

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

DISABILITY RIGHTS FLORIDA, Inc., a
Florida non-profit corporation,

Plaintiffs,

v.

CASE NO.:

BARBARA PALMER in her official capacity
as Director of the Florida Agency
for Persons with Disabilities,

Defendants.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW, Plaintiff, Disability Rights Florida (DRF), by and through undersigned counsel, and sues the Defendant Barbara Palmer, in her official capacity as Director of the Florida Agency for Persons with Disabilities (APD), and alleges as follows:

Preliminary Statement

1. This is a systemic complaint brought on behalf of individuals with intellectual and developmental disabilities, as defined by Section 393.063(9) of the Florida Statutes, who also have intensive behavioral challenges. These individuals are eligible and enrolled to receive services through Florida's Home and Community Based Services Waiver for persons with intellectual and developmental disabilities known as the Individual Budgeting Waiver ("iBudget Waiver"), administered through APD. Due to the deficiency's in APD's program for provision of behavioral services and for crisis

management, these individuals are placed at risk of unnecessary institutionalization and are unable to access those services in the least restrictive setting possible.

2. The iBudget Waiver administered by Defendant provides behavioral services primarily through three means: in-home services, residential services in small licensed group homes, and the larger facility of Carlton Palms Education Center (“Carlton Palms”) under a specialized license as a “Comprehensive Transitional Education Program” (CTEP). A CTEP license allows up to 120 residents per license.
3. Carlton Palms held the only two CTEP licenses, allowing admission of up to 240 residents for the entire facility. The Carlton Palms facility is a large congregate setting located in an isolated rural area outside of Mt. Dora, Florida.
4. The CTEP license was statutorily created in 2006. It was intended to serve individuals who have developmental disabilities along with severe maladaptive behaviors and/or co-occurring complex medical conditions or mental illness.
5. Defendant has relied heavily upon the operation of Carlton Palms for the placement and management of individuals with severe behavioral challenges, despite its institutional characteristics. As a result, APD’s system for authorization and funding of behavioral services and crisis management for individuals with severe maladaptive behaviors in home and community-based settings has been poorly developed outside of the use of the CTEP.
6. Due to licensure complaints filed by the Defendant against Carlton Palms for abuse and neglect of its residents, Carlton Palms had been operating under a series of settlement agreements with the Defendant. The most recent agreement of July 2016 contemplated

transition of residents by March 2019 to smaller, community settings. About a third of Carlton Palms residents were transitioned under the settlement agreement, with mixed results.

7. On May 31, 2018, the operator of Carlton Palms, Delaware-based Bellwether Behavioral Health, informed state authorities that Bellwether did not intend to renew its CTEP licenses and would cease operating in Florida. The facility has now been placed in receivership, with transition for remaining residents (approximately 115) still pending.

8. APD's transition process for current residents of Carlton Palms lacks an organized and accountable system for ensuring minimal risk to the health and safety of residents both in transition and post-transition.

9. While the closing of Carlton Palms highlights the immediate risk to its current and recent residents, individuals with intensive behavioral needs are not exclusively located at Carlton Palms. Individuals residing in the community are also subject to the deficiencies of APD's current system for provision of behavioral services.

10. APD has not adequately adjusted the iBudget Waiver's delivery and oversight system of behavioral supports to make those supports sufficient and accessible to all iBudget enrollees, including those transitioning from Carlton Palms. The current system does not have adequate group home providers willing and capable of meeting this population's needs. In-home support remains capped below the level provided in residential settings and relies too heavily on a family's ability to manage sometimes dangerous behaviors. APD's current structure for residential habilitation services is also restrictive, with little regard for staffing required for maintenance. As a result, transitions

are taking place that rely heavily on temporarily approving additional non-Waiver services, paid for out of general revenue and not reliable or sustainable in the future.

11. Individuals with intensive behavioral needs, both at Carlton Palms and currently within the community, are placed at risk of unnecessary institutionalization by APD's systemic failures to provide sustainable care for this population. Institutionalization can take a variety of forms, including being placed in an Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD). In addition, APD's lack of an adequate system for crisis management and understaffing in homes or group home often results in individuals being inappropriately taken to jail or involuntarily placed in a psychiatric facility.

JURISDICTION

12. This Court has jurisdiction over the claims presented in this action pursuant to 28 U.S.C. § 1331. Declaratory and Injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

13. The plaintiff's claims are predicated upon the applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

NAMED PLAINTIFFS

DISABILITY RIGHTS FLORIDA

14. The Plaintiff, Disability Rights Florida, Inc., (DRF), is a not-for-profit-corporation serving as Florida's federally funded protection and advocacy system for

individuals with disabilities. DRF maintains offices in Tampa, Gainesville, Hollywood and Tallahassee. Its main office is located in Tallahassee, Leon County, Florida.

15. DRF's mission is to advance the quality of life, dignity, equality, self-determination, and freedom of choice of people with disabilities through collaboration, education, and advocacy, as well as legal and legislative strategies.

16. Specifically, on behalf of persons with developmental disabilities, DRF is authorized by federal law to "pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of individuals within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements." 42 U.S.C. § 15043(a)(2)(A)(i). It is on behalf of these individuals that DRF proceeds and collectively refers to as the "Plaintiffs" in this complaint.

17. DRF has represented and continues to represent persons with developmental disabilities in individual actions, class actions and systemic relief initiatives affecting all such individuals.

18. DRF has standing to file this action as it provides representation and other legal services to persons receiving home and community-based Medicaid services under the iBudget waiver such as the individuals in need of behavioral services. Additionally, challenging the Defendants' policies, procedures, actions and inactions falls within DRF's general scope of interest and activity, and the relief requested, declaratory and injunctive, is the type of relief appropriate for the Plaintiffs to receive on behalf of the individuals who DRF is mandated to serve.

19. DRF and its constituents are represented in this action by undersigned counsel. Service should be made at the address of counsel as set forth below. Plaintiffs, DRF's clients and constituents, consist of those individuals who use or have used behavioral services through the iBudget Waiver including the following exemplars:

- a. AV is an adult receiving services through the iBudget Waiver who resides at Carlton Palms. AV is diagnosed with Autism, intellectual disability, obsessive compulsive disorder, explosive disorder, attention deficit-hyperactivity disorder, tachycardia, and Diabetes Type 1. AV is in need of a community residential placement that will meet all of her needs for behavioral and medical conditions.
- b. LP is an adult receiving services through the iBudget Waiver who resides at Carlton Palms. LP is diagnosed with Autism, self-injurious behaviors, and polycystic ovarian syndrome. While a resident at Carlton Palms, LP became legally blind due to a detached retina that was not identified early enough to be repaired. LP is in need of a community residential placement that will meet all of her needs for behavioral and medical conditions.
- c. MO is an adult receiving services through the iBudget Waiver who resides at Carlton Palms and was ready for discharge to a group home owned and operated by Carlton Palms' parent company, Bellwether Behavioral Health, when he was told there was no space at the group home and he was left without a transition plan.

- d. SM is an adult receiving services through the iBudget Waiver who currently resides at Carlton Palms and is need of transitioning to a community residential placement that will meet his needs for health and safety, provide effective behavioral services, and offer opportunities for community engagement.
- e. ARS is an adult receiving services through the iBudget Waiver who previously resided in inadequately staffed behavior group homes leading to the use of police and unlawful placement at psychiatric facilities. ARS was ultimately transferred to Carlton Palms. While at Carlton Palms, ARS was the victim of complaints of abuse and neglect. ARS was ultimately transitioned to a typical behavior group home with additional, but precarious, general revenue funding to provide adequate supports and services to keep ARS healthy and safe in the community.
- f. MM is an adult receiving services through the iBudget Waiver who resided at Carlton Palms until March 2018 when Carlton Palms discharged MM while she was inappropriately placed in a hospital following an involuntary psychiatric admission from a private health care clinic that Carlton Palms staff took her to in order to have blood drawn. MM now resides in a group home and is need of effective behavioral services.
- g. KG is an adult receiving services through the iBudget Waiver who has previously been a resident of Carlton Palms on three separate occasions. KG has recently transitioned to a group home.

