

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION NO. II

CASE NO. 18-CJ-531

FILED
CAMPBELL CIRCUIT/FAMILY/DISTRICT
JUN 22 2018
TAUNYA DOLAN JACK, CLERK
BY [Signature] D.C.

J [REDACTED] D [REDACTED],

PLAINTIFF

and

C [REDACTED] W [REDACTED], Guardian of the Person and Estate of
J [REDACTED] H [REDACTED],

PLAINTIFF

and

G [REDACTED] S [REDACTED], Husband and attorney in fact
for C [REDACTED] S [REDACTED],

PLAINTIFF

and

T [REDACTED] R [REDACTED], Guardian of the Person and Estate of
C [REDACTED] S [REDACTED],

PLAINTIFF

VS.

Baptist Convalescent Center, Inc
d/b/a Baptist Life Communities
a/k/a The Seasons @ Alexandria
7341 E Alexandria Pike
Alexandria, KY 41001-2397

DEFENDANT

Serve: ROBERT H. LONG
BAPTIST LIFE COMMUNITIES
1452 DONALDSON HIGHWAY
ERLANGER, KY 41018

COMPLAINT

Come the Plaintiffs, J [REDACTED] D [REDACTED], J [REDACTED] H [REDACTED], C [REDACTED] S [REDACTED], and
C [REDACTED] S [REDACTED], by counsel, and for their cause of action herein state as follows:

PARTIES

1. That the Plaintiff, J [REDACTED] D [REDACTED], is 70 years old and has resided at all relevant times in Campbell County, Kentucky and currently resides in a nursing home operated by the Baptist Convalescent Center, Inc. doing business as Baptist Life Communities and known as The Seasons at Alexandria, located at 7341 E. Alexandria Pike, Alexandria, Kentucky, which is operated by the Defendant.

2. That the Plaintiff, J [REDACTED] H [REDACTED], is 83 years old and of unsound mind, C [REDACTED] W [REDACTED] brings this action as his guardian having been appointed guardian by the Kenton District Court in case number [REDACTED]. That he has resided at all relevant times in Campbell County, Kentucky and currently resides in a nursing home operated by the Baptist Convalescent Center, Inc. doing business as Baptist Life Communities and known as The Seasons at Alexandria, located at 7341 E. Alexandria Pike, Alexandria, Kentucky, which is operated by the Defendant.

3. That the Plaintiff, C [REDACTED] S [REDACTED], is 68 years old and of unsound mind, G [REDACTED] S [REDACTED], her husband and attorney in fact, brings this action as her attorney in fact having been appointed by her on February 15, 2016. That she has resided at all relevant times in Campbell County, Kentucky and currently resides in a nursing home operated by the Baptist Convalescent Center, Inc. doing business as Baptist Life Communities and known as The Seasons at Alexandria, located at 7341 E. Alexandria Pike, Alexandria, Kentucky, which is operated by the Defendant.

4. That the Plaintiff, C [REDACTED] S [REDACTED], is 87 years old and of unsound mind, T [REDACTED] R [REDACTED] brings this action as his guardian having been appointed guardian by the Campbell District Court in case number 08-H-010-001. That he has resided at all relevant times in Campbell County, Kentucky, and currently resides in a nursing home operated by the Baptist Convalescent Center, Inc. doing business as Baptist Life Communities and known as The Seasons at Alexandria, located at 7341 E. Alexandria Pike, Alexandria, Kentucky, which is operated by the Defendant.

5. That the Defendant, Baptist Convalescent Center, Inc., is a duly organized corporation under the laws of the Commonwealth of Kentucky, doing business as Baptist Life Communities, with its principal place of business at 1452 Donaldson Highway, Erlanger, Kenton County, Kentucky. The Defendant operates several nursing homes in Kentucky including its former facility, the Baptist Convalescent Center, located at 120 Main Street in Newport, Campbell County, Kentucky which is now known as The Seasons at Alexandria, 7341 E. Alexandria Pike, Alexandria, Kentucky.

INTRODUCTION

6. Plaintiffs are indigent, elderly citizens of Kentucky who depend upon the Medicaid program to cover the costs of their nursing home care. They now face unpayable bills, and likely eviction, because the Defendant nursing home has imposed additional and unlawful costs upon them, roughly \$900.00 each month on top of the Medicaid rate. After the Defendant recently moved its nursing home to a new location, the Defendant targeted a pool of transferring Medicaid-eligible residents and has notified them that they will soon be responsible to pay an additional supplemental daily rate over and above the Medicaid rate. These residents seek the Court's intervention to stop this unlawful practice and allow them to remain among friends and familiar caregivers in their nursing home.

