

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NEW YORK ASSOCIATION OF HOMES AND SERVICES
FOR THE AGING, INC., individually and on behalf of its
residential health care facility members located in the State of
New York,

Plaintiff,

-against-

RICHARD F. DAINES, M.D., as Commissioner of Health of
the State of New York; DIRECTOR OF THE BUDGET OF
THE STATE OF NEW YORK; and DAVID A. PATERSON,
as Governor of the State of New York,

Defendants.

AMENDED COMPLAINT

Index No. 4577-09

Plaintiff New York Association of Homes and Services for the Aging, Inc. (“NYAHSA”), individually and on behalf of its residential health care facility members, as and for its complaint for declaratory judgment and injunctive relief, respectfully alleges:

PARTIES

1. Plaintiff NYAHSA is a not-for-profit membership corporation organized under the laws of the State of New York with its principal offices located in Albany, New York. NYAHSA is a statewide association of nearly 600 not-for-profit and public providers of long-term residential, health care, and community-based services every year to an estimated half million of New York State’s elderly persons and individuals with special needs.

2. NYAHSA’s membership includes 282 residential health care facilities, commonly known as nursing homes (“RHCs” or “nursing homes”), on whose behalf this action is being brought (with the six exceptions noted in Exhibit A), all of which are owned and operated by charitable and/or religious organizations or counties or municipalities located throughout the

State of New York. A list of NYAHSA's member nursing homes as of June 1, 2009 is annexed hereto as Exhibit A and incorporated herein by reference. Each of these nursing homes is licensed by the New York State Department of Health (the "Department of Health"), and virtually all are certified providers of health care services in the New York State Medicaid Program. As such, NYAHSA's member nursing homes depend upon receiving appropriate government reimbursement for care rendered to their Medicaid-eligible residents.

3. Defendant Richard Daines, as the Commissioner of Health of the State of New York, is charged with the responsibility for determining and certifying rates of payment for services rendered to Medicaid recipients by nursing homes. *See* N.Y. Public Health Law § 2807(3). These rates are to be calculated in accordance with rules and regulations promulgated by the State Hospital Review and Planning Council (the "State HRPC") with approval of the Commissioner of Health. *See* N.Y. Public Health Law §§ 2803(2) and 2803(3). At the present time, the pertinent regulations are set forth in Part 86-2 of Title 10 of the N.Y.C.R.R.

4. Defendant Director of the Budget of the State of New York, with principal offices located in the City and County of Albany, is responsible for approving the Medicaid reimbursement rates determined and certified to the Director by the Commissioner of Health pursuant to Section 2807(3) of the Public Health Law.

5. Defendant David Paterson is the Governor of the State of New York, with his principal office located in the City and County of Albany. Governor Paterson is named as a defendant in this action because this action in part challenges the constitutionality of certain provisions of New York State statutes and/or their implementation, which statutes the Governor is responsible for executing.

VENUE

6. Plaintiff designates Albany County as the place of trial. The bases of venue are the Defendants' principal offices are located in Albany County and Defendants in their official capacity reside therein; NYAHSA has its office and resides therein; nine of NYAHSA's nursing home members operate and reside therein; and certain material events occurred therein.

NATURE OF THIS ACTION

7. As detailed more fully below, NYAHSA brings this action to declare invalid and enjoin the implementation of certain provisions of Part I of Chapter 2 of the Laws of 2009, adopted by the Legislature on February 3, 2009 and signed into law by Governor Paterson on February 4, 2009, as part of the Deficit Reduction Plan for the 2008-09 Fiscal Year ending March 31, 2009 (the "Deficit Reduction Plan"), and Part D of Chapter 58 of the Laws of 2009, passed by the Legislature on April 3, 2009, and signed into law by Governor Paterson on April 7, 2009, as part of the Budget Bill for the 2009-10 Fiscal Year (the "2009-2010 Budget").

8. Driven solely by budgetary considerations, the New York State Legislature enacted the Deficit Reduction Plan, which dramatically reduced Medicaid reimbursement for New York State nursing homes by more than \$220 million over a three-month period, including reimbursement for services already provided from January 1, 2009 through February 4, 2009, and prospectively from February 4, 2009 through March 31, 2009. More than 55 percent of the estimated impact of these rate cuts will be borne by NYAHSA's member nursing homes – all of which are not-for-profit or county-operated entities. In so acting, the Legislature undid the most significant reform in nursing home reimbursement in decades for New York's Medicaid program, and retroactively set nursing home rates back in time to 2006 levels, without even fully accounting for inflation in the three year interim. Specifically, the Deficit Reduction Plan –

(a) without any prior notice to nursing homes, delayed implementation of the long-awaited “rebasement” of nursing home reimbursement rates from January 1, 2009 until April 1, 2009. This action was taken despite the fact that (a) the same Legislature, in 2006, recognized the need for updating nursing home reimbursement rates – in many cases, still tied to outmoded 1983 costs – and mandated rebasing of rates effective January 1, 2009 to 2002 costs, trended forward for inflation to 2009 dollars, and (b) the Department of Health, in December 2008, notified nursing homes that, consistent with the Legislature’s mandate, nursing homes would be reimbursed on the basis of 2002 costs commencing on January 1, 2009; and

(b) reduced the inflationary “trend factor” for the period from April 1, 2008 through December 31, 2008 by eliminating the trend factor “banking” adjustment that would ordinarily be made to 2009 rates to reconcile the difference between the projected and final 2008 trend factors. *See* Public Health Law § 2807-c(10)(c)(3).

9. Compounding these injuries, the State enacted another series of nursing home rate reductions in the 2009-2010 Budget that substantially eviscerated the “rebasement” relief in the fiscal year commencing April 1, 2009 through March 31, 2010. The 2009-2010 Budget was passed before the ink had barely dried on the Federal American Recovery and Reinvestment Act (“ARRA”), Public Law 111 5, known as the “Fiscal Stimulus Act”, which, among other things, *increased* the Federal share of the cost of New York’s Medicaid program with the express purpose of “avert[ing] cuts to provider payment rates and benefits or services” during the current economic crisis. ARRA, § 5000(a). Specifically, the 2009-2010 Budget effected further cuts to nursing home payments to the tune of approximately \$330 million statewide, directly contrary to the express purpose of the Fiscal Stimulus Act, by among other things –

(a) capping the additional amount that nursing homes were to receive as a result of rebasing pursuant to the Reimbursement Reform Act at \$210 million for the period from April 1, 2009 through March 31, 2010; and

(b) in addition to continuing the Deficit Reduction Act's trend factor reduction for the period from April 1, 2008 through December 31, 2008, eliminating the 2008 and 2009 trend factor adjustments to account for inflation for the period April 1, 2009 through March 31, 2010 that otherwise would have been applied to those rates.

10. The rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget, described above, are unconstitutional or otherwise unlawful for the following reasons:

(a) **The retroactive rate reductions, effected after the nursing homes had already provided services based on the higher, rebased rates to which they were entitled from January 1, 2009 through February 4, 2009, violate the Due Process Clauses of the New York State and U.S. Constitutions and constitute a governmental taking of private property without just compensation.** Simply put, nursing homes have a protected property interest in being reimbursed at the rates, previously promulgated and in effect at the time services were provided, which cannot be lawfully reduced after the fact.

(b) **The drastic change in methods and standards for Medicaid reimbursement effected by the Deficit Reduction Plan and the 2009-2010 Budget violates Federal law requiring prior notice and opportunity for public comment as well as Federal approval.** Before effecting any changes to the Medicaid reimbursement methodology for nursing homes, New York State must receive prior approval from the Federal government. In order to obtain such approval, consistent with Federal law and

regulations, the State must have provided a process that affords affected nursing homes, including NYAHSA's members, prior notice and a meaningful opportunity to comment on the proposed rate changes before they go into effect. Defendants utterly failed to provide such a process in adopting the Deficit Reduction Plan and the 2009-2010 Budget. Accordingly, Defendants may not lawfully implement the rate reduction measures effected by the Deficit Reduction Plan during the January 1, 2009 through March 31, 2009 rate period.

(c) **The rate reductions, to the extent implemented without 60 days' advance notice to nursing homes, violate the State Public Health Law.** Section 2807(7) of the New York Public Health Law requires the Department of Health to provide nursing homes with notice of their reimbursement rates 60 days in advance of the affected rate period; the Deficit Reduction Plan, enacted on February 4, 2009, did not suspend the 60-day advance notification requirement in Public Health Law Section 2807(7). Accordingly, to conform with the prospective rate setting mandate in Public Health Law Section 2807(7), Defendants may not lawfully implement the rate reduction measures effected by the Deficit Reduction Plan during the January 1, 2009 through March 31, 2009 rate period.

(d) **The rate changes are a purely budget-driven measure in contravention of Federal and State law.** The rate reductions effected by the Deficit Reduction Plan and the 2009-2010 Budget, motivated as they are solely by budgetary considerations, violate Federal and State requirements that nursing home rates be reasonable and adequate and designed to assure efficiency, economy, and quality of care. *See* 42 U.S.C. § 1396a(30)(A); N.Y. Public Health Law § 2807(3).