- h. AG is an adult receiving services through the iBudget Waiver who at one time resided at and received services at Carlton Palms. AG now resides at home with parents who petitioned for and received a variance of the behavior services limits. The variance expires every six months leaving AG with uncertainty in the provision of needed services.
- i. SS is an adult receiving services through the iBudget Waiver who previously resided at Carlton Palms and upon transition to group homes throughout the state, had inadequate services to support SS, causing multiple placements. SS has sought wrap around services in a supported living environment but the services are inadequate to keep SS healthy and safe in the community.
- j. TW is an adult receiving services through the iBudget Waiver that resided at Carlton Palms until recently when his parent took him home upon learning of the continued abuse and neglect allegations at the facility. TW received injuries while at Carlton Palms and now questions the veracity of explanations for those injuries. TW now resides in the family home but desires to live in an adequately staffed group home with a meaningful day activity.
- k. JB is an adult receiving services through the iBudget waiver who resided at Carlton Palms until December 2017, and upon transition to a group home, had inadequate services for support. As a result of inadequate supports, J.B. had been subject to continuous chemical restraint and

instances of physical abuse. JB would like to be transitioned to his family home with adequate supports that will meet his needs for health and safety, provide effective behavioral services, and offer opportunities for community engagement.

1. DRF also represents exemplars who have transitioned from Carlton Palms to group homes that have been insufficiently staffed for their safety and the safety of staff, have been involuntarily committed to psychiatric facilities, have ended up with criminal charges, and who have had to seek temporary variances from APD rules in order to receive adequate services.

DEFENDANT

BARBARA PALMER

20. The Defendant Barbara Palmer is the Director of Florida's Agency for Persons with Disabilities (APD) and is sued in her official capacity. Under Chapter 393 of the Florida Statutes, APD is responsible for administering the iBudget Waiver that provides home and community-based services to persons with intellectual and developmental disabilities (iBudget Waiver), including in-home behavior services and behavior services through residential settings licensed by APD. *See* § 20.197(3), Fla. Stat. APD administers the Medicaid iBudget Waiver program under an interagency agreement with AHCA.

21. APD is tasked with establishing standards for licensed facilities in the areas of staff training for the detection, reporting, and prevention of sexual abuse, abuse, neglect, exploitation, and abandonment. The rulemaking is also tasked with addressing minimum

standards of quality and adequacy of client care as well as incident reporting requirements.

MEDICAID STATUTORY AND REGULATORY FRAMEWORK

Medicaid Optional and Mandatory Services

22. Medicaid is a joint federal/state program authorized by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. It provides medical assistance to low income and disabled individuals who meet certain eligibility requirements.

23. States are not required to participate in the Medicaid Program. If a state elects to participate, however, it is required to comply with applicable federal statutory and regulatory requirements.

24. The Medicaid program allows states to furnish persons (including those with developmental disabilities) “rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care.” 42 U.S.C. § 1396-1.

25. In addition to providing services that support the independence of program participants, the Medicaid Act requires that each state medical assistance program be administered in the best interests of the recipients. *See* 42 U.S.C. §1396a(a) (19).

Medicaid Waivers and Developmental Disabilities Service Delivery System

26. Medicaid home and community-based services waiver programs are authorized by 42 U.S.C. § 1396n(c) and governed by 42 C.F.R. §§ 441.300-.310. Waiver programs enable states to provide home and community-based services to individuals with developmental disabilities or intellectual disabilities who would otherwise need the level of care provided in an Intermediate Care Facility (ICF/DD).

27. Florida Statutes Chapter 409 and Florida Administrative Code Rule 59G-13.080 authorize the Florida Medicaid Developmental Disabilities Waiver (DD Waiver).

Florida's DD Waiver is a home and community-based waiver, created to maintain persons with intellectual and developmental disabilities in a home or community-based setting with supporting services necessary to prevent institutionalization.

28. Florida's iBudget Waiver was last authorized on or about January 1, 2018 by the federal Centers for Medicare and Medicaid Services (CMS). APD is primarily responsible for compliance with the Waiver application that is ultimately considered by CMS.

29. APD's waiver description of the service provided in typical group homes is called "Residential Habilitation." The only limit APD is restricted to by the federally-approved Waiver is that the services be "limited to the amount, duration, and scope of the service described on the recipient's support plan and current approved cost plan to foster health, safety, and welfare for the recipient."

30. All further limitations on the service provided to individuals needing services in a residential setting are created solely by Defendant's policies and practices.

31. APD's waiver description for "Behavioral Services" and "Behavior Assistance" states the services can be provided in a providers' office, the recipient's place of residence, or anywhere in the community. The only limit APD is restricted to by the federally-approved Waiver is that the services are "limited to the amount, duration, and scope of the service described on the recipient's support plan and current approved cost plan to foster health, safety, and welfare of the recipient."

32. All further limitations on the service, including caps on the amount of Behavioral Services and Behavior Assistance services, provided to individuals needing behavioral services are created solely by Defendant's policies.

33. Defendant has placed similar limits on additional services, such as supported living coach and companion, that would be necessary for Plaintiffs to live in less restrictive and less institutional like settings.

APD'S SERVICE SYSTEM FOR INTENSIVE BEHAVIORAL NEEDS

34. The Florida Legislature authorized the creation of the CTEP license in 2006 specifically for individuals with "severe maladaptive behaviors." Carlton Palms was granted the only two licenses, which allowed for up to 240 residents at its facility.

35. The Carlton Palms facility is located in an isolated, rural area of Lake County, Florida and includes its own Adult Day Training facility on its campus.

36. The CTEP licensed facility, Carlton Palms, received a bundled rate for all-inclusive residential habilitation services including day programming, transportation, vocational opportunities, behavioral and medical services, as well as educational training. This rate was the highest rate allowed for residential habilitation facilities, regardless of the individual's level of need.

37. Individuals with "severe maladaptive behaviors" do not exist solely at Carlton Palms. Upon information and belief, in 2016 there were approximately 1,100 individuals enrolled on the iBudget Waiver that required high levels of oversight and supervision for their behavioral challenges.

38. Other than Carlton Palms, however, no other iBudget waiver provider receives a

bundled rate for such services. Individuals receiving residential habilitation in typical group homes or their own homes must add on additional services such as Adult Day Training programs or Companion services in order to have care during daytime hours and to access the community. In addition, services are limited in amount, both in terms of a cap on the number of hours per week and in terms of the ratio of staff to client.

39. Behavior Focused and Intensive Behavior group homes are the typical group homes that treat those with maladaptive behaviors and are operated by different providers throughout the state. There are insufficient numbers of these group homes and they are not adequately staffed to provide appropriate care to prevent unnecessary segregation and institutionalization of persons with the most intensive behavioral challenges.

40. The delivery of behavior services in the family home, as devised by APD, permits only eight hours per day of Behavior Assistant services, which is far less than the around-the-clock care that can be obtained in more restrictive settings. In addition, these services are intended primarily as training for family members who often do not have the mental or physical skill or availability to safely take over the challenge of intervention for a person with dangerous behaviors.