FACTUAL ALLEGATIONS

7. That the Plaintiff, **J. D. [REDACTED]**, requires nursing home care due to limitations in her ability to move about as the result of a broken hip and femur, problems with her ankle, bladder control and a bipolar disorder. Due to her limited financial resources, she is eligible for the Medicaid program, which covers her nursing home care.

8. That beginning on October 6, 2012, and prior to Baptist Convalescent Center's relocation to Alexandria, Ms. D██████ resided at the Newport, Kentucky location of the Defendant's nursing home. While living at the Baptist Convalescent Center, she resided in a shared occupancy room. On December 1, 2017 she received notice that she was to be discharged from the Center as of January 2, 2018. The nursing home made an application for Ms. D██████ to relocate to a nursing home in Ohio, even though she did not want to move to that nursing home.

9. Based upon information and belief, Plaintiff D██████ believes that the Defendant reversed its position as to her discharge from their facility and allowed her to relocate to its new Alexandria location in January when it was determined that the federal Centers for Medicare & Medicaid Services (CMS) would temporarily make a supplemental payment to Defendant. She now resides at The Seasons at Alexandria in a private room because that was the room the Defendant placed her in when the Defendant relocated from Newport to Alexandria. She is willing to move into a shared-occupancy room at any time. Regardless, the Defendant has informed her of its intent to assess her a \$30 a day supplemental charge for a private room. She cannot afford to pay this supplemental charge.

10. That the Plaintiff, J██████ H██████, requires nursing home care due to a stroke he suffered in July 2016 and subsequent onset of dementia. Due to his limited financial resources, he is eligible for the Medicaid program, which covers his nursing home care.

11. That beginning on November 9, 2016, and prior to Baptist Convalescent Center's relocation to Alexandria, Mr. H██████ resided at the Newport, Kentucky location of the Defendant's nursing home. While living at the Baptist Convalescent Center in Newport, he resided in a shared occupancy room. He moved to the Alexandria location on January 3, 2018, because the Defendant relocated its nursing home operations there. He resides at The Seasons at

Alexandria in a private room because that was the room the Defendant placed him in when the Defendant relocated from Newport to Alexandria. He is willing to move into a shared-occupancy room at any time. Regardless, the Defendant has informed him of its intent to assess him a \$30 a day supplemental charge for a private room. He cannot afford to pay this supplemental charge.

12. That the Plaintiff, ~~Carline S.~~, requires nursing home care due to Alzheimer's disease and the fact that she recently fell and broke her back. She now uses a wheel chair. Due to her limited financial resources, she is eligible for the Medicaid program, which covers her care in the nursing home.

13. That beginning on April 30, 2016, and prior to Baptist Convalescent Center's relocation to Alexandria. Mrs. ~~S.~~ resided at the Newport, Kentucky location of the Defendant's nursing home. While living at the Baptist Convalescent Center in Newport, she resided in a shared occupancy room. She moved to the Alexandria location on January 3, 2018, because Defendant relocated its nursing home operations there. She resides at The Seasons at Alexandria in a private room because that was the room the Defendant placed her in when the Defendant relocated from Newport to Alexandria. She is willing to move into a shared-occupancy room at any time. Regardless, the Defendant has informed her of its intent to assess her a \$30 a day supplemental charge for a private room. She cannot afford to pay this supplemental charge.

14. That the Plaintiff, ~~Carl S.~~, requires nursing home care due to dementia, Parkinson's disease, and other conditions. Due to his limited financial resources, he is eligible for the Medicaid program, which covers his care in the nursing home.

15. That beginning on September 29, 2016 and prior to Baptist Convalescent Center's relocation to Alexandria, Mr. ~~S.~~ resided at the Newport, Kentucky location of the Defendant's nursing home. While living at the Baptist Convalescent Center in Newport, he resided

in a shared-occupancy room. He moved to the Alexandria location on January 3, 2018, because the Defendant relocated its nursing home operations there. He resides at The Seasons at Alexandria in a private room because that was the room the Defendant placed him in when the Defendant relocated from Newport to Alexandria. He is willing to move into a shared-occupancy room at any time. Regardless, the Defendant has informed him of its intent to assess him a \$30 a day supplemental charge for a private room. He cannot afford to pay this supplemental charge.