11. For the foregoing reasons, in adopting the Deficit Reduction Plan and the 2009-2010 Budget, Defendants have acted unlawfully to deprive the member nursing homes of NYAHSAs of reimbursement to which they are entitled under Federal and State law. Accordingly, the rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget should be declared invalid, and Defendants required to calculate or recalculate rates without applying or giving effect to those measures.

BACKGROUND
Federal Requirements of the Medicaid Program

12. The Medicaid program is a joint Federal and State program designed to provide care to the poor. 42 U.S.C. §§ 1396 *et seq.* (the “Medicaid statute”). Each individual State administers the Medicaid program pursuant to a State Plan for Medical Assistance (a “State Plan”) approved by the Federal government. *See* 42 U.S.C. § 1396. At all relevant times, New York State has had in effect a State Plan approved by the U.S. Secretary of Health and Human Services (“HHS”).

13. To qualify for participation in the Medicaid program and receive matching Federal funds, a participating State must agree to administer its Medicaid program in accordance with the Medicaid statute, its approved State Plan, and the implementing regulations and policies of the Federal government. 42 U.S.C. §§ 1396a and 1396c; 42 C.F.R. § 447.253(i).

14. Under the Medicaid program, a participating State is reimbursed in part by the Federal government for the costs it incurs in providing health care and treatment, including nursing home services, rendered to indigent sick and elderly residents of the State who are eligible for assistance under the Medicaid program. *See* 42 U.S.C. § 1396. Pursuant to a formula set forth in the Medicaid statute, until September 30, 2008 the Federal share of costs incurred by the State of New York in providing nursing home services to its eligible residents

was 50%. *See* 42 U.S.C. § 1396b. This share is known as the Federal Medical Assistance Percentage (“F-MAP”).

15. As part of its State Plan, each State must designate a “single State agency” to administer the Medicaid program within that State. *See* 42 U.S.C. § 1396a(a)(5). At all relevant times, New York State has designated the Department of Health as its single State agency. *See* N.Y. Social Services Law, § 363-a.

16. Federal law requires a State to provide methods and procedures to assure that payments are consistent with efficiency, economy, and quality of care, and that payments are sufficient to enlist enough providers so that care and services are equally available to Medicaid beneficiaries as such care and services are available to the general population in a geographic area. 42 U.S.C. § 1396a(30)(A).

17. The Medicaid statute includes exacting requirements for nursing homes in connection with assessing residents’ conditions; staff training; the development and professional review of plans of care for each individual resident; professional review of the use of any psychotropic drugs by residents; quality assurance; nurse aide testing and training; and surety bonds to safeguard patient funds. *See* 42 U.S.C. 1396r(b). Furthermore, a nursing home must care for its residents “in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.” 42 U.S.C. § 1396r(b)(1)(A). In addition, it “must provide services and activities to attain or maintain the highest practicable physical, mental, and psychological well-being of each resident.” 42 U.S.C. § 1396r(b)(2).

18. Under Federal law, a State Plan must provide a public process for establishing nursing home rates, whereby: (a) the “proposed rates”, the “methodologies underlying the establishment of such rates,” and “justifications for the proposed rates” are published; (b) providers, beneficiaries and their representatives, and other concerned members of the public

are given a “reasonable opportunity for review and comment” on the proposed rates, methodologies, and justifications; and (c) final rates, and the methodologies and justifications for such final rates, are published. 42 U.S.C. § 1396a(a)(13)(A).

19. Similarly, Federal regulations implementing the Medicaid statute require that a State Medicaid agency seeking to amend its State Plan provide public notice of any significant proposed changes in its methods and standards for setting reimbursement rates. 42 C.F.R. § 447.205. To comply with Federal regulation, the notice must, among other things, (a) describe the proposed changes in methods and standards for setting payment rates; (b) give an estimate of any expected increase or decrease in annual agency expenditures; (c) explain why the agency is changing its methods and standards; (d) identify a local agency in each county where copies of the proposed changes are available for public review; and (e) give a contact address where written comments may be sent and reviewed. Id.

20. The Federally mandated notice of rate changes must be published before the proposed reimbursement rates go into effect, either in the State Register or in the newspapers of widest circulation in each city within the State that has a population of over 50,000. 42 C.F.R. § 447.205.

21. All State Plan amendments must be approved by the Federal government before they become effective. No State Plan amendment that changes the State’s methods and standards for reimbursement can be effective prior to the first day of the calendar quarter in which an “approvable” amendment has been submitted. *See* 42 C.F.R. §§ 430.256(b)(2) and 447.256(c).

22. Under Federal regulations, a State Plan must also provide for the establishment of a Medical Care Advisory Committee, which must have the opportunity to participate in policy development and administration of the State’s Medicaid program. *See* 42 C.F.R. § 431.12. To

comply with this regulation, New York State has established a Medical Advisory Committee pursuant to Section 365-c of the Social Services Law, which at all times relevant hereto has, upon information and belief, been in existence.

23. New York State has participated in the Medicaid program at all relevant times, and originally submitted its State Plan to HHS, which HHS approved.

24. Since the original approval by the Federal government of New York's State Plan, New York has submitted and received approval of several amendments thereto. However, it has not received approval for the rate reduction measures effected by the Deficit Reduction Plan.

New York State's Medicaid Reimbursement Methodology

25. Pursuant to Article 28 of the New York Public Health Law, the Commissioner of Health of the State of New York is responsible for establishing the rates of Medicaid reimbursement for nursing homes in New York State. These Medicaid reimbursement rates must be "reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities." N.Y. Public Health Law § 2807(3).

26. The Medicaid reimbursement rates paid to nursing homes are in large part prospective in nature. Section 2807(7)(a) of the Public Health Law requires that the Commissioner give nursing homes notice of any Medicaid reimbursement rates at least 60 days "prior to the beginning of an established rate period for which the rate is to become effective."

27. Since 1986, Medicaid rates have been calculated by reference to costs incurred during a prior year known as the "base year". The year 1983 has been generally used as the base year for calculating nursing home reimbursement rates for rates effective since 1986. *See* 10 N.Y.C.R.R. § 86-2.10(b)(1)(i). Base year costs were also adjusted by a "trend factor", which is a percentage established by the Department of Health in an attempt to account for inflation between the base year (when costs were reported) and the actual rate period when rates were to

be paid (with the notable exception of much of 1995, 1996 and 1997, during which the Legislature imposed a trend factor “freeze”).

28. The Department of Health’s regulations provide for an exception to the 1983 base year in the case of newly established nursing homes, newly constructed or substantially renovated facilities, or new operators of existing nursing homes. 10 N.Y.C.R.R. § 86-2.10(b)(1)(i). *See also* 10 N.Y.C.R.R. §§ 86-2.2(e), 86-2.10(k)(4) and 86-2.15(c). In the latter circumstances, the Department’s regulations provide for the use of a new base year corresponding with the first 12-month period during which the new facility or new operator has achieved an overall occupancy of at least 90 percent.

29. Even when the Department of Health calculates reimbursement rates for new facilities and new operators, the Department goes through a computational exercise that is not provided for in the regulations. Under a so-called “detrending”/“retrending” process, the Department deflates, or “detrends”, the base year costs of a new facility or operator down to 1983 levels by factors established by respondents in an effort to account for the overall rate of inflation in effect from 1983 through the new base year. After the costs of a new facility or operator are detrended to 1983 levels, the costs are subjected to the same indirect and direct cost ceilings applicable to facilities with 1983 base year costs. The Department then “retrends” the costs to the Medicaid rate year – but at a rate less than full inflation, to give effect to any trend factor “freezes” imposed by statute during the intervening years.

30. As a result of the foregoing, every nursing home in New York State was effectively being reimbursed on the basis of costs incurred 25 years ago, in 1983 (the “1983 base year methodology”).¹

31. The above methodology, as adjusted from time to time, was used to calculate nursing home rates from 1986 through 2008. As required by Federal law, the 1983 base year and any adjustments thereto were approved and accepted by HHS as part of New York’s State Plan.

The Need for Medicaid Reimbursement Reform in New York State

32. After two decades of being reimbursed on the basis of outmoded 1983 costs, an increasing majority of nursing homes over time were unable to cover the growing cost of providing nursing home services and were incurring ever-growing operating deficits. The nursing homes in the worst financial shape were caring for the more financially needy, Medicaid-eligible residents and, accordingly, generally had high Medicaid utilization rates.

