

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LAUREN WECHSLER, individually and on behalf  
of all similarly situated,

Plaintiffs,

- against -

GROUP HEALTH INCORPORATED ("GHI")

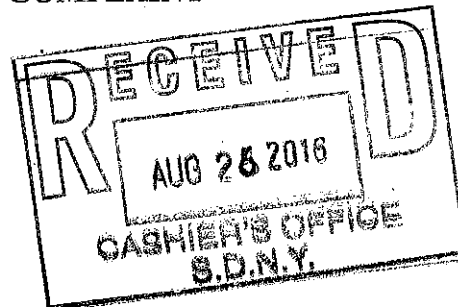
AND

EMBLEMHEALTH, INC.

Defendants.

\_\_\_ Civ. \_\_\_ ( ) ( )

**CLASS ACTION  
COMPLAINT**



**PRELIMINARY STATEMENT**

1. Plaintiff Lauren Wechsler brings this action on her own behalf and on behalf of a class of persons who are or who in the future will be: insured by the Defendants; approved to receive medically necessary private duty nursing services; medically cleared to access and participate in activities in their communities; and barred from such access and participation solely because the Defendants prohibit private duty nurses from providing services outside the patient's home.

2. Ms. Wechsler was born with two rare genetic conditions that affect nearly all aspects of her daily life. As the result of her multiple significant disabilities, Ms. Wechsler requires private duty nursing care to monitor her condition and safeguard her health. Ms. Wechsler is also a vibrant and friendly young woman who is highly social and loves interacting with others. Despite her complex physical, developmental, and neurological conditions, she lives at home and is medically cleared to participate in community activities, which she has always enjoyed doing.

3. For a number of years, Ms. Wechsler attended a Day Habilitation Program five days a week under the care of her private duty nurse. This experience benefited her in a number of ways. Most significantly, it allowed Ms. Wechsler to integrate into her community and interact with disabled and non-disabled peers. It reduced her feelings of isolation and of being different from others.

4. Citing ambiguous language in the Comprehensive Benefits Plan that governs Ms. Wechsler's health insurance policy, Defendants GHI and EmblemHealth have decided to bar Ms. Wechsler from attending her Day Habilitation Program or, indeed, from going anywhere at all during her private duty nursing hours.

5. Having authorized Ms. Wechsler to receive approximately 76 hours a week of private duty nursing care, the Defendants now maintain that she can only receive the skilled medical care she requires if she remains confined to her home and isolated from the community. As a result, Ms. Wechsler is suffering emotionally, physically, and psychologically. Her mental state has declined, she shows signs of anxiety and depression, and her physical symptoms have worsened, including increased spasticity and swelling in her limbs.

6. By restricting Ms. Wechsler's use of her private duty nursing services so as to require her to remain isolated in her apartment, the Defendants are failing to provide these services in the most integrated setting appropriate to her needs, thereby violating section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116, as well as breaching the contract under which Plaintiff and Plaintiff class members are insured.

7. As preliminary relief, Ms. Wechsler seeks a temporary restraining order and preliminary injunction prohibiting the Defendants from restricting her use of private duty nursing services outside of her home to attend Gateway, or to attend any other program that enables her

to participate in community-based activities, and further prohibiting the Defendants from reducing the approximately 76 hours a week of a private duty nursing services that she is currently authorized to receive.

8. As ultimate relief, Plaintiff and Plaintiff class members seek declaratory and permanent injunctive relief that prohibits the Defendants from prohibiting private duty nurses from providing their services in any out-of-home location in which normal life activities take place, as well as monetary damages, attorney's fees and costs against the Defendants.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 for civil actions arising under the laws of the United States and 28 U.S.C. § 1343(a) for actions arising under laws providing for the protection of civil rights. A private right of action is conferred by 42 U.S.C. § 18116 for Plaintiffs to enforce the non-discrimination provisions of the Patient and Protection Affordable Care Act (ACA), 42 U.S.C. § 18116.

10. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C.A. § 1367.