41. Most of the individuals placed at Carlton Palms over the years of its operation have had a history of failed placements in family homes or group homes. Rather than increase staffing support to the family home or group home, these individuals suffered through repeated involuntary admission to psychiatric facilities, harm to themselves or others, imprisonment, and eventual placement at Carlton Palms.

42. Carlton Palms has been the subject of numerous investigations for abuse and

neglect of its residents. After the death of a child in 2014, APD and Carlton Palms entered into an informal agreement to require technical and administrative improvements and staff trainings. After another resident was injured in 2015, APD and Carlton Palms entered into another settlement agreement. In 2016, another settlement agreement was entered between APD and Carlton Palms, including a statement that federal regulations would no longer permit funding for a CTEP program after March of 2019.

43. On April 17, 2017, Defendant announced the revocation of the CTEP licenses of Carlton Palms and the requirement for transition of all remaining residents living at Carlton Palms into other placements.

44. On May 10, 2018, Defendant filed a petition in state court requesting that a receiver be named to run Carlton Palms. The receivership was granted and the closing of Carlton Palms is ongoing. Although the receivership exists to handle the business affairs of the transition, it must operate within the administrative system that supports all individuals enrolled in the iBudget Waiver in need of intensive behavioral supports.

45. Effective July 1, 2018, APD adopted a new rate structure for residential habilitation services called Enhanced Intensive Behavior. This new rate does not include daytime services, such as Adult Day Training and Companion services. It is also restricted by rule to be available only to individuals who are transitioning from Carlton Palms, in contravention of Medicaid guidance prohibiting the limitation of waiver services to subgroups of the waiver's enrolled population. In addition, even with the population of individuals transitioning from Carlton Palms, many individuals with high staffing needs will not meet the behavioral criteria on transition or at a mandated six-

month review because the high level of staffing in place prevented injury or harm.

46. Upon information and belief, there are few providers who have indicated a willingness to accept residents at this rate due to concerns about its sustainability and economic viability.

47. There continues to be insufficient group home providers with the state who are willing and able to provide services to either transitioning Carlton Palms residents or other individuals with intensive behavioral challenges not currently residing at Carlton Palms. In April 2017, there were currently 114 APD-licensed group homes which are authorized to render Intensive Behavioral Residential Habilitation services. Within those homes, there were a total of 733 beds with only 30 vacant beds statewide.

48. Upon information and belief, there are, as of July 2018, only 48 existing group home placements that may be able to serve the individuals remaining at Carlton Palms, and the Agency is left waiting for the development of 183 anticipated placements, 30 of which will need to be group homes willing to accept and serve individuals at the Agency's new Enhanced Intensive Behavior rate.

49. As of the date of this Complaint, only about a third of Carlton Palms' residents have transitioned to other placements. As of March 2018, there remained approximately 112 Florida residents with intense behavior challenges residing at Carlton Palms who are in need of transitioning to the few group homes existing throughout the state.

50. APD staff has suggested that residents who cannot find group home placement would be institutionalized at Tacachale, an APD-operated institution for the intellectually disabled (formerly known as one of the six Sunland institutions).

51. Defendant has utilized a process of “stacking” additional services to the Intensive and Behavior Focus group home residential habilitation services in order to attempt to meet the needs of the individuals that have so far transitioned from Carlton Palms. These services are being funded by the state’s general revenue dollars, thus not incorporating the federal match as a Medicaid service, are not set out in any statute or rule, and are tenuous in their continuity and reliability for these residents and their providers.

52. Residents who have never been placed at Carlton Palms or who have already transitioned will not qualify for either the EIB rate or “stacking” of services that Defendant is now willing to utilize to meet the needs of this population despite their own intensive behaviors.

53. Barriers to expansion of provider capacity include limits on direct care staffing, lack of crisis services (and methodology to access crisis services), lack of stable funding for maintenance of behavioral goals, insufficient funding for meaningful day activities, and lack of economic incentives for smaller group home development. Removal of these barriers is required in order to meet the ongoing service needs of DRF’s constituents during and after their transition.

54. APD’s failure to provide for adequate provider capacity, sustainable funding models for intensive behavioral care of individuals in the home or group homes, and continued restrictions on intensive behavioral services have resulted in the risk of unnecessary institutionalization for DRF constituents who have significant behavioral challenges, whether they reside at Carlton Palms or elsewhere in the community.

Inappropriate Institutionalization as Crisis Management

55. Individuals placed in settings that are inadequately staffed are subject to institutionalization resulting from police intervention and involuntary psychiatric admissions that are not appropriate for persons with developmental disabilities. Some settings that are inadequately staffed also rely on the use of physical and chemical restraints to manage a resident's behavior, which can result in irreversible physical and psychological injury.

56. APD staff has recommended calling law enforcement and the use of Florida's Baker Act for involuntary commitment as a method of crisis intervention for residents of group homes or in family homes who engage or threaten to engage in harmful behaviors.

57. Due to the inadequacy of staffing for iBudget Waiver enrollees receiving services in group homes, the staff at group homes frequently call local police for assistance in handling and restraining residents. During such incidents, law enforcement has used restraints, such as handcuffs, and force, such as Tasers, and incarceration.

58. Police intervention can also result in the resident being involuntarily institutionalized in a psychiatric crisis unit.

59. The Florida Mental Health Act, § 394.451, referred to as the "Baker Act," allows for the institutionalization of a person who, by reason of their mental illness, requires inpatient treatment. The definition of "mental illness," however, specifically excludes "a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse." § 394.455 (28).

60. Inpatient psychiatric receiving facilities under the Baker Act do not provide

behavioral services for persons with developmental and intellectual disabilities, and frequently, such persons are subject to chemical restraint and sedation through the entirety of their incarceration at the psychiatric facility.

61. Confounding the inappropriateness of treating behavioral manifestations at a psychiatric facility includes the many instances in which the individual's stay is prolonged due to the group home's refusal to take the individual back.

62. In order to facilitate psychiatric institutionalization of persons with developmental and intellectual disabilities, or as a method to provide anti-psychotic medications to manage behaviors or restrict freedom of movement, group homes and inpatient psychiatric receiving facilities often misdiagnose such person's behavior as the result of mental illness.

63. Facilities and programs must report any incidents to APD where a recipient of the iBudget Waiver is subject to death, chemical or physical restraint, injury or use of law enforcement as behavioral interventions.

64. Notwithstanding the use of law enforcement as an intervention, and the wrongful psychiatric institutionalization of an individual, additional services or supports are rarely provided to prevent the re-use of police interventions for behavioral manifestations and re-institutionalization in a psychiatric facility.

65. In June of 2014, Defendant received a report from a workgroup tasked to review services and supports for individuals who exhibit intensive behavioral challenges and mental illness. The workgroup identified gaps in the current service system, lack of expertise of caregivers or staff to manage behaviors, and lack of a continuum of housing

and service options to manage crisis situations, among other problems. Few of the workgroups suggestions were implemented.

66. The Defendant's inadequate provision of behavioral services and lack of sufficient crisis management places DRF's constituents at risk of inappropriate incarceration, inappropriate psychiatric institutionalization, and risk of harm in the use of chemical or physical restraints

Inadequate Transition Process for Residents at Carlton Palms

67. Part of those behavioral services provided at Carlton Palms requires the development and implementation of behavior plans that included reactive strategies which includes personal restraints as well as mechanical restraints utilizing four point restraints in mat wraps and chairs.

68. Though Carlton Palms was supposed to provide transition of residents to less restrictive settings as part of its treatment and training programs, the facility was plagued by allegations of abuse and neglect that ultimately resulted in the settlement agreements with Defendant that most recently, in July 2016, officially stated Defendant's intention to transition all of the residents to community settings.

