

STATE OF MARYLAND,

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IN THE

*Plaintiff,*

\*

CIRCUIT COURT

v.

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FOR

NEISWANGER MANAGEMENT  
SERVICES, LLC,

\*

MONTGOMERY COUNTY

c/o Matthew Neiswanger  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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NMS HEALTHCARE  
OF HYATTSVILLE, LLC,

\*

Case No.: \_\_\_\_\_

c/o Matthew Neiswanger  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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NMS HEALTHCARE  
OF HAGERSTOWN, LLC,

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c/o Matthew Neiswanger  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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NMS HEALTHCARE  
OF SILVER SPRING, LLC,

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c/o Mark Yost  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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NMS HEALTHCARE  
OF SPRINGBROOK, LLC,

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c/o Mark Yost  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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NEW ANNAPOLIS NURSING, LLC,

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c/o Matthew Neiswanger  
4922 Lasalle Road  
Hyattsville, Maryland 20782,

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MATTHEW NEISWANGER \*  
4922 Lasalle Road \*  
Hyattsville, Maryland 20782, \*

CLEATUS HEALTH, LLC, \*  
c/o Mark Yost \*  
4922 Lasalle Road \*  
Hyattsville, Maryland 20782, \*

NANCY MOORE AND COMPANY, LLC, \*  
c/o Mark Yost \*  
4922 Lasalle Road \*  
Hyattsville, Maryland 20782, \*

MARK YOST, \*  
4922 Lasalle Road \*  
Hyattsville, Maryland 20782, \*

CRAIG NEISWANGER, \*  
4922 Lasalle Road \*  
Hyattsville, Maryland 20782, \*

MARIE COSTA NADORA, \*  
14014 Marsh Pike \*  
Hagerstown, Maryland 21742, \*

BELEN POLICARPIO, \*  
4011 Randolph Road \*  
Silver Spring, Maryland 20902, \*

SANTIAGO OQUENDO TORO, \*  
12325 New Hampshire Avenue NE, \*  
Silver Spring, Maryland 20904, \*

and \*

RENE GOMEZ, \*  
900 Van Buren Street \*  
Annapolis, Maryland 21403, \*

*Defendants.* \*

\* \* \* \* \*

## COMPLAINT

1. The State of Maryland, by Attorney General Brian E. Frosh, brings this action under the Maryland Patient’s Bill of Rights, *see* Md. Code Ann., Health-Gen. §§ 19-342 to 19-353, and the Maryland False Health Claims Act, *see id.* §§ 2-601 to 2-611. Through this action, the State requests an order (1) under §§ 19-344(c)(6)(iii) and 19-345.3(c) of the Health-General Article, enjoining the various unlawful practices described below through which the defendants have unsafely and unfairly evicted hundreds of frail, infirm, mentally ill, and physically and intellectually disabled people from their five Maryland nursing homes, and (2) under § 2-603(b) of the Health-General Article, imposing civil penalties on the defendants and awarding treble damages and other relief to the State for the defendants’ submission of false claims to the Maryland Medical Assistance (Medicaid) program.

## PRELIMINARY STATEMENT

2. The defendants, collectively referred to here as “Neiswanger Management Services” or “NMS,” operate a chain of five Maryland nursing facilities located in Anne Arundel County, Montgomery County, Prince George’s County and Washington County. Each year, NMS unlawfully evicts from its nursing facilities hundreds of frail, infirm, mentally ill, and physically and intellectually disabled people.<sup>1</sup> NMS dumps many of its

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<sup>1</sup> As used in this complaint, the terms “eviction” and “involuntary discharge” are synonymous and mean discharge from a nursing facility without the legally valid written consent of the resident or his or her lawful representative. As the federal Centers for Medicare and Medicaid Services have recently explained in promulgating new rules to govern nursing facilities, “[t]o evict is to make a person leave a place. . . . Not all residents

evictees in homeless shelters, which lack the capacity to provide needed care, and it trafficks many others to predatory operators of sham assisted living facilities, who neglect the evictees' care, and who sustain their operations by unlawfully stripping vulnerable people of social security payments, food stamps, and other public benefits. NMS often abandons its evictees far from their hometowns, in places where they have no family or connections to assist them. Within days or weeks of eviction, former NMS residents frequently appear in hospital emergency rooms, facing serious or life-threatening medical complications caused by their evictions. This emergency medical care is often provided at the State's expense. NMS's conduct straightforwardly violates Maryland law, which requires nursing facilities, when discharging residents without their consent, to do so only "in accordance with a post-discharge plan of care" and only to a "safe and secure environment." *See* Md. Code Ann., Health-Gen. § 19-345.2(c)(2); COMAR 10.09.07.11(C)(2).

3. NMS engages in this unlawful and at times inhumane conduct in order to maximize the amount of money it is paid by taxpayer-funded public health insurance programs. In 2015, the five NMS facilities received more than \$100 million in reimbursement from Medicare and Medicaid, including more than \$35 million from Maryland's Medical Assistance (Medicaid) program. NMS constantly monitors the public

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consider the LTC [long term care] facility his or her place of residence, but for those who do, an involuntary discharge is equivalent to an eviction." 81 Fed. Reg. 68688, 68718 (Oct. 4, 2016). Maryland regulations define "consent" in this context as "an express agreement by a resident who is capable of making an informed decision or, in cases when the resident is not capable, by the resident's representative." COMAR 10.07.09.02(B)(7).

health insurance status of its residents and effectuates its unlawful evictions at the point when it believes it can replace a resident with someone for whose care it will be reimbursed at a higher rate. For example, NMS strives to evict Medicare participants on the precise day that they have exhausted their 100 days of coverage for a post-hospitalization nursing home stay – no sooner and no later, and without regard to the resident’s health status or need for services. Because Medicare pays for such post-hospitalization care at substantially higher daily rates than Medicaid pays for long term care, NMS’s evictees include hundreds of Medicaid-eligible people, notwithstanding that it is presumptively unlawful for a Maryland nursing home to evict a resident who is eligible for Medicaid. *See* Md. Code Ann., Health-Gen. § 19-345(b)(2).

4. NMS engages in this conduct on an expansive scale. During the 17-month period from January 1, 2015 to May 31, 2016, NMS issued involuntary discharge notices to at least 1,061 residents. In at least 1,038 of these cases, the reason for discharge cited by NMS was the resident’s failure to pay for his or her care, or to arrange for payment by Medicare, Medicaid or another third party payor. By contrast, all of Maryland’s 225 other licensed nursing facilities, during the same 17-month period, together issued a total of about 510 notices of involuntary discharge. Thus, during this period, each of the five NMS facilities issued, on average, at least 212 notices of involuntary discharge (the overwhelming majority for a supposed failure to pay), whereas other Maryland nursing homes, during the same period, issued on average only 2 to 3 such notices. It is NMS’s unlawful practice (a) to issue such eviction notices before notifying residents that they have failed to pay any amount and, indeed, in many and perhaps most cases, before there has

been any actual nonpayment, and (b) to use such notices to deceive residents and their families into submitting to eviction, notwithstanding the anti-eviction protections afforded to them under Maryland law.

5. Through this conduct, NMS has compromised the health and safety of hundreds of vulnerable people with whose care it has been entrusted, and it has repeatedly and systematically violated multiple requirements of the Maryland Patient's Bill of Rights, *see* Md. Code Ann., Health-Gen. §§ 19-342 to 19-353, including the particular statutory and regulatory provisions, sometimes known as "Anna Mae's Law," intended to protect nursing home residents from unsafe and unfair discharges, *see id.* § 19-345 to 19-345.3; COMAR 10.07.09 ("Residents' Bill of Rights"). Moreover, in submitting to the Maryland Medicaid program claims for reimbursement for social work and discharge planning services that it does not in fact provide, and in falsely certifying through the submission of claims that it adheres to the Patient's Bill of Rights, Neiswanger Management Services has defrauded the Medicaid program and caused substantial financial harm to the State.

6. As of the filing of this complaint, more than 700 people likely reside in the five NMS facilities, and, absent intervention by this Court, many of them will be victimized by NMS's unlawful practices in the coming weeks and months.

#### **PARTIES**

7. The State of Maryland is a free, sovereign, and independent state. Maryland law authorizes the Attorney General to seek relief on behalf of individuals evicted from nursing facilities in violation of the Maryland's Patient's Bill of Rights, *see* Md. Code

Ann., Health-Gen. §§ 19-344(c)(6)(iii), 19-345.3(c), and to file a civil action against a person who violates Maryland's False Health Claims Act, *see id.* § 2-603.

8. Defendant Neiswanger Management Services, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road in Hyattsville, Maryland. Neiswanger Management Services, also known by the trade name NMS Healthcare, manages and operates the five Maryland nursing facilities described in greater detail below.

9. Defendant NMS Healthcare of Hyattsville, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road in Hyattsville, Maryland. It holds a State-issued license to operate a 270-bed nursing facility at that address known as St. Thomas More Medical Complex or NMS Hyattsville.

10. Defendant NMS Healthcare of Hagerstown, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road in Hyattsville, Maryland. It holds a State-issued license to operate a 206-bed nursing facility known as NMS Hagerstown at 14014 Marsh Pike in Hagerstown, Maryland.

