

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

9  
10 RESIDENT COUNCILS OF WASHINGTON, )  
WASHINGTON STATE LONG-TERM CARE )  
11 OMBUDSMAN PROGRAM through KARY W. )  
HYRE, LOUISE CLARK, DAN FRUICHANTIE, )  
12 DOLORES SHAFER, and MIKE SWOPE, )  
on behalf of themselves and all others )  
13 similarly situated, )  
14 Plaintiffs, )  
15 v. )  
16 TOMMY G. THOMPSON, Secretary of )  
United States Department of )  
17 Health and Human Services, )  
18 Defendant. )  
19

Civil Action No. \_\_\_\_\_  
  
COMPLAINT FOR  
DECLARATORY, INJUNCTIVE,  
AND MANDAMUS RELIEF  
  
CLASS ACTION

20  
21 I. INTRODUCTION

22 1. The federal Nursing Home Reform Law (“Reform Law”) sets quality of care standards  
23 for every nursing home certified for reimbursement from the federal Medicare or Medicaid  
24 programs. Because almost all nursing homes are certified to accept reimbursement from  
25 Medicare or Medicaid (or both), the Reform Law governs the care provided in over 90% of  
26 nursing homes nationwide.

27 2. A central provision of the Reform Law is a requirement that direct care be provided  
28 only by licensed health professionals, or by certified nurse aides. The Reform Law requires



1 care providers in Washington. Its board of directors consists of nine nursing home residents and  
2 five boarding home residents.

3 8. Plaintiff WASHINGTON STATE LONG-TERM CARE OMBUDSMAN PROGRAM  
4 through KARY W. HYRE is authorized under federal and state law to represent the interests of  
5 the residents of licensed long-term care facilities in the State of Washington. KARY W. HYRE  
6 is the State Long-Term Care Ombudsman.

7 9. Plaintiff LOUISE CLARK is a resident of a nursing home in Edmonds, Washington,  
8 and is President of the Board of Directors of the Resident Councils of Washington.

9 10. Plaintiff DAN FRUICHANTIE is a resident of a nursing home in Tacoma,  
10 Washington.

11 11. Plaintiff DOLORES SHAFER is a resident of a nursing home in Bothell,  
12 Washington.

13 12. Plaintiff MIKE SWOPE is a resident of a nursing home in North Bend, Washington.

14 13. Defendant TOMMY G. THOMPSON is Secretary of the United States Department  
15 of Health and Human Services and is responsible for the overall operation of the Medicare and  
16 Medicaid programs and specifically for the regulations implementing the Medicare and Medicaid  
17 programs. He is sued in his official capacity.

#### 18 IV. CLASS ACTION ALLEGATIONS

19 14. Plaintiffs bring this action on behalf of themselves and all others similarly situated,  
20 pursuant to Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The class consists of  
21 residents of all federally-certified nursing homes in states that have decided or will decide to  
22 permit nursing homes to employ paid feeding assistants pursuant to the federal feeding assistant  
23 regulations that took effect on October 27, 2003.

24 15. Joinder is impracticable due to the large number of class members and for other  
25 reasons, including, but not limited to, their geographic diversity, their ages and/or disabilities,  
26 their low-income status, and the fear of retaliation from the nursing homes in which they live.  
27 On information and belief, Plaintiffs estimate the class to include many thousands of present  
28 members.

1 16. There are questions of law and fact common to the class members, including that  
2 Defendant has promulgated a regulation that allows nursing home care to be provided by poorly-  
3 trained feeding assistants, and thus has violated the Nursing Home Reform Law and the  
4 Administrative Procedure Act.

5 17. The claims of the named Plaintiffs are typical of those of class members in that the  
6 claims allege that Defendant is endangering the health and lives of nursing home residents in  
7 violation of the Nursing Home Reform Law and the Administrative Procedure Act.

8 18. The named Plaintiffs will fairly and adequately protect the interests of the class.  
9 They have no interests that are or may be potentially antagonistic to the interests of the class.  
10 Moreover, the Plaintiffs are represented by competent counsel who are experienced in nursing  
11 home law and in federal litigation involving Medicare and Medicaid, and who have represented  
12 classes in numerous other cases involving Medicare, Medicaid, other public benefit programs,  
13 and nursing home law.

14 19. The Defendant has acted and refused to act on grounds generally applicable to the  
15 class as a whole, thereby making appropriate final injunctive and declaratory relief to the class as  
16 a whole.