33. In 2004, NYAHSAs along with two other statewide provider associations embarked on a collaborative effort to reform nursing home reimbursement in New York State by developing a new, updated reimbursement methodology. To that end, NYAHSAs, the New York State Health Facilities Association, Inc., and the Healthcare Association of New York State, which when combined represent an estimated 90 percent of all nursing homes in the State, formed the Joint Association Task Force on Nursing Home Reimbursement (the “Joint Task Force”). The Joint Task Force solicited and harnessed input and expertise from national Medicaid reimbursement experts, staff persons of the respective associations and a large and diverse group of nursing home professionals from across the State, including nursing home chief

¹ In the 2006 State Budget, the State Legislature established 2002 as the new base year for calculating the operating component of a nursing facility’s Medicaid reimbursement rate. *See* N.Y. Public Health Law § 2802(2-b). The “rebasement” of nursing facility rates is being phased in and will not be fully implemented until 2009.

executive officers, administrators, finance directors, consultants and staff. The Joint Task Force also retained a respected third party health care consulting firm to provide technical guidance in modeling various policy options for a new reimbursement methodology. In addition, NYAHSAs and the other Joint Task Force members held a series of public forums across the State to solicit direct member nursing home input. The reimbursement model being developed by the Joint Task Force was refined several times to incorporate issues identified throughout this deliberative process.

34. The Joint Task Force completed its work in 2005, and identified several recommendations for reforming the Medicaid reimbursement methodology. Key to this reform was the implementation of a new base period for reimbursement rates: based on the availability of cost report data and the timing of the analyses, the Joint Task Force identified 2002 as a base year to replace the two decades-old 1983 base year.

35. NYAHSAs and the Joint Task Force members shared their recommendations with the Legislative and Executive branches of the New York State government, including the Department of Health, in subsequent briefings and as part of the 2006-07 State budget process.

Medicaid Rate “Rebasing”

36. The major recommendations from the Joint Task Force became the basis for the first legislative initiative in decades to reform the Medicaid reimbursement methodology for nursing homes. The legislation, introduced in 2006, called for the replacement of the 1983 base year methodology, as it was by then clearly outmoded, inequitable, and inadequate to cover the actual costs being experienced by nursing homes in the 21st Century.

37. Acting on the Joint Task Force recommendations, then-Governor Pataki signed into law Chapter 109 of the Laws of 2006, Part C (the “Reimbursement Reform Act”), which incorporated most of the Joint Task Force’s recommendations, including the key “rebasing”

provisions. The Reimbursement Reform Act provided that, effective January 1, 2009, the operating cost component of the Medicaid reimbursement rates for New York State nursing homes would be calculated on the basis of 2002 base year costs (trended) (the “2002 base year methodology”).² See N.Y. Public Health Law § 2808(2-b), *as added by* Reimbursement Reform Act § 47. This rebasing provision represented a major leap forward in rate reform from the prior methodology, pursuant to which operating costs were being reimbursed was based on stale cost data reported some 23 years ago.

38. On June 23, 2006, the Reimbursement Reform Act was passed unanimously by the New York State Senate and with only one dissenting vote by the New York State Assembly and signed into law that same day by the Governor.

39. Upon information and belief, the Director of the Budget and/or other State officials estimated that, as a result of rebasing rates to 2002 costs pursuant to the Reimbursement Reform Act, the aggregate Statewide annualized Medicaid reimbursement for all nursing homes in 2009 would be approximately \$460 million greater than the aggregate amount that would otherwise have been paid under the 1983 base year methodology.

40. The Reimbursement Reform Act also provided for “transitional” payments to nursing homes in rate years 2007 and 2008 to bridge the gap between rates calculated under the 1983 base year methodology and the updated 2002 base year methodology that was to take effect on January 1, 2009. See N.Y. Public Health Law § 2808(2-b)(a), *as added by* the Reimbursement Reform Act, § 47. However, the Reimbursement Reform Act provided that:

² The 2002 “rebasing” provision would also be applied to any nursing home whose rates were already being determined on the basis of a base year more recent than 2002 by deflating, or “detrending”, the base year costs of such a facility down to 2002 levels using the established trend factors for all intervening years. After the costs of such a facility are detrended to 2002 levels, they are subjected to the same indirect and direct cost ceilings applicable to facilities with 2002 base year costs. The Department of Health then “retrends” the costs to the Medicaid rate year using the established trend factors.

(a) in 2007 (as distinguished from 2009), the aggregate additional amount to be paid Statewide to nursing homes through the transitional payments would be limited or “capped” at \$137.5 million over and above the aggregate Statewide amount under the prior 1983 base year methodology; and (b) for 2008 (as distinguished from 2009), the aggregate Statewide annual additional amount to be paid through the transitional payments was limited to \$167.5 million. N.Y. Public Health Law § 2808(2-b)(a)(1), *as added by* Reimbursement Reform Act, § 47.

41. By contrast, the Legislature did not place any cap or limit on the aggregate increased reimbursement that was to be paid to nursing homes on and after January 1, 2009 as a result of rebasing.

42. The foregoing changes in the methods and standards for payment required Federal State Plan amendment approval, and the Defendants and/or their predecessors in office duly submitted such amendment for HHS approval. In 2008, the Federal government approved the State Plan amendment incorporating the changes to the methods and standards for reimbursement called for in the Reimbursement Reform Act, and the Defendants thereafter reimbursed NYAHSA’s member nursing homes for 2007 and 2008 with the requisite transitional payments in accordance with the Reimbursement Reform Act.

43. Under Public Health Law Section 2807(7), Defendants are also required to provide nursing homes with advance notice of their Medicaid reimbursement rates. By letter dated December 8, 2008, the Department of Health notified NYAHSA’s member nursing homes of their Medicaid reimbursement rates for the rate period commencing on January 1, 2009. In that same communication, the Department of Health specifically informed nursing homes that “the rate reflects the rebasing provisions implemented by [the Reimbursement Reform Act] and made effective January 1, 2009.”

44. Thereafter, NYAHSAs member nursing homes, relying on the rebased rates promulgated in accordance with the Reimbursement Reform Act and approved State Plan amendment, provided nursing home services to Medicaid-eligible recipients from January 1, 2009 through March 31, 2009 and onward.

The Deficit Reduction Plan

45. Despite the foregoing, on February 3, 2009 the New York State Legislature passed, and on February 4, 2009 Governor Paterson signed into law, the Deficit Reduction Plan, which in relevant part:

(a) retroactively delayed by three months, until April 1, 2009, the rebasing of nursing home Medicaid reimbursement rates that was otherwise supposed to have been implemented as of January 1, 2009 and, in the absence of the transitional payments made during 2007 and 2008, thereby retroactively reduced reimbursement rates to levels in effect in 2006, without prior notice to nursing homes or Federal approval of any enabling State Plan amendment; and

(b) retroactively reduced the trend factor adjustment for the rate period from April 1, 2008 through December 31, 2008 that was otherwise required to be made pursuant to Section 2807-c(10) of the Public Health Law, also without prior notice or Federal approval.

46. Notably, although the Deficit Reduction Plan deferred rebasing for three months, the Legislature did not authorize any transitional payments for the January 1, 2009 through March 31, 2009 rate period as it had done in 2007 and 2008. What is more, in delaying rebasing, the State froze case-mix adjustments otherwise made to account for changes in the clinical acuity and care needs of nursing home residents. Defendants also deprived nursing homes of the

supplemental rate adjustments designed to account for the greater cost of caring for dementia, behavioral and bariatric residents, included in the Reimbursement Reform Act.

47. Moreover, although the Legislature in the past, from time to time, has suspended the 60-day advance notification mandated by Public Health Law Section 2807(7), the Deficit Reduction Plan does not contain any provision for suspending or otherwise waiving the 60-day advance notification requirements. By contrast, the 2009-2010 Budget did suspend the statutory notice requirement—but did so only with regard to rate changes effected by the 2009-2010 Budget from April 1, 2009 through March 31, 2010, and not with respect to the changes wrought by the Deficit Reduction Plan.

48. Furthermore, prior to the effective date of the Deficit Reduction Plan, upon information and belief, the Defendants –

(a) failed to publish in the State Register (or in any newspaper of widest circulation in any city within the State having a population in excess of 50,000) the reduced Medicaid reimbursement rates for nursing homes resulting from the enactment the Deficit Reduction Plan, the methodologies underlying the establishment of such rates, their purported justifications, the expected decreases in expenditures resulting therefrom, or their effective dates;

(b) failed to provide NYAHSA, its member nursing homes, or the affected public, with notice of such rates, methodologies, and justifications or afford them a meaningful opportunity to comment on the proposed rate changes; and

(c) otherwise failed to comply with Federal laws and regulations governing the process by which changes are to be made to the standards and methods by which nursing homes are to be reimbursed. *See* 42 U.S.C. § 196a(30)(A), 42 C.F.R. § 447.205.

49. Upon information and belief, the Defendants also failed to submit a State Plan amendment to the appropriate Federal authorities to obtain approval of the changes adopted pursuant to the Deficit Reduction Plan and/or failed to accurately provide the requisite assurances that New York State complied with the public notice and comment provisions. 42 C.F.R. §§ 447.253(b)(1)(iii)(C) and 447.253(h).

50. On or about February 24, 2009, the Department of Health notified NYAHSA's member nursing homes of the reduction of their Medicaid reimbursement rates for the January 1, 2009 through March 31, 2009 period pursuant to the Deficit Reduction Plan. Thereafter, the Defendants told NYAHSA's member nursing homes that they would commence recoupment, with interest, of any amounts included in their reimbursement rates to the extent that they exceeded the reduced rates sent on February 24, 2009.