16. That pursuant to KRS 216B and the regulations promulgated thereunder, the Defendant was issued license number 100055 by the Cabinet for Health and Family Services to operate a 167 bed nursing facility known as The Seasons at Alexandria, located at 7341 E. Alexandria Pike, Alexandria, Campbell County, Kentucky.

17. That the Defendant owns, controls, operates and manages The Seasons at Alexandria, which is licensed as a nursing facility. (This Complaint uses the term "nursing home" instead of "nursing facility" because "nursing home" is the more familiar term.)

18. That if a nursing home is certified to accept reimbursement from the Medicaid program, the nursing home must comply with federal nursing home law set forth in section 1396r of Title 42 of the United States Code, and sections 483.1 through 483.95 of Title 42 of the Code of Federal Regulations. In addition, a nursing home must comply with general Medicaid requirements, applicable to all Medicaid-certified providers, as set forth in section 1396 et seq. of Title 42 of the United States Code, and section 400.200 et seq. of Title 42 of the Code of Federal Regulations. The Seasons at Alexandria is certified to accept Medicaid reimbursement and thus must comply with these federal provisions. Relevant to this action, the Defendant specifically must comply with section 1396r(c) (1) (A) (xi) of Title 42 of the United States Code, and sections 483.10 (f) (11) (ii) (K) and 447.15 of Title 42 of the Code of Federal Regulations.

19. That the General Assembly of the Commonwealth of Kentucky has recognized and declared that it is an essential function, duty, and responsibility of the state government to provide medical care to its indigent citizenry and to accomplish this function passed KRS 205.520 which provides that in order to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed by federal law.

20. In compliance with the requirements of federal law set forth above, the secretary for health and family services has adopted 902 KAR 20:300(sec. 4)(4)(a)(2) and 907 KAR 1:065, sec. 8, which set forth limitations in charges to residents of a nursing home.

21. Both the Commonwealth and the federal government have enacted significant quality of care protections specifically to benefit Medicaid-eligible nursing home residents. 902 KAR 20:300 (licensure requirements); 42 C.F.R. §§ 483.1- 483.95 (quality of care standards for any nursing facility certified to accept Medicaid or Medicare reimbursement).

CAUSES OF ACTION

COUNT I (Petition for Declaratory Judgment)

22. Plaintiffs incorporate by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

23. Plaintiffs petition this Court for Declaratory Judgment pursuant to KRS 418.045 *et seq.*

24. An actual and justiciable controversy exists, warranting the Court's declaration of rights and obligations among the parties.

25. Specifically, the Plaintiffs contend that the Defendant has no right to assess a supplemental charge against the Plaintiffs, since they are Medicaid-eligible. The Plaintiffs are

unable to pay any such supplemental charge and are at risk of eviction for failure to pay such charges.

26. The Defendant has informed Plaintiffs that the federal CMS is temporarily paying an amount that covers the supplemental charges, and upon information and belief the Plaintiffs believe that these payments by CMS will cease in the near future.

27. Due to the Plaintiffs' limited financial resources, they are unable to pay this supplemental charge which is in excess of the usual and customary reimbursement provided by Medicaid, and which the Defendant demands in order for the Plaintiffs to remain in their nursing home.

28. Plaintiffs have reason to believe that their inability to pay this supplemental charge of approximately \$900.00 per month will result in their eviction from the nursing home.

29. The Plaintiffs desire a judicial determination of the parties' respective rights and obligations in connection with the applicable provisions of federal and state statutes and regulations including a finding that the Defendant is prohibited from assessing an extra charge for a private room without compliance with section 1:065(sec. 8)(2), (3)(a) of Title 907 of the Kentucky Administrative Regulations, and section 483.10(f)(11)(ii)(K) of Title 42 of the Code of Federal Regulations, including but not limited to a resident's affirmative choice of a private room in lieu of an available shared-occupancy room.

COUNT II
(Injunctive Relief)

30. Plaintiffs incorporate by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

31. By virtue of the allegations set forth herein, Plaintiffs have demonstrated a strong likelihood of success on the merits and that a balancing of the equities favors the issuance of an injunction against the Defendant.

