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CV 99-5577 #340

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APR 28 2003  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA  
DEPUTY

The Honorable Franklin D Burgess

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

The Arc of Washington State, Inc , a  
Washington corporation, on behalf of its  
members, et al ,

Plaintiffs,

v

Lyle Quasim, in his official capacity as the  
Secretary of the Washington Department  
of Social And Health Services, et al ,

Defendants

NO C99-5577FDB

DEFENDANTS'  
MEMORANDUM IN  
OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT

Defendants in the above-captioned matter, through their attorneys Christine O  
Gregoire, Attorney General, and Edward J Dee, Assistant Attorney General, respectfully  
submit the following memorandum in opposition to plaintiffs' Motion for Partial Summary  
Judgment

**I. RELIEF REQUESTED**

Defendants ask the Court to deny plaintiffs' motion in its entirety.

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## II. PROCEDURAL BACKGROUND

1  
2 Plaintiffs initiated this litigation in November 1999 as a class action lawsuit alleging  
3 violation of class members' rights under Medicaid law and the ADA to developmental  
4 disabilities services provided by the Washington State Department of Social and Health  
5 Services (DSHS). Plaintiffs alleged that DSHS denied plaintiffs their rights under Medicaid to  
6 ICF/MR services (Intermediate Care Facilities for the Mentally Retarded) provided by five  
7 institutional facilities operated by DSHS staff as well as several community-based ICF/MRs  
8 operated by private parties under contract with DSHS. Plaintiffs also claimed that defendants  
9 violated their rights under Medicaid and the ADA to community-based services available  
10 under a waiver program within the state's Medicaid plan (referred to as the Community  
11 Alternatives Program waiver or "CAP waiver")

12 In December 2000 the Court granted defendants' Cross-Motion for Partial Summary  
13 Judgment on plaintiffs' ADA claims, holding there was no right under the ADA for equal  
14 access to limited home and community-based services. Dkt No 132. The Court essentially  
15 ruled that plaintiffs must demonstrate violations by defendants of their statutory rights under  
16 Medicaid or violation of rights secured by the U.S. Constitution in DSHS's provision of  
17 developmental disability services. In the Motion for Partial Summary Judgment currently  
18 before the Court, plaintiffs appear to rely exclusively on claims under Medicaid.

19 On January 5, 2001 defendants filed a second Motion for Dismissal of Claims. This  
20 motion remains pending before the Court. The case was then stayed based on the joint motion  
21 of the parties to allow efforts to achieve a mediated settlement. An initial settlement agreement  
22 was proposed by the parties but rejected by the Court. The stay was continued until December  
23 2002 when the Court for the second and final time denied the settlement agreement proposed  
24 by the parties. In its order denying approval the Court held that the proposed settlement had  
25 the potential to keep the Court embroiled in the administration of state developmental

1 disabilities programs for the indefinite future, coming very close to an inappropriate  
2 substitution of the Court for the state legislature (Dkt No 323 at page 11) In this order the  
3 Court also decertified the previously approved class and ordered the case to proceed as a  
4 “regular” or “ordinary” case (Dkt No 323 at page 13) The case was then reset for trial

5 In December 2002 this Court dismissed a similar case filed on behalf of four  
6 individuals receiving developmental disabilities services through the CAP waiver, holding that  
7 various claims of entitlement to CAP waiver services can be addressed through administrative  
8 and judicial remedies available to plaintiffs in state forums Boyle v Braddock, No C01-  
9 5687FDB The Court also held that the CAP waiver program is a matter of local importance  
10 that warrants deference to state remedial procedures already in place

### 11 III. COUNTERSTATEMENT OF FACTS

12 In section II of their memorandum plaintiffs purport to present facts that are  
13 undisputed Defendants cannot disagree more With the exception of several allegations made  
14 by the parent of plaintiff Lorianne Ludwigson, the allegations offered by plaintiffs as  
15 undisputed facts fall entirely into the following three categories, all of which are comprised  
16 almost entirely of facts in dispute

- 17 1 Unreliable statements allegedly made by anonymous non-parties,
- 18 2 Unfounded assumptions by plaintiffs leading to erroneous conclusions that  
19 defendants made admissions against interest relevant to plaintiffs claims, or
- 20 3 Factual allegations of non-parties which offer no proof of claims asserted by the  
21 plaintiffs