69. Ostensibly to facilitate transitions, on December 1, 2016, Defendant, Carlton Palms, and Guardian Healthcare entered into a contract for Guardian Healthcare to provide certain staff positions as independent contractors to work on APD's monitoring, oversight, and transition team at Carlton Palms.

70. The transition plan for residents intentionally started with those residents who had

the lowest level of care needs.

71. Transitions that have already taken place have had deficient transition plans and processes, including inadequate behavioral evaluations and plans to assess and determine necessary services and placement options, inadequate medication reviews, lack of comprehensive psychiatric evaluations, poor communication, frequent changes in staff, and lack of information given to providers.

72. The remaining individuals at Carlton Palms have higher care needs, making their transition more complex. A systematized and transparent transition process is necessary to their successful transition.

73. APD has no formal or consistent process for transition planning. Providers continue to report not receiving a full client record. Parents or guardians report lack of understanding as to who is facilitating transition meetings and the options available for placement and services to be provided at those placements.

74. Following transition, individuals will need continuous and frequent oversight and reliable and rapid responses to any escalation of behaviors that exceed the capabilities of the providers receiving these residents. Further, a mechanism to ensure transitions are successful should not be burdened by prolonged administrative processes.

75. APD does not have a formal post-transition monitoring process that sets out the frequency of visits, communication exchange with APD, and procedures for APD intervention when transition issues are identified.

76. Upon information and belief and despite transitioning approximately one-third of the residents from Carlton Palms, a Post Transition Survey was not implemented by the

Agency until May 3, 2018.

77. The lack of an effective and transparent transition and post-transition process places all Carlton Palms residents at risk of unnecessary institutionalization as the result of inappropriate placements, insufficient staffing, or the inappropriate use of law enforcement as a crisis management tool.

Inadequate Care of Current Carlton Palms Residents

78. Two methods APD utilizes to ensure the health, safety and welfare of iBudget Waiver recipients receiving behavioral services is (1) through the monitoring of behavior plans through its LRC process of approval and (2) through its receipt and tracking of incidents.

79. Defendant invokes use of a Local Review Committee (LRC) to oversee the standards and efficacy of behavior plans developed for recipients of the iBudget waiver. Situated by APD regions and chaired by the Defendant's Senior Behavior Analyst for that region, the LRC Chair reviews and ultimately is solely responsible for approving behavior plans presented to the LRC.

80. Monthly reports of the use of reactive strategies, including the mat wraps and chair restraints used by Carlton Palms, are reviewed by Defendant's Senior Area Behavior Analyst, or other designee.

81. Each Behavior Provider is responsible for submitting a copy of the monthly, quarterly, and annual summaries for each consumer to the local APD Program Office.

82. At all times, Defendant was aware of the behavior plans developed and being implemented at Carlton Palms.

83. Use of restraint and seclusion are reported monthly by the providers to the local APD field office and submitted to the APD State Office for review and statewide analysis. APD then has an opportunity to provide feedback, correction, or review of the plan for efficacy.

84. APD created operating procedures to permit the agency to ensure “Critical” and “Reportable” incidents are reported in the required timeframes, complete any Plan of Remediation for providers, and ensure any Corrective Action Plan is initiated appropriately to address and eliminate the possibility of another incident of the same and/or similar nature.

85. It is APD’s responsibility to train providers to report incidents to them regarding significant events (referred to by APD as “critical” and “reportable” incidents) including client injuries and client deaths.

86. APD regional or headquartered staff have the responsibility to investigate those critical and reportable incidents.

87. APD also has the responsibility of monitoring and oversight of responses to critical incidents or events in part to identify systemic issues in order to mitigate the recurrence of incidents as part of its quality management activities.

88. APD retains the responsibility, through its operating policies and procedures, to analyze and coordinate appropriate follow up actions in order to ensure the health, safety and well-being of the client and other clients in the provider’s care.

89. APD has permitted the unsafe conditions at Carlton Palms to continue knowing of its ongoing failings of staff to refrain from abuse and neglect of the residents.

90. Despite having staff on-site, either directly or through APD's agent, Guardian Healthcare, the calls for abuse and neglect of residents at Carlton Palms continued to rise in numbers and severity throughout 2016, 2017, and now 2018.

91. APD has permitted the continued inadequate care of Carlton Palms residents despite knowing of the ongoing failings of staff to adhere to the proper use of mechanical restraints and development and implementation of behavioral programs.

92. Throughout the previous three years during which time Defendant had been monitoring Carlton Palms' compliance with its numerous Corrective Action Plans, Memorandums of Understanding, and Settlement Agreements, the Defendant has known of continued failures to appropriately provide behavioral services and eliminate abuse and neglect of the residents. Defendant has been unable to provide the necessary feedback and correction in order to ensure the residents have received effective behavioral services and remained safe and healthy at Carlton Palms.

93. The Defendant's inability to develop provider capacity and alternative intensive behavioral services for the population needing them, including those residents at Carlton Palms, has resulted in a shortage of those services throughout the state and closest to the enrollees' families who provide natural oversight for the health and safety of their loved ones, such that the individuals are, and remain, at risk of institutionalization.

94. Defendant only recently deployed a team of regional Behavior Analysts to review the behavior plans at Carlton Palms and found that they were not meaningful, not person-centered, not person-specific, and not based upon a progression of skills leading to incremental independence. It is unknown why Defendant's local Chair of the LRC, an

employee of Defendant, approved the behavior plans that were lacking in standards.

95. Defendant's team of regional Behavior Analysts also found that many of the residents at Carlton Palms did not show improvement in skills targeted for improvement, thus evidencing the need for ongoing intensive behavior services upon transition from Carlton Palms that will most likely exceed the Defendant's current limitations.

96. Defendant's team of regional Behavior Analysts found additional problems in the residents' behavior plans including a lack of individualization and integration of the plans so that the residents may benefit from the behavioral services.

97. Defendant's team of regional Behavior Analysts found that of the plans reviewed, none of Carlton Palms' behavior analysis service plans would be approved without modification – yet that is exactly what Defendant did through its LRC.

98. Defendant's oversight and monitoring of behavior plans developed and implemented at Carlton Palms failed to conform with legislative intent to have an ongoing reduction on the use of restraint and seclusion.

99. Defendant's rules governing the formation and processes of LRC and Peer Review Committees for behavior plan oversight failed to identify the lack of progress, individualization, and adherence to industry standards in the behavior plans developed and implemented at Carlton Palms. This is the core function of the LRC and Peer Review Committees.

100. Plaintiffs transitioning from Carlton Palms are in need of services that exceed the current iBudget waiver behavior service limits due to Defendant's past neglect in oversight of the behavioral services provided at Carlton Palms that did not afford them

with progress, and possibly stunted their progress, by failing to address known abuse and neglect such that they might successfully transition to less restrictive settings.

DISABILITY RIGHTS EXEMPLARS

A.V.

101. AV is an adult enrolled in the iBudget Waiver and in need of adequate behavioral services. AV has been a resident at Carlton Palms since December 2006.

102. AV is diagnosed with Autism, intellectual disability, obsessive compulsive disorder, explosive disorder, attention deficit-hyperactivity disorder, and tachycardia. While a resident of Carlton Palms, AV was diagnosed with Type 1 Diabetes in January 2017. AV is in need of a community residential placement that will meet all of her needs for behavioral and medical conditions.

103. AV also requires specific meal time protocols to assist in avoiding her behaviors of eating too fast and food stealing which present a choking risk for AV. This requires significant meal time preparation and oversight including cutting her food into small pieces and serving to her in two mini-meals in order to ensure proper time for food chewing and avoidance of choking. This also requires prompt removal of garbage to avoid foraging for food by AV.