11. The Court is authorized to grant the temporary restraining order and declaratory, preliminary and permanent injunctive relief requested pursuant to these statutes and 28 U.S.C. §§ 2201-02 and Rule 65 of the Federal Rules of Civil Procedure.

12. Venue in the Southern District of New York is proper under 28 U.S.C. § 1391(b)(2), as it is the judicial district in which a substantial portion of the events or omissions giving rise to the claims herein occurred.

## PARTIES

### Named Plaintiff

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13. Named Plaintiff Lauren Wechsler is 30 years old and resides in the Bronx with her mother, Daisy Concepcion-Wechsler, who is her primary caretaker.

14. Ms. Wechsler was born with two rare genetic conditions called Pfeiffer's Syndrome Type III and Chiari Malformation Type III, both of which are registered with the National Organization for Rare Disease.

15. Pfeiffer's Syndrome Type III, which is the most severe of the Pfeiffer's types, causes the sutures of the skull to fuse prematurely affecting the ability to breathe and creates a high risk for choking on food and aspirating food into the lungs.

16. Chiari malformation is a neurological disorder where the bottom part of the brain descends out of the skull and crowds the spinal cord, putting pressure on both the brain stem and spine and causing many symptoms. Chiari symptoms include respiratory problems, swallowing difficulties with frequent choking, severe headaches and blackouts from sneezing, coughing or getting up from a recline position. Ms. Wechsler has a permanent tracheostomy.

17. As a result of these genetic conditions, Ms. Wechsler was diagnosed with multiple developmental disabilities at birth that substantially interfere with her mobility, ambulation, and activities of daily living and cognitive functioning. Developmental disabilities are severe, chronic disabilities acquired at birth that substantially restrict an individual's functioning in several major life activities for an indefinite period. Pressure from Ms. Wechsler's fused skull resulted in significant brain damage and she has been diagnosed with a moderate intellectual disability.

18. Ms. Wechsler has had over 20 surgeries to address the issues of breathing and compression of the brain and has had several strip craniotomies to remove parts of the skull to allow for the brain to grow.

19. Ms. Wechsler is a recipient of health insurance benefits from the Defendants GHI and EmblemHealth through her mother's employer, the New York City Department of Education. Upon information and belief, EmblemHealth administers her insurance benefits.

20. The health insurance policy under which Ms. Wechsler is insured is the Comprehensive Benefits Plan. It includes private duty nursing services as a covered benefits category.

21. Defendants approved Ms. Wechsler for approximately 76 hours a week of medically necessary Private Duty/Private Duty Nursing – RN services (“private duty nursing”).

22. As part of daily private duty nursing care, Ms. Wechsler is continuously monitored. The skilled nursing tasks are numerous, and include tracheal suctioning every few hours to ensure the airway passages are clear; monitoring vital signs, signs of choking or other respiratory obstructions; administering oxygen if necessary, through a ventilator; tracheotomy care; and monitoring signs of distress, such as an increase in weakness, stiffness and pain in the arms and legs.

23. Despite her numerous and complex medical conditions and disabilities, Ms. Wechsler is medically cleared to access her community and participate in community-based activities, and requires the same skilled nursing services at home as she does when participating in community-based activities.

24. Ms. Wechsler cannot safely attend community-based activities without the presence of a private duty nurse.

## **Defendant GHI**

25. Defendant GHI is a not-for-profit corporation, organized pursuant to Article 43 of the New York Insurance Law, with two principal place of business at 55 Water Street, New York, NY 10041 and 441 Ninth Avenue, New York, NY 10001.

26. GHI is licensed in the State of New York to issue certain insurance products and does in fact issue insurance products within the State, including, but not limited to group health insurance programs marketed to businesses operating within the State.

27. GHI is a wholly-owned subsidiary of EmblemHealth.

28. GHI is administered by EmblemHealth, which is the parent company to GHI.

29. GHI entered into a contract with the City of New York to provide health insurance benefits to New York City employees and retirees.

30. GHI is a health plan or activity that receives Federal financial assistance, including credits, subsidies, or contracts of insurance.