51. Moreover, following enactment of the Deficit Reduction Plan, the Department of Health issued revised rates that recouped the 2008 transitional payments that had continued in the first quarter of 2009, while other, positive adjustments to 2009 rates owed to nursing homes have not been processed yet.

The Federal Fiscal Stimulus Act

52. On or about February 17, 2009, Congress enacted, and President Obama signed into law, the Fiscal Stimulus Act, which, among other things, increased the F-MAP share for all States, including New York. The express purpose for the increased F-MAP was "(1) to provide fiscal relief to States in a period of economic downturn and (2) to protect and maintain State Medicaid programs during a period of economic downturn, including by helping to avert cuts to provider payment rates and benefits or services . . .". ARRA, § 5000(a). Pursuant to the Fiscal Stimulus Act, the matching share paid to New York State by the Federal government for Medicaid reimbursement payments to nursing homes pursuant to 42 U.S.C. Section 1396b

increased from 50% to approximately 58% for the period from October 1, 2008 through December 31, 2010. *See* ARRA, § 5001.

53. Despite the increase in F-MAP to New York State, the State took no action to reverse the rate reductions effected by the Deficit Reduction Plan. In fact, New York State acted directly contrary to the express purpose of the Fiscal Stimulus Act, by effecting further cuts to nursing home reimbursement rates.

The 2009-2010 Budget

54. On April 7, 2009, Governor Paterson signed into law the 2009-2010 Budget, which through a combination of measures, reduced nursing home Medicaid payments by approximately \$360 million statewide. Specifically, the 2009-2010 Budget:

(a) capped the additional amount that nursing homes were to receive as a result of rebasing pursuant to the Reimbursement Reform Act for the period from April 1, 2009 through March 31, 2010 at \$210 million more than the State had paid to facilities in 2006; and

(b) eliminated the 2008 and 2009 trend factor adjustments for the period from April 1, 2009 through March 31, 2010 that otherwise would have been applied to those rates.

55. On April 29, 2009, the Defendants published a notice in the State Register purportedly “[p]ursuant to 42 CFR Section 447.205,” in which the Department of Health “propose[d] to amend the Title XIX (Medicaid) State Plan for long term care services to comply with recently enacted statutory provisions”, and describing the “significant changes” effective as early as May 1, 2009. *See* 31 *N.Y. Register* 92 (April 29, 2009). On June 10, 2009, Defendants published another notice in the State Register “[p]ursuant to 42 CFR Section 447.205”, in which the Department again “propose[d] to amend the Title XIX (Medicaid) State Plan for inpatient

hospital, long term care and non-institutional services to comply with recently enacted statutory provisions”, and describing “clarification to previously noticed provisions” and “new significant changes”. *See* 31 *N.Y. Register* 77 (June 10, 2009).

56. These eleventh-hour publications:

(a) evidence Defendants’ acknowledgement of the requirements under Federal law to provide notice of any significant changes in the reimbursement methodology such as those effected by the Deficit Reduction Plan; and

(b) only purported to address and justify the prospective rate changes enacted in the 2009-2010 Budget, and did not even attempt to address or justify the rate reductions for the January 1, 2009 through March 31, 2009 period effected by the Deficit Reduction Plan.

57. That is, the forgoing State Register notices, concededly mandated by Federal law, failed to, and necessarily could not, cure the defect in the State’s failure to provide public notice and opportunity for comment to the rate reduction measures wrought by the Deficit Reduction Plan. Yet those rate reductions also represent significant changes in the methods and standards for setting rates that were never approved by the Federal government.

58. Upon information and belief, Defendants failed to otherwise timely comply with Federal laws and regulations governing the process by which changes are to be made to the standards and methods by which nursing homes are to be reimbursed. *See* 42 U.S.C. § 196a(30)(A), 42 C.F.R. § 447.205.

59. Upon information and belief, the Defendants also failed to submit a State Plan amendment to the appropriate Federal authorities to obtain approval of the changes adopted pursuant to the 2009-2010 Budget and/or failed to accurately provide the requisite assurances

that New York State complied with the public notice and comment provisions. 42 C.F.R. §§ 447.253(b)(1)(iii)(C) and 447.253(h).

FIRST CAUSE OF ACTION
(Violation of Due Process/Illegal Taking)

60. Plaintiff repeats and realleges the allegations contained in each and every preceding paragraph hereof.

61. As a matter of due process, nursing homes in New York State have a protected property interest in being reimbursed at the rates promulgated and in effect when they provided nursing home services to Medicaid recipients.

62. Prior to the adoption of the Deficit Reduction Plan, Plaintiff's member nursing homes were entitled to have their Medicaid reimbursement rates for the period from January 1, 2009 through February 4, 2009 calculated in accordance with promulgated rates and rebasing provisions enacted pursuant to the Reimbursement Reform Act.

63. Plaintiff's member nursing homes were also entitled to have said rates reflect an appropriate trend factor adjustment to account for inflation during the period from April 1, 2008 through December 31, 2008, pursuant to Public Health Law Section 2807-c(10).

64. The retroactive rate reductions to Plaintiff's member nursing homes' Medicaid reimbursement rates for the period from January 1, 2009 through February 4, 2009 pursuant to the Deficit Reduction Plan, which (i) deferred rebasing until April 1, 2009, (ii) reduced the trend factor adjustments that were otherwise to be made pursuant to Section 2807-c(10) of the Public Health Law, and (iii) effectively reinstated the rates in effect as of December 31, 2006 without an appropriate trend factor adjustment, constitute a deprivation of property without due process of law and an unlawful taking of property without just compensation, in violation of the Fifth

Amendment of the United States Constitution and Article I, Section 7 of the New York State Constitution, as well as the Supremacy Clause of the United States Constitution.

SECOND CAUSE OF ACTION
(Violation of Federal Law and Regulations and Supremacy Clause)

65. Plaintiff repeats and realleges the allegations contained in each and every preceding paragraph hereof.

66. The rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget resulted in a significant change in the methods and standards by which the State of New York establishes reimbursement rates for Plaintiff's members and other nursing homes participating in New York State's Medicaid program.

67. The changes effected by the Deficit Reduction Plan and the 2009-2010 Budget require prior Federal approval from the U.S. Secretary of Health and Human Services before those provisions may be lawfully implemented.

68. In order to obtain such prior Federal approval, the State of New York was required to submit an approvable State Plan amendment for consideration by the U.S. Secretary of Health and Human Services.

69. In order to be approved by the Secretary of Health and Human Services, the Defendants' submission of such State Plan amendment required public notice; specifically, advance publication of the proposed Medicaid reimbursement rates to be promulgated pursuant to any such amendment, along with the methodologies underlying the rates as well as the State's justifications for them. In addition, Defendants were required to afford providers, beneficiaries, and the public a reasonable opportunity to comment on such rates, methodologies, and justifications. 42 U.S.C. § 1396a(a)(13)(A).

70. The public notice and comment required pursuant to 42 C.F.R. Section 447.205 was to be provided before the effective date of rates to be published pursuant thereto.

71. No State Plan amendment can be lawfully effected prior to the first day of a calendar quarter in which an “approvable” amendment is submitted to the U.S. Secretary of Health and Human Services.

72. Since (i) the Defendants have failed to, and at this point in time, cannot provide the public notice and comment required under 42 C.F.R. Section 447.205 for the rate reduction measures effected by the Deficit Reduction Plan prior to their effective date; and (ii) no approvable State Plan amendment has been submitted to the U.S. Secretary of Health and Human Services, let alone approved, the rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget violate Federal law and regulations, and may not be lawfully implemented consistent with the Supremacy Clause of the United States Constitution.

THIRD CAUSE OF ACTION
(Violation of Federal and State Reimbursement Standards)

73. Plaintiff repeats and realleges the allegations contained in each and every preceding paragraph hereof.

74. Federal law requires that a State employ methods and procedures for setting reimbursement rates that assure efficiency, economy, and quality of care and that are sufficient to enlist enough providers so that care will be equally available to Medicaid beneficiaries as to the general population. 42 U.S.C. § 1396a(30)(A). Likewise, the New York Public Health Law requires that the Defendants reimburse nursing homes at rates that are reasonable and adequate to meet the costs incurred by efficiently and economically operated facilities. N.Y. Public Health Law § 2807(3). Neither Federal law nor State law permits rate reductions that are based solely on budgetary considerations.

75. Upon information and belief, rebasing was delayed by the Deficit Reduction Plan in disregard of the need for Medicaid nursing home reimbursement rate reform evidenced by the enactment of the Reimbursement Reform Act calling for the rebasing of rates effective January 1, 2009 in response to the recommendations of the Joint Task Force.

76. Upon information and belief, the delay of rebasing and the other rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget were enacted for purely budgetary reasons.