32. Unless Defendant is preliminarily and permanently enjoined from the foregoing conduct, the Plaintiffs will be irreparably harmed by virtue of the fact that they are financially unable to pay a supplemental charge and as a result they will face eviction from their nursing home.

33. Plaintiffs are entitled to a Preliminary Injunction and Permanent Injunction which directs that:

The Defendant be immediately enjoined, directly or indirectly, and whether alone or in concert with others, until hearing and thereafter until further Order of the Court from doing any of the following (i) charging the plaintiffs a supplemental charge; or (ii) serving a notice of eviction, transfer or discharge upon the Plaintiffs for their failure to pay a supplemental charge.

COUNT III
(Violation of The Kentucky Consumer Protection Act)

34. The Plaintiffs incorporate by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

35. By reason of its conduct as alleged herein, the Defendant has violated the provisions of KRS 367 *et seq.* as it refers to consumer protection by forcing the Plaintiffs to pay a supplemental charge, in excess of the usual and customary reimbursement provided by Medicaid in order to remain in their nursing home.

36. By engaging in the conduct described above, the Defendant has violated and continue to violate the state's Consumer Protection Act by, among other things:

(a) Engaging in unfair acts or practices by requiring an illegal supplemental payment as a condition of remaining in the nursing home.

(b) Engaging in unfair, false, misleading, or deceptive acts or practices by presenting a supplemental payment as mandatory, when Medicaid law prevents a nursing home from compelling such a payment.

(c) Engaging in unfair, false, misleading, or deceptive acts or practices by failing to state material facts regarding limitations on supplemental payments established by state and federal law, the omission of which deceived or tended to deceive.

COUNT IV
(Violation of KRS 216.515)

37. Plaintiffs incorporate by reference all preceding paragraphs and allegations of this Complaint as though fully set forth herein.

38. The Defendant is a long-term-care facility as defined in KRS 216.510(1).

37. By reason of its conduct as alleged herein, the Defendant has violated the provisions of KRS 216.515 (3) and (4) by forcing the Plaintiffs to pay a supplemental payment, in excess of the usual and customary reimbursement provided by Medicaid, in order to remain in its nursing home.

39. In violation of KRS 216.515 (3), the Defendant did not fully inform, in writing, the Plaintiffs and/or their responsible party, responsible family members or guardians of all service charges for which the resident or his or her responsible family members or his or her guardians are responsible for paying.

40. In violation of KRS 216.515 (4), the Defendant has communicated to the Plaintiffs that they will be evicted, transferred or discharged from the facility for failure to pay a supplemental payment for a private room, even though the Plaintiffs have not requested a private room and are instead requesting a shared-occupancy room.

41. That as the result of the Defendant's conduct, the Plaintiffs have suffered damages for which they are entitled to seek redress.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

1. That the Court enter a declaration that Defendant is required to comply with applicable state and federal laws and regulations regarding limitations on charges to residents of the Defendant's nursing home;

2. That the Court enter a declaration that the Defendant is prohibited from assessing a supplemental charge for a private room without compliance with sections 907 KAR 1:065, sec. 8, and 483.10(f)(11)(ii)(K) of the Federal Code of Regulations, including but not limited to a resident's affirmative choice of a private room in lieu of an available shared-occupancy room;

3. For preliminary and permanent injunctive relief enjoining and restricting Defendant from assessing a supplemental charge to Plaintiffs;

4. For preliminary and injunctive relief enjoining and restricting Defendant from evicting Plaintiffs, or pursuing involuntary transfer or discharge against Plaintiffs, from Defendant's nursing home known as The Seasons at Alexandria;

5. For preliminary and permanent injunctive relief enjoining and restricting Defendant from engaging in any conduct in violation of the Consumer Protection Act;

6. For preliminary and permanent injunctive relief enjoining and restricting Defendant from engaging in any conduct in violation of KRS 216.515;

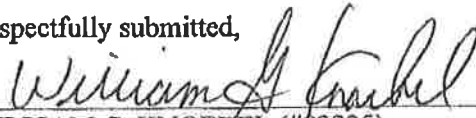
7. An award of compensatory, exemplary and punitive damages in excess of the minimum jurisdictional limits of the Court;