## **Defendant EmblemHealth**

31. Defendant EmblemHealth is a corporation of the State of New York with its principal place of business at 55 Water Street, New York, New York 10004.

32. EmblemHealth is a health plan or activity that receives Federal financial assistance, including credits, subsidies, or contracts of insurance.

## **Defendants GHI and EmblemHealth**

33. Defendants GHI and EmblemHealth provide insurance benefits to Ms. Wechsler that are outlined in the Comprehensive Benefits Plan contract.

## CLASS FACTS AND ALLEGATIONS

34. This action is brought as a class action pursuant to Rule 23 (a) and (b)(2) of the Federal Rules of Civil Procedure. The class consists of individuals with the following characteristics in common:

are at present or in the future will be insured by the Defendants; approved to receive medically necessary private duty nursing services; medically cleared to access and participate activities in their communities; and barred from such access and participation solely because the Defendants prohibit private duty nurses from providing services outside the patient's home.

35. The number of persons in the plaintiff class is so numerous that joinder of all members is impracticable. In addition, all members of the plaintiff class have severe health and medical conditions requiring private duty nursing services. The exact number and identity of class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery.

36. Ms. Wechsler's claims are typical, if not identical, to the claims of all members of the Plaintiff class. The specific locations or activities in the community that she seeks to access and participate in may differ from those of other class members, but they are identical in regard to their status as an out-of-home location or activity, and in regard to the Defendants' refusal to allow private duty nurses to provide their services in those locations or activities.

37. There are questions of law or fact common to the class. They include whether Section 1557 of the ACA provides a private right of action to plaintiffs; whether pursuant to Section 1557 of the ACA, plaintiffs are entitled to receive private duty nursing services in the most integrated setting appropriate to their needs and abilities; and whether providing community-

based private duty nursing services will be a reasonable accommodation to plaintiffs or a fundamental alteration of the insurance contract.

38. Another question of law in common to the class is whether the text of the Defendants' private duty nursing benefit is properly interpreted. Defendants' interpret the phrase "rendered at home or in a hospital" as the location where the services are allowed to be provided. An alternative reasonable interpretation, followed by the Second Circuit Court of Appeals and the Centers for Medicare & Medicaid Services, is this phrase refers to the locations where a patient will qualify for these services, and not to the exclusive location of where the services may be rendered.

39. Ms. Wechsler will fairly and adequately protect the interests of the class. Her attorneys are committed to the vigorous prosecution of this action and are experienced in civil rights law, class action litigation, and the specific issue in dispute in this hearing: the provision of out-of-home private duty and other nursing services.

40. Defendants' refusal to allow private duty nursing services to be provided in settings outside the homes of insured individuals is and will be generally applied to Ms. Wechsler and all class members. For this reason, the award of the declaratory, and preliminary and permanent injunctive relief Ms. Wechsler seeks will be appropriate with respect to the class as a whole.

#### **FACTS CONCERNING NAMED PLAINTIFF**

##### ***Ms. Wechsler's Need for Private Duty Nursing Services***

41. Due to the nature, complexity and severity of Ms. Wechsler's medical conditions and disabilities, she requires no less than 12 hours of skilled private duty nursing per day on



Monday through Friday and eight hours of skilled nursing on Saturday and Sundays totaling 76 hours a week.

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42. Defendants have approved approximately 76 hours a week of private duty nursing services as medically necessary for Ms. Wechsler.

43. According to the Defendants' Comprehensive Benefits Plan, the Defendants have determined that Ms. Wechsler qualifies for private duty nursing services for the following reasons:

- (a) there is a medical need for the skilled nursing services;
- (b) her complex disabilities and conditions are unstable and require constant monitoring;
- (c) the private duty nursing services relate to her complex disabilities and condition;
- (d) only a registered nurse (R.N.) can render the services, or a licensed practical nurse (L.P.N.) if an R.N. is not available; and
- (e) the services cannot be rendered by a home health aide, homemaker, housekeeper, home attendant, or similar and are not custodial in nature.