104. AV's parent and Guardian has experienced delays and misinformation during the transition process.

105. Upon information and belief, AV was referred to a group home in Gainesville without AV's parent/Guardian being made aware of the referral. The placement was

declined by AV's parent/Guardian because it was too far from their home. After this incident, AV was provided a new transition specialist.

106. Another referral was made to a provider that operates both community group homes and Intermediate Care Facilities for individuals with developmental disabilities (ICF/DDs) which are institutional settings and remove the individual from the Medicaid Waiver.

107. AV's parent/Guardian consulted her Waiver Support Coordinator who was unaware of the referral to the ICF/DD and it is unclear if the Coordinator is consulted in the referral.

108. The ICF/DD that AV was referred to would provide a 1:3 ratio in staffing for AV and so AV's parent/Guardian requested additional staffing from Defendant to increase that ratio during transition but it was declined by Defendant.

109. AV's parent/Guardian is also concerned about losing AV's placement in the Medicaid Waiver which currently has a very long waitlist. Defendant responded to AV that when someone comes off of the Medicaid Waiver to go into ICF/DD "due to a law suit" now the process is that they can come back to the Medicaid Waiver at any time, though this is not codified in statute or in rule.

110. Without sufficient provider capacity to serve individuals like AV, she is at risk of placement in an institution thus forfeiting her Medicaid Waiver without sufficient guarantees to access those home and community based services if desired. Without appropriate community services, AV is at risk of institutionalization.

L.P.

111. LP is an adult enrolled in the iBudget Waiver and in need of adequate behavioral services in the community. LP has been diagnosed with Autism and was placed at Carlton Palms in 2008 after beginning self-injurious behaviors after a trial of pharmaceutical that was not controlled well resulting in a hospitalization at Miami Children's Hospital.

112. Prior to placement at Carlton Palms, LP was involuntarily committed pursuant to the Baker Act on two separate occasions within twelve months.

113. Within a month of being placed at Carlton Palms, LP had head butted a wall and knocked out her two front teeth which resulted in numerous dental appointments, root canals, caps, implants at a significant cost to her family.

114. A few years later, LP began displaying disoriented behavior and Carlton Palms transported her to the emergency room where she received a clean bill of health. However, LP's parents were uncertain in the diagnosis and took LP on their own to Bascolm Palmer Eye Institute at University of Miami where LP was diagnosed with two detached retinas. One retina had been detached so long that it was inoperable and irreparably damaged. LP is now legally blind.

115. As early as July 2017, LP's parent/Guardian informed Defendant that they wanted LP to transition to a group home closer to them.

116. LP's parents/Guardians brought LP home for Christmas and LP was so medicated that she did not engage and was so sedated at night that she was incontinent though she had been toilet trained by age two.

117. LP's mother attended the provider fair at Carlton Palms unannounced and sought to visit with LP. She was made to wait for LP for forty-five minutes when they brought LP to her freshly showered, hair wet, and in semi-clean clothes.

118. LP's parents/Guardians left messages for their transition specialist only to find out through LP's Waiver Support Coordinator that the transition specialist was no longer there and another was being assigned.

119. LP's parents/Guardians began reaching out to community providers on their own and sought out two potentially placements. However, one placement will not accept LP due to her apparent incontinence and her lack of a mental health diagnosis. LP's parents/Guardians await a call back from the second potential placement.

120. Despite an alleged lack of a mental health diagnosis, LP has been treated and followed by a psychiatrist while a resident of Carlton Palms and has been prescribed Risperidone as an "Anti-Psychotic" as well as Lithium. As recently as May 2018, LP's parents/Guardians had to request the psychiatrist to decrease her regimen of medications.

121. LP can independently ambulate but requires prompting to transition from one place to another though by July 2017 had met her goal of making smooth transitions throughout the day. LP has limited verbal communication. LP also needs prompting to complete activities of daily living including meals so that she does not ingest too much food and choke.

122. Defendant last conducted a Behavioral assessment of LP in May of 2017 and determined that LP qualified for Intensive Behavior residential habilitation at Level Four. LP requires staff to be in the same room with her at all times and previously while at

Carlton Palms utilized behavioral protective equipment. Upon transition to a suitable placement, LP will need significant supports to be healthy and safe in the community.

123. Without adequate treatment and supports, LP is at risk of involuntary commitments pursuant to Florida's Baker Act, use of abusive chemical and physical restraints, or other more restrictive placements.

M.O.

124. MO is an adult receiving services through the iBudget Waiver as a resident at Carlton Palms.

125. MO has been diagnosed with Autism, seizures, allergies, anxiety, and a small bowel tumor removal. He previously had his teeth removed and is on a regular diet with mechanical soft/chopped meat and nectar thickened liquids. He is non-verbal and communicates gesturally.

126. MO exhibits severe self-injurious behavior. MO was placed at Carlton Palms when there were insufficient services in his home area and his parents/guardians felt Carlton Palms was the only option.

127. MO was preparing for transition to a group home owned by Carlton Palms' parent company, Bellwether Behavioral Health. MO and his family had toured the group home and even picked out a room for MO to have as his own.

128. Two days after the tour, on or about April 20, 2018, MO's family was informed by Carlton Palms that MO was no longer accepted in that group home because there was no longer space for MO.

129. MO had participated in transition meetings throughout the summer of 2017 and had forgone the referral and visit process of identifying group homes operated by other providers because he had been led to believe the group home spot was slated for him. Now MO has to begin the transition process all over again without adequate information from Defendant or Carlton Palms.

130. MO's parents/guardians participated in a purported "provider fair" hosted by Defendant at Carlton Palms on or about April 23rd and 24th. They met with two providers and both stated they had no open beds and though they were considering expanding, there were no concrete plans to do so or homes for the parents to view. The providers did not even want MO's parents to provide referral packets about MO.

131. During the "provider fair" MO's parents were not provided with a packet of relevant information regarding MO's current services, behavior data, and prospective funding. MO's parents were without information to even share with providers should they find one that seemed capable of providing adequate services.

132. MO was also referred to a provider that owns and operates an Intermediate Care Facility for people with developmental disabilities. MO was not told by Defendant that acceptance of such a placement would end MO's enrollment on the iBudget Waiver and that such placements were institutions.

133. MO's last assessment of functional, physical and behavioral needs was completed in January 2017. MO requires line of sight supervision and potentially should be at arms-length for supervision.

134. Defendant conducted a behavioral review of MO on or about January 29, 2018 and determined that MO qualifies for Residential Habilitation at a Behavior Focus Extensive II level “effective upon transition or 8/1/18 whichever occurs first.” Though MO also qualified for a higher staff ration for his day program to redirect inappropriate behaviors and assist with his transition, that qualification expires in July 2018, before MO has even transitioned.

135. MO is in need of adequate services and supports either in a typical group home near his doctors in Lake County or in a possible family home nearby so that he can remain healthy and safe in the community and not unnecessarily institutionalized.

S.M.

136. SM is an adult enrolled in the iBudget Waiver and in need of adequate behavioral services. From 2013 to present, he has been a resident at Carlton Palms. He has been receiving services through the iBudget Waiver since April of 2016.

137. SM has been diagnosed with autism and has a history of severe self-abuse and aggression that can result in serious harm to himself or to others if intervention is not provided immediately. SM’s behaviors tend to be cyclical, so that he can have stretches of time where the behaviors do not occur. In addition, SM is very sensitive to changes in routine, staffing, and other transitions, which can trigger behavioral episodes that can last for up to an hour and in the past have required up to six staff to intervene.