8. Their costs expended herein;

9. A reasonable attorney's fee;

10. Any and all other relief to which they may appear to be entitled.

Respectfully submitted,



WILLIAM G. KNOEBEL (#83225)

KNOEBEL & VICE, PLLC

P.O. Box 96

223 Main Street

Florence, KY 41022-0096

(859) 371-2302

Fax: (859) 525-6194

bill@kvlawf.com

and



STEPHANIE D. LANGGUTH (#92110)

LEGAL AID OF THE BLUEGRASS

104 East Seventh Street

Covington, KY 41011

(859) 431-8206

Fax: (859) 431-3009

slangguth@lablaw.org

FILED
CAMPBELL CIRCUIT/FAMILY/DISTRICT
JUN 22 2018
TAUNYA NOLAN JACK, CLERK
BY D.C.

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION NO. II
CASE NO. 18-CI-531

J [REDACTED] D [REDACTED],

PLAINTIFF

and

C [REDACTED] W [REDACTED], Guardian of the Person and Estate of
J [REDACTED] H [REDACTED],

PLAINTIFF

and

G [REDACTED] S [REDACTED], Husband and attorney in fact
for C [REDACTED] S [REDACTED],

PLAINTIFF

and

T [REDACTED] R [REDACTED], Guardian of the Person and Estate of
C [REDACTED] S [REDACTED],

PLAINTIFF

VS.

Baptist Convalescent Center, Inc
d/b/a Baptist Life Communities
a/k/a The Seasons @ Alexandria

DEFENDANT

MOTION FOR TEMPORARY INJUNCTION

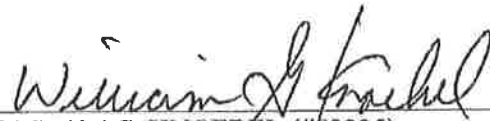
Come now the Plaintiffs in the above entitled cause, by and through counsel, and respectfully move this Court to issue an order enjoining and restraining Defendant, Baptist Convalescent Center, Inc., its agents, servants, and employees, during the pendency of this action, from charging the Plaintiffs a supplemental charge, including any charge assessed on top of the Medicaid rate based on a Plaintiff occupying a private room. Additionally, the Plaintiffs seek an order enjoining and restraining the Defendant from evicting Plaintiffs from the Defendant's nursing home known as The Seasons at Alexandria as a result of their inability to pay such

supplemental charges due to their limited financial resources.

As grounds for this motion, Plaintiffs rely on their verified complaint filed in this cause, and the affidavits of T [REDACTED], R [REDACTED], G [REDACTED] S [REDACTED], G [REDACTED] W [REDACTED], J [REDACTED] D [REDACTED] and L [REDACTED] B [REDACTED], MD, attached hereto.

A Memorandum of Law in Support of Plaintiff's Motion is attached hereto.

Respectfully submitted,



WILLIAM G. KNOEBEL (#83225)
KNOEBEL & VICE, PLLC
P.O. Box 96
223 Main Street
Florence, KY 41022-0096
(859) 371-2302
Fax: (859) 525-6194
bill@kvlawf.com

and



STEPHANIE D. LANGGUTH (#92110)
LEGAL AID OF THE BLUEGRASS
104 East Seventh Street
Covington, KY 41011
(859) 431-8206
Fax: (859) 431-3009
slangguth@lablaw.org

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was issued along with the Original Complaint for service upon the Defendant.


WILLIAM G. KNØEBEL

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION NO. II
CASE NO. 18-CI-531

FILED
CAMPBELL CIRCUIT/FAMILY/DISTRICT
JUN 22 2018
TAUNYA NOLAN JACK, CLERK
BY D.C.

J [REDACTED] D [REDACTED],

PLAINTIFF

and

C [REDACTED] W [REDACTED], Guardian of the Person and Estate of
J [REDACTED] H [REDACTED],

PLAINTIFF

and

G [REDACTED] S [REDACTED], Husband and attorney in fact
for C [REDACTED] S [REDACTED],

PLAINTIFF

and

T [REDACTED] R [REDACTED], Guardian of the Person and Estate of
C [REDACTED] S [REDACTED],

PLAINTIFF

VS.