44. Ms. Wechsler depends on a private duty nurse to manage all of the negative but inevitable conditions of her complex disability. A private duty nurse monitors Ms. Wechsler for any infections of her tracheotomy; she must be suctioned every 2-3 hours to clear secretions from the trachea. A private duty nurse must also monitor Ms. Wechsler for any signs of trouble swallowing, as she suffers from constant choking episodes that leave her blue and needing intervention with an ambulatory bag. The nurse also monitors Ms. Wechsler for any respiratory problems; weakness and stiffness in arms and legs along with increased spasticity; increase in intracranial pressure; signs of neurological decline; and increase in pain level. Ms. Wechsler is ambulatory with the assistance of a walker.

### *Community Access and Participation*

45. Notwithstanding these disabilities, Ms. Wechsler has the medical clearance from her physician to go out of her home to access and participate in community based activities with her nurses.

46. Consistent with her physician's clearance for out-of-home activity, Ms. Wechsler seeks to attend and participate in the Gateway Counseling Center's Day Habilitation Program (Gateway). It is located approximately five miles from Ms. Wechsler's home. Gateway provides round-trip transportation to participants in its program.

47. Gateway offers participants numerous programs and services, including the opportunity for socialization with others, development of friendships, and participation in adult education classes, such as art and music; and lessons designed to improve daily living skills and pragmatic skills such as writing, verbal and non-verbal communication, and ambulation. Gateway also offers access to community resources such as the movies, bowling, museums, and restaurants.

48. Gateway does not provide private duty nursing services. For Ms. Wechsler to attend and participate in its programs and services safely, she must come with the nurses approved by the Defendants.

49. For a number of years, Ms. Wechsler attended Gateway and participated in its programs and services five days per week, from 9 a.m. to 2 p.m. During this period, Ms. Wechsler utilized the private duty nursing hours approved by and paid for by the Defendants.

50. While at Gateway, Ms. Wechsler had a nurse with her at all times to monitor her condition and safeguard her health. Her private duty nurses provide the same services to Ms. Wechsler at Gateway as are provided to her at home.

51. During this period, Ms. Wechsler was never informed of any extra charges that accrued when the Defendants provided the private duty nursing services that she used while attending Gateway.

52. During this period, no issues arose regarding the ability of the private duty nurses to render nursing care to Ms. Wechsler at Gateway or during travel to and from Gateway.

53. Among the primary benefits of Ms. Wechsler's opportunity to attend and participate in Gateway's programs and services are reduction of her isolation and feelings of being different. Access to Gateway allows Ms. Wechsler to integrate into the community, interact with others, and build and develop her skills.

***Defendants Denial of Necessary Services Confines Ms. Wechsler To Her Home***

54. In around September 2014, the Defendants informed Ms. Wechsler that she was no longer authorized to use her private duty nursing hours while attending Gateway.

55. Defendants stopped reimbursing the nursing company that administered skilled nursing services to Ms. Wechsler while she attended Gateway, informing Ms. Wechsler that private duty nursing services are limited to "in the home" and could not be authorized "outside of the home."

56. Ms. Wechsler cannot attend Gateway without the presence of her private duty nurse. Due to the complexity of her medical conditions and significant disabilities, Ms. Wechsler requires her private duty nurse to administer nursing services when she attends Gateway. Her nurse must monitor her condition and safeguard her health.

57. Defendants' interpretation of the Comprehensive Benefits Plan contract language prohibits Ms. Wechsler from participating in everyday life activities and causes her to be entirely isolated from the community. As a result of her confinement, Ms. Wechsler is suffering

emotionally, physically and psychologically. Her mental state has declined because she is unable to attend Gateway, which provides her with community inclusion activities that promote her independence and help improve her socialization skills. Ms. Wechsler has been unable to leave her home and must take prescription vitamin D to compensate for the lack of sun exposure.

### **Exhaustion of Administrative Remedies**

58. Ms. Wechsler pursued the Defendants' internal appeals and grievance procedures to challenge the Defendants' decision to limit her private duty nursing services to the physical location of her home.