22 For the reasons stated below, very few of these allegations should be accepted by the  
23 Court as undisputed facts

1 **A. Alleged Statements of Unknown Parties.**

2 In support of their Motion for Partial Summary Judgment, plaintiffs offer a number of  
3 factual allegations and claimed "admissions against interest" by DSHS that they assert under  
4 the heading "Statement of Undisputed Facts" A significant number of the facts alleged to be  
5 undisputed by plaintiffs are actually hearsay statements of anonymous third parties These  
6 unattributed statements, contained in plaintiffs' memorandum and in the thirteenth declaration  
7 of Sue Elliott, cannot qualify as undisputed facts because their source is unknown, rendering  
8 them incapable of dispute as to their truth or falsity These statements should be rejected  
9 outright by the Court as offering no support to plaintiffs' motion

10 **B. Alleged Statements Against Interest.**

11 Even more suspect than unattributed statements by non-parties are plaintiffs' claims  
12 that DSHS has made a number of "admissions" and "admissions against interest" which  
13 "sustain plaintiffs' position on Medicaid law" Plaintiffs' Memorandum in Support of  
14 Plaintiffs' Motion for Partial Summary Judgment at page 3 As the basis for these claims,  
15 plaintiffs point to findings by the federal Centers for Medicare and Medicaid Services (CMS)  
16 following its 2002 review of DSHS's CAP waiver program, and to DSHS's response to those  
17 findings However, as explained in the attached Declaration of Linda Rolfe dated April 28,  
18 2003, CMS and states often disagree over Medicaid requirements Ms Rolfe, who is the state's  
19 Director of the Division of Developmental Disabilities, asserts there are a number of reasons  
20 why states might forego challenging CMS findings and may instead try to resolve issues  
21 through discussion, clarification, and the offering of assurances Issues can often be resolved  
22 informally, and until a significant sanction is imposed there is no incentive or requirement that  
23 DSHS must publicly deny or refute CMS's position

24 Without agreeing that CMS's findings are correct, DSHS is attempting to address  
25 CMS's concerns regarding the CAP waiver in order to avoid a disallowance of federal

1 matching funds This may involve taking actions that demonstrate to CMS that state policy is  
 2 intended to comport with Medicaid law, and to provide assurances to CMS that certain  
 3 Medicaid requirements of concern to them will be met This is all part of the give and take  
 4 associated with federal oversight of state programs funded through Medicaid A strategy  
 5 employed by a state to minimize the potential for sanctions should not be considered  
 6 admissions against interest as argued by plaintiffs in this case See Declaration of Linda Rolfe  
 7 dated April 28, 2003 (attached)

8 CMS has not yet issued a disallowance against the state related to its 2002 review of  
 9 Washington's CAP waiver If CMS does so, at that time DSHS will likely dispute the findings  
 10 and pursue its federal appeal rights See Declaration of Linda Rolfe dated April 28, 2003  
 11 (attached) In the appeals process, CMS and DSHS are equal parties, and a neutral factfinder  
 12 will ultimately decide whose interpretation of Medicaid requirements should prevail

13 **C. Factual Allegations Contained in Plaintiffs' Declarations.**

14 As demonstrated by the attached declarations of Linda Rolfe and Kristyn Winchell of DSHS,  
 15 except for a very few allegations, most of the factual allegations contained in the declarations  
 16 proffered by plaintiffs are directly disputed In Linda Rolfe's declaration dated April 28, 2003  
 17 at page 5, the director of DSHS's Division of Developmental Disabilities disputes plaintiffs'  
 18 claims that lack of timely services by DSHS has caused severe stress for unidentified members  
 19 of Arc Plaintiffs make this claim despite their acknowledgment on page 4, lines 20-24 of their  
 20 memorandum that Arc keeps no records regarding its members who claim to be waiting for  
 21 services from DSHS Based on this admission, all claims by Arc related to unmet need of its  
 22 members should be rejected as speculative and unreliable

23 In her declaration dated April 28, 2003 DSHS staff Kristyn Winchell identifies the  
 24 numerous facts alleged by plaintiffs that are directly disputed by DSHS With the exception of  
 25 the fourth declaration of Donald Ludwigson, previously submitted to the Court in September

2001, the facts alleged by plaintiffs involve statements by non-parties whose circumstances are not relevant to the claims of the three individual plaintiffs in this action. Even if the Court finds the circumstance of non-parties to be relevant, the great majority of facts alleged in the declarations submitted in support of plaintiffs' Motion for Partial Summary Judgment are disputed by defendants. See attached declaration of Kristyn Winchell dated April 28, 2003.