138. Attempts to care for SM in the home were unsuccessful, resulting in injuries to his mother and caregivers. SM was originally placed at Carlton Palms in 2013 after a

nationwide search for a program that would agree to provide treatment for SM's behaviors; CP was the only willing provider located.

139. SM's mother and father are also his co-guardians. They have been active participants in SM's life and involved in all aspects of planning for his care.

140. SM has experienced verbal abuse from staff members at Carlton Palms who were later fired for their behavior.

141. SM's co-guardians have attempted to work with Defendant in developing appropriate transition options for SM and other residents at Carlton Palms.

142. The present options available to SM are limited due to the severity of his behaviors. Both APD's current IB funding model and the newly adopted EIB model do little to assure long-term adequate staffing for dangerous behaviors. In addition, APD's regulatory practice of continually reducing residential habilitation services at regular intervals does not reflect the consistent need for staff to be alert to triggers and modify environment, nor does it respond to cyclical events.

143. Without adequate treatment and support, SM is at risk of repeated involuntary commitments pursuant to the Baker Act or other more restrictive placements.

A.R.S.

144. ARS is an adult who receives services through the iBudget Waiver. ARS was previously a resident at Carlton Palms.

145. ARS has been diagnosed with Autism and has intense behaviors.

146. Previously, while ARS was a resident at Carlton Palms he was subject to repeated use of chemical and mechanical restraints and neglect by staff that let him shave his own head.

147. ARS was transitioned to a typical group home but staffing was inadequate and Defendant then stacked additional supports through the use of state funds in order to keep ARS healthy and safe.

148. ARS is unable to remain in the community without the additional state-funded supports and would be at risk of unnecessary institutionalization if they were removed.

M.M.

149. MM is an adult enrolled in the iBudget Waiver and in need of adequate behavioral services in the community. From 2006 to approximately February 12, 2018, MM received services as a resident at Carlton Palms.

150. MM has been diagnosed with neuroleptic malignant disorder, a life-threatening neurological disorder most often caused by an adverse reaction to neuroleptic or antipsychotic medications. MM has also been diagnosed with an intellectual disability, schizoaffective disorder and impulse control disorder.

151. MM's mother, who is her legal guardian, and her adult sister are actively involved in her life and care. MM's mother has previously requested services in her home so that MM can live with her. She was told that Defendant would not pay for the amount of services MM needs to live in her mother's home.

152. MM had multiple injuries while at Carlton Palms, including bruises to her arms, and reported them to staff and her family. When family complained of the obvious

bruises, Carlton Palms staff did not investigate the matter or provide modifications to ensure the abuse and neglect did not occur again.

153. MM suffered a bite mark under her breast from another resident, despite that resident being required to be within the line of sight of staff which required, a course of antibiotics for MM.

154. MM's family previously were able to take MM home for weekends and even sometimes for a week at a time by taking off from work and providing the continuous and undivided care and attention MM needs. MM would often not want to return to Carlton Palms and would ask to stay home with her mother and sister.

155. MM's family sought transition for MM to return home and was able to, on their own, line up services including a primary care physician, a psychologist, and other providers with the exception of a Behavior Analyst. One Behavior Analyst agreed to provide services but only if the service included the time it would take to travel to MM's mother's home to provide that service. Defendant's limits on Behavior Analyst's services does not cover time and expense for travelling in order to serve individuals in their own home. Without proper behavior supports in the home, Defendant's suggestion for a back-up plan was to call emergency services and have MM involuntarily committed pursuant to Florida Mental Health Act, § 394.463, Florida Statute.

156. MM's family was also agreeable to placement in a group home if adequate services were in place. However, MM's transition team noted there were no Intensive Behavior group homes in the family's county and there were no vacancies in the Defendant's entire central region.

157. After multiple transition meetings without any potential solution, MM's family was at a loss for what would happen to MM. In February of 2018, Carlton Palms decided to take MM to Quest Diagnostics in order to have blood drawn for an allergist. Though the family had noted possible allergic reactions in the past, it is unknown why Carlton Palms determined they should take MM to a community provider she had never been to before in order to have someone take blood, an invasive and, for MM, frightening and painful procedure. Anytime MM had blood drawn in the past, Carlton Palms had a provider that came to the site and had staff available for the procedure. While at the lab, MM had an incident and law enforcement were called to take MM to a receiving psychiatric facility for involuntary commitment. However, the receiving facility's director believed it dangerous to provide treatment to MM and so MM was discharged to Springbrook, a local hospital, where she resided for five months without a proper discharge plan and community placement to receive iBudget Waiver services.

158. MM was finally placed in an Intensive Behavior Group home after a five month stay in a psychiatric hospital during which time she was declared ready for discharge with no potential placements such that a call to the Department of Children and Families Adult Protective Services was made because her mother/legal guardian would not bring her home without adequate services and there was no group home for her to go to, not even temporarily.

159. During her time as a patient in the psychiatric hospital, MM did not have a Waiver Support Coordinator and she became ineligible for Medicaid Waiver due to her lengthy hospitalization. She was discharged from the hospital on or about May 24, 2018.

160. On or about May 24, 2018, Defendant conducted a desk review of MM's behavioral needs and scored MM as needing an Intensive Behavior designated group home at the highest level possible (Level 6) with Behavior Assistant Services as a one-to-one ratio of supervision during her daytime activities. The Behavior Assistant Services are for her daytime activities in addition to her one-to-one companion but expire in November 2018.

161. MM was transitioned from the hospital to an Intensive Behavior group home without Medicaid because she had been hospitalized for so long. MM does not have a Medicaid Waiver support plan or Support Coordinator.

162. Upon information and belief, no state general revenue funding was provided for the group home's services until Medicaid had been established and as of June 24, 2018, MM did not have Medicaid. It is unclear if any changes in retroactive Medicaid eligibility will affect MM.

163. Upon information and belief, MM's current services, though apparently funded by State general revenue funds, were based on a 2017 assessment of her physical, functional, and medical needs and a 2015 Behavior Analysis Service Plan (BASP). MM's services, while tenuously supporting her now, are based on out-of-date assessments and funded by unmatched state dollars.

164. Without adequate treatment and supports, MM is at risk of involuntary commitments pursuant to Florida's Baker Act or other more restrictive placements.

K.G.

165. KG is an adult that receives services through the iBudget Waiver and has been a resident of Carlton Palms on three separate occasions. KG's third residency at Carlton Palms began in 2014.

166. KG has been diagnosed with Autism, developmental delay, bipolar disorder, schizophrenia, enuresis, AUD/HALL (multiple brain hemorrhages at birth), food obsession and a history of lithium toxicity.

167. In 2012, KG left Carlton Palms to reside in a group home in Orlando but was only there for a couple of months before returning to KG's family's home with in-home behavioral supports. However, KG's inappropriate behaviors include inappropriately touching strangers and after engaging in this behavior, KG went, for the third time, to Carlton Palms.

168. KG has previously been involuntarily committed pursuant to Chapter 394, Florida Statutes.

169. KG has excellent verbal and language skills and has participated in vocational crew activities but needs to be within close supervision based on past behaviors.

170. In early June, KG's parent/Guardian attended a transition meeting for KG but the representative from the Agency for Persons with Disabilities did not appear to know KG's specifics, no Behavior Analyst attended from either the Agency or Carlton Palms, and only one staff from Carlton Palms attended by phone. The prospective provider desired the transition to take place in one week but KG's parent refused such a timeline without seeing the services that would be provided to KG in writing.

171. KG's transition specialist did attend the transition meeting but told KG's parent afterwards that the transition wasn't safe as-is and wanted to correct the deficiencies. Previously KG's parent was told that KG would be eligible for the Enhanced Intensive Behavior Rate but after the transition meeting, it was uncertain.