59. In response to Ms. Wechsler's appeals and grievances, the Defendants reported multiple times that, based on her Comprehensive Benefits Plan contract, private duty nursing services "may be rendered at home or in a hospital" only.

60. Defendants did not cite or refer to any medical fact, policy or principle to support its interpretation of the insurance policy such that it refers to the location where private duty nursing services may be provided.

61. Defendants did not cite or refer to any cost savings that were or will be achieved by restricting private duty nurses such that they can provide their services only in the patient's home.

62. Ms. Wechsler exhausted her administrative remedies.

### **LEGAL FRAMEWORK**

#### ***Patient Protection & Affordable Care Act, Section 1557, 42 U.S.C. § 18116***

63. The regulations implementing Section 1557, the non-discrimination provision of the Patient Protection and Affordable Care Act (ACA), recently went into effect on July 18, 2016.

64. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities.

65. Section 1557's definition of prohibited discrimination relies in part on Section 504 of the Rehabilitation Act (Rehab Act). An individual shall not, on the ground prohibited under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance. Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C.A. § 18116(a). The rule itself states that "[t]he enforcement mechanisms available for and provided under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975 shall apply for purposes of Section 1557 as implemented by this part." 45 C.F.R. § 92.301.

66. The implementing regulations broadly define Federal financial assistance as "any grant, loan, credit, subsidy . . . or any other arrangement by which the Federal government provides or otherwise makes available assistance," including assistance provided by means of tax credits, subsidies, or payments given to individuals to purchase insurance from "any entity providing health-related insurance coverage." *See* 45 C.F.R. § 92.4

67. In implementing Section 1557, the Department of Health and Human Services (DHH) contemplated in its final rule that "Qualified health plan issuers receiving Federal financial assistance through advance payments of premium tax credits and cost-sharing reductions (which include at least the 169 health insurance issuers in the Federally facilitated Marketplaces receiving Federal financial assistance through advance payments of premium tax

credits and cost sharing reductions and at least 11 issuers operating in the State-Based Marketplaces that we were able to identify)” are covered under the ACA. *Nondiscrimination in Health Programs and Activities*, 81 Fed. Reg. 31,1445 (May 18, 2016).

68. To further clarify that health plan insurer’s qualify as “programs or activities” under Section 1557, the implementing regulations state the following: “For an entity principally engaged in providing or administering health services or health insurance coverage or other health coverage, all of its operations are considered part of the health program or activity.” 45 C.F.R. § 92.4.

69. Defendant GHI receives Federal financial assistance through its participation in the Medicare Part D prescription insurance program, and other Medicare insurance programs.

70. Defendant EmblemHealth receives Federal financial assistance as a Health Insurance Marketplace provider offered by New York State under the provisions of the Patient Protection and Affordable Care Act and through its role as a provider of Medicare and Medicaid health insurance plans.

71. The nondiscrimination provision of section 1557 applies to Defendants because these entities qualify as “any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance.” 42 U.S.C.A. § 18116(a).

72. Section 1557 provides a private right of action to individuals for violations of Section 1557. *See* 45 C.F.R. § 92.302(d); *see also* *Nondiscrimination in Health Programs and Activities*, 81 Fed. Reg. 31,376, 31,439 (May 18, 2016) (clarifies that “a private right of action and damages for violations of Section 1557 are available to the same extent that such

enforcement mechanisms are provided for and available under Title VI, Title IX, Section 504, or the Age Act with respect to recipients of Federal financial assistance”).

***Breach of Contract***

73. The Comprehensive Benefits Plan offered and administered by the Defendants qualifies as a health insurance contract under New York state law.

74. Insurance policies are governed by the rules of contract interpretation.

75. An insurance contract must be interpreted so that an unambiguous policy provision is given its plain meaning.

76. Contract language is deemed ambiguous when there is a reasonable basis for more than one interpretation of the policy.

77. The language in question cited by the Defendants in the Comprehensive Benefits Plan is ambiguous because it is reasonably susceptible to more than one interpretation. Specifically, the phrase “rendered at home or in a hospital” in the policy’s private duty nursing benefit reasonably can be read to refer to the locations where a patient will qualify for these services and not refer to the exclusive location where the services may be performed.