#### IV. ARGUMENT

##### A. Because Plaintiffs Have Not Demonstrated There Are No Material Facts in Dispute, Their Motion for Summary Judgment Should be Denied.

It is well settled that the purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the Court. Snelling v Riveland, 983 F Supp 930 (E D Wash 1997), aff'd 165 F 3d 917 (9<sup>th</sup> Cir 1998). Granting of summary judgment is appropriate if after viewing proffered evidence in a light most favorable to the party opposing the motion, the court determines there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Burlington Northern R R Co v Time Oil Co., 738 F Supp 1339 (W D Wash 1990). Where the nonmoving party comes forward with direct evidence contrary to the facts offered by the party seeking summary judgment, credibility issues are raised which are for the trier of fact, such cases are not appropriate for summary judgment. Cassidy v U S., 875 F Supp 1438 (E D Wash 1994). Material facts are those that might effect the outcome of the case under the applicable law. Brooks v Burlington Northern R.R., 910 F Supp 505 (W D Wash 1995).

Plaintiffs provide the Court with no analysis regarding the question of whether material facts remain in dispute. Most all of the facts alleged in the declarations supporting plaintiffs' motion involve allegations of non-parties that are disputed by DSHS. These allegations are not material to the issue before the Court, whether defendants have violated Medicaid rights of the three individual plaintiffs. The allegations of plaintiff Donald Ludwigson involve alleged actions of some unidentified DSHS staff that occurred over two years ago. In actions such as

1 this where injunctive relief is requested, the Court's focus should be on current policies and  
2 practices of the defendant, not on past allegations of wrongdoing Thus the facts alleged by  
3 Mr Ludwigson, who acknowledges that his daughter's need are currently being met, are not  
4 material even if true Also, DSHS disputes the accuracy of those allegations

5 Plaintiffs effort to demonstrate there are no issues of material fact seems to hinge on  
6 their assertion that DSHS has made admissions against interest which now bind them in this  
7 motion for summary judgment For the reasons stated in Section III above and in the  
8 declaration of Linda Rolfe dated April 28, 2003, the presence of such admissions is vigorously  
9 disputed by DSHS and should not be found to demonstrate there are no genuine issues of  
10 material fact

11 The only material facts at issue in this case are those involving what services the three  
12 individual plaintiffs are eligible for under Medicaid, whether they have demonstrated their  
13 need for and entitlement to those services, what services were offered to them at what points in  
14 time, and whether those services were adequate to address the needs that must be met under  
15 Medicaid Some of these are mixed questions of law and fact, but defendants maintain they  
16 either remain at issue or they have been resolved in defendants' favor based upon the weight of  
17 evidence that the three plaintiffs are receiving the services they requested Either way,  
18 plaintiffs have failed to meet the criteria for summary judgment

19  
20 **B. Because Plaintiffs Have Not Demonstrated They Should Prevail as a Matter of Law, Their Motion for Summary Judgment Should be Denied.**

21 Not only must plaintiffs show there are no material facts in dispute, they must convince  
22 the Court they should prevail as a matter of law Plaintiffs, who do not dispute their current  
23 needs are being met, attempt to accomplish this through conclusory allegations and arguments  
24 that in the past they were denied Medicaid services to which they were entitled, or were not  
25 provided those services with reasonable promptness They seek summary judgment on two



1 separate claims (1) A claim under the Medicaid Act that persons currently on the CAP  
 2 waiver are not receiving all services to which they are entitled, and (2) A claim under the  
 3 Medicaid Act that persons eligible for ICF/MR services are not receiving such services with  
 4 reasonable promptness Their factual and legal arguments fall far short of demonstrating they  
 5 should prevail in this case as a matter of law, thus summary judgment should be denied

6 **1. Plaintiffs' attempt to proceed as if this were a class action should be rejected.**

7 It is obvious by plaintiffs wording of their claims on page 2 of their memorandum that  
 8 they continue to pursue this case as if it were a class action They attempt to use class action-  
 9 type evidence to support the claims of the three individual plaintiffs They assert their claims  
 10 as involving "persons on the waiver" who are not receiving all entitled services, and "persons  
 11 eligible for ICF/MR services" who are not receiving them with reasonable promptness  
 12 (Emphasis added) They attempt to use declarations and statements of non-parties, some of  
 13 them anonymous, to support these two claims They also assert that DSHS has made certain  
 14 admissions that suggest a general pattern or practice of not adhering to Medicaid requirements  
 15 imposed on states