11. Defendant NMS Healthcare of Silver Spring, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road in Hyattsville, Maryland. It holds a State-issued license to operate a 116-bed nursing facility known as NMS Silver Spring at 4011 Randolph Road in Silver Spring, Maryland.

12. Defendant NMS Healthcare of Springbrook, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road

in Hyattsville, Maryland. It holds a State-issued license to operate a 93-bed nursing facility known as NMS Springbrook at 12325 New Hampshire Avenue in Silver Spring, Maryland.

13. Defendant New Annapolis Nursing, LLC is a limited liability company organized under the laws of Maryland and purportedly headquartered at 900 Van Buren Street in Annapolis, Maryland. On information and belief, its principal offices are located at 4922 LaSalle Road in Hyattsville, Maryland. It holds a State-issued license to operate a 96-bed nursing facility at its Annapolis address known as Bay Ridge Health Care Center or NMS Annapolis.

14. Defendant Matthew Neiswanger owns all of the above-named defendants, as well as defendants Cleatus Health, LLC and Nancy Moore and Company, LLC. Mr. Neiswanger personally controls, manages and operates each of NMS's five Maryland nursing facilities from the offices of defendant Neiswanger Management Services, LLC at 4922 LaSalle Road in Hyattsville, Maryland. In November 2016, Mr. Neiswanger purportedly stepped down as the chief executive officer of Neiswanger Management Services.

15. Defendant Cleatus Health, LLC is a limited liability company organized under the laws of Maryland and headquartered at 4922 LaSalle Road in Hyattsville, Maryland. Cleatus Health has an ownership interest in each of the above-named, State-licensed entities and participates directly in the management and operation of NMS's five Maryland nursing facilities.

16. Defendant Nancy Moore and Company, LLC is a limited liability company organized under the laws of Delaware. Nancy Moore and Company claims in its filings



with the State Department of Assessments and Taxation that its principal offices are located at 2711 Centerville Road, Suite 400, in Wilmington, Delaware, which is the address of the Corporation Service Company, a well-known entity providing resident agent services. On information and belief, Nancy Moore and Company maintains its principal offices at 4922 LaSalle Road in Hyattsville, Maryland. Nancy Moore and Company has an ownership interest in, and participates directly in the management and operation of, defendants NMS Healthcare of Hyattsville, LLC, NMS Healthcare of Hagerstown, LLC, and New Annapolis Nursing, LLC.

17. Defendant Mark Yost purportedly assumed the role of chief executive officer of Neiswanger Management Services, LLC in November 2016, about a month before the filing of this complaint. From March 2016 until November 2016, Mr. Yost served as the chief operating officer of Neiswanger Management Services, and he previously served as the company's general counsel. Mr. Yost, a licensed Maryland lawyer, exerts operational and managerial control over each of NMS's five Maryland facilities from his offices at 4922 LaSalle Road in Hyattsville, Maryland. He is sued only as to the injunctive relief requested under Count One.

18. Defendant Craig Neiswanger is the administrator of the nursing facility known as NMS Hyattsville or St. Thomas More located at 4922 LaSalle Road in Hyattsville, Maryland. He is sued only as to the injunctive relief requested under Count One.

19. Defendant Marie Costa Nadora is the administrator of the nursing facility known as NMS Hagerstown located at 14014 Marsh Pike in Hagerstown, Maryland. She is sued only as to the injunctive relief requested under Count One.

20. Defendant Belen Policarpio is the newly-appointed administrator of the nursing facility known as NMS Silver Spring located at 4011 Randolph Road in Silver Spring, Maryland. She assumed the role of administrator at NMS Silver Spring approximately one week before the filing of this complaint. Ms. Policarpio is sued only as to the injunctive relief requested under Count One.

21. Defendant Santiago Oquendo Toro is the administrator of the nursing facility known as NMS Springbrook located at 12325 New Hampshire Avenue in Silver Spring, Maryland. He is sued only as to the injunctive relief requested under Count One.

22. Defendant Rene Gomez is the administrator of the nursing facility known as NMS Annapolis or Bay Ridge Health Center located at 900 Van Buren Street in Annapolis, Maryland. He is sued only as to the injunctive relief requested under Count One.

#### **JURISDICTION AND VENUE**

23. Section 6-102(a) of the Courts and Judicial Proceedings Article authorizes this Court to exercise personal jurisdiction over the defendants, each of whom is domiciled in Maryland or maintains a principal place of business in Maryland.

24. Venue is proper in this Court under § 6-201(b) of the Courts and Judicial Proceedings Article, because a number of the defendants carry on a regular business in Montgomery County or are employed in Montgomery County.

## ALLEGATIONS OF FACT

### **A. People Discharged By NMS to Sham Assisted Living Facilities, Homeless Shelters, and the Streets**

25. In recent years, Neiswanger Management Services has evicted from its nursing homes hundreds of frail, infirm, mentally ill and physically and intellectually disabled people. NMS often effectuates these involuntary discharges with brutal indifference to the health and safety of evictees, dumping the people it no longer wants in homeless shelters or handing them over to predatory operators of sham assisted living facilities.

#### *i. Vonda Wagner*

26. On November 11, 2015, staff at NMS Hagerstown took Vonda Wagner, a frail 59-year-old West Virginia woman suffering from the effects of advanced stage cancer, from her room at the nursing home and loaded her into a vehicle driven by a woman she had never met before. Ms. Wagner weighed approximately 85 pounds, having lost about 40% of her body weight to cancer; used a tracheostomy tube; could not speak; and had difficulty walking. NMS staff did not tell Ms. Wagner where she was being taken. An NMS social worker had previously threatened Ms. Wagner that, if she did not leave the facility, NMS's "big boss" – an apparent reference to defendant Matthew Neiswanger, NMS's owner and then-chief executive officer – would call the police and cause Ms. Wagner to be arrested.

27. The woman driving the vehicle into which Ms. Wagner had been loaded, Sharon Isaacs, drove Ms. Wagner to Baltimore City, a place Ms. Wagner had never before

visited and where she knew no one. Ms. Isaacs owns at least three rowhouses in Baltimore City in which she illegally houses frail and disabled people. Although NMS does not operate any facilities in the Baltimore area, NMS and Ms. Isaacs have a longstanding partnership under which NMS rids itself of residents whose Medicare post-hospitalization benefits it has already extracted or whose public health insurance profile it otherwise regards as no longer attractive, and under which Ms. Isaacs then strips these vulnerable and often helpless NMS evictees of social security payments and other public benefits.

28. On the occasion of Ms. Wagner's eviction from NMS Hagerstown, Ms. Isaacs placed Ms. Wagner in a Baltimore City rowhouse crowded with frail and disabled people. An NMS social worker had assisted Ms. Isaacs in confiscating Ms. Wagner's West Virginia state-issued debit card, and Ms. Isaacs coerced Ms. Wagner into revealing the PIN number associated with the card. NMS had not provided Ms. Wagner with any of her prescribed medications on discharge, as required by Maryland law.

29. Ms. Wagner remained in Ms. Isaacs' rowhouse for several weeks. Ms. Isaacs, too, did not provide Ms. Wagner with any of her prescribed medications, and Ms. Isaacs fed Ms. Wagner only instant ramen noodles and water.

30. Three weeks after bringing Ms. Wagner to Baltimore, on December 5, 2015, Ms. Isaacs discovered that Ms. Wagner had cancelled the state-issued debit card that Ms. Isaacs had confiscated from her. In retaliation, Ms. Isaacs physically abused Ms. Wagner, threw out most of Ms. Wagner's personal belongings, and dumped Ms. Wagner at a Baltimore City homeless shelter. From the shelter, Ms. Wagner was immediately taken to the emergency room at Mercy Hospital, where Ms. Wagner received medical care at the

expense of Maryland's Medicaid program. In the months after her eviction from NMS, Ms. Wagner received both inpatient and outpatient care at several Baltimore City hospitals. Today, Ms. Wagner remains homeless in Baltimore City, but she is staying with a friend whom she met at the Weinberg Housing and Resources Center at Health Care for the Homeless.

31. NMS did not engage in any meaningful discharge planning with Ms. Wagner, who at the time of her eviction had been a resident at NMS Hagerstown for several months. Moreover, NMS knew, at the time that it trafficked Ms. Wagner to Ms. Isaacs, that Ms. Isaacs' purported assisted living facilities are not licensed in accordance with Maryland law, that Ms. Isaacs' purported facilities are in fact merely Baltimore rowhouses without staff or equipment to care for a person like Ms. Wagner with complex medical needs, and that Ms. Isaacs principally sustains her operation by stripping vulnerable people like Ms. Wagner of benefit payments.

32. Though NMS discharged Ms. Wagner from its Hagerstown facility for a supposed failure to pay for her stay, NMS had arranged for Ms. Wagner to enroll in Maryland's Medicaid program and was already receiving reimbursement from Medicaid at the time that it evicted her. The State paid NMS more than \$17,500 for the nursing facility services it supposedly provided to Ms. Wagner, including social work and discharge planning services that NMS had in fact failed to provide. In addition, the State paid thousands of dollars to reimburse Baltimore City hospitals and other providers for care provided to Ms. Wagner, including emergency room care, necessitated by NMS's

failure to provide the social work services and discharge planning for which it had fraudulently billed the State.