Baptist Convalescent Center, Inc
d/b/a Baptist Life Communities
a/k/a The Seasons at Alexandria

DEFENDANT

Memorandum Of Law In Support Of
Plaintiffs' Motion For A Temporary Injunction

1. Introduction

Plaintiffs are elderly nursing home residents who rely on the Medicaid program to cover their nursing home expenses. Although Medicaid income rules allow each Plaintiff to retain only \$40.00 from monthly income, Defendant's nursing home is assessing each Plaintiff a supplemental monthly charge of approximately \$900.00, and it will require Plaintiffs to leave or be evicted if they do not pay.

contemplates that the parties show an urgent necessity for relief. *McCloud v. City of Cadiz*, 548 S.W.2d 158, 161 (Ky. App. 1977). “Immediacy” has been defined by the courts to mean that “(a)n injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted.” *Hamlin v. Durham*, 235 Ky. 842, 845, 32 S.W.2d 413, 414 (1930). On numerous instances, as it relates to the issuance of a temporary injunctive relief, it has been noted by the appellate courts that the clearest example of irreparable injury exists when it appears from the initial facts presented that the final judgment would be rendered completely meaningless should the alleged probable harm occur prior to trial. CR 65.04(1); *Oscar Ewing, Inc. v. Melton*, 309 S.W.2d 760, 761 (Ky. 1958).

In this case, immediate injunctive relief is necessary; otherwise, prior to trial, Plaintiffs will be assessed unlawful and unaffordable supplemental charges, and be subject to eviction for their inability to pay such charges. Each Plaintiff is eligible for Medicaid coverage of his or her health care expenses, including nursing home expenses. The Medicaid program provides safety-net coverage for persons who otherwise could not afford health insurance; accordingly, Medicaid eligibility is based on financial need. In Kentucky, the program is administered jointly by the Kentucky Cabinet for Health and Family Services, and the federal Centers for Medicare & Medicaid Services (CMS). Federal Medicaid law sets certain minimum standards, and states have circumscribed discretion to individualize their programs within those federal requirements. The program is funded jointly by the state and federal governments. *See, e.g., Sandoz Inc. v. Commonwealth ex rel. Conway*, 405 S.W.3d 506, 508 (Ky. App. 2012); KRS 205.520(2) (Kentucky Medicaid program providing “medical care to its indigent citizenry”); 42 U.S.C.

§ 1396-1 (“medical assistance [for persons] ... whose income and resources are insufficient to meet the costs of necessary medical services”).

As a result, under Medicaid income rules, each Plaintiff retains only \$40.00 monthly from his or her income. 907 KAR 20:035(sec. 3)(2)(a). The remainder of the Plaintiff’s monthly income is paid to the nursing home or, in the case of some married nursing home residents, allocated to the resident’s spouse so the spouse can maintain a home and keep up with other routine expenses. 907 KAR 20:035(sec. 2) (protecting income for maintenance of spouse), (sec. 3)(4) (remainder of income paid for cost of care). A nursing home is prohibited by state and federal law from charging a resident more than the amount allowed by the Medicaid income rules. 902 KAR 20:300(sec. 4)(4)(a)(2); 907 KAR 1:065(sec. 8); 42 C.F.R. §§ 447.15, 483.10(f)(11).

Defendant is now prepared to impose a supplemental charge of \$30.00 a day (roughly \$900.00monthly) against each Plaintiff. (See Affidavits of J.D., ¶ 15, J.H., ¶ 12, C. ~~Some~~, ¶ 14, C. ~~Stunning~~, ¶ 15). None of the Plaintiffs are able to pay this supplemental charge, given the Medicaid income allocation of only \$40.00 per month. 907 KAR 20:035(sec. 3)(2)(a) (\$40.00 monthly allocation). Failure to pay the charge will subject Plaintiffs to eviction. KRS 216.515(4) (eviction for nonpayment); 902 KAR 20:300(sec. 4)(1)(a)(5) (same); 42 C.F.R. § 483.15(c)(1)(i)(E) (same).

It is highly likely that Defendant will pursue eviction for Plaintiffs’ inability to pay the supplemental charges, because Defendant already did so in December 2017. At that time, Defendant was relocating its nursing home from Newport to Alexandria and was planning to relocate Medicaid-eligible residents to the new location only if they agreed to pay \$30.00 a day for a private room in the new building. When Plaintiffs said that they could not pay this amount, Defendant issued eviction notices, telling Plaintiffs that in 30 days they would be discharged to

the homes of their children, spouses, or friend unless a Plaintiff were to arrange for discharge to another location. (See Affidavit of J. B., ¶ 12, Affidavits of J.H., ¶ 10, C. S., ¶ 7, C. S., ¶ 9). Defendant only rescinded the eviction notices when the federal Centers for Medicare & Medicaid Services (CMS) “agreed to cover the cost of the private room differential for a short period of time until other arrangements [could] be made pursuant to a plan of closure for the Newport facility.” (See Affidavits of J.H., ¶ 11, C. S., ¶ 11, C. S., ¶ 11).