78. The basis for this interpretation is the review of identical text stated in the federal regulations governing nursing services offered by the Medicaid program. In *Detsel v. Sullivan*, 895 F.2d 58, 64 (2d Cir. 1990) and *Skubel v. Furouli*, 113 F.3d 330, 332 (2d Cir. 1997), the U.S. Court of Appeals for the Second Circuit interpreted the phrases: “provided ... in... his or her own home [or] a hospital;” 42 C.F.R. § 440.80, and “provided ... at his place of residence,” 42 C.F.R. § 440.70 to not refer to the place where the nursing services must be provided.

79. To resolve the ambiguity, a search must be conducted for evidence of the actual intent of the parties. Upon information and belief, no such evidence exists. To date, in their

responses to numerous inquiries and appeals, the Defendants have provided no explanation for their assertion that the private duty nursing benefit was expressly intended to limit the locations where covered nursing services can be provided.

80. When no evidence exists to establish the actual intent of the parties, an ambiguity in an insurance contract is resolved by the common law principle of *contra proferentem*. *Contra proferentem* is a longstanding rule of contract interpretation. It directs a decision maker to interpret an insurance contract ambiguity consistent with the reasonable interpretation that favors coverage. In this dispute, it will conclude that the reference in the insurance contract to the patient's home or hospital is intended to identify the locations where patients will qualify for private duty nursing services, and not to restrict the locations where those nursing services can be provided.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS**  
**GHI AND EMBLEMHEALTH**

81. Defendants GHI and EmblemHealth qualify as a health program or activity pursuant to Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C.A. § 18116(a).

82. Defendant GHI receives Federal financial assistance through its participation in the Medicare Part D prescription insurance program, and other Medicare insurance programs.

83. Defendant EmblemHealth receives Federal financial assistance as a Health Insurance Marketplace provider offered by New York State under the provisions of the Patient Protection and Affordable Care Act and through its role as a provider of Medicare and Medicaid health insurance plans.

84. Ms. Wechsler is a qualified person with a disability under Section 504 of the Rehabilitation Act. She suffers from neurological, respiratory and other intellectual and



development impairments that substantially limit her major life activities of self-care, walking, speaking, breathing, learning and thinking.

85. Ms. Wechsler is medically cleared to receive private duty nursing services either inside or outside of the physical location of her home.

86. Defendants' interpretation of the Comprehensive Benefits Plan language, "at home or in a hospital", requires Ms. Wechsler to receive private duty nursing services only when confined to the physical location of her home.

87. Ms. Wechsler is entitled to receive insured health services, including private duty nursing services, in the most integrated setting to meet the needs of her developmental disabilities and genetic conditions.

88. Defendants are failing to provide private duty nursing services to Ms. Wechsler in the most integrated setting appropriate to her needs, unjustifiably isolating Ms. Wechsler from the community and preventing her from interacting with disabled and non-disabled peers in violation Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C.A. § 18116(a).

89. Defendants can readily and reasonably eliminate their restriction on nursing services to allow them to be setting independent: i.e., to allow them to be provided outside a patient's home in or at any setting where normal life activities take place. This accommodation can be accomplished without financial impact to the Defendants. To offer this accommodation will not fundamentally alter the nature of the insurance contract or the nature or extent of private duty nursing services covered under the policy.

**SECOND CAUSE OF ACTION AGAINST DEFENDANTS**  
**GHI AND EMBLEM HEALTH**

90. Ms. Wechsler resides at home and has been administratively approved for approximately 76 hours a week of private duty nursing services by the Defendants.

91. Ms. Wechsler has medical clearance to participate in community-based activities, and wishes to attend Gateway during some of the 76 hours a week she has the Defendants'-insured private duty nursing services.

92. Defendants have interpreted the Comprehensive Benefits Plan language in Ms. Wechsler's insurance policy, "at home or in a hospital", to limit the locations where private duty nursing services can be provided to the inside of her home.