*ii. Andrew Edwards*

33. On January 12 or 13, 2016, staff at NMS Hagerstown took Andrew Edwards, a frail 30-year-old West Virginia man with severe kidney disease, and placed him in a vehicle with Sharon Isaacs. At the time of his eviction, Mr. Edwards used a walker and needed to receive dialysis treatments three times per week. Mr. Edwards knew no one in Baltimore. To induce Mr. Edwards to enter Ms. Isaacs' vehicle and travel with her to Baltimore, NMS staff had falsely represented to Mr. Edwards that Ms. Isaacs runs an assisted living facility.

34. Ms. Isaacs placed Mr. Edwards in a rowhouse crowded with frail and disabled people, including at least one other person who had been evicted from an NMS nursing home. Upon seeing the rowhouse, Mr. Edwards understood that NMS had deceived him and that he had not in fact been sent to an assisted living facility. Ms. Isaacs confiscated the bank card through which Mr. Edwards accessed his social security benefits. Within a day of Mr. Edwards' arrival in Baltimore, Ms. Isaacs, over Mr. Edwards' objections, withdrew \$966 from Mr. Edwards' account.

35. NMS knew that Mr. Edwards must receive dialysis treatments three times per week, but NMS failed to arrange for dialysis post-discharge, thereby ignoring its legal obligation to do so. Ms. Isaacs likewise failed to arrange for dialysis.

36. On his first or second full day in Baltimore, after Mr. Edwards objected to Ms. Isaacs' confiscation of his debit card and to her unauthorized withdrawals from his

account, Ms. Isaacs kicked a walker out from under Mr. Edwards' legs, causing him to fall on the floor. Mr. Edwards, weak from having missed a dialysis treatment, then indicated that he needed to go to the hospital. Ms. Isaacs packed Mr. Edwards into a vehicle, dumped him at the door of the emergency room at St. Agnes Hospital, and drove off. St. Agnes immediately provided emergency dialysis to Mr. Edwards, at the Maryland Medicaid program's expense.

37. As in Ms. Wagner's case, NMS did not engage in any meaningful discharge planning with Mr. Edwards, who had been a resident at NMS Hagerstown for several months prior to his eviction. Moreover, NMS knew, at the time that it consigned Mr. Edwards to Ms. Isaacs, that Ms. Isaacs' purported assisted living facilities are not licensed in accordance with Maryland law, that Ms. Isaacs' purported facilities are in fact merely Baltimore City rowhouses without staff or equipment to care for a person like Mr. Edwards with complex medical needs, and that Ms. Isaacs principally sustains her operation by extracting public benefits from vulnerable people like Mr. Edwards.

38. Though NMS discharged Mr. Edwards from its Hagerstown facility for a supposed failure to pay for his stay, NMS had arranged for Mr. Edwards to enroll in Maryland's Medicaid program and was already receiving reimbursement from Medicaid at the time that it evicted him. The State paid NMS more than \$7,300 for the nursing facility services supposedly provided to Mr. Edwards, including social work and discharge planning services that NMS had in fact failed to provide. In addition, the State spent thousands of dollars to reimburse Baltimore City hospitals and other providers for care provided to Mr. Edwards, including emergency room care, necessitated by NMS's failure

to provide the social work services and discharge planning for which it had fraudulently billed the State.

*iii. C.C.*

39. On or about February 2, 2016, staff at NMS Hagerstown took C.C., a 53-year-old military veteran from Virginia suffering from a traumatic brain injury, serious mental illness and substance use disorder, and placed him into a car with Troy Brown, a predatory operator of a sham assisted living facility in Baltimore City. C.C. had never been to Baltimore and knew no one there.

40. After picking up C.C. in Hagerstown, Mr. Brown immediately drove C.C. to the offices of the Social Security Administration and coerced C.C. into making Mr. Brown the payee for C.C.'s social security benefits. Ultimately, although C.C. was housed in Mr. Brown's rowhouse only for about one day, Mr. Brown was able to steal more than \$2,000 in social security benefits from C.C. over a period of several months.

41. Within a day after NMS trafficked C.C. to Mr. Brown, C.C. fled Mr. Brown's house and found his way to the emergency room at Bon Secours Hospital.

42. NMS did not engage in any meaningful discharge planning with C.C., who had been a resident at NMS Hagerstown for several months. Moreover, NMS knew, at the time that it handed over C.C. to Mr. Brown, that Mr. Brown's purported assisted living facility is not licensed in accordance with Maryland law, that Mr. Brown's purported facility is in fact merely a rowhouse in Baltimore City without staff or equipment to care for a person like C.C. with complex medical needs, and that Mr. Brown principally sustains his operation by extracting public benefits from vulnerable people like C.C.



43. Though NMS discharged C.C. from its Hagerstown facility for a supposed failure to pay for his stay, NMS had arranged for C.C. to enroll in Maryland's Medicaid program and was in fact already receiving reimbursement from Medicaid at the time that it discharged him. The State paid NMS more than \$20,500 for the care it supposedly provided to C.C., including social work and discharge planning services that NMS had in fact failed to provide. In addition, the State spent thousands of dollars to reimburse Baltimore City hospitals and other providers for care provided to C.C., including emergency room care, necessitated by NMS's failure to provide the social work services and discharge planning for which it had fraudulently billed the State.

*iv.* W.S.

44. On or around June 5, 2016, NMS dumped W.S., a 52-year-old Maryland man, at a homeless shelter in Martinsburg, West Virginia. W.S. is a victim of a traumatic brain injury and has experienced mental illness and cognitive impairments. At the time that NMS deposited W.S. in West Virginia, W.S. was also recovering from a broken leg and used a wheelchair. W.S. had never been to Martinsburg, and he was terrified when NMS staff abandoned him there. Within a day or two of arriving in Martinsburg, W.S. found his way to the emergency room of Martinsburg City Hospital, where he received care for his broken leg. The Martinsburg hospital then transported W.S. back to Hagerstown, where W.S. remains homeless today. Because W.S. is a Maryland Medicaid participant, the State paid thousands of dollars for hospital care and other health services provided to W.S. in Martinsburg and Hagerstown during the weeks after NMS evicted him from its facility.

45. W.S. is one of dozens of people with mental illness or with intellectual disabilities whom NMS cyclically admits to and evicts from its nursing homes, based on the status of their public health insurance benefits. In November 2015, eight months before dumping W.S. in West Virginia, NMS had deposited W.S. at a homeless shelter in Hagerstown. It is NMS's practice to seek out such mentally ill or intellectually disabled people at the conclusion of an inpatient hospitalization, when they have a full complement of 100 days of Medicare post-hospitalization coverage; to evict such residents as close as possible to the 101st day of their stay at the nursing home, sometimes to homeless shelters or sham assisted living facilities for a supposed failure to pay, and sometimes to hospitals for treatment of a supposed mental health crisis; to refuse to readmission to those discharged to the hospital; and then, when an evictee's entitlement to Medicare post-hospitalization coverage has been refreshed, to re-admit him or her after a subsequent qualifying hospital stay.

v. *D.L.*

46. For several years, NMS has serially admitted, discharged, re-admitted, and re-discharged D.L., a 65-year-old Maryland man with intellectual disabilities and mental illness who has resided at different times at NMS Hagerstown, NMS Silver Spring, and NMS Springbrook. On at least one occasion in January 2016, NMS trafficked D.L. to Troy Brown, who took D.L. to Baltimore City and attempted to extract social security benefits from him. During the two weeks after his January 2016 discharge to Troy Brown's sham assisted living facility, D.L. received care at three different Maryland hospitals: Bon

Secours in Baltimore City, Northwest Hospital in Baltimore County, and Suburban Hospital in Montgomery County.

47. NMS has not provided social work services or meaningful discharge planning to D.L. prior to the multiple occasions on which it has evicted him from its facilities. Nonetheless, since 2013, the Maryland Medicaid program has paid NMS at least \$176,700 for the nursing facility services that, during D.L.'s various stays at its facilities, it supposedly provided to him. The Medicaid program has also expended substantial amounts to pay for post-discharge medical care provided to D.L., including care provided in connection with the three January 2016 hospital visits referenced above.

*vi. F.K.*

48. For substantial portions of the past four years, NMS has housed F.K., a 58-year-old Maryland man suffering both from mental illness and from Crohn's disease, a serious intestinal disorder. F.K. has been found to lack capacity to make decisions for himself, and his sister serves as his legal guardian. Within days of the filing of this complaint, NMS appeared to be seeking to evict F.K. from its Springbrook facility. NMS had already unlawfully evicted F.K. from its facilities on at least two prior occasions during the past 18 months.

49. On or around October 1, 2015, NMS Hagerstown trafficked F.K. to Sharon Isaacs. In violation of Maryland law, NMS provided no notice to F.K. or his guardian in advance of discharging him. Ms. Isaacs housed F.K. for two to three weeks in a Baltimore City rowhouse and extracted nearly \$1,000 in public benefit payments from him. Ms. Isaacs refused to address F.K.'s complex medical needs, and she humiliated him by

throwing out the clothes he soiled and by forcing him to wash the bathroom of the rowhouse where she housed him. After leaving Ms. Isaacs' house, F.K. was admitted to NMS Silver Spring.