#### 17 IV. STATUTORY AND REGULATORY FRAMEWORK AND DEVELOPMENTS

##### 18 A. Requirements Under the Nursing Home Reform Law

19 20. The federal Nursing Home Reform Law was enacted in 1987 and, pursuant to its  
20 terms, has been in effect since October 1, 1990. The Reform Law sets quality of care standards  
21 for every nursing home that is certified for reimbursement from the Medicare program, the  
22 Medicaid program, or both. If a nursing home is federally certified, the Reform Law governs the  
23 care provided to each and every resident within the facility, whether or not the care of the  
24 individual resident is reimbursed through the Medicare or Medicaid programs.

25 21. The Reform Law is set forth at 42 U.S.C. §§ 1395i-3 and 1396r for Medicare- and  
26 Medicaid-certified facilities, respectively. Sections 1395i-3 and 1396r are virtually identical.

27 22. The federal law refers to Medicare-certified nursing homes as “skilled nursing  
28 facilities,” and to Medicaid-certified nursing homes as “nursing facilities.” For simplicity, this

1 Complaint uses the term “nursing homes” to include both “skilled nursing facilities” and  
2 “nursing facilities” as defined by federal law.

3 23. To protect nursing home quality of care, the Reform Law requires that “nursing or  
4 nursing-related services” be provided by licensed health professionals, registered dietitians, or  
5 certified nurse aides. An exception is made for “volunteers,” so that residents’ family members  
6 and friends can be allowed to assist in providing care. 42 U.S.C. §§ 1395i-3(b)(5)(F),  
7 1396r(b)(5)(F).

8 24. Certified nurse aides must complete a training and competency evaluation program  
9 that requires, *inter alia*, at least 75 hours of training by licensed health care professionals, as well  
10 as uniform statewide testing. 42 U.S.C. §§ 1395i-3(b)(5)(A), 1395i-3(e)(1), and 1395i-  
11 3(f)(2)(A)(i) (Medicare-certified nursing homes), and 42 U.S.C. §§ 1396r(b)(5)(A), 1396r(e)(1),  
12 1396r(f)(2)(A)(I) (Medicaid-certified nursing homes); 42 C.F.R. § 483.152(a)(5) and (6). At  
13 least 12 hours of annual in-service training also is required. 42 U.S.C. §§ 1395i-3(b)(5)(E),  
14 1396r(b)(5)(E). Before having any direct contact with a resident, a certified nurse aide must  
15 complete at least 16 hours of training in safety procedures, infection control, communication and  
16 interpersonal skills, residents’ rights, and the promotion of resident independence. 42 C.F.R.  
17 § 483.152(b)(1).

18 25. Under the Reform Law, each state must maintain a publicly-accessible registry of the  
19 individuals who have satisfied the certified nurse aide requirements relating to training and  
20 competency evaluations. 42 U.S.C. §§ 1395i-3(e)(2)(A), 1396r(e)(2)(A). The registry must  
21 record any finding that a certified nurse aide subsequently committed abuse, neglect, or  
22 misappropriation. The registry is used on a daily basis by nursing homes and other care facilities  
23 to lessen the possibility of hiring an aide who has neglected or abused a resident.

24 B. Background of the New Feeding Assistant Regulations

25 26. Prior to the promulgation and implementation of the regulations at issue here, it was  
26 the position of the Defendant, as stated by his Department of Health & Human Services’ Centers  
27 for Medicare & Medicaid Services (CMS), that the Nursing Home Reform Law did not permit  
28 the use of non-nurse aides to perform feeding assistance. The basis for that conclusion was that

1 assisting a resident to eat is a nursing-related service under the Reform Law, so that feeding  
2 assistance can be performed only by a licensed health care professional, a registered dietician, a  
3 certified nurse aide, or a volunteer.

4 27. In 2000, CMS (under its former name, the Health Care Financing Administration  
5 (HCFA)), explicitly found Wisconsin to be in violation of the Reform Law because the state  
6 allowed nursing homes to hire so-called feeding assistants. Under an agreement with HCFA,  
7 Wisconsin agreed to phase out its feeding assistant program although, based on statements  
8 appearing in the preamble to the final regulations at issue, it is unclear whether and to what  
9 extent Wisconsin ended the use of feeding assistants.

10 28. After HCFA informed members of Congress in 2000 that federal law required nurse  
11 aide certification for feeding assistance, federal legislation was introduced in 2000 and 2001 that  
12 would have allowed nursing homes to employ feeding assistants who were not certified nurse  
13 aides. None of the legislation was approved by Congress.