77. The rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget, if implemented, would produce reimbursement rates that are not reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities, as required by Public Health Law Section 2807(3), nor sufficient to assure efficiency, economy, and quality of care, as required by 42 U.S.C. Section 1396a(30)(A) and the Supremacy Clause of the United States Constitution.

FOURTH CAUSE OF ACTION
(Violation of State Law Prohibiting Retroactive Rate Setting)

78. Plaintiff repeats and realleges the allegations contained in each and every preceding paragraph hereof.

79. New York Public Health Law Section 2807(7) requires that the Department of Health give notice to nursing homes of their Medicaid reimbursement rates, at least 60 days prior to the established rate period for which the rates are to become effective. The Deficit Reduction Plan, adopted on February 4, 2009, does not contain any provision purporting to suspend or waive the 60-day advance notification required by Public Health Law Section 2807(7).

80. Accordingly, consistent with the Public Health Law, the rate reduction measures effected by the Deficit Reduction Plan may not be lawfully implemented during the period from January 1, 2009 through March 31, 2009.

FIFTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983)

81. Plaintiff repeats and realleges the allegations contained in each and every preceding paragraph hereof.

82. NYAHSA and its member nursing homes are persons within the jurisdiction of the United States as that term is defined in 42 U.S.C. Section 1983.

83. Implementation of the rate reductions and measures challenged herein has subjected and will subject NYAHSA and its member nursing homes to, or cause them to be subjected to, the deprivation of substantial federal rights under color of State law.

84. By their actions, which Defendants know or should have known cause a violation of such Federally protected rights, Defendants will proximately cause and have caused in fact the deprivation of substantial Federal rights including, but not limited to, the rights of NYAHSA and its member nursing homes, to substantive due process and protection from the unconstitutional taking of property without just compensation.

RELIEF REQUESTED

WHEREFORE, Plaintiff New York Association of Homes and Services for the Aging, Inc., on behalf of its residential health care facility members, respectfully demands judgment against Defendants as follows:

1. On the First Cause of Action,
 - (a) Declaring the rate reduction measures effected by the Deficit Reduction Plan, including the delay of rebasing, to be null and void;

(b) Enjoining Defendants from implementing said rate reduction measures;

(c) Directing the Defendants to calculate or recalculate the rates of NYAHSA's member nursing homes for the period from January 1, 2009 through February 4, 2009 by providing reimbursement in accordance with the rebasing provisions enacted pursuant to the Reimbursement Reform Act, and by applying the appropriate trend factor adjustment to reimbursement rates for the period from April 1, 2008 through December 31, 2008, pursuant to Public Health Law Section 2807-c(10); and

(d) Directing Defendants and/or their agents and successors in office to repay to Plaintiff's member nursing homes any funds (with interest) heretofore recouped from such nursing homes pursuant to such rate reduction measures.

2. On the Second, Third, Fourth, and Fifth Causes of Action,

(a) Declaring the rate reduction measures effected by the Deficit Reduction Plan and the 2009-2010 Budget, including the delay of rebasing, to be null and void;

(b) Enjoining Defendants from implementing the rate reduction measures in the Deficit Reduction Plan and the 2009-2010 Budget;

(c) Directing the Defendants to calculate or recalculate the rates of NYAHSA's member nursing homes for the period from January 1, 2009 through March 31, 2009 and provide reimbursement (i) in accordance with the rebasing provisions enacted pursuant to the Reimbursement Reform Act; and (ii) by applying the appropriate trend factor adjustment to reimbursement rates for the period from April 1, 2008 through December 31, 2008, pursuant to Public Health Law Section 2807-c(10);

(d) Directing the Defendants to calculate or recalculate the rates of NYAHSA's member nursing homes for the period from April 1, 2009 through March 31, 2010 (i) in accordance with the rebasing provisions enacted pursuant to the


Reimbursement Reform Act, without capping the additional amount that nursing homes were to receive as a result of rebasing pursuant to the Reimbursement Reform Act; and (ii) by applying the appropriate 2008 and 2009 trend factor adjustments for the period from April 1, 2009 through March 31, 2010 that otherwise would have been applied to those rates; and

(e) Directing Defendants and/or their agents and successors in office to repay to Plaintiff's member nursing homes any funds (with interest) heretofore recouped from such nursing homes pursuant to such rate reduction measures.

3. Granting Plaintiff such other and further relief as this Court may deem just and proper, together with the costs and disbursements of this proceeding and attorneys' fees pursuant to 42 U.S.C. Section 1988.

DATED: New York, New York
August 3, 2009

CADWALADER, WICKERSHAM & TAFT LLP

By: 

Brian T. McGovern
Attorneys for Plaintiff
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281

(Exhibit A)

A. Holly Patterson Extended Care Facility

875 Jerusalem Avenue
Uniondale, NY 11553-3038

A.O. Fox Memorial Hospital Nursing Home

1 Norton Avenue
Oneonta, NY 13820-2629

Adirondack Medical Center - Mercy

114 Wawbeek Avenue
Tupper Lake, NY 12986-2038

Adirondack Medical Center - Uihlein

185 Old Military Road
Lake Placid, NY 12946-1710

Adirondack Tri-County Nursing and Rehab. Center Inc.

112 Ski Bowl Road
North Creek, NY 12853-0500

Albany County Nursing Home

780 Albany Shaker Road
Albany, NY 12211-1089

Alice Hyde Nursing Home

133 Park Street, PO Box 729
Malone, NY 12953-1220

Amsterdam Memorial Hospital SNF

4988 State Highway 30
Amsterdam, NY 12010-1699

Amsterdam Nursing Home Corporation

1060 Amsterdam Avenue
New York, NY 10025-1715

Andrus on Hudson

185 Old Broadway
Hastings-on-Hudson, NY 10706-3801

ArchCare at Ferncliff / Ferncliff Nursing Home Co. Inc.

21 Ferncliff Drive
Rhinebeck, NY 12572-1900

Arnot Ogden Medical Center RHCF

600 Roe Avenue
Elmira, NY 14905-1676

Baptist Health Nursing and Rehabilitation Center

297 North Ballston Avenue
Scotia, NY 12302-2427

Beechtree Care Center

318 South Albany Street
Ithaca, NY 14850-5792

Beechwood Homes

2235 Millersport Highway
Getzville, NY 14068

Beth Abraham Health Services

612 Allerton Avenue
Bronx, NY 10467-7495

Bethany Manor

3005 Watkins Road
Horseheads, NY 14845-1855

Bethel Nursing Home

17 Narragansett Avenue
Ossining, NY 10562-2899

Bethel Nursing and Rehabilitation Center

67 Springvale Road
Croton-on-Hudson, NY 10520-1343

Bezalel Rehabilitation & Nursing Center

29-38 Far Rockaway Blvd.
Far Rockaway, NY 11691-1925

Bishop Charles Waldo MacLean Episcopal Nursing Home

17-11 Brookhaven Avenue
Far Rockaway, NY 11691-4406

Bishop Henry B. Hucles Nursing Home

835 Herkimer Street
Brooklyn, NY 11233-3031

Bishop Mugavero Center for Geriatric Care, Inc.

155 Dean Street
Brooklyn, NY 11217-2213

Broadlawn Manor Nursing and Rehabilitation Center

399 County Line Road
Amityville, NY 11701-1798

Bronx-Lebanon Special Care Center
1265 Fulton Avenue
Bronx, NY 10456-3401

Brooklyn United Methodist Church
Home
1485 Dumont Avenue
Brooklyn, NY 11208-4705

Brothers of Mercy Nursing and
Rehabilitation Center
10570 Bergtold Road
Clarence, NY 14031-2105

Buena Vida Continuing Care and
Rehabilitation Center
48 Cedar Street
Brooklyn, NY 11221-3253

CABS Nursing Home Company, Inc.
270 Nostrand Avenue
Brooklyn, NY 11205-4926

CNR Health Care Network
520 Prospect Place
Brooklyn, NY 11238-4205

CVPH Medical Center SNF
75 Beekman Street
Plattsburgh, NY 12901-1427

Cabrini Center for Nursing and
Rehabilitation
542 East 5th Street
New York, NY 10009-7245

Cabrini of Westchester
115 Broadway
Dobbs Ferry, NY 10522-2835

Canterbury Woods
705 Renaissance Drive
Williamsville, NY 14221-8080

Carmel Richmond Healthcare and
Rehabilitation Center
88 Old Town Road
Staten Island, NY 10304-4299

Catskill Regional Medical Center -
Skilled Nursing Unit
PO Box 515, Bushville Road
Harris, NY 12742

Cayuga County Nursing Home
7451 County House Road
Auburn, NY 13021-8298

Chapin Home For The Aging
165-01 Chapin Parkway
Jamaica, NY 11432-1807

Charles T. Sitrin Health Care Center,
Inc.
2050 Tilden Avenue, Box 1000
New Hartford, NY 13413-1000

Chase Memorial Nursing Home, Inc.
PO Box 250
One Terrace Heights
New Berlin, NY 13411-9515

Chautauqua County Home
10836 Temple Road
Dunkirk, NY 14048-9611

Chemung County Nursing Facility
103 Washington Street, PO Box 588
Elmira, NY 14902-0588