50. On or about November 27, 2015, NMS evicted F.K. from its Silver Spring facility. On this occasion, NMS staff placed F.K.'s belongings outside the facility's front door and directed him to leave. He had nowhere to go. NMS staff later falsely claimed that F.K. had "eloped" from the facility.

51. In mid-June 2016, after a two-month hospital stay had refreshed F.K.'s entitlement to 100 days of Medicare coverage for post-hospitalization care, NMS admitted F.K. to its Springbrook facility, where he is currently a resident. On September 6, 2016, about fifty days into F.K.'s current stay at NMS Springbrook, NMS sent F.K. a notice of involuntary discharge, claiming that F.K. had "failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) for a stay at this facility." This notice was false, in at least two respects. First, F.K. did not owe NMS any money. Second, NMS had not previously notified F.K. of any asserted nonpayment, let alone provided "reasonable and appropriate notice" of nonpayment.

52. In the days before the filing of this complaint, F.K. was sent to Holy Cross Hospital to address severe dehydration. NMS then indicated that it would not permit F.K. to return to the facility, despite having no lawful basis to evict him.

53. NMS has not provided social work services or meaningful discharge planning during F.K.'s several stays at NMS facilities. Nonetheless, during the past four years, the Maryland Medicaid program has paid NMS at least \$123,500 for care supposedly

provided to F.K. during portions of periods of residence at the Hagerstown, Silver Spring, and Springbrook facilities.

*vii. NMS Silver Spring “Resident #1”*

54. After a recent survey for a period ending on August 24, 2016, the Office of Health Care Quality (“OHCQ”) at the Department of Health and Mental Hygiene issued to NMS Silver Spring a deficiency statement in which it cited the facility for failing to comply with federal and state regulations in connection with the discharge of “Resident #1.” OHCQ staff found that Resident #1 was admitted to NMS Silver Spring on April 15, 2016, following a hospitalization. On approximately the 70th day of the resident’s stay at the facility, the resident received a notice of involuntary discharge, citing nonpayment. On July 26, 2016, which appears to have been approximately the 101st day of the resident’s stay at the facility, Resident #1 was discharged to an out-of-state homeless shelter.

55. OHCQ staff found no evidence that the discharge planner at NMS Silver Spring had communicated with staff at the homeless shelter regarding Resident #1’s medication regimen before an NMS “activity director” dumped the resident there. Though Resident #1 had been prescribed Prednisone for chronic obstructive pulmonary disease and morphine for leg pain, NMS did not provide the resident with any supply of these medications.

56. OHCQ also found that the abandonment of Resident #1 at the out-of-state homeless shelter resulted in the resident lacking access to nebulizer treatments, which he or she was required to receive four times per day.

57. Resident #1 was admitted to a local hospital on July 27, 2016, the day after NMS evicted him.

*viii. NMS Hagerstown "Resident #15"*

58. After a recent survey for a period ending on September 9, 2016, OHCQ issued a deficiency statement to NMS Hagerstown in which it cited the facility for failing to comply with federal and state regulations in connection with the discharge of "Resident #15," a cognitively impaired woman. Resident #15's daughter reported that NMS had notified her family that the facility would discharge Resident #15 at some future, unspecified time, "due to insufficient payment rates." According to Resident #15's husband, NMS staff had indicated that the facility was considering discharging Resident #15 "to Baltimore." Though Resident #15's daughter called NMS Hagerstown multiple times to discuss alternative payment options, and though Resident #15's daughter, son, and husband had all been accorded power of attorney due to concerns about the resident's mental capacity, NMS did not notify any family member before evicting Resident #15 on August 12, 2016.

59. An NMS discharge planner drove Resident #15 to her home, which was locked, and then drove the resident to her son's home, where the discharge planner abandoned Resident #15 in the driveway. When Resident #15's son arrived at home, he found his mother outside, wandering toward nearby woods. The high temperature recorded that day was 95 degrees Fahrenheit.

60. Upon finding his mother wandering toward the woods, Resident #15's son attempted to drive his mother to an emergency room, but while en route, Resident #15

attempted to get out of the car several times. The resident's son then called 911 to have his mother transported to the hospital. Medical staff at the hospital determined that Resident #15 had not been safe to be left alone.

61. When OHCQ staff questioned the NMS discharge planner, she confirmed that no family member had been notified of the resident's discharge, and that she had not taken any steps to inquire whether any family member would be at home before departing the facility with Resident #15. The discharge planner told OHCQ that the administrator of NMS Hagerstown had directed her to drive the resident back to her house, which was 90 minutes away from the facility, and leave her there.

62. OHCQ further found that, at the time of Resident #15's discharge, NMS entered an inaccurate note in the resident's discharge summary falsely stating that Resident #15 left the facility "by car w/family" and "in stable condition accompanied by husband."

63. According to OHCQ, the "psychosocial harm" suffered by Resident #15, and her "subsequent need for hospitalization," were "foreseeable" consequences of NMS staff having "failed to meet standards for discharge planning and le[aving] the cognitively impaired resident at the end of a driveway in the heat with no supervision."

64. Vonda Wagner, Andrew Edwards, C.C., W.S., D.L., F.K., Silver Spring Resident #1 and Hagerstown Resident #15 are only eight of dozens of frail, infirm, mentally ill and physically and intellectually disabled people whom NMS has discharged to sham assisted living facilities, to homeless shelters, and to the streets, often fraudulently billing the Maryland Medicaid program thousands or tens of thousands of dollars for nursing facility services, including social work and discharge planning services, that it did

not in fact provide to them. In a high proportion of these cases, within days or weeks of their eviction from NMS, these former NMS residents appear in the emergency rooms of Maryland hospitals, often requiring attention for medical problems caused or exacerbated by having been evicted from an NMS facility without any post-discharge plan of care, and often receiving such medical attention at the further expense of Maryland's Medicaid program.

65. Moreover, the people whom NMS has discharged to sham assisted living facilities, homeless shelters and the streets form only a particularly troubling subset of the hundreds of people whom NMS has illegally and unsafely evicted from its facilities, as further discussed below.

**B. The NMS Chain of Nursing Facilities, its Ownership and Administration, and its Reimbursement by Public Health Insurance Programs**

66. Neiswanger Management Services is a for-profit health care enterprise that, among other things, operates five Maryland nursing homes: NMS Hyattsville (also known as St. Thomas More Medical Complex) in Prince George's County, NMS Hagerstown in Washington County; NMS Annapolis (also known as the Bay Ridge Health Center) in Anne Arundel County; NMS Silver Spring in Montgomery County; and NMS Springbrook, also in Montgomery County. NMS acquired the right to operate its Springbrook facility from Genesis Health Care, a national chain of for-profit nursing homes, on July 1, 2015. The five NMS nursing homes, together, have a current licensed capacity to serve 782 residents. NMS also provides physician services, physical therapy,



dialysis and other services in Maryland through corporate subsidiaries that are not parties to this case.

67. NMS is owned and controlled by defendant Matthew Neiswanger, who is also a licensed nursing home administrator. (Mr. Neiswanger purportedly relinquished his role as NMS's chief executive officer in November 2016.) Although NMS has designated an administrator for each of its facilities, Mr. Neiswanger intensively oversees the day-to-day operations of all five facilities. As further discussed below, Mr. Neiswanger encourages the facilities to compete with one another to maximize reimbursement from Medicare and Medicaid, puts substantial pressure on his administrators and social work staff to evict residents at the point when their public health insurance profile is no longer desirable, and causes each facility to submit false claims for reimbursement to Maryland's Medicaid program.

68. In 2010, Mr. Neiswanger entered into a consent order with the Maryland State Board of Examiners of Nursing Home Administrators under which his nursing home administrator license was placed on probation for three years. The Board's consent order describes two complaints that had been lodged against Mr. Neiswanger related to conduct occurring prior to his assumption of operational control of the NMS facilities. In one complaint, Mr. Neiswanger's former employer, a large, national, for-profit nursing home chain, alleged that Mr. Neiswanger, while acting as the administrator of one of its facilities in 2001 and 2002, had hired a "phantom" employee, the spouse of a physician with whom the facility had a relationship. Another, anonymous complaint further alleged that Mr. Neiswanger had hired the physician's wife as a kickback to the physician for admitting

residents to the facility and that, in addition, Mr. Neiswanger had “fiddled with the Medicare and Medicaid reimbursements to generate increased reimbursements” for the facility. Although the Board recited the allegations of the anonymous complaint in its consent order, its investigative findings only expressly addressed the complaint lodged against Mr. Neiswanger by his former employer. The Board concluded, with Mr. Neiswanger’s consent, that Mr. Neiswanger, among other statutory and regulatory violations, had practiced fraud, deceit, or misrepresentation in his capacity as a nursing home administrator.

69. In 2014, many years after assuming operational control over the NMS facilities, Mr. Neiswanger appointed his nephew, defendant Craig Neiswanger, a recent college graduate, to serve as the administrator of his largest nursing facility, NMS Hyattsville (St. Thomas More), which has a current licensed capacity to serve 270 residents.