14 29. Also, on July 5, 2001, CMS informed its regional administrators that, despite  
15 concerns about the alleged shortage of nurse aides, CMS had “identified transporting residents as  
16 the only nursing home service that does not require the use of nurse aides with 75 hours of  
17 training . . . .”

#### 18 C. Issuance of the New Regulations

19 30. On March 29, 2002, the Defendant proposed new regulations to allow long term care  
20 facilities to employ paid feeding assistants. 67 Fed. Reg. 15,149. The proposal cited an alleged  
21 shortage of nurse aides as the main rationale for the change in policy. The experiences of  
22 Wisconsin and North Dakota, which allegedly had used paid feedings assistants despite the  
23 Reform Law’s prohibition against them, were offered as evidence of the value and benefit of  
24 using paid feeding assistants.

25 31. The proposal recognized that “[t]here is no provision in federal regulations for the  
26 employment of nursing home workers who perform only a single task without completing 75  
27 hours of nurse aide training.” 67 Fed. Reg. at 15,151. It was the stated position of the  
28 Defendant, however, that this “policy change to allow the use of feeding assistants can be

1 accommodated under existing statute.” 67 Fed. Reg. at 15,151.

2 32. The regulations were issued in final form on September 26, 2003, with an effective  
3 date of October 27, 2003. 68 Fed.Reg. 55,528.

4 33. The preamble to the final regulations repeated much of the discussion in the  
5 preamble to the proposed regulations, alleging again that Wisconsin and North Dakota had been  
6 successfully permitting the use of paid feeding assistants for some years. 68 Fed. Reg. at  
7 55,530.

8 34. In a response to comments received on the proposed regulations, the Defendant gave  
9 as his legal rationale for the change in policy that he did “not consider the kinds of tasks facilities  
10 may ask feeding assistants to provide as either nursing or nursing related.” 68 Fed. Reg. at  
11 55,530-31.

12 D. The New Regulations

13 35. The new regulations create a subsection entitled “Paid feeding assistants.” 42 C.F.R.  
14 § 483.35(h). That provision requires, *inter alia*, that the feeding assistant complete a training  
15 course. The requirements of the training course are set out at 42 C.F.R. § 483.160 and include a  
16 minimum of eight hours of training. The training requirements list eight topics, including four of  
17 the five subject areas that require at least 16 hours of initial training in the case of certified nurse  
18 aides. No ongoing in-service training is required of paid feeding assistants. No requirements are  
19 set for the instructors of paid feeding assistants. No testing or competence evaluation is required  
20 of feeding assistants. 68 Fed. Reg. at 55,534-35.

21 36. A paid feeding assistant is defined as “an individual who meets the requirements  
22 specified in § 483.35(h)(2) of this chapter and who is paid to feed residents by a facility, or who  
23 is used under an arrangement with another agency or organization.”

24 37. The federal feeding assistant regulations do not require a registry of feeding  
25 assistants, and feeding assistants are not included on the state’s nurse aide registry. 68 Fed. Reg.  
26 at 55,535. Thus, a feeding assistant who has committed abuse or neglect will not be listed on the  
27 state registry and could be fired by one facility and later be employed by another facility.

28 ///

1 V. STATEMENT OF FACTS

2 38. There are about 17,000 nursing homes in the country participating in the Medicare or  
3 Medicaid program, or both. The Defendant estimates that 20% of them will use feeding  
4 assistants. 68 Fed. Reg. 55,536.

5 39. Since the effective date of the federal feeding assistant regulations, more than 15  
6 states have chosen to authorize use of feeding assistants. In most of these cases, state  
7 authorization of feeding assistants has been done not through legislation or regulation, but  
8 through a state agency’s release of a memorandum or issuance of informal guidance.

9 40. Many states have authorized the use of feeding assistants without any standards  
10 beyond those that are set forth in federal regulation. Other states have required additional hours  
11 of training, competency evaluations, or criminal background checks, or have required that  
12 feeding assistants work only in a central dining room. Plaintiffs are informed and believe that  
13 some nursing homes have begun to employ paid feeding assistants.

14 41. By a memorandum dated February 23, 2004, addressed to nursing home  
15 administrators, the Washington Department of Social and Health Services authorized the use of  
16 feeding assistants, which Washington calls “dietary aides.” Washington Department of Social &  
17 Health Services, Aging and Disability Services Administration: Memorandum NH #2004-004,  
18 Feb. 23, 2004. The State approved one training curriculum, that developed by the American  
19 Health Care Association, the national trade association that represents primarily for-profit  
20 nursing homes. Washington State’s guidance includes no further elaboration on the feeding  
21 assistant program.