Chenango Memorial Hospital, RHCF
179 North Broad Street
Norwich, NY 13815-1019

Claxton-Hepburn Medical Center RHCF
214 King Street
Ogdensburg, NY 13669-1142

Clifton Springs Hospital and Clinic
Extended Care
2 Coulter Road
Clifton Springs, NY 14432-1122

Clinton County Nursing Home
16 Flynn Avenue
Plattsburgh, NY 12901-3707

Cobble Hill Health Center
380 Henry Street
Brooklyn, NY 11201-6048

Coler-Goldwater Specialty Hospital and
Nursing Facility
One Main Street
Roosevelt Island, NY 10044-0011

Community Memorial Hospital
150 Broad Street
Hamilton, NY 13346-9575

Concord Nursing and Rehabilitation
Center
300 Madison Street
Brooklyn, NY 11216-1509

Cortland Regional Nursing and
Rehabilitation Center
134 Homer Avenue
Cortland, NY 13045-1261

Crouse Community Center, Inc.
101 South Street
Morrisville, NY 13408-9756

Cuba Memorial Hospital, Inc. & RHCF
140 West Main Street
Cuba, NY 14727-1317

DOJ Nursing and Rehabilitation Center
1160 Teller Avenue
Bronx, NY 10456-4145

Daughters of Sarah Nursing Home Co.,
Inc.
180 Washington Avenue Ext.
Albany, NY 12203-2322

DeMay Living Center
100 Sunset Drive
Newark, NY 14513-1068

Dr. Susan Smith McKinney Nursing &
Rehabilitation Center
594 Albany Avenue
Brooklyn, NY 11203-1706

Dumont Masonic Home
676 Pelham Road
New Rochelle, NY 10805-1038

Eastern Star Home
8290 State Route 69, PO Box 959
Oriskany, NY 13424-0959

Eddy Heritage House Nursing and
Rehabilitation Center
2920 Tibbits Avenue
Troy, NY 12180-7041

Eddy Memorial Geriatric Center
2256 Burdett Avenue
Troy, NY 12180-2400

Eddy Village Green
421 West Columbia Street
Cohoes, NY 12047-2222

Edna Tina Wilson Living Center
700 Island Cottage Road
Rochester, NY 14612-2312

Eger Health Care and Rehabilitation
Center
140 Meisner Avenue
Staten Island, NY 10306-1200

Elant at Goshen, Inc.
46 Harriman Drive
Goshen, NY 10924-2410

Elant at Newburgh, Inc.
172 Meadow Hill Road
Newburgh, NY 12550-3878

Elizabeth Seton Pediatric Center
590 Avenue of the Americas
New York, NY 10011-2097

Ellis Residential & Rehabilitation Center
1101 Nott Street
Schenectady, NY 12308

Episcopal Church Home
505 Mt. Hope Avenue
Rochester, NY 14620-2251

Erie County Medical Center SNF†
462 Grider Street
Buffalo, NY 14215-3075

Fairport Baptist Homes
4646 Nine Mile Point Road
Fairport, NY 14450-1163

Father Baker Manor
6400 Powers Road
Orchard Park, NY 14127-4841

† Upon information and belief, this facility is a plaintiff in Soldiers & Sailors Memorial Hosp. v. Daines, Sup. Ct. Albany County, Index No. 4608-09, and is not participating in the instant action.

Field Home-Holy Comforter
2302 Catherine Street
Cortlandt Manor, NY 10567

Finger Lakes Center for Living
20 Park Avenue
Auburn, NY 13021-1983

Folts Homes
104 North Washington Street
Herkimer, NY 13350-2028

Fort Hudson Nursing Center, Inc.
319 Broadway
Fort Edward, NY 12828-1298

Founders Pavilion
205 East First Street
Corning, NY 14830-2809

Fox Run at Orchard Park
One Fox Run Lane
Orchard Park, NY 14127

Franklin County Nursing Home
184 Finney Boulevard
Malone, NY 12953-2241

Fred & Harriett Taylor Health Center
7571 State Route 54
Bath, NY 14810-9504

Fulton County Residential Health Care Facility
847 County Highway 122
Gloversville, NY 12078-9738

Genesee County Nursing Home
278 Bank Street
Batavia, NY 14020-1616

Glen Arden, Inc.
46 Harriman Drive
Goshen, NY 10924-2410

Glendale Home
59 Hetcheltown Road
Scotia, NY 12302-5506

Good Samaritan Lutheran Health Care Center, Inc.
125 Rockefeller Road
Delmar, NY 12054-2221

Good Samaritan Nursing Home
101 Elm Street
Sayville, NY 11782-3193

Good Shepherd-Fairview Home, Inc.
80 Fairview Avenue
Binghamton, NY 13904-1195

Gouverneur Healthcare Services
227 Madison Street
New York, NY 10002-7537

Greater Harlem Nursing Home and Rehabilitation Center, Inc.
30 West 138th Street
New York, NY 10037-1710

GreenField Health and Rehabilitation Center
5949 Broadway
Lancaster, NY 14086-9523

Groton Community Health Care Center, Inc.
120 Sykes Street
Groton, NY 13073-1231

Guild Institute for Vision and Aging
100 West Kingsbridge Road
Bronx, NY 10468-3990

Gurwin Jewish Nursing & Rehabilitation Center
68 Hauppauge Road
Commack, NY 11725-4403

HELP/PSI, Inc.
1401 University Avenue
Bronx, NY 10452-4050

Harbour Health Multicare Center for Living
1205 Delaware Avenue
Buffalo, NY 14209-1401

Hawthorn Health Multicare Center for Living
1175 Delaware Avenue
Buffalo, NY 14209-1401

Hebrew Hospital Home of Westchester
61 Grasslands Road
Valhalla, NY 10595-1609

Helen Hayes Hospital
Route 9W
West Haverstraw, NY 10993-1127

Helen and Michael Schaffer Extended
Care Center
16 Guion Place
New Rochelle, NY 10801-5503

Heritage Commons Residential
Healthcare, Inc.
1019 Wicker Street
Ticonderoga, NY 12883-1097

Heritage Green Rehab & Skilled Nursing
PO Box 400, 3023 Route 430
Greenhurst, NY 14742-0400

Heritage Park Rehab & Skilled Nursing
150 Prather Avenue
Jamestown, NY 14701-6796

Heritage Village Rehab & Skilled
Nursing, Inc.
PO Box 351, Route 60
Gerry, NY 14740-0351

Hill Haven
1550 Empire Boulevard
Webster, NY 14580-2104

Holy Family Home
1740-84th Street
Brooklyn, NY 11214-2825

Hoosick Falls Health Center
PO Box 100, 21 Danforth Street
Hoosick Falls, NY 12090-0100

Horace Nye Home
81 Park Street, PO Box 127
Elizabethtown, NY 12932-0127

Huntington Living Center†
369 East Main Street
Waterloo, NY 13165-1654

Ideal Senior Living Center
508 High Avenue
Endicott, NY 13760-4719

Iroquois Nursing Home, Inc.
4600 Southwood Heights Drive
Jamesville, NY 13078-9595

Isabella Geriatric Center, Inc.
515 Audubon Avenue
New York, NY 10040-3403

Island Nursing & Rehab Center
5537 Expressway Drive North
Holtsville, NY 11742-0131

Jamaica Hospital Nursing Home Co.,
Inc./Trump Pavilion
90-28 Van Wyck Expressway
Jamaica, NY 11418-2898

James G. Johnston Memorial Nursing
Home
286 Deyo Hill Road
Johnson City, NY 13790-5109

Jeanne Jugan Residence
Little Sisters of the Poor
2999 Schurz Avenue
Bronx, NY 10465-3826

Jefferson's Ferry
1 Jefferson's Ferry Drive
South Setauket, NY 11720-4708

Jewish Home Lifecare, Harry & Jeanette
Weinberg Campus-Bronx
100 West Kingsbridge Rd
Bronx, NY 10468-3990

Jewish Home Lifecare, Manhattan
120 West 106th Street
New York, NY 10025-3712

Jewish Home Lifecare, Sarah Neuman
Center, Westchester
845 Palmer Avenue
Mamaroneck, NY 10543-2406

Jewish Home of Central New York, Inc.
at Menorah Park
4101 East Genesee Street
Syracuse, NY 13214-2103

† Upon information and belief, this facility is a plaintiff in Soldiers & Sailors Memorial Hosp. v. Daines, Sup. Ct. Albany County, Index No. 4608-09. and is not participating in the instant action.