16 The Court in its order of December 2, 2002 could not have made it clearer that this case  
 17 is no longer a class action The Court decertified the previously approved class and ordered  
 18 that " this case will henceforth proceed as a regular case and will no longer proceed as a class  
 19 action " Dkt No 323 at page 13 Plaintiffs are ignoring this clear directive from the Court  
 20 They are attempting to use evidence that is unrelated to their own individual circumstances in  
 21 an effort to prove the DSHS is violating their rights Defendants respectfully recommend that  
 22 the Court reject these arguments and admonish plaintiffs to present motions in this case that are  
 23 consistent with prior Court orders

24 Even if everything asserted in plaintiffs' memorandum and attached declarations were  
 25 true, it would still fail to demonstrate that current services for the three individual plaintiffs are



1 deficient under Medicaid. There is nothing in the record to dispute the statements contained in  
 2 the attached Declaration of Kristyn Winchell dated April 28, 2003 at pages 4 – 5 that the three  
 3 individual plaintiffs are receiving appropriate services to address their assessed needs.

4 **2. Plaintiffs have not demonstrated there are no material facts in dispute**  
 5 **regarding their claim that some Arc members on the CAP waiver need**  
 6 **services which the state has failed to supply with reasonable promptness.**

7 To support this claim plaintiffs offer the declarations of three non-parties in addition to  
 8 claims by Arc executive director Sue Elliott that certain unidentified individuals on the CAP  
 9 waiver have not received services to which they are entitled. Claims about these anonymous  
 10 persons should be rejected as lacking credibility and reliability, and because defendants have  
 11 no opportunity to evaluate those claims. DSHS disputes many of the allegations contained in  
 12 the declarations of Suzanne Gries, Lori Flood, and Beverly Waugh.

13 Plaintiffs offer no evidence on this issue related to the three individual plaintiffs.  
 14 DSHS has offered specific, credible evidence regarding the waiver services currently enjoyed  
 15 by the three plaintiffs, and assert that services currently provided are adequately addressing  
 16 their needs. Any claims that the needs of the three individual plaintiffs were not being met  
 17 with reasonable promptness would of necessity require an individualized inquiry to determine  
 18 if plaintiffs or defendants are correct in their assertions. The inquiry would need to evaluate  
 19 the current needs of each plaintiff, current services offered by DSHS, the ability of those  
 20 services to address the assessed need, and when the services were provided and under what  
 21 circumstances. This is precisely the kind of inquiry that is available to all individuals on the  
 22 CAP waiver who claim they have been denied reasonably prompt services, through  
 23 administrative remedies available under state law.

24 **3. Plaintiffs have not demonstrated there are no material facts in dispute**  
 25 **regarding their claim that some Arc members want ICF/MR services that**  
**the state has failed to supply with reasonable promptness.**

1 Arc admits that it does not keep records of members who claim they have requested  
 2 Medicaid services but have not received them with reasonable promptness (plaintiffs'  
 3 memorandum at page 4) Only one of the three individual plaintiffs, Lorianne Ludwigson,  
 4 claims to have asked for ICF/MR placement Lorianne is currently receiving residential  
 5 services funded through the CAP waiver, and DSHS believes her assessed needs are being  
 6 fully met Plaintiffs submit a declaration by Donald Ludwigson that is now two years old and  
 7 that alleges denial of ICF/MR services by DSHS from 1998 through 2000 DSHS disputes  
 8 these allegations, and asserts that the issue before this Court is the nature of current services  
 9 available to plaintiffs and the current policies covering those services When current services  
 10 becomes the focus of inquiry, as it should, it becomes clear that DSHS is providing necessary  
 11 and appropriate services to meet Lorianne Ludwigson's assessed needs See attached  
 12 declaration of Kristyn Winchell dated April 28, 2003 at pages 4-5

13  
 14 **4. Arc's claims that it has been harmed by alleged actions of defendants are speculative and without foundation.**

15 Arc claims to have a "real and substantial organizational interest" related to plaintiffs'  
 16 claims that DSHS fails to provide reasonably prompt Medicaid services It claims that it  
 17 expends resources on behalf of individuals who have been denied services from DSHS  
 18 Thirteenth declaration of Sue Elliott at page 4 At the same time Arc admits that it does not  
 19 keep track of advocacy efforts by its staff Plaintiffs memorandum at page 9

20 The individual cases Arc presents to support this claim involve hearsay statements by  
 21 two unidentified clients who claim that DSHS staff wrongfully denied requested services Arc  
 22 claims that if it did not have to respond to these calls from members " it would save  
 23 significant amounts of paid staff time" and that because of this expenditure it is "truly  
 24 harmed" Plaintiffs memorandum at pages 9-10