22 42. An analysis by an expert on nursing home care, Dr. Jeanie Kayser-Jones, estimates  
23 that 40% to 60% of institutionalized older persons have dysphagia or swallowing disorders but,  
24 in those residents with such disorders, the disorder is identified and professionally evaluated only  
25 in one-fourth or one-fifth of the cases.

26 43. Plaintiffs are informed and believe, and accordingly allege, that the use of feeding  
27 assistants is not supported by the experiences of Wisconsin and North Dakota, or by any other  
28 empirical evidence.

1 44. The feeding assistant regulations will diminish the quality of care provided to nursing  
2 home residents, particularly to those residents who need assistance with eating. Residents will be  
3 more likely to suffer physical injury or death as a result of inadequate nursing home care.

4 45. Plaintiff Resident Councils provides education, advocacy, and consultation to  
5 residents and their families throughout the state of Washington, with its primary goal to empower  
6 residents. Resident Councils annually sponsors several conferences under the title “Partners in  
7 Progress” in different regions of Washington, bringing together residents and their families,  
8 nursing home staff members, ombudsman program representatives, and policy makers to  
9 participate in dialogues designed to improve resident empowerment and nursing home quality of  
10 care.

11 46. The Resident Councils’ philosophy of resident rights and empowerment is mirrored  
12 in Washington State’s residents’ rights law: “The resident has a right to a dignified existence,  
13 self-determination, and communication with and access to persons and services inside and  
14 outside the facility.” Wash. Rev. Code § 70.129.020. Resident Councils seeks to accomplish  
15 this by empowering residents in their nursing homes, involving residents in their local  
16 communities, getting residents involved in statewide political and advocacy efforts, and sharing  
17 successes with national organizations and organizations in other states.

18 47. One of Resident Councils’ major concerns is nursing home staffing. The Resident  
19 Councils’ 2004 Position Paper highlights the importance of having sufficient numbers of well-  
20 paid, qualified staff, noting that “[o]ur quality of life and care is totally dependent on having  
21 sufficient numbers of able, well-trained caregivers with sufficient time and energy to provide the  
22 most personal and private care we require.” Resident Councils is aware of dangerous health  
23 problems encountered by residents during mealtimes due to hurried or insufficiently trained  
24 aides. Some of these residents are too afraid to speak up publicly.

25 48. Implementation of the federal feeding assistant regulations in Washington will result  
26 in members of the Resident Councils being threatened with harm and possible death, as at least  
27 some of the members will be fed by paid feeding assistants. Other members will suffer from the  
28 overall decline in quality of care caused by the feeding assistant regulations.

1           49. In addition, the Resident Councils now must devote, and will continue to devote,  
2 scarce time, effort, staff, and other resources to alert its members and others to the feeding  
3 assistant regulations, to the harm that will be caused by the use of feeding assistants in nursing  
4 homes, and to advocate for changes in state policy. The resources devoted to these efforts could  
5 be used for other projects to implement the Resident Councils’ mission.

6           50. By promulgating regulations that allow and encourage the use of paid feeding  
7 assistants, Defendant has increased the number of residents needing the Resident Councils’  
8 assistance and the scope of the assistance needed, has interfered with and impeded the Resident  
9 Councils’ mandate, and has reduced the overall effectiveness of its programs and efforts.

10          51. Plaintiff Washington State Long-Term Care Ombudsman Program, through the State  
11 Ombudsman Kary W. Hyre (hereinafter simply “Ombudsman Program”), represents the interests  
12 of nursing home residents throughout the State of Washington, as mandated by federal and state  
13 law.

14          52. The Ombudsman Program is established under the authority of both the federal Older  
15 Americans Act and Washington law. *See, e.g.*, 42 U.S.C. § 3058g (Older Americans Act setting  
16 standards for state long-term care ombudsman programs); Wash. Rev. Code §§ 43.190.010- .900  
17 (authorization under Washington law for Ombudsman Program). The Ombudsman Program is  
18 operated by a non-profit organization to ensure its independence from the state agency that  
19 implements state and federal nursing home regulations. Wash. Rev. Code § 43.190.030. The  
20 Ombudsman Program operates independently to pursue its responsibilities and its mission, which  
21 is “to promote the interest, well-being, and rights of long-term care facility residents.” Wash.  
22 Admin. Code 365-18-010.