172. KG has recently transitioned again from Carlton Palms to another group home in the Orlando area. However, KG is in jeopardy of losing the one-to-one services in the future and KG's parent/Guardian worries about the impact this will have especially for the night shift ratios.

173. Without adequate supports and treatment, KG is at risk of involuntary commitment pursuant to Florida's Baker Act, arrests, or other more restrictive placements.

A.G.

174. AG is an adult that receives services through the iBudget Waiver and was previously a resident at Carlton Palms.

175. Since December 2015, AG has had to seek variances every six months in order to receive the amount of behavioral services needed to keep him at healthy and safe at home and out of an institution. However, the process of seeking a variance, often denied at first and then reversed by the agency when a hearing is requested, is an inefficient and inappropriate method of procuring needed services to keep AG healthy and safe. The variances are temporary and requires AG's family to anticipate an appropriate date before the expiration of the variance in which to seek another six-month variance. Such a

process exposes AG to potential gaps in services and requires extra steps by AG's family that is not required of other iBudget Waiver enrollees.

176. Without the services in excess of Defendant's limits, AG would not be able to remain at home and would be at risk of unnecessary institutionalization.

S.S.

177. SS is an adult with a developmental disability that receives services through the iBudget Waiver and was previously a resident at Carlton Palms.

178. SS now resides in a more typical group home but must have additional supports in order to keep SS healthy and safe in the community. SS desires to live in a supported living environment. However, Defendant limits these services, including supported living coach and behavior assistance, in a manner that would fall short of SS's needs to remain healthy and safe in the community.

179. Other typical group homes for SS have been unsuccessful due to a lack of supports for a meaningful day activity including employment. SS is capable of working and previously worked on crews from Carlton Palms. However, SS has been unable to find employment and the companion services currently offered through the iBudget waiver are not suitable to his needs and abilities.

180. Due to services such as companion and adult day training not being authorized immediately upon his placement in other group homes, and a general lack of suitable services for SS, he has been involuntarily committed pursuant to the Baker Act. These interruptions in his services and lack of behavioral treatment for his challenging behaviors have caused SS harm including an emergency room visit for an ill-informed

expedited removal from psychiatric medications. SS is in need of proper medication administration and oversight in order to be successful in the community and that oversight must work with his behavioral supports in order to avoid further involuntary commitments.

181. Without adequate treatment and support, SS is at risk of repeated involuntary commitments pursuant to the Baker Act or other more restrictive placements as well as the ongoing lack of community engagement through meaningful employment.

T.W.

182. TW is an adult diagnosed with autism receiving services through the iBudget waiver and is now residing at home after his parent removed him from Carlton Palms.

183. TW exhibits challenging behaviors and his residence in the family home is tenuous at best. TW previously could not reside at home due to aggression and violence, however, TW's parent was outraged with the continued allegations of abuse and neglect coupled with TW's previous unexplained injuries while a resident of Carlton Palms.

184. Prior to his residence at Carlton Palms, TW had been involuntarily committed pursuant Florida's Baker Act, on several occasions.

185. Prior to his residence at Carlton Palms, TW had eloped from his home and was hit by a vehicle. During his residency at Carlton Palms, TW also engaged in elopement as well as aggression that resulted in property destruction and physical violence.

186. While a resident of Carlton Palms, TW suffered injuries resulting in bruises and scratches, an eye socket injury, and a fist mark on his face, that were reported to be from other residents but TW's parents doubt the veracity of those reports.

187. While a resident of Carlton Palms, TW was subjected to forty-four instances of mechanical restraint.

188. TW recently aged out of the school system last year and since that time has not had meaningful treatment and habilitation. Even the communications from Carlton Palms to TW's parent became scarce and consisted mainly of email communications when requested by TW's parents.

189. TW suffered other injuries including untreated skin conditions such as a toenail fungus that caused him to scream in pain during showers and a significant weight loss while a resident of Carlton Palms.

190. Defendant conducted a behavioral review of TW in May of 2017 and confirmed TW is in need of Residential Habilitation at an Intensive Behavior (Level 4) without any identified additional personal supports or Behavior Assistant services.

191. TW is in need of a home that will provide him with his own room to lessen potentially aggression with roommates. The only home identified that could provide such a situation was a Behavior Focus designated home. With wrap around services that exceed limitations, TW may be successful in such a situation and his parents/guardians are eager to try the scenario but fear unnecessary involuntary commitments if not adequately staffed.

192. TW is now residing at home and TW's parents are taking time off of work to care for TW and are at risk of losing their employment.

193. Without adequate treatment and support, TW is at risk of involuntary commitments pursuant to the Baker Act or other more restrictive placements.

J.B.

194. JB is an adult enrolled in the iBudget Waiver and in need of adequate behavioral services in the community. From 2007 to December 4, 2017, JB received services as a resident at Carlton Palms.

195. JB has been diagnosed with Autism and Obsessive-Compulsive Disorder. He has a history of self-injurious behaviors and essentially non-verbal.

196. At Carlton Palms, JB was subject to repeated uses of physical and chemical restraints to control his behaviors. The physical restraints included a protective helmet and restraint chair, and the restraint chair was used at least once per week. The chemical restraints that JB currently uses in lieu of services are Haldol, Zyprexa, Lithium, Depakote, and as sedatives, Benadryl and Restoril.

197. JB's mother, who is her legal guardian, and her adult sister are actively involved in her life and care. JB's mother and sister would not be allowed to go to JB's Room, and were concerned about his lethargy. They had previously requested services near their home and would prefer that JB live in his mother's home.

198. JB had multiple injuries while at Carlton Palms, including bruises to his head, ears, back and body, and JB's family reported them to staff. Carlton Palms staff did not investigate the matter or provide modifications to ensure the abuse and neglect did not occur again.

199. Prior to the institution of the EIB rate, JB was moved to an intensive behavior group home in Miami Lakes. Notwithstanding his move, JB remains on a potent mix of

anti-psychotic medication which is solely used as a restriction to manage JB's behavior, and was subject to physical abuse because of his behavioral needs.

200. Without adequate treatment and supports, JB is subject to unlawful restraint, abuse, and at risk of involuntary commitments pursuant to Florida's Baker Act or other more restrictive placements.

Constituents with Post-Transition Incidents

201. DRF's constituents that have already transitioned from Carlton Palms include, but are not limited to, the following reports:

- a. One individual was hospitalized for bilateral pneumonia two days after transitioning to a group home whose owner claimed to have received insufficient information on the individual's care needs prior to transition;
- b. One individual engaged in maladaptive behavior and has since been institutionalized at Florida State Hospital;
- c. One individual engaged in maladaptive behavior and required one-to-one staffing until he was ultimately transitioned to the family home with eight hours of Behavior Assistance per day and "stacked" services of fourteen hours of Personal Supports per day;
- d. One individual had additional "stacked" personal supports provided through general revenue IFS funding but was left unsupervised when staff left without replacement or backup;

- e. One individual had exhibited maladaptive behavior resulting in involuntary Baker Act commitment and placement in a new group home. However, the individual was again involuntarily committed while a resident of the second transition placement.