Jewish Home of Rochester
2021 Winton Road South
Rochester, NY 14618-3957

John J. Foley Skilled Nursing Facility
14 Glover Drive
Yaphank, NY 11980-1204

Kaaterskill Care: Skilled Nursing and
Rehab
161 Jefferson Heights
Catskill, NY 12414-1239

Kaleida Health Waterfront Health Care
Center
200 Seventh Street
Buffalo, NY 14201-2190

Kateri Residence Skilled Nursing and
Rehabilitation Center
150 Riverside Drive
New York, NY 10024-2201

Kendal at Ithaca
2230 North Triphammer Road
Ithaca, NY 14850-1011

Kendal on Hudson
1010 Kendal Way
Sleepy Hollow, NY 10591-1054

Keser Nursing and Rehabilitation
Center, Inc.
40 Heyward Street
Brooklyn, NY 11211-7823

Kirkhaven
254 Alexander Street
Rochester, NY 14607-2515

Komanoff Ctr for Geriatric and Rehab
Med of Long Beach Md Ct
375 E. Bay Drive, PO Box 839
Long Beach, NY 11561-2350

Lakeside Beikirch Care Center
170 West Avenue
Brockport, NY 14420-1225

Lewis County General Hospital & RHCF
7785 N. State Street
Lowville, NY 13367-1297

Living Center at Geneva-North†
196 North Street
Geneva, NY 14456-1694

Living Center at Geneva-South†
196 North Street
Geneva, NY 14456-1651

Livingston County Center for Nursing
and Rehabilitation
11 Murray Hill Drive
Mt. Morris, NY 14510

Long Island State Veterans Home at
Stony Brook University
100 Patriots Road
Stony Brook, NY 11790-3300

Loretto Health & Rehabilitation Center
700 East Brighton Avenue
Syracuse, NY 13205-2201

Loretto Oswego Health and
Rehabilitation Center
132 Ellen Street
Oswego, NY 13126-3946

Loretto Utica Center
1445 Kemble Street
Utica, NY 13501-4441

Lutheran Augustana Ctr for Extended
Care and Rehabilitation
5434 Second Avenue
Brooklyn, NY 11220-2606

Lutheran Care Center
965 Dutchess Turnpike
Poughkeepsie, NY 12603-4117

Lutheran Home and Rehabilitation
Center
715 Falconer Street
Jamestown, NY 14701-1997

LutheranCare
108-110 Utica Road
Clinton, NY 13323-1596

M. M. Ewing Continuing Care Center
350 Parrish Street
Canandaigua, NY 14424-1731

† Upon information and belief, this facility is a plaintiff in Soldiers & Sailors Memorial Hosp. v. Daines, Sup. Ct. Albany County, Index No. 4608-09, and is not participating in the instant action.

MJG Nursing Home Co., Inc.
4915 Tenth Avenue
Brooklyn, NY 11219-3301

Marcus Garvey Nursing Home, Inc.
810 St. Marks Avenue
Brooklyn, NY 11213-1420

Margaret Tietz Nursing and
Rehabilitation Center
164-11 Chapin Parkway
Jamaica, NY 11432-1816

Maria Regina Residence
1725 Brentwood Road, Bldg. 1
Brentwood, NY 11717

Mary Manning Walsh Home
1339 York Avenue
New York, NY 10021-4707

Masonic Care Community of New York
2150 Bleecker Street
Utica, NY 13501-1788

McAuley Manor at Mercycare
One Bethesda Drive
Hornell, NY 14843-1098

Menorah Home & Hosp. for the Aged &
Infirm/Manhattan Beach
1516 Oriental Boulevard
Brooklyn, NY 11235-2328

Mercy Health and Rehabilitation Center
3 St. Anthony Street
Auburn, NY 13021-4500

Mercy Skilled Nursing Facility
55 Melroy Avenue
Lackawanna, NY 14218

Methodist Church Home for the Aged
4499 Manhattan College Pkwy
Bronx, NY 10471-3919

Michael Malotz Skilled Nursing Pavilion
120 Odell Avenue
Yonkers, NY 10701-1408

Michaud Residential Health Services
453 Park Street
Fulton, NY 13069-2999

Mohawk Valley Nursing Home, Inc.
99 Sixth Avenue
Ilion, NY 13357-1527

Monroe Community Hospital
435 East Henrietta Road
Rochester, NY 14620-4629

Monsignor Fitzpatrick Pavilion for
Skilled Nursing Care
152-11 89th Avenue
Jamaica, NY 11432-3730

Morningside House
1000 Pelham Parkway
Bronx, NY 10461-1003

Mount Loretto Nursing Home, Inc.
302 Swart Hill Road
Amsterdam, NY 12010-7081

Mountainside Residential Care Center
42158 State Highway 28
Margaretville, NY 12455-4700

Nathan Littauer Hospital and Nursing
Home
99 East State Street
Gloversville, NY 12078-1203

New York Congregational Nursing
Center
135 Linden Boulevard
Brooklyn, NY 11226-3302

New York State Veterans Home at
Batavia
220 Richmond Avenue
Batavia, NY 14020-1227

New York State Veterans Home at
Montrose
2090 Albany Post Road
Montrose, NY 10548-1454

New York State Veterans Home at
Oxford
4211 State Highway 220
Oxford, NY 13830-4323

New York State Veterans Home at St. Albans
178-50 Linden Boulevard
Jamaica, NY 11434-1467

Niagara Lutheran Home & Rehabilitation Center, Inc.
64 Hager Street
Buffalo, NY 14208-1327

North Shore Univ. Hosp/Stern Fam. Ctr for Ext. Care & Rehab
330 Community Drive
Manhasset, NY 11030-3816

Northern Dutchess RHC, Inc., aka The Thompson House
6525 Springbrook Avenue, PO Box 514
Rhinebeck, NY 12572-0514

Northern Manor Multicare Center, Inc
199 North Middletown Road
Nanuet, NY 10954-1317

Northern Metropolitan
225 Maple Avenue
Monsey, NY 10952

Norwegian Christian Home & Health Center
1270 67th Street
Brooklyn, NY 11219-5921

Odd Fellow and Rebekah Rehab. & Health Care Center, Inc.
104 Old Niagara Road
Lockport, NY 14094-1518

Oneida Healthcare Center Extended Care Facility
323 Genesee Street
Oneida, NY 13421-2691

Ontario County Health Facility
3062 County Complex Drive
Canandaigua, NY 14424-9502

Orzac Center for Extended Care & Rehabilitation
900 Franklin Avenue
Valley Stream, NY 11580-2145

Otsego Manor
128 Phoenix Mills Cross Road
Cooperstown, NY 13326-4950

Our Lady of Consolation
111 Beach Drive
West Islip, NY 11795-4960

Our Lady of Hope Residence
1 Jeanne Jugan Lane
Latham, NY 12110-3098

Our Lady of Mercy Life Center
2 Mercycare Lane
Guilderland, NY 12084-9701

Ozanam Hall of Queens Nursing Home, Inc.
42-41 201st Street
Bayside, NY 11361-2550

Park Ridge Living Center
Long Term Home Health Care Services
1555 Long Pond Road
Rochester, NY 14626-4122

Parker Jewish Institute for Health Care and Rehab.
271-11 76th Avenue
New Hyde Park, NY 11040-1433

Peconic Landing
1500 Brecknock Road
Greenport, NY 11944-3116

Peninsula Center for Extended Care and Rehabilitation
50-15 Beach Channel Drive
Far Rockaway, NY 11691-1110

Penn Yan Manor Nursing Home, Inc.
655 North Liberty Street
Penn Yan, NY 14527-1048

Pine Haven Nursing & Rehabilitation Center
PO Box 785
201 Main Street
Philmont, NY 12565-0785

Pleasant Valley
4573 State Route 40
Argyle, NY 12809-9640

Presbyterian Home for Central New York, Inc.
4290 Middle Settlement Rd., PO Box 1144
New Hartford, NY 13413-1144

<p>Providence Rest 3304 Waterbury Avenue Bronx, NY 10465-1554</p>	<p>Queen of Peace Residence 110-30 221st Street Queens Village, NY 11429-2531</p>	<p>Rebekah Rehab and Extended Care Center 1070 Havemeyer Avenue Bronx, NY 10462-5310</p>
<p>Resurrection Nursing Home 90 North Main Street Castleton, NY 12033-1006</p>	<p>Rivington House: The Nicholas A. Rango Health Care Facility 45 Rivington Street New York, NY 10002-1304</p>	<p>Robinson Terrace 28652 State Highway 23 Stamford, NY 12167-9614</p>
<p>Rome Memorial Hospital Residential Health Care Facility 1500 North James Street Rome, NY 13440-2899</p>	<p>Rosewood Heights Health Center 614 South Crouse Avenue Syracuse, NY 13210-1798</p>	<p>Ruby Weston Manor 2237 Linden Boulevard Brooklyn, NY 11207-7527</p>
<p>Rutland Nursing Home 585 Schenectady Avenue Brooklyn, NY 11203-1854</p>	<p>Saints Joachim & Anne Nursing & Rehabilitation Center 2720 Surf Avenue Brooklyn, NY 11224-1913</p>	<p>Samaritan-Keep Home PO Box 100, 133 Pratt Street Watertown, NY 13601-0100</p>
<p>San Simeon By The Sound for Nursing & Rehab. 61700 Route 48 Greenport, NY 11944-0974</p>	<p>San Vicente de Paul Skilled Nursing and Rehabilitation Ctr 900 Intervale Avenue Bronx, NY 10459-4203</p>	<p>Saratoga Care Nursing Home 211 Church Street Saratoga Springs, NY 12866-1003</p>
<p>Saratoga County Maplewood Manor 149 Ballston Avenue Ballston Spa, NY 12020-1988</p>	<p>Schervier Nursing Care Center 2975 Independence Avenue Riverdale, NY 10463-4699</p>	<p>Schervier Pavilion 22 Van Duzer Place Warwick, NY 10990-1035</p>
<p>Schnurmacher Center for Rehabilitation & Nursing 12 Tibbits Avenue White Plains, NY 10606-2438</p>	<p>Schoellkopf Health Center PO Box 708, 621 Tenth Street Niagara Falls, NY 14302-0708</p>	<p>Schofield Residence 3333 Elmwood Avenue Kenmore, NY 14217-1081</p>
<p>Schuyler Ridge Residential Health Care One Abele Boulevard Clifton Park, NY 12065-2951</p>	<p>Seneca Hill Manor, Inc. 20 Manor Drive Oswego, NY 13126-8400</p>	<p>Sephardic Nursing & Rehabilitation Center 2266 Cropsey Avenue Brooklyn, NY 11214-5706</p>