23          53. Under federal law, the required functions of the Ombudsman Program include, *inter*  
24 *alia*, to identify decisions by public agencies “that may adversely affect the health, safety,  
25 welfare, or rights of the residents”; to monitor the “development and implementation of Federal,  
26 State, and local laws, regulations, and other governmental policies and actions”; and to  
27 “represent the interests of the residents before governmental agencies and seek administrative,  
28 legal, and other remedies to protect the health, safety, welfare, and rights of the residents.” 42

1 U.S.C. § 3058g(a)(3)(B), (E) and (G).

2 54. Implementation of the feeding assistant regulations in Washington will result in  
3 Washington nursing home residents being threatened with harm and possible death. Some  
4 residents will be fed by feeding assistants, and others will suffer from the overall drop in quality  
5 of care caused by the minimal standards applicable to feeding assistants. The residents' right to  
6 be cared for by qualified staff will be eroded because of the Defendant's new regulations.

7 55. In addition, the Ombudsman Program now must devote, and will continue to devote,  
8 scarce time, effort, staff, and other resources to alert nursing home residents and others to the  
9 feeding assistant regulations, to the harm that will be caused by the use of feeding assistants in  
10 nursing homes, and to advocate for changes in state policy. The resources devoted to the efforts  
11 necessitated by Defendant's feeding assistants regulations could be used for other projects to  
12 further the Ombudsman Program's mission.

13 56. Plaintiff Louise Clark is a retired history teacher and newspaper reporter. She has  
14 been in a nursing home for about five years and has diagnoses of diabetes, allergies, and  
15 congestive heart failure. Ms. Clark does not currently use an aide while eating, but she  
16 sometimes has coughing spasms and aspiration. She has experienced choking episodes and has  
17 witnessed similar problems with other residents. In one case the resident choked on lettuce and  
18 died. She is concerned that feeding assistants, with far less training and less familiarity with  
19 residents than certified nurse aides, will be ill equipped to recognize resident changes or respond  
20 to emergencies. As the President of plaintiff Resident Councils of Washington, she also has  
21 learned about the concerns of other residents in her facility and across the state. She knows that  
22 nursing homes constantly complain of tight budgets and that administrators will feel pressure to  
23 save money by hiring feeding assistants in place of some certified nurse aides. She believes that  
24 eight hours of training is not sufficient and that the federal feeding assistant rule will lower the  
25 quality of care for all residents and jeopardize the health and safety of those residents receiving  
26 the new "feeding assistance."

27 57. Plaintiff Dan Fruichantie is paralyzed from the neck down because of an automobile  
28 accident in 1965, and, as a consequence, he has been in a nursing home since 1967. He has

1 noticed that the nursing home staff often hurries the feeding process, which makes plaintiff  
2 Fruichantie worry that someone will choke because of being fed too fast. He worries that the  
3 limited training that feeding assistants will receive will not be enough to prepare them for the  
4 work. He is also concerned that, if feeding assistants are hired, his facility will cut back on  
5 nursing staff.

6 58. Plaintiff Dolores Shafer has been in a nursing home for about ten years, after retiring  
7 as a teacher in 1988. She has multiple sclerosis. She cannot hold anything or pick anything up  
8 and therefore must have total assistance in eating. She has swallowing problems and can be in  
9 great trouble when the nurse aide feeds her too fast. She worries that, if her nursing home were  
10 to hire feeding assistants, they would cut back on other nursing staff.

11 59. Plaintiff Mike Swope is 49 years old, and, because of muscular dystrophy, he has  
12 been wheelchair-bound since he was fourteen. He has been in his present nursing home for six  
13 years. He sees certified nurse aides not doing a good job of feeding residents and worries that  
14 feeding assistants, who would have even less training, would not know how to encourage  
15 residents to eat, creating an underfeeding problem. He is generally concerned that feeding  
16 assistants' lack of training and relative lack of contact with residents would lead to problems as  
17 they would not be familiar with the residents and their personalities. He is also very concerned  
18 that, by hiring feeding assistants, his nursing home would reduce the number of certified nurse  
19 aides, a cost-saving measure for the facility because the feeding assistants would be paid less  
20 than the nurse aides.