**COUNT I: VIOLATION OF INTEGRATION MANDATE PURSUANT TO THE
AMERICANS WITH DISABILITIES ACT and SECTION 504 OF THE
REHABILITATION ACT**

202. Plaintiffs re-allege and incorporate paragraphs 1 through 201 as if fully set forth herein.
203. The Defendant is the head of a public agency responsible for operation of a public entity, pursuant to 42 U.S.C. §§ 12131(1)(A) & (B).
204. The Defendant is the head of a public agency that receives and administers federal financial assistance.
205. Pursuant to the ADA, public entities, including the defendants, must administer services, programs and activities in “the most integrated setting appropriate” to the needs of qualified individuals with disabilities. *See* 28 C.F.R. § 35.130(d).
206. Section 504 of the Rehabilitation Act of 1973 also contains an integration mandate for recipients of federal funds. *See* 29 U.S.C. § 794.
207. 28 C.F.R. § 41.51(d) requires a recipient to administer its services, programs and activities “in the most integrated setting appropriate” to the needs of qualified individuals with disabilities.
208. The Defendant’s pattern and practice in its administration of the Medicaid iBudget waiver program violates the ADA, 42 U.S.C. § 12101 *et seq.*, in that Florida’s

system for delivery of intensive behavioral services has long favored the CTEP model, which has all the earmarks of an institutional setting: a large number of residents congregated in an isolated facility with limited community involvement. As a result, the Defendant's current system is ill equipped to handle both Carlton Palms residents in transition and other iBudget enrollees with similar behavioral challenges.

209. Defendant's current program for delivery of intensive behavioral services is now placing both current residents of Carlton Palms and other individuals with intensive behavioral challenges at risk of unnecessary institutional placement or provision of services in more restrictive settings in the following ways:

- a. Plaintiffs with intensive behavioral needs received the highest level of funding at the CTEP, the most restrictive setting. That level of funding is not available to residents of family homes or group homes except by limited, temporary, and special exception.
- b. Behavioral services in the family home, the least restrictive setting, have greater restrictions and limitations than other settings.
- c. Behavioral services in group homes have limitations in funding and staffing that are less than those available through the CTEP, except for the EIB rate which applies only to certain Carlton Palms residents who meet the heightened criteria.
- d. In order to transition Carlton Palms residents, Defendant has relied on use of general revenue funds to stack services, a system that is based on arbitrary approvals and is not sustainable.
- e. The Defendant's failure to adopt an appropriate crisis management system for this

- population has and will continue to result in unnecessary commitment to psychiatric institutions and jails or correctional institutions.
- f. Only certain residents of Carlton Palms can receive the EIB rate, even if a non-resident enrollee were to meet the same behavioral qualifications. The EIB rate is also structured in a way that makes continued eligibility tenuous.
 - g. The historical reliance on CTEP licenses has resulted in insufficient providers who are willing and qualified to treat and care for this population.
 - h. The lack of adequate providers for this population places all individual with intensive behavioral needs at risk of institutional placement at an ICF/DD or at Tacachale, the public institution for persons with developmental disabilities.
 - i. Except for the limited individuals who can qualify for the EIB rate and locate a qualified provider, all other individuals with intensive behaviors are at risk of going to an understaffed group home or family home. This places them at risk of being inappropriately committed to a psychiatric facility or arrested and jailed.

**COUNT II: DISCRIMINATION BY PUBLIC ENTITY PURSUANT TO THE
AMERICANS WITH DISABILITIES ACT**

- 210. Plaintiffs re-allege and incorporate paragraphs 1-201, as if fully set forth herein.
- 211. The ADA states a public entity shall not subject qualified individuals with disabilities to discrimination. 42 U.S.C. §12132.
- 212. The ADA's regulations provide:

A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

- (i) Deny a qualified individual with a disability the opportunity to ... benefit from the aid, benefit, or service;
- (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

28 C.F.R. § 35.130(b)(1)(i-iii)

213. The Defendant's current system of delivery of behavioral services is the result of reliance on placement of individuals needing the most intensive behavioral services at the one CTEP facility, rather than support and funding for adequate services and staffing in group homes or family homes. Individuals with severe behavioral challenges are, therefore, exposed to risk of injury, institutionalization in psychiatric facilities or other harmful consequences such as arrest or law enforcement involvement.

214. The Defendant's current system of delivery for behavioral services denies the Plaintiffs the opportunity to benefit from the behavioral services because these individuals cannot receive the level of service needed in their homes or within more typical group homes close to their home communities throughout their lifespan as the current modifications to the delivery of behavioral services is short-term and confined to the transition period from Carlton Palms.

COUNT III: VIOLATION OF AMERICANS WITH DISABILITIES ACT
THROUGH METHODS OF ADMINISTRATION

215. Plaintiffs incorporate and re-allege paragraphs 1-201 as if fully set forth herein.

216. The ADA states a public entity shall not subject qualified individuals with

disabilities to discrimination. 42 U.S.C. §12132.

217. The ADA's regulations provide:

A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration: (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability; (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities.

28 C.F.R. §35.130(b)(3)

218. Defendant utilizes methods of administration that have the effect of subjecting individuals with intensive behavioral needs to unsafe and segregated settings at the CTEP, or if it in fact closes, at inadequately staffed group homes and family homes, rather than providing sufficient behavioral services in the most integrated setting of their homes or other group homes throughout the state. Defendant's current modifications to the delivery of behavioral services is limited to a subgroup of iBudget Waiver enrollees and restricted to the time in which they are transitioning from Carlton Palms. Intensive behavioral services are needed by all current and potential iBudget Waiver enrollees throughout their lifespan and not just during the transition from Carlton Palms.

219. Defendant utilizes methods of administration that have the effect of impairing the objective of the delivery of behavioral services as residents of the CTEP have limited options for transitioning to less restrictive settings with sufficient, reliable, supports that will keep them healthy and safe in the community throughout their lifespan and not just during the transition from Carlton Palms.

220. Defendant utilizes methods of administration that have the effect of

discriminating against residents of the CTEP as similar incidents of abuse and neglect, unsafe and inappropriate use of reactive strategies, and a lack of treatment progress are, upon information and belief, not tolerated in other community settings that provide behavioral services.

221. Defendant's use of the LRC and its monitoring and tracking of critical and reportable incidents has not afforded the residents of Carlton Palms with effective and safe behavioral intervention plans that will allow them to accomplish the goals of their behavior plan and has permitted them to be subject to abuse and neglect despite Defendant's knowledge of the same.

222. Should the Defendant not succeed in closing Carlton Palms, the Plaintiffs will continue to be subjected to the programming at Carlton Palms which has been plagued with allegations of abuse and neglect, through the overuse and inappropriate use of mechanical and chemical restraints and a lack of effective behavior programming which would achieve the transition of residents to less-restrictive settings such as their original homes or group homes within their communities.

RELIEF REQUESTED

Plaintiffs request the following relief be granted:

1. A declaration that the Defendant's policies and procedures, actions and inactions, have subjected Plaintiffs to segregated, institutional-like settings, that are not the least restrictive setting appropriate to their needs, as well as involuntary commitments pursuant to Florida Mental Health Act, § 394.463, Florida Statute;

2. A declaration that the Defendant's policies and procedures, actions and inactions, have subjected Plaintiffs to discrimination through continued abuse and neglect, as well as the risk of abuse and neglect, on the basis of their disability;
3. A declaration that the Defendant's policies and procedures, actions and inactions, have subjected Plaintiff's constituents to discrimination through their methods of administration that subject them to ongoing abuse and neglect at Carlton Palms and an inability to achieve the same level of behavior programming that might enable them to live in less restrictive settings appropriate to their needs and desires;
4. An Order requiring the Defendant to immediately take such steps as are necessary to enable Plaintiff's constituents to receive effective and sustainable services in the most integrated setting appropriate to their needs;
5. An Order directing Defendant to remedy the restrictive and short-term based services and supports that Plaintiff's constituents rely upon in the home and community based Medicaid Waiver to ensure their health, safety and welfare;
6. An award of prevailing party costs, disbursements and attorney fees; and
7. Such other relief the Court deems just and proper.

DATED this 19th day of July, 2018.

Respectfully submitted,

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