70. NMS no longer owns the nursing homes that it operates. In a series of transactions in 2015 and 2016, Sabra Health Care, a California-based real estate investment trust specializing in ownership of health care facilities, acquired the five facilities for a total of \$284.4 million in cash. At the time of the transactions, staff at the Maryland Health Care Commission calculated that the “per bed” price Sabra paid for each facility ranged from approximately \$538,000 per bed at NMS Springbrook to \$286,000 per bed at NMS Hagerstown. Commission staff observed that these amounts are roughly two to three times greater than the largest per-bed amount ever approved by the Commission in connection with the issuance of a certificate of need for the construction of a *new* nursing facility in

Maryland. Defendant Mark Yost explained to Commission staff that Sabra was willing to pay this premium for acquisition of the NMS facilities because of the facilities' "comprehensive and innovative services" and because "the facilities consistently operate near capacity."

71. NMS continues to operate the five facilities under triple-net lease arrangements with Sabra. These leases require each of the facilities both to make significant monthly rent payments to Sabra and to bear continued responsibility for real estate taxes, insurance payments and maintenance costs. NMS's financial arrangements with Sabra impose substantial additional financial pressure on it to evict nursing home residents as soon as their public health insurance profiles are no longer desirable, without regard to the evictees' health and safety.

72. The five NMS nursing facilities derive more than 90% of their revenues from public health insurance programs. In 2015, the federal Medicare program paid the five NMS facilities more than \$62 million collectively. According to data from the federal Centers for Medicare and Medicaid Services (CMS), during 2013, NMS Hyattsville (St. Thomas More Medical Complex) was the single largest recipient of Medicare funds of all of Maryland's 230 skilled nursing facilities, including a number of significantly larger facilities. During 2015, the Maryland Medical Assistance (Medicaid) program paid the five NMS facilities more than \$37 million collectively (including approximately \$6 million for hospice services), and the DC Medicaid program paid NMS more than \$7 million.

73. Federal Medicare recipients are entitled to coverage of up to 100 days in a skilled nursing facility after a qualifying hospital stay. For such post-hospitalization care,

Medicare establishes facility-specific rates of reimbursement for residents in each of 66 “resource utilization groups,” or “RUGs,” which differentiate among residents based on types of services needed and overall acuity of health need. NMS places the majority of its residents who are Medicare participants in two RUGs (“RUB” and “RUC”) defined by resident need for both rehabilitation and an “ultra high” level of additional therapies, such as physical therapy, occupational therapy or speech therapy. In December 2015, Medicare reimbursement rates for residents in these categories at the five NMS facilities ranged from \$558 per day at NMS Hagerstown to \$611 per day at NMS Hyattsville (St. Thomas More). Medicare pays nursing facilities its full reimbursement rate for the first 20 days of the resident’s post-acute stay at a nursing facility. During days 21 to 100, Medicare pays 80% of its reimbursement rate, with the resident responsible in many cases for a co-payment. Where, as in the case of many of NMS’s most vulnerable residents, the Medicare participant is also a Medicaid participant (such individuals are often referred to as “dual eligibles”), the co-payment amount often will not be allowed under Maryland Medicaid cost containment rules.

74. The Medicaid program covers the cost of long term care in a nursing facility for Maryland residents who meet financial and other eligibility requirements and who have a need for such long term care. On a quarterly basis, the Medicaid program establishes a rate of reimbursement for long term care at each of Maryland’s nursing facilities based on statewide, regional and facility-specific factors, including the overall acuity of the health needs of the facility’s resident population as measured using a variant of the RUGs system described above. For the second quarter of 2016, Medicaid paid for standard long term

care at the five NMS facilities at rates ranging from \$234 per day at NMS Hagerstown to \$274 per day at NMS Hyattsville. Thus, Medicaid pays for long term care at NMS facilities at about half the rate that Medicare pays for post-hospitalization care for most residents at the same facilities. This differential supplies a significant motive for NMS's mass eviction practices, described below.

**C. NMS's Systematic Eviction of Frail and Disabled Residents Based on Their Public Health Insurance Profile**

75. To maximize reimbursement from public health insurance programs, Neiswanger Management Services strives to discharge each resident of its nursing homes at the precise point in time when the resident can be replaced by someone else with a more favorable public health insurance profile. NMS has developed a number of procedures and practices to support this objective. These include: (i) careful monitoring of the public health insurance status of the facilities' current residents to identify candidates for eviction and to ensure that evictions are effectuated at the financially optimal time; (ii) the mass issuance of misleading notices of involuntary discharge, often falsely citing non-payment as the reason for eviction; (iii) the deployment of social workers and discharge planners to plan and effectuate evictions, and to mislead residents and their families about the date of the eviction, the nature of the place to which the resident will be evicted, and the rights of residents and their families under Maryland law; (iv) the maintenance of relationships with predatory operators of sham assisted living facilities, despite knowledge that these operations are not licensed and sustain themselves by extracting public benefits from

vulnerable people while neglecting their care; and (v) intense oversight and pressure from defendant Matthew Neiswanger, NMS's owner and, until recently, chief executive officer.

*i. Tracking of residents' public health insurance status*

76. NMS constantly monitors the public health insurance status of each of its residents both to identify candidates for eviction and to ensure that evictions occur on a schedule that maximizes reimbursement from public health insurance programs.

77. This monitoring includes, for example, the enterprise-wide maintenance and circulation of spreadsheets titled "PPS Tracking" and "LTC Discharges" and the regular convening of "PPS meetings." Through "PPS Tracking" and "PPS meetings," NMS monitors residents' primary payor source (PPS), status of coverage, and other aspects of their public health insurance profile, including their Medicare Resource Utilization Group and associated acuity score for reimbursement purposes. To enhance reimbursement from public health insurance programs, NMS prefers to evict residents with lower acuity scores, and Matthew Neiswanger encourages his facilities to compete with one another to increase their overall average score, which is a key determinant of Medicaid reimbursement rates. Through "LTC Discharges," NMS appears to identify Medicaid-eligible residents whom NMS has slated for eviction ("LTC" refers to long term care) and to track the progress of those evictions.

78. When identifying residents for admission, NMS prefers Medicare participants with a full complement of 100 days of Medicare post-hospitalization coverage, because of Medicare's high rates of reimbursement, discussed above. NMS then aggressively seeks to evict Medicare participants as close as possible to their last covered

day under Medicare, without regard to the residents' medical needs. In recent years, NMS has evicted hundreds of residents on exactly the 101st day of their stay at an NMS facility. When NMS staff provide lists of evicted residents to Matthew Neiswanger, they often annotate the list with the reference "day 101" or "MCA day 101," so that Mr. Neiswanger knows that the facility has extracted the maximum amount of Medicare payments from the resident. Mr. Neiswanger often personally demands an explanation from staff when Medicare participants are discharged either before or after Day 101.

79. For example, on one occasion in February 2016, Mr. Neiswanger wrote directly to a social work manager at his newly-acquired Springbrook facility to admonish her for discharging a resident on the 103rd day of her stay at the facility, rather than exactly on the 101st day. "So . . . . She was not discharged on day 101." Mr. Neiswanger wrote. "Somebody in your facility, either the d/c [discharge] planner or sw [social worker], didn't do their job because you didn't make sure that they did their job. Who should pay me for that extra two days?"

80. NMS's policy and practice of seeking to evict residents on precisely the 101st day of their stay at the facility does not appear to be one adopted by other Maryland nursing homes. According to data routinely provided to the State by all of Maryland's licensed nursing facilities, during the year from July 1, 2015 to June 30, 2016, the five NMS facilities discharged 186 residents on exactly the 101st day of the resident's stay at the facility, whereas Maryland's 225 other nursing facilities discharged a total of 260 residents on exactly Day 101. To put this in larger context, during this twelve-month period, discharges from the five NMS facilities accounted for approximately 3.2% of all discharges

(both voluntary and involuntary, and for any reason) from all of Maryland's 230 licensed nursing facilities, but discharges from the NMS facilities accounted for approximately 41.2% of all discharges statewide in which the resident was discharged on exactly the 101st day of his or her stay at the facility. Thus, the NMS facilities account for approximately one in every 30 discharges (both voluntary and involuntary) from a Maryland nursing facility, but nearly *half* of all Day 101 discharges. Of the 186 residents discharged by NMS on exactly Day 101 of their stay, NMS indicated that approximately 93.4% had been discharged to the "community," a term which includes discharges to licensed assisted living facilities but which also includes, at least as NMS uses it, most of the discharges to homeless shelters and unlicensed group homes described above.

81. In comparison with its demonstrable preference for residents with unexhausted Medicare coverage, NMS's attitude toward residents with long term care coverage under Medicaid is far more ambivalent. When NMS anticipates low occupancy at one of its facilities, it will admit residents for long term care or assist desirable Medicare-covered residents to apply for long term care benefits from Medicaid rather than leave beds unfilled. Thus, for example, in a recent email with the subject line "Total of 22 empty beds!" Matthew Neiswanger exhorted his staff to "Fill beds with Medicaid if you can't get Medicare!!!"