21 VI. INADEQUACY OF REMEDY AT LAW,

22 AND PROPRIETY OF ISSUANCE OF WRIT OF MANDAMUS

23 60. Plaintiffs suffer irreparable injury by reason of Defendant's actions complained of  
24 herein. Plaintiffs Clark, Fruichantie, Shafer, and Swope are at risk of being fed by paid feeding  
25 assistants, and of receiving a lower quality of care as a result of the lessened standards applicable  
26 to feeding assistants. Plaintiffs Resident Councils of Washington and the Washington State  
27 Long-Term Care Ombudsman Program are harmed because their members and clients are or will  
28 be harmed and because the Resident Councils and the Ombudsman Program must devote limited

1 resources, time, and effort to assisting those who are or will be harmed due to implementation of  
2 the feeding assisting regulations.

3 61. Plaintiffs have no adequate remedy at law. Only the declaratory, injunctive, and  
4 mandamus relief that this Court can provide will fully redress the wrongs done to plaintiffs.

5 62. Plaintiffs have a clear right to the relief sought. There is no other adequate remedy  
6 available to correct an otherwise unreviewable defect not related to a claim for benefits. The  
7 defendant has a plainly defined and nondiscretionary duty to provide the relief which plaintiff  
8 seeks.

9 VII. FIRST CAUSE OF ACTION:  
10 VIOLATION OF THE FEDERAL NURSING HOME REFORM LAW

11 63. The Defendant’s regulations that authorize states to permit nursing homes to employ  
12 or otherwise use paid feeding assistants are in conflict with and violate the provisions of the  
13 federal Nursing Home Reform Law.

14 VIII. SECOND CAUSE OF ACTION:  
15 VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

16 64. The Administrative Procedure Act, 5 U.S.C. § 706(2)(A), prohibits agency action  
17 that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

18 65. The Defendant has violated 5 U.S.C. § 706(2)(A) by promulgating regulations that  
19 depart from agency precedent without a reasoned explanation and without empirical support.

20 IX. PRAYER FOR RELIEF

21 \_\_\_\_\_ WHEREFORE, Plaintiffs respectfully pray that this Court:

22 1. Assume jurisdiction over this action.

23 2. Declare that Defendant’s final rule authorizing paid feeding assistants (42 C.F.R.  
24 §§ 483.35(h), 483.75(e)(1), (q), 483.160, and the applicable portion of 488.301 defining “paid  
25 feeding assistant”) violates the Nursing Home Reform Law and the Administrative Procedure  
26 Act.

27 3. Grant and issue a permanent injunction, and/or an order of mandamus, prohibiting the  
28 Defendant, his successors in office, his agents, employees, and all persons acting in concert with  
him, from continuing to implement the paid feeding assistant regulations (42 C.F.R.

1 §§ 483.35(h), 483.75(e)(1), (q), 483.160, and applicable portion of 488.301 defining “paid  
2 feeding assistant”), and ordering that those regulations be withdrawn and rescinded.

3 4. Grant and issue a permanent injunction, and/or an order of mandamus, prohibiting the  
4 Defendant, his successors in office, his agents, employees, and all persons acting in concert with  
5 him, from authorizing states to permit their nursing homes to employ or otherwise use paid  
6 feeding assistants.

7 5. Grant and issue a permanent injunction, and/or an order of mandamus, ordering the  
8 Defendant, his successors in office, his agents, employees, and all persons acting in concert with  
9 him, to direct that Washington and any other states that presently allow nursing homes to employ  
10 or otherwise use paid feeding assistants immediately prohibit the employment or use of paid  
11 feeding assistants.

12 Plaintiffs pray in addition:

13 6. For costs of the suit herein, as authorized by 28 U.S.C. § 1920.

14 7. For reasonable attorneys’ fees and expenses pursuant to the Equal Access to Justice  
15 Act, 28 U.S.C. § 2412.

16 8. For such other and further relief as the Court deems just and proper.

17  
18 Respectfully submitted,

19  
20 DATED: July 30, 2004

By: \_\_\_\_\_

21 JEFF B. CROLLARD  
22 WSB # 15561  
23 Crollard & Associates, PLLC  
1621 114<sup>th</sup> Avenue SE, Suite 223  
Bellevue, WA 98004  
(425) 453-5679

24 TOBY S. EDELMAN  
25 Center for Medicare Advocacy, Inc.  
26 1101 Vermont Ave., N.W., Suite 1001  
Washington, D.C. 20005  
(202) 216-0028

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ERIC M. CARLSON  
National Senior Citizens Law Center  
3435 Wilshire Blvd., Suite 2860  
Los Angeles, California 90010  
(213) 639-0930

GILL DEFORD  
Center for Medicare Advocacy, Inc.  
P.O. Box 350  
Willimantic, Connecticut 06226  
(860) 456-7790

Attorneys for Plaintiffs