93. The Comprehensive Benefits Plan language "at home or in a hospital" is susceptible to more than one reasonable interpretation and is ambiguous as a matter of law. A second reasonable interpretation of this text is that it refers to the locations where patients will qualify for private duty nursing services. No credible evidence exists to clarify the specific intent of the parties regarding the policy's private duty nursing benefit.

94. To resolve the ambiguity, the principle of *contra proferentem* will apply. *Contra proferentem* directs the decision maker to resolve the policy text ambiguity by applying the reasonable interpretation that supports coverage. In this context it will cause Defendant's insurance policy to be interpreted such that private duty nursing services are setting independent and are able to be provided in any location – at home or in the community – where normal life activities take place.

95. Having refused to authorize Ms. Wechsler's private duty nursing services to provide services in those locations, the Defendants are in breach of the insurance policy.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief from the Court:

96. Certify this case as a class action, pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure, with the class defined as: persons who are at present or in the future will be: insured by the Defendants; approved to receive medically necessary private duty nursing services; medically cleared to access and participate activities in their communities; and barred from such access and participation solely because the Defendants prohibit private duty nurses from providing services outside the patient's home

97. Award Plaintiff a temporary restraining order and preliminary injunction prohibiting the Defendants from restricting her use of private duty nursing services outside of her home to attend Gateway, or to attend any other program that enables her to participate in community-based activities, and further prohibiting the Defendants from reducing the approximately 76 hours a week of a private duty nursing services that she is currently authorized to receive.

98. Enter a permanent injunction against the Defendants authorizing Ms. Wechsler and other members of the Plaintiff class to use their approved private duty nursing services in or out-of-her home in any setting in which normal life activities take place;

99. Declare that the Defendants have violated Section 1557 of the Affordable Care Act by administering programs and providing services in a manner that isolates persons with disabilities rather than providing these services in the most integrated setting appropriate to their needs;

100. Declare that the Defendants' refusal to allow private duty nursing services to be provided outside the patient's home violates the non-discrimination on the basis of disability

prohibition stated in § 1557; that eliminating the at home only limitation will be a reasonable accommodation and not a fundamental alteration to the contract; and that the Defendants' interpretation is a breach of the insurance policy;


101. Award such monetary damages as are reasonable, just and equitable in order to compensate Plaintiff and other members of the Class for the violations of their rights for which the Defendants are found liable;

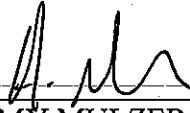
102. Find that Plaintiffs are prevailing parties in this lawsuit and award attorneys' fees, costs and expenses against the Defendants jointly and severally, and award such other and further relief, at law or equity, to which the Plaintiff and members of the Class may be justly entitled.

**JURY DEMAND**

Plaintiffs demand a trial by jury of all issues as permitted by the Statutes and Law complained of herein.

Dated: Brooklyn, New York  
August 24, 2016

  
NATALIE CHIN (NC 1535)  
*Attorney for Plaintiffs*  
Brooklyn Law School  
Disability and Civil Rights Clinic: Advocating for  
Adults with Intellectual and Developmental  
Disabilities  
One Boerum Place, Third Floor  
Brooklyn, New York 11201  
718-780-7539 (ph)  
718-780-0359 (f)  
natalie.chin@brooklaw.edu



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AMY-MULZER (AM 0107)  
*Attorney for Plaintiffs*  
Brooklyn Law School  
Disability and Civil Rights Clinic: Advocating for  
Adults with Intellectual and Developmental  
Disabilities  
One Boerum Place, Third Floor  
Brooklyn, New York 11201  
718-780-7539 (ph)  
718-780-0359 (f)  
amy.mulzer@brooklaw.edu



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LEWIS GOLINKER (LG 2229)  
Law Office of Lewis Golinker  
*Attorney for Plaintiffs*  
401 East State Street, Suite 300  
Ithaca, New York 14850  
607-277-7286 (ph)  
607-277-5239 (f)  
lgolinker@aol.com