82. On the other hand, when occupancy rates are high, NMS seeks to maximize reimbursement by evicting Medicaid-eligible residents (violating Maryland law that prohibits such evictions) and replacing them with residents whose primary payor will be Medicare – again, without regard to the residents' medical needs. As defendant Craig



Neiswanger, the administrator of NMS Hyattsville, wrote to his social workers on one such recent occasion:

IT IS TIME!!!!

We have been officially full for over two weeks. We have quantity not quality. Lets now push those LTC Discharges to open up beds for MCA :)

“MCA” is the shorthand used by NMS for residents whose primary payor source will be Part A of the federal Medicare program. (Again, “LTC Discharges” refers to NMS’s list of residents who are eligible for long term care benefits through the Medicaid program but who are nonetheless slated for eviction.)

83. Domenic Borro, who served until recently as the administrator of NMS Hagerstown, explained NMS’s ambivalence toward Medicaid-eligible residents (whom Mr. Borro refers to as “LTC residents”) in a recent email to a social work manager on his staff:

I need to communicate the LTC discharges to you better. With 8 empty beds we should not be discharging approved LTC residents (cash flow issue). Only when I’m 4 beds empty is when I’ll consider a LTC dc [discharge]. Special cases will be reviewed individually. Make sure your girls run [t]he dcs by you.

*ii. Mass issuance of false or misleading eviction notices*

84. In most cases, NMS formally initiates the eviction process by issuing a “notice of involuntary discharge” 30 days prior to a resident’s earliest anticipated eviction date. As in the case of NMS Silver Spring Resident #1, described above, NMS appears to issue such notices, for example, to all or almost all residents whose primary payor is Medicare (the so-called “MCAs”) on or around the seventieth day of the person’s stay at the facility, because Maryland law requires a facility to provide 30 days’ advance notice of

an eviction, because, as discussed above, the Medicare program covers 100 days of post-hospitalization care, and because NMS seeks to evict Medicare participants on exactly the 101st day of their stay.

85. During the 17-month period from January 1, 2015 to May 31, 2016, NMS issued involuntary discharge notices to at least 1,061 residents. In at least 1,038 of these cases, the reason for eviction cited by NMS was the resident's "fail[ure], after reasonable and appropriate notice, to pay (or to have paid under Medicare or Medicaid) for a stay at this facility." In all or almost all of these cases, this statement was false. NMS rarely if ever notifies its residents of any non-payment prior to issuing an eviction notice, let alone provides the "reasonable and appropriate notice" of non-payment referenced in the notice and required by Maryland law.

86. Moreover, in many and perhaps most cases, NMS issues these eviction notices before there has been any *actual non-payment* by the resident, or when the supposed non-payment relates to a co-payment amount to which NMS is not legally entitled under Medicaid cost containment rules, or when the amount of supposed non-payment is *de minimis*. In these cases, NMS's conduct is analogous to that of a landlord who issues an eviction notice to tenants in anticipation of possible non-payment by the tenant on the last day of the month, on the (legally erroneous) theory that doing so will somehow entitle the landlord to evade protections in landlord-tenant law and evict the tenant immediately upon non-payment.

87. NMS has adopted this illegal and misleading practice as its formal policy. NMS's Nursing Policy and Procedure Manual contains a directive titled "Notice of

Involuntary Discharge,” which states: “It is the policy of Neiswanger Management Service that 30 days prior to the last covered day of service, where payment has not been made *in advance* (and third-party payor coverage is ending), a resident will receive notice of the intent to involuntarily discharge the resident.” (Emphasis added.)

88. Through its mass issuance of eviction notices based only on anticipated non-payment, NMS has grossly distorted a legally-required practice intended to protect Maryland nursing home residents against unsafe and unfair evictions into a practice for pressuring and misleading residents and their families into submitting to unlawful and unsafe evictions.

89. As further discussed below, although NMS issues involuntary discharge notices to hundreds of residents each year, it also evicts a number of residents, often those with mental illness or intellectual disabilities who cycle in and out of its facilities, without providing notice. Two of the residents whose histories with NMS are described above, D.L. and F.K., have been evicted by NMS on multiple occasions without notice.

*iii. Deployment of social work staff as eviction planners*

90. Each of the five NMS facilities employs a small staff of social workers and discharge planners, whose principal responsibilities are not to provide services to residents and their families, but rather to plan and execute evictions in accordance with NMS’s reimbursement-driven timelines. For many residents, NMS social workers do not coordinate the development of any post-discharge plan of care or even ensure that residents are being discharged to a safe place where their medical needs can be met, despite Maryland law requiring NMS to do so. NMS social workers and discharge planners instead

focus their efforts on identifying places to dump unwanted residents and on preventing or confounding any resistance to eviction from residents and their families and legal representatives.

91. NMS social workers and discharge planners often keep secret from residents and their families the dates of planned evictions and the places to which residents will be evicted. When residents are made aware of the location to which they will be sent, they are frequently deceived as to the nature of the placement and the care they will receive there. Residents often do not learn the date of their discharge until the day of discharge itself, and residents' families and legal guardians are often not told about the timing of discharge until after the discharge has been effectuated. Indeed, NMS social workers and discharge planners often discontinue communicating with family members in the days and weeks prior to a planned eviction, to reduce the possibility that families will interfere with the eviction.

92. NMS social workers and discharge planners also omit to tell residents and their family members about residents' rights under Maryland law and instead strive to deceive residents and family members into believing that residents are legally subject to eviction as soon as their Medicare coverage runs out. NMS social workers and discharge planners tell Medicaid-eligible residents and their families, for example, that, upon exhaustion of their Medicare coverage on the 101st day of their stay, they will become "private pay" or will have to pay "out of pocket" to remain at the facility. NMS has deceived dozens of residents whose Medicare coverage is about to be exhausted, but who

are Medicaid-eligible, into submitting to eviction, despite Maryland law deeming it presumptively illegal to evict Medicaid-eligible nursing home residents.

93. The cases that most starkly reflect NMS's abdication of its responsibility to provide social work services and discharge planning are those in which residents are dumped in homeless shelters or evicted to homeless shelters or directly to the streets. In recent years, NMS appears to have discarded dozens of residents at the Rescue Mission in Hagerstown, at the Open Doors Shelter in Washington, D.C., and at the D.C. homeless shelter operated by the Community for Creative Non-Violence. On occasion, as in the case of F.K. described above, NMS places the personal belongings of a resident outside a facility's front door and simply forces the resident out of the facility, or, as in the case of NMS Hagerstown Resident #15 described above, abandons cognitively-impaired residents outside the homes of their family members.

94. Moreover, in at least some cases, NMS social workers and discharge planners personally effectuate evictions. For example, a social worker at NMS Hagerstown personally drove W.S., a 52-year-old Maryland man with cognitive impairments, mental illness, and a broken leg, to Martinsburg, West Virginia, and dumped him at a homeless shelter there, even though W.S. had never been to Martinsburg, knew no one there, and was terrified to be left there. The social worker told W.S. that she was dumping him in Martinsburg because she herself lived in the Martinsburg area.

95. NMS consistently conveys to its social workers and discharge planners that residents' public health insurance profiles drive the discharge process and that residents' health needs are incidental to the process. For example, on one recent occasion, defendant

Craig Neiswanger, the administrator at NMS Hyattsville (St. Thomas More), wrote to a facility discharge planner observing that a resident had “converted from MCA to DMA.” (“DMA” is a reference to the District of Columbia’s Medical Assistance (Medicaid) program.) “I heard he had a hip fracture,” Mr. Neiswanger noted, “but this does not totally slow down a discharge. What we can we do to make this happen?” Later that day, Mr. Neiswanger issued a directive to staff regarding the eviction of the resident with the fractured hip: “[H]e needs to be gone ASAP.”

*iv. Partnerships with sham assisted living facilities*

96. To facilitate the eviction of other residents, Neiswanger Management Services maintains close relationships with sham assisted living facilities, which provide an outlet for NMS to rid itself of residents whose public health insurance status has become undesirable, and which sustain themselves by crowding frail and disabled people into residential houses, neglecting their care, and stripping them of other public benefit payments. NMS has discharged dozens of frail, infirm, mentally ill and disabled people to Sharon Isaacs and Troy Brown, who operate sham assisted living facilities in Baltimore City, and to Rosemary Ogbenna, who operates sham assisted living facilities in Washington, D.C. Due to NMS’s relationships with Ms. Isaacs and Mr. Brown, numerous vulnerable NMS residents find themselves abandoned, homeless, and stripped of their public benefits in Baltimore City, even though they may have no ties to Baltimore, and even though NMS itself does not operate any facilities in the Baltimore area.

97. NMS knows that the facilities operated by Ms. Isaacs, Mr. Brown and Ms. Ogbenna are not licensed, that they have no capacity to provide the care that discharged

residents need, that the conditions in these houses are not safe, and that Ms. Isaacs, Mr. Brown and Ms. Ogbenna sustain themselves by extracting public benefits from vulnerable people. As in the case of Andrew Edwards, NMS social workers and discharge planners deceive certain residents who are being handed over to Ms. Isaacs, Mr. Brown and Ms. Ogbenna into believing that they are being discharged to an assisted living facility. As in the case of Vonda Wagner, NMS uses threats of arrest or legal action to coerce other vulnerable residents to submit to the custody of these predatory actors.