In short, Defendants are assessing illegal charges that Plaintiffs cannot afford, and are prepared to evict Plaintiffs for failure to pay those charges. These injuries are both immediate and irreparable, and without question cannot be adequately remedied by any future judgment in this action. Only the requested temporary injunction will enable Plaintiffs to remain in their nursing home while paying only the amount allowed by Medicaid income rules. See *Maupin*, 575 S.W.2d at 699 (moving party required to show only “probability of irreparable injury”); *Hamlin v. Durham*, 32 S.W.2d 413, 414 (Ky. App. 1930) (“must be at least a reasonable probability that the injury will be done if no injunction is granted”).

c. Consideration of the Equities Supports Issuance of a Temporary Injunction.

The Court of Appeals lists a non-exclusive list of issues relevant to the equities: “possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Maupin*, 575 S.W.2d at 699. Each of these issues supports issuance of a temporary injunction.

First, issuance of a temporary injunction would protect low-income nursing home residents and thus advance the public interest. Plaintiffs bear the twin burdens of significant health care issues and relatively limited financial resources. (See Affidavits of J.D., ¶s 3, 4, 5, 15, J.H., ¶s 2, 6, 8, C. S., ¶s 3, 6, C. S., ¶ 3, 6). Both the Commonwealth and the federal government

have enacted significant quality of care protections specifically to benefit Medicaid-eligible nursing home residents. 902 KAR 20:300 (licensure requirements); 42 C.F.R. §§ 483.1- 483.95 (quality of care standards for any nursing facility certified to accept Medicaid or Medicare reimbursement). In addition, in provisions relied upon by Plaintiffs in this matter, regulations limit the charges that a nursing home can assess against a Medicaid-eligible resident, to ensure that such residents are able at a minimum to retain Medicaid's \$40.00 a month income allocation. 902 KAR 20:300(sec. 4)(4)(a)(2); 907 KAR 1:065 (sec. 8); 42 C.F.R. §§ 447.15, 483.10(f)(11); *see also* 907 KAR 20:035(sec. 3)(2)(a) (\$40.00 monthly allocation). Public policy shows a concern for Medicaid-eligible nursing home residents, *see, for example* KRS 205.510 ("it is an essential function, duty and responsibility of the state government to provide medical care to its indigent citizenry"), so the public interest is advanced when they are protected by a temporary injunction grounded on state and federal standards.

Second, the potential harm to Defendant is limited, particularly in the context of Defendant's overall revenues. From a low-income Plaintiff's perspective, payment of an extra \$900.00 monthly for a supplemental charge is wholly unaffordable, given Medicaid's monthly income allocation of only \$40.00. *See* 907 KAR 20:035(sec. 3)(2)(a) (\$40.00 monthly allocation). For Defendant, however, \$3,600.00 monthly (\$900.00 X 4 Plaintiffs) is a much more moderate amount, given that the Defendant will still receive \$196.15 per day from Medicaid, per plaintiff, during the pendency of this action, or \$23,538.00 for a 30 day period. *See* Department for Medicaid Services Fee and Rate Schedules posted at chfs.ky.gov/agencies/dms/DMS%20Schedules/April2018NFRates.pdf.

Third, the injunction preserves the status quo. Currently, Plaintiffs reside in the Alexandria nursing home; in return, they pay Defendant the amount authorized by Medicaid

income rules. Under the requested temporary injunction, this state of affairs would continue pending trial.

d. Plaintiffs' Complaint Presents a Substantial Question, Because Defendant Violates State and Federal Laws By Requiring Plaintiffs to Pay Supplemental Charges that They Cannot Afford.