1 The "proof" offered by plaintiffs to support this claim is woefully inadequate Arc  
 2 keeps no records of how its staff spend their time, and identifies anonymous members whose  
 3 inquiries have allegedly taken Arc staff time for some unspecified duration The evidence  
 4 supporting this claim is so speculative and conclusory that it leaves defendants no means by  
 5 which to refute it This claim is illustrative of why Arc should not be a party to this litigation,  
 6 and why defendants will again ask the Court to dismiss Arc as a plaintiff By infusing itself as  
 7 a representative of its membership, a membership whose names and circumstances Arc has  
 8 been unable to identify, in reality Arc is attempting to act as a class comprised of all  
 9 individuals with developmental disabilities who are eligible for ICF/MR or CAP waiver  
 10 services This is the class definition that the Court previously rejected in this case, based on  
 11 the Court's determination that inherent conflicts exist among class members The Court also  
 12 found that adjudication of class members claims would require individualized determinations  
 13 to ascertain if rights to services were violated

14 Based on the above, defendants respectfully recommend that claims by Arc for alleged  
 15 harm to the organization be rejected as unfounded and speculative, and that claims of Arc on  
 16 behalf of its members be rejected as inconsistent with prior orders of this Court

17  
 18 **C. Plaintiffs Are Unable to Demonstrate A Current or Anticipated Violation of Their  
 Rights to Developmental Disability Services Funded Through Medicaid.**

19 In their complaint plaintiffs seek preliminary and permanent injunctions against  
 20 defendants requiring DSHS to provide ICF/MR services, CAP waiver services, and  
 21 administrative appeal rights consistent with Medicaid law In seeking temporary or permanent  
 22 injunctive relief, a party must demonstrate (1) a clear legal or equitable right, (2) a well  
 23 grounded fear of **immediate** invasion of that right, and (3) that the acts complained of must be  
 24 **resulting in or will result in** actual and substantial harm Kucera v State Dept of Transp.  
 25 140 Wn 2d 200, 995 P 2d63 (2000). Article III standing demonstrating a case or controversy

1 requires an injury that is **actual or imminent**, not conjectural or hypothetical Clark v City of  
 2 Lakewood, 259 F 3d 996 (9<sup>th</sup> Cir 2001)

3 Plaintiffs' allegations of injury in this case do not meet these criteria The three  
 4 individual plaintiffs are currently receiving the services they have requested and for which they  
 5 have assessed needs There is no indication that plaintiffs have outstanding requests for  
 6 services that are currently unmet or may become unmet in the future Plaintiffs assert that  
 7 defendants are now publicly acknowledging what Medicaid law requires and have made  
 8 admissions regarding what the state's responsibilities are toward Medicaid recipients with  
 9 developmental disabilities Under the cases cited above, plaintiffs no longer have Article III  
 10 standing to maintain the action they initiated in 1999

11 Even if one accepts plaintiffs' allegations of past violations of Medicaid law at face  
 12 value, they fail to demonstrate present violations, or anticipated future violations, sufficient to  
 13 warrant the imposition of injunctive relief from this Court Such relief is considered to be an  
 14 extraordinary remedy designed to prevent serious harm Its purpose is not to protect a plaintiff  
 15 from mere inconveniences or from speculative or insubstantial injury Kucera v State Dept of  
 16 Transp, 140 Wn 2d 200, 995 P 2d63 (2000) Here the fear of harm alleged by plaintiffs is  
 17 speculative, they are all currently receiving the services they have requested And as  
 18 emphasized throughout their memorandum to the Court, CMS provides close monitoring and  
 19 oversight to state agency implementation of Medicaid requirements

20 **D. Plaintiffs Have Comprehensive Appeal Rights That Meet Due Process**  
 21 **Requirements Imposed by Medicaid Law.**

22 State law grants comprehensive notice and appeal rights to plaintiffs Under RCW  
 23 71A 10 050 and RCW 71A 10 060, plaintiffs are afforded appeal rights whenever there is a  
 24 denial, reduction, or termination of a service, a denial of eligibility, an unreasonable delay in  
 25 acting on an application for eligibility or a request for a service, a claim for overpayment, a

1 disagreement about notice provisions, a discharge from a state institution, and a change in  
2 category of residential service. The latter statute grants extensive notice rights. Plaintiffs  
3 cannot demonstrate that adequate due process rights under Medicaid are not available. See  
4 also WAC 388-825-120 (granting additional appeal rights regarding the development or  
5 modification of service plans). Plaintiffs are afforded full evidentiary hearings before  
6 administrative law judges pursuant to chapter 34.05 RCW, including appeal to the county  
7 superior courts. These appeal rights closely mirror and are entirely consistent with Medicaid  
8 due process requirements contained in 42 C.F.R. §431.201 and 42 C.F.R. §431.220.