98. In Ms. Ogbenna's case, NMS knows that two people died while residing in her sham facilities in 2012. NMS also knows that, since 2009, Ms. Ogbenna's properties have been the subject of repeated citations by regulatory authorities in Washington, D.C. Indeed, NMS is so closely allied with Ms. Ogbenna that she called an NMS discharge planner as a witness at her September 2014 hearing before D.C.'s Board of Zoning Adjustment, after which Ms. Ogbenna was cited for operating an illegal rooming house. Despite these events, NMS has continued to rely on Ms. Ogbenna as a means to discard unwanted people, discharging at least nine vulnerable people to Ms. Ogbenna's houses during the 18-month period from January 1, 2015 to June 30, 2016 alone.

*v. Aggressive executive oversight*

99. NMS's owner, Matthew Neiswanger, personally oversees the "LTC discharge" process, pressuring facility administrators to evict residents at the financially optimal time and often bypassing facility administrators to direct personally the activities of social work and discharge planning staff. Mr. Neiswanger makes it clear to his administrators, social workers and discharge planners that their continued employment at

NMS depends on their ability to “do their job,” as he put it in an above-quoted message to a social work manager at his Springbrook facility, by replacing “LTCs” with “MCAs” and otherwise implementing his aggressive and inhumane eviction policies.

100. For example, on February 18, 2016, Mr. Neiswanger wrote to Ashley Walters, who was at the time the administrator at Mr. Neiswanger’s newly-acquired Springbrook facility (and who then served, until about a week before the filing of this complaint, as the administrator at NMS Silver Spring), to explain his expectations regarding the replacement of Medicaid participants with people who have unexhausted Medicare coverage. “While overall occupancy needs to STAY HIGH,” Mr. Neiswanger explained, “[y]ou need to have at least 6 LTC MA READY TO GO the very minute you know that you have MCAs coming to replace them.” (In Mr. Neiswanger’s message, the “MA” in “6 LTC MA” refers to the Maryland Medical Assistance program, and “READY TO GO” means that Ms. Walters was required to be prepared to implement immediately, as soon as six new “MCAs” could be identified for admission, the eviction of six Medicaid-eligible long term care residents.)

101. Mr. Neiswanger added: “Welcome to life as an administrator. It is not easy, but that is what you have to do to be successful. MAKE IT HAPPEN!!!”

102. A week later, Mr. Neiswanger gave the following additional direction to Ms. Walters:

Please have your Discharge planner send me DAILY:

- 1) List of all MA [Medicaid] patients who are not on dialysis
- 2) What she is doing every day to have the[m] discharged



3) What is their balance on the books—even if it is 2 cents, then we can give a 30 day [eviction notice] . . .  
You need to make room for MCAs!!!

(NMS, which is also a dialysis provider, derives substantial additional public reimbursement from dialysis patients, so it sometimes defers the eviction of such patients.)

103. Ms. Walters forwarded Matthew Neiswanger’s above-quoted message to her social work staff, with the following instruction: “We have to work on LTC discharges now to make room for more Medicare residents. Let’s meet on Monday to plan all of this out. I will send the list of Medicaid residents to you.”

104. Later that day, Ms. Walters, copying both her social work staff and other NMS executives, sent Mr. Neiswanger a list of “LTC Discharges to work on” – that is, a list of Medicaid-eligible residents whom she and her staff had identified as candidates for eviction. Mr. Neiswanger responded by asking Ms. Walters: “Who is your discharge planner and thereby responsible to ensure safe and swift discharges?”

105. Two weeks later, Ms. Walters, again copying her social work staff, sent Mr. Neiswanger another list of Medicaid-eligible residents who had been identified as candidates for eviction. Mr. Neiswanger responded with a three-word directive concerning the evictions: “Make them happen.”

**D. NMS’s Violations of the Patient’s Bill of Rights and “Anna Mae’s Law”**

106. The Maryland Patient’s Bill of Rights, *see* Md. Code Ann., Health-Gen. §§ 19-342 to 19-353, among other things, comprehensively protects hospital patients and nursing home residents from unfair and unsafe evictions. In enacting this law, the General

Assembly stated, with respect to nursing facility residents, that it “intend[ed] to promote the interests and well-being of each resident of a [nursing] facility” by conferring on residents a set of “basic rights,” including “[t]he right to be treated with consideration, respect, and full recognition of human dignity,” “[t]he right to receive treatment, care, and services that are adequate, appropriate, and in compliance with relevant State and federal laws, rules, and regulations,” and “[t]he right to be free from mental and physical abuse,” *see id.* § 19-343(b).

107. The legislature enacted many of the anti-dumping provisions of the Patient’s Bill of Rights in 1995, when the law was substantially amended to address perceived gaps in its protections against the unsafe and unfair eviction of nursing home residents. According to a series of articles in *The Washington Post*, the impetus for these amendments was a Maryland nursing home’s eviction, in December 1993, of Anna Mae Washington, a frail 83-year-old woman. The nursing home’s administrator left Ms. Washington on the front porch of the home of her legal guardian and drove off. Proponents of the 1995 legislation, including then-Attorney General J. Joseph Curran, referred to the legislation as “Anna Mae’s Law.” *See, e.g.*, Amy Goldstein, “Eviction Spurs Md. to Restrict Nursing Homes,” *Washington Post*, April 16, 1995; Amy Goldstein, “Law Against Patient ‘Dumping’ Asked; Md. Attorney General Wants Tougher Rules for Nursing Homes and Their Staffs,” *Washington Post*, January 7, 1994.

108. The Maryland Department of Health and Mental Hygiene (“DHMH”) has adopted regulations, known as the “Resident’s Bill of Rights,” that implement the statutory

protections afforded to nursing home residents under the Patient's Bill of Rights, including the anti-dumping provisions of "Anna Mae's Law." *See* COMAR 10.07.09.

109. Neiswanger Management Services flagrantly and systematically violates this law.

*i. Violations of notice requirements*

110. NMS issues involuntary discharge notices to hundreds of residents each year, almost always citing as the reason for discharge the resident's supposed failure to pay for his or her stay at the facility. The law permits NMS to send such discharge-for-nonpayment notices only when "[t]he resident has failed, after reasonable and appropriate notice, to pay for, or under Medicare or Medicaid or otherwise, to have paid for a stay at the facility." *See* Md. Code Ann., Health-Gen. § 19-345(a)(4). In all or almost all cases, as discussed above, NMS violates this law by issuing the eviction notice before it has provided "reasonable and appropriate notice" to the resident of any nonpayment. In these cases, in other words, the eviction notice is the resident's *first* notice of an asserted nonpayment, notwithstanding the legal requirement that the eviction notice may be issued only "after" the resident has been provided with an initial notice of nonpayment.

111. Moreover, and perhaps more fundamentally, NMS violates this law in many cases by issuing a discharge notice *before there has been any actual non-payment* by the resident, or when the supposed non-payment relates to a co-payment amount to which NMS is not legally entitled under Medicaid cost containment rules, or when the amount of supposed non-payment is *de minimis*. In these cases, NMS issues eviction notices based

only on a prediction of future nonpayment, misleading residents into believing that they are legally subject to eviction.

112. The involuntary discharge notices issued by NMS are further deficient in that they do not notify residents of the “date of the proposed . . . discharge.” *See* COMAR 10.07.09.10(D)(8). Indeed, to mislead residents into submitting to eviction, NMS often does not tell residents the date that they will be evicted until the day of the eviction itself. Residents often learn the timing of their eviction for the first time when a staff member tells them that the eviction is under way and begins to pack up their belongings.

113. NMS also violates “Anna Mae’s Law” by failing, in many cases, to notify a resident’s “next of kin, guardian, or any other individual known to have acted as the individual’s representative” of the resident’s impending discharge. *See* Md. Code Ann., Health-Gen. § 19-345.1(c)(2)(i) (requiring facilities to provide such individuals with a 30-day notice of involuntary discharge); *id.* § 19-345.2(b)(5) (requiring facilities to provide a “written statement containing the date, time, method, mode, and destination of discharge” to the resident’s “next of kin, guardian, or legal representative” at the time of discharge); *see also* COMAR 10.07.09.09(F)(4) (requiring a resident’s “appropriate legal representative, or interested family member” and “the resident’s physician” to be informed if a decision to discharge the resident is made). Through these violations, NMS further frustrates any opportunity for residents, many of whom are frail, mentally ill, or physically or intellectually disabled, to object to being evicted and to assert their rights under Maryland law.

114. In some cases, NMS fails to provide any information at all to family members and leaves them to search frantically for loved ones. As a result of this practice, families attempting to locate an evicted NMS resident have at times been forced to seek assistance from police, thereby unnecessarily wasting law enforcement resources. Earlier this year, a Washington County deputy sheriff spent an entire day assisting a Western Maryland man to locate his mother, whom NMS had evicted and handed over to Troy Brown, and whom Mr. Brown had driven to his sham assisted living facility Baltimore City.