Under temporary injunction procedures, the court at this stage applies a lenient standard in evaluating the merits of a plaintiff's claim. A plaintiff does *not* have "to show a substantial probability of success;" it is sufficient that the complaint "raises a substantial question." *Maupin*, 575 S.W.2d at 699. *See also, Harrison's Sanitarium v. Commonwealth*, 417 S.W.2d 137, 139 (Ky. 1967). Evidence can be presented through a verified complaint, affidavit or other evidence. CR 65.04(1); *Maupin*, 575 S.W.2d at 699.

Under these standards, Plaintiffs clearly have raised a "substantial question." Plaintiffs are Medicaid-eligible nursing home residents who moved into Defendants' nursing home in Newport, and then were forced by the defendant into private rooms when defendant relocated its nursing home to Alexandria. Now the defendant is telling each plaintiff that he or she will have to pay an extra \$30.00 per day (or roughly \$900.00 monthly) in order to stay in the nursing home. These supplemental charges violate Medicaid law.

The Medicaid program provides health care coverage for low-income persons who otherwise cannot afford coverage. *See* KRS 205.520(2) and 42 U.S.C. § 1396-1 discussed *supra* in section 2(b). In general, a Medicaid recipient has few resources, and is required to spend much of his or her income towards health care expenses. This is particularly true for nursing home residents. Kentucky Medicaid standards allow a nursing home resident to retain no more than \$2,000.00 in non-exempt assets and no more than \$40.00 in monthly income, and to spend the remainder of his or her monthly income towards nursing home bills or other health care costs. 907

KAR 20:025(sec. 1)(1)(a) (\$2,000.00 resource limit), 20:035(sec. 3)(2)(a) (\$40.00 monthly allocation), (4) (paying remainder of income for health care costs). If the resident is married, Medicaid rules allow the resident's spouse to retain some additional assets and income to support a moderate standard of living for the spouse outside of the nursing home. 907 KAR 20:035(sec. 2).

Because Medicaid recipients have little financial margin for error, state and federal law prohibits a nursing home from charging any more than the amount authorized by Medicaid. 902 KAR 20:300(sec. 4)(4)(a)(2); 907 KAR 1:065(sec. 8); 42 C.F.R. §§ 447.15, 483.10(f)(11). For example, if an unmarried nursing home resident receives non-exempt income of \$1,000.00 monthly, the facility can charge no more than the \$960.00 authorized by Medicaid, leaving the resident with a small personal needs allowance of \$40.00 monthly. *See* 907 KAR 20:035(sec. 3)(2)(a) (\$40.00 monthly allocation), (4) (paying remainder of income for health care costs).

Under Medicaid regulations, a nursing home can charge extra for certain items or services that are outside the normal package of Medicaid-funded services — telephones, personal computers, personal reading materials, and flowers, for example. A nursing home can charge extra for a private room only if the resident requests a private room, the facility has informed the resident of the extra charge, the private room is not required therapeutically or required to achieve the resident's care plan goals, and the Medicaid program is not specifically paying for a private room. 42 C.F.R. § 483.10(f)(11)(ii)(K).


In this case, Defendant has no right to charge for a private room. Plaintiffs did not request private rooms when they moved into the Newport nursing home and are not requesting private rooms now. They are currently living in private rooms now only because the Defendant gave them no choice — when Defendant relocated its nursing home from Newport to Alexandria, Defendant

chose to move Plaintiffs into private rooms, based on the smaller number of shared-occupancy rooms in the Alexandria building. Notably, Kentucky law prohibits a nursing home from “requir[ing] a resident, or responsible representative of the resident, to request any item or services as a condition of admission or continued stay.” 907 KAR 1:065(sec. 8)(3)(a).

3. Conclusion.

Absent prompt action from this Court, Plaintiffs are at risk of being assessed illegal, unaffordable charges, and then being evicted for failure to pay those charges. They respectfully request that the Court issue a temporary injunction to enjoin Defendant from assessing supplemental charges and from evicting Plaintiffs for failure to pay such charges.

Respectfully submitted,



WILLIAM G. KNOEBEL (#83225)

KNOEBEL & VICE, PLLC

P.O. Box 96

223 Main Street

Florence, KY 41022-0096

(859) 371-2302

Fax: (859) 525-6194

bill@kvlawf.com

and



STEPHANIE D. LANGGUTH (#92110)

LEGAL AID OF THE BLUEGRASS

104 East Seventh Street

Covington, KY 41011

(859) 431-8206

Fax: (859) 431-3009

slangguth@lablaw.org