Shorefront Jewish Geriatric Center
3015 West 29th Street
Brooklyn, NY 11224-1901

St. Ann's Home
1500 Portland Avenue
Rochester, NY 14621-3065

St. Barnabas Nursing Home
2175 Quarry Road
Bronx, NY 10457-1663

St. Camillus Health and Rehabilitation
Center
813 Fay Road
Syracuse, NY 13219-3098

St. Catherine of Siena Nursing Home
52 Route 25A
Smithtown, NY 11787-1346

St. Elizabeth Ann's Health Care &
Rehabilitation Center
91 Tompkins Avenue
Staten Island, NY 10304-3850

St. Francis Home of Williamsville
147 Reist Street
Williamsville, NY 14221-5321

St. Francis of Buffalo
34 Benwood Avenue
Buffalo, NY 14214-1705

St. John's Home
150 Highland Avenue
Rochester, NY 14620-3099

St. Johnland Nursing Center, Inc.
395 Sunken Meadow Road
Kings Park, NY 11754-1099

St. Joseph Nursing Home
2535 Genesee Street
Utica, NY 13501-6251

St. Joseph's Home
950 Linden Street
Ogdensburg, NY 13669-3317

St. Joseph's Nursing Home of Yonkers,
New York
127 South Broadway
Yonkers, NY 10701-4006

St. Joseph's Place at Bon Secours
Community Hospital
160 E. Main Street
Port Jervis, NY 12771-2253

St. Luke Health Services
299 East River Road
Oswego, NY 13126-9302

St. Luke's Home RHCF
1650 Champlin Avenue
Utica, NY 13502

St. Margaret's Center
27 Hackett Boulevard
Albany, NY 12208-3420

St. Mary's Episcopal Center Inc.
516 West 126th Street
New York, NY 10027-2406

St. Mary's Hospital for Children
29-01 216th Street
Bayside, NY 11360-2810

St. Patrick's Home for the Aged and
Infirm
66 Van Cortlandt Park South
Bronx, NY 10463-3199

St. Peter's Nursing and Rehabilitation
Center
301 Hackett Boulevard
Albany, NY 12208-1963

St. Teresa's Nursing and Rehabilitation
Center
120 Highland Avenue
Middletown, NY 10940-4713

Steuben County Health Care Facility
7009 Rumsey Street Ext.
Bath, NY 14810-7827

Sullivan County Adult Care Center
256 Sunset Lake Road
Liberty, NY 12754-0671

Summit Park Hospital & Nursing Care Center
Sanatorium Road - Bldg. A
Pomona, NY 10970-3554

Syracuse Home Association
7740 Meigs Road
Baldwinsville, NY 13027-9757

Terence Cardinal Cooke Health Care Center SNF
1249 Fifth Avenue
New York, NY 10029-4437

Teresian House Center for the Elderly
200 Washington Avenue Ext.
Albany, NY 12203-5335

The Baptist Home at Brookmeade
46 Brookmeade Drive
Rhinebeck, NY 12572-2322

The Friendly Home
3156 East Avenue
Rochester, NY 14618-3428

The Harry and Jeanette Weinberg Campus
2700 North Forest Road
Getzville, NY 14068-1527

The Hebrew Home for the Aged at Riverdale/Palisade NH
5901 Palisade Avenue
Bronx, NY 10471-1205

The Heritage
1450 Portland Avenue
Rochester, NY 14621-3065

The Highlands at Brighton
5901 Lac de Ville Boulevard
Rochester, NY 14618-5600

The Homestead at Soldiers and Sailors Memorial Hospital†
418 North Main Street
Penn Yan, NY 14527-1070

The Living Center at the Highlands
500 Hahnemann Trail
Pittsford, NY 14534-2356

The Osborn*
101 Theall Road
Rye, NY 10580-1406
***The Osborn does not participate in the Medicaid program.**

The Pines Healthcare & Rehabilitation Centers Machias Campus
9822 Route 16
Machias, NY 14101-0310

The Pines Healthcare and Rehabilitation Center-Olean Campus
2245 West State Street
Olean, NY 14760-1921

The Schulman and Schachne Institute for Nursing and Rehab.
555 Rockaway Parkway
Brooklyn, NY 11212

The Silvercrest Center for Nursing and Rehabilitation
144-45 87th Avenue
Briarwood, NY 11435

The Valley View Center for Nursing Care and Rehabilitation
PO Box 59
Glenmere Cove Road
Goshen, NY 10924-0059

The Villages of Orleans Health & Rehabilitation Center
14012 Route 31
Albion, NY 14411-9353

The Wartburg Adult Care Community
Wartburg Place
Mount Vernon, NY 10552-3840

The Wesley Community
131 Lawrence Street
Saratoga Springs, NY 12866-1399

Tolstoy Foundation Rehabilitation and Nursing Center
100 Lake Road
Valley Cottage, NY 10989

Ulster County Golden Hill Health Care Center
99 Golden Hill Drive
Kingston, NY 12401-6442

United Hebrew Geriatric Center
60 Willow Drive
New Rochelle, NY 10805-2307

† Upon information and belief, this facility is a plaintiff in Soldiers & Sailors Memorial Hosp. v. Daines, Sup. Ct. Albany County, Index No. 4608-09, and is not participating in the instant action.

United Helpers Canton Nursing Home
West Main Street
Canton, NY 13617-1297

United Helpers Nursing Home, Inc.
8101 State Highway 68
Ogdensburg, NY 13699-0001

United Methodist Homes - Doris L.
Patrick Campus
88 Calvary Drive
Norwich, NY 13815-1000

United Methodist Homes - Elizabeth
Church Campus
863 Front Street
Binghamton, NY 13905-1597

Unity Living Center
89 Genesee Street
Rochester, NY 14611-3285

Valley Health Services, Inc.
690 West German Street
Herkimer, NY 13350-2135

Van Duyn Home & Hospital
5075 West Seneca Turnpike
Syracuse, NY 13215-2292

Van Rensselaer Manor
85 Bloomingrove Drive
Troy, NY 12180-8404

Victoria Home
25 North Malcolm Street
Ossining, NY 10562-3299

Victory Memorial Hospital Skilled
Nursing Center
699 92nd Street
Brooklyn, NY 11228-3619

Village Nursing Home
607 Hudson Street
New York, NY 10014-1899

Wayne County Nursing Home & Rehab
Center
1529 Nye Road
Lyons, NY 14489-9106

Wells Nursing Home, Inc.
201 West Madison Avenue
Johnstown, NY 12095-2806

Wesley Gardens Corporation d/b/a
Wesley Gardens Nursing Home†
3 Upton Park
Rochester, NY 14607-2194

Westchester Meadows
55 Grasslands Road
Valhalla, NY 10595-1655

Westmount Health Facility
42 Gurney Lane
Queensbury, NY 12804-9515

Willow Point Nursing Home
3700 Old Vestal Road
Vestal, NY 13850-2289

Wyoming County Nursing Facility
400 North Main Street
Warsaw, NY 14569-1097

† Upon information and belief, this facility is a plaintiff in Soldiers & Sailors Memorial Hosp. v. Daines, Sup. Ct. Albany County, Index No. 4608-09, and is not participating in the instant action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NEW YORK ASSOCIATION OF HOMES AND SERVICES FOR THE AGING, individually and on behalf of its residential health care facility members located in the State of New York,

Plaintiff,

- against -

RICHARD F. DANIES M.D., as Commissioner of Health of the State of New York; DIRECTOR OF THE BUDGET OF THE STATE OF NEW YORK; and DAVID A. PATERSON, as Governor of the State of New York,

Defendants.

AMENDED COMPLAINT

CADWALADER, WICKERSHAM & TAFT LLP

One World Financial Center
New York, NY 10281

(212) 504-6000

Attorneys for Plaintiff

Index No. 4577-09