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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Peg Ball, Cree James, a minor person by) and through her grandfather and guardian) Bennie James, and Jeanne Spinka, as) individuals and as representatives of a) class of persons similarly situated,

Plaintiffs,

vs.

Anthony D. Rodgers, Director of the) Arizona Health Care Cost Containment) System, the Arizona Health Care Cost) Containment System Administration, and) the State of Arizona,

Defendants.

No. 00-67-TUC-EHC

**ORDER**

Pending before the Court is Plaintiffs' Motion to Enforce Court Orders. (Dkt. 264.) Plaintiffs argue that Defendants are not complying with this Court's order dated June 28, 2005. (Dkt. 248.)

June 28, 2005 Order

On June 28, 2005, the Court ordered Defendants to, among other things, provide critical services to qualified individuals without any gaps in their scheduled service.<sup>1</sup> Critical

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<sup>1</sup> "A gap in critical services is defined as the difference between the number of hours of home care worker critical service scheduled in each qualified individual's HCBS care plan and the hours of the scheduled type of critical service that are actually delivered to the

1 services include personal care service such as bathing, toileting, dressing, feeding,  
2 transferring to or from beds or wheelchairs, and assistance with other similar daily activities.  
3 June 28, 2005 order (Dkt. 248.) The Court's order provided that: Defendants must finalize  
4 a system that produces no gaps in critical services; contractors who provide home care  
5 services under Defendants must have no gaps in the services they provide; contractors  
6 "should be required to have back-up staffing available on-call to substitute for those times  
7 when an unforeseeable gap occurs;" Defendants must monitor its system so that gaps can be  
8 anticipated and corrected within two hours; and there must be a grievance process set up so  
9 that patients can make AHCCCS aware when a gap occurs. Id. The grievance process must  
10 include a hotline to speak with a live operator, and a standardized form to complete and mail  
11 to report the gap. The Court ordered that Defendants provide the patient with a response,  
12 whether written or oral, detailing the explanation for the gap, the alternative plan to rectify  
13 the gap and any possible future gaps. Id.

#### 14 Plaintiffs' Motion to Enforce

15 Plaintiffs allege that Defendants are providing services with gaps, violating this  
16 Court's order. Plaintiffs also allege that: gaps in service are not being filled within two  
17 hours; there have been incidents where patients cannot reach a live operator to report a gap  
18 (and instead must leave a message); there have been incidents where patients were not  
19 provided standardized forms to file a grievance (and were told that the patient could do  
20 nothing about the gap); AHCCCS is only requiring contractors to have a "network"  
21 relationship with other contractors so that gaps do not occur, instead of the court-ordered  
22 "back-up staff;" and patients have been told by providers that they must find their own back-  
23 up service provider to fill a gap in service. Plaintiffs' Motion to Enforce (Dkt. 264.)

24 On April 24, 2006, the Court held a hearing on the Motion. (Dkt. 282.) On August  
25 22, 2006, the Court held a status hearing. (Dkt. 297.) The Court will deny Plaintiffs' Motion

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qualified individual." June 28, 2005 order, p. 2 (Dkt. 248.)

1 without prejudice to later refiling, including supplemental memoranda regarding Defendants'  
2 current delivery of services.

3 Accordingly,

4 **IT IS ORDERED DENYING** Plaintiffs' Motion to Enforce Court Orders without  
5 prejudice to refiling. (Dkt. 264.)

6 **IT IS FURTHER ORDERED DENYING** Defendants' Cross-Motion to Modify  
7 Injunction. (Dkt. 267.)

8 DATED this 28th day of September, 2006.

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12 Earl H. Carroll  
13 United States District Judge  
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