9 It is defendants' position that issues surrounding the nature and scope of Medicaid  
10 services to which a person may be entitled is particularly well suited to the administrative  
11 hearing process, where evidence can be submitted through testimony and exhibits regarding  
12 the individualized circumstances and needs of the person who feels aggrieved. Determining  
13 the appropriate nature, scope and duration of an individual's Medicaid services is not well  
14 suited to major litigation in federal court. This Court so ruled in a recent case of a similar  
15 nature dealing with CAP waiver services (Boyle v Braddock, C01-5687FDB). Defendants  
16 maintain that the principles underlying the Court's decision in Boyle apply with equal force in  
17 this case, and should, at a minimum, defeat plaintiffs' arguments for an order granting  
18 summary judgment.

19  
20 **E. Reasonable Promptness Under Medicaid is Determined on a Case by Case Basis.**

21 Without offering any current examples, plaintiffs infer that defendants are out of  
22 compliance with reasonable promptness requirements under Medicaid. They appear to argue  
23 that Doe v Chiles, 136 F.3d 709 (11th Cir 1998) stands for the proposition that "reasonable  
24  
25

1 | promptness” under Medicaid means a bright-line ninety day rule<sup>1</sup> This is not how the  
2 | reasonable promptness requirement has been interpreted

3 | There is a ninety-day rule in 42 C F R §435.911, but this applies only to  
4 | determinations of eligibility, not to the provision of services CMS has not adopted a similar  
5 | rule governing the delivery of services In the absence of statutory or agency guidelines for  
6 | determining what constitutes reasonable promptness, its requirements are best determined on a  
7 | case-by-case basis See Mathews V Eldridge, 424 U S 319, 96 S CT 893, 47 L Ed 2d 18  
8 | (1976) (interpreting the reasonable promptness requirement under 42 U S C 1396a(a) to  
9 | require a balancing of interests )

10 | Plaintiffs have made no present showing that DSHS is violating Medicaid’s reasonable  
11 | promptness standard in its eligibility determinations or in its delivery of services All  
12 | allegations regarding timeliness of services are several years old or more If plaintiffs do have  
13 | complaints about the timeliness of services, they have specific appeal rights under state law  
14 | providing a vehicle to pursue whatever remedies are appropriate

15 | Plaintiffs have not demonstrated a present or anticipated violation of their rights to  
16 | reasonably prompt services for which they are entitled They have adequate remedies if such  
17 | violations occur in the future

## 18 | V. CONCLUSION

19 | Plaintiffs have failed to meet its burden to warrant summary judgment in their favor  
20 | Defendants have raised many issues of fact, and plaintiffs have failed to demonstrate they must  
21 | prevail and as a matter of law Plaintiffs have not made the necessary showing to warrant the  
22 | imposition of injunctive relief on defendants’ provision of Medicaid services

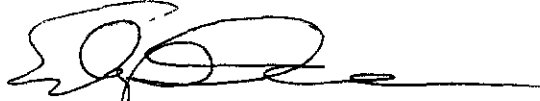
23 |  
24 |  
25 | <sup>1</sup> Doe v Chiles had a long and tortuous history during which the Court became very dissatisfied with the  
pace of progress in Florida’s implementation of Court orders

1 For the foregoing reasons defendants respectfully request that the Court deny plaintiffs'

2 Motion for Partial Summary Judgment

3 Respectfully submitted this 28<sup>th</sup> day of April, 2003

4 CHRISTINE O. GREGOIRE  
5 Attorney General

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7 Edward J. Dee, WSBA #15964  
8 Assistant Attorney General

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**PROOF OF SERVICE**

*Carol Carney*, states and declares as follows

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows

**Attorney for Plaintiffs**

Larry A Jones  
2118 Eighth Avenue  
Seattle, WA 98121-2608

- By United States Mail
- By Legal Messenger
- By Facsimile
- By Federal Express
- By Hand Delivery by Edward J Dee, Assistant Attorney General

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct

Dated this 28<sup>th</sup> day of April, 2003 at Olympia, Washington

  
 CAROL CARNEY  
 Legal Assistant