115. Though the majority of NMS residents receive a false or misleading discharge notice prior to their eviction, other evictees receive no notice at all. Maryland law requires nursing facilities to provide “written notice of . . . [a]ny proposed discharge or transfer.” *See* Md. Code Ann., Health-Gen. § 19-345.1(a). NMS most often fails to provide notice in cases involving residents with mental illness or intellectual disabilities, like D.L. and F.K.

*ii. Failure to provide assistance in applying for Medicaid*

116. The law requires administrators of Maryland nursing facilities to “cooperate with and assist” residents and their agents in applying for long term care benefits from the Medicaid program. *See* Md. Code Ann., Health-Gen. § 19-344(c)(5)(ii); COMAR 10.07.09.11(E)(2); *see also* COMAR 10.07.09.04(A)(7). Because of its ambivalence toward Medicaid long term care reimbursement, however, NMS often violates these requirements, ignoring resident requests for assistance or delaying the submission of required paperwork to the Department of Health and Mental Hygiene. In many particularly troubling cases, NMS delays or impedes the submission of the long term care applications

of Medicare/Medicaid dual eligibles, many of whom are people with physical and intellectual disabilities, and who are, categorically, already financially eligible for Medicaid long term care coverage.

*iii. Failure to engage in discharge planning*

117. Under “Anna Mae’s Law” and its implementing regulations, nursing facilities are responsible for ensuring safe transitions of care for their residents. Facilities must provide “orientation and planning to residents to ensure safe and orderly transfer or discharge from the nursing facility.” COMAR 10.07.09.12(F). In particular, facilities must provide “[a] post discharge plan of care for the resident that is developed, if possible, with the participation of the resident’s next of kin, guardian or legal representative. *See* Md. Code Ann., Health-Gen. § 19-345.2(a)(1)(ii). NMS routinely ignores these requirements. In many cases, NMS does not undertake any meaningful discharge planning before evicting residents and does not develop a post-discharge plan of care. In addition, NMS often fails to identify a place where the resident can be safely discharged; to arrange for post-discharge medical care; to ensure that necessary supports are in place in the new environment; and to work with residents’ family members in developing any plan of care. Indeed, as in the cases described above, NMS often provides little or no information to residents and their families in advance of evictions and then dumps residents in homeless shelters or consigns them to unlicensed assisted living facilities far from residents’ families and communities of origin.

118. Under “Anna Mae’s Law,” a resident may be discharged for nonpayment only as a last resort, and the implementing regulations therefore require nursing facilities,

“before *proposing* the discharge,” to document “interventions” initiated by the facility to *avoid* the discharge. COMAR 10.07.09.10(E)(1)(a) (emphasis added). NMS does not appear to undertake or document any such “interventions.” As reflected in its internal correspondence, NMS operates from ethical premises aggressively contrary to those that inform Maryland law, “push[ing] those . . . discharges,” in the words of NMS Hyattsville administrator Craig Neiswanger, rather than intervening to avoid discharges.

119. NMS also fails to adhere to the critical requirements of “Anna Mae’s law” that nursing facilities provide or obtain, “within 48 hours before the discharge,” both “[a] comprehensive medical assessment and evaluation of the resident, including a physical examination,” and “[w]ritten documentation from the resident’s attending physician indicating that the . . . discharge is in accordance with the post discharge plan of care and is not contraindicated by the resident’s medical condition.” *See* Md. Code Ann., Health-Gen. § 19-345.2(a)(1)(i), (iii). Again, NMS often fails to develop *any* post-discharge plan of care. When it discharges residents, it consistently fails, too, to obtain a medical evaluation and a valid medical opinion that the discharge is appropriate to the resident’s medical condition and is not medically contraindicated.

120. Further, NMS often fails to comply with its obligation, through the discharge planning process, to facilitate post-discharge medical care. *See* Md. Code Ann., Health-Gen. § 19-345.2(b); COMAR 10.07.09.11(B). NMS violated this requirement, for example, when it failed to arrange for dialysis treatments for Andrew Edwards before consigning him to Sharon Isaacs, one of the sham assisted living facility operators with whom NMS works most closely. In Mr. Edwards’ case, this failure had near-catastrophic

results, leaving him discarded in the emergency room of St. Agnes Hospital and in need of emergency dialysis. NMS also violates this requirement each time that it discharges residents with mental illness or intellectual disabilities without arranging for post-discharge psychiatric care or post-discharge supports, including most notably in the cases of the numerous people with mental illness and intellectual disabilities whom NMS cyclically admits to, and evicts from, its facilities, depending on the status of their Medicare benefits.

121. NMS often fails, too, to comply with express statutory requirements that it provide evicted residents and their family members with a written statement “itemizing the medications currently being taken by the resident,” with “at least a 3-day supply of the medications,” and with “information necessary to assist the resident . . . in obtaining additional prescriptions.” *See* Md. Code Ann., Health-Gen. § 19-345.2(b).

*iv. Resident dumping and resident trafficking*

122. Ultimately, nursing homes may only evict residents “in accordance with a post-discharge plan of care” and must ensure placement of the resident in “a safe and secure environment where the resident will be under the care of” a “[l]icensed . . . provider” or a “[p]erson who has agreed in writing to provide a safe and secure environment.” Md. Code Ann., Health-Gen. § 19-345.2(c)(2); COMAR 10.09.07.11(C)(2). NMS consistently fails to adhere to these fundamental requirements. NMS has violated these requirements most flagrantly in the dozens of cases in which it has dumped frail, infirm, mentally ill and disabled residents in homeless shelters, delivered vulnerable residents to predatory operators of sham assisted living facilities, or simply forced evictees out of its facilities without identifying any place for them to go.



v. *Violations related to failure to protect Medicaid-eligible residents*

123. “Anna Mae’s Law” accords special protections to nursing home residents who are eligible for long term care benefits from the State’s Medicaid program. “A Medicaid certified facility may not[,]” as NMS does routinely, “discharge a resident involuntarily because the resident is a Medicaid benefits recipient.” Md. Code Ann., Health-Gen. § 19-345(b)(1)(ii). A nursing facility violates State law when, like the NMS facilities, it fails to establish and maintain “identical policies and practices regarding transfer [and] discharge . . . for all individuals, regardless of source of payment.” COMAR 10.07.09.09(C).

124. “Anna Mae’s Law” protects nursing home residents who are in the process of applying for Medicaid benefits. “[A] Medicaid certified facility is presumed to be transferring or discharging a resident in violation of” the law “if the resident *is or becomes eligible* for Medicaid benefits.” *See* Md. Code Ann., Health-Gen. § 19-345(b)(2)(i) (emphasis added). Any nursing home resident who “has not paid a current obligation” to a nursing facility may apply to the State’s Medicaid program “for a determination of the funds available to pay for the cost of the resident’s care.” *Id.* § 19-344(c)(4)(iii). Absent refusal on the part of a Medicaid-eligible resident to apply for Medicaid, a facility may discharge a resident for nonpayment only if the resident “was ineligible” for Medicaid. *See id.*, § 19-345(b)(2)(ii). Thus, under this law, NMS may not evict a resident who has a pending application for long term care benefits unless it has a good faith belief that the resident is ineligible for such benefits, and it may not evict a Medicaid-eligible resident unless the resident has failed to cooperate with it in obtaining reimbursement from

Medicaid. NMS violates this law on an expansive scale, particularly during the periods described above when, because of high bed occupancy rates, it decides to “push those LTC discharges to make room for MCA.”

125. In its regulations implementing these statutory requirements, DHMH requires nursing facilities, “[b]efore discharging any Medical Assistance recipient” who requires long term care, to inform the resident, among other things, of his or her “right to remain in the discharging facility and have the cost of care paid by the Medical Assistance Program,” of the anti-eviction protections set forth in Maryland law, and of “the services provided by and the location of the alternative placement” to which the resident would be discharged. COMAR 10.09.10.03(Q). Indeed, DHMH considers these requirements so significant that it has made them an express condition of a nursing facility’s participation in the Medicaid program. Yet, NMS consistently fails to adhere to these requirements. In its zeal to replace “LTCs” with “MCAs,” and in direct contravention of this regulation, NMS often seeks to mislead Medicaid-eligible residents about their right to remain in the nursing facility and have their stay paid for by Medicaid.

*vi. Non-consensual evictions*

126. On information and belief, NMS claims that almost all of the people who are discharged from its facilities, including those of those with mental illness and intellectual disabilities, and including most of those dumped in homeless shelters or handed over to predatory operators of sham assisted living facilities, somehow agreed to be discharged. These claims, in addition to being factually false, are legally irrelevant, because many evicted NMS residents lack capacity to consent to their eviction, and because NMS, in any

event, does not obtain “express agreement” “in writing” to discharge, as required for such consent to be valid under “Anna Mae’s Law” and its implementing regulations. *See* Md. Code Ann., Health-Gen. § 19-345.2(c)(1); COMAR 10.07.09.02(B)(7), .10(E)(1)(c) & .11(C)(1).

**E. NMS’s Submission of False Claims to Maryland’s Medicaid Program**

127. The Medicaid program, established under Title XIX of the federal Social Security Act of 1965, 42 U.S.C. §§ 1396 – 1396w-5, provides health coverage to people with limited resources and to people with disabilities, including coverage of long term care at nursing facilities for qualified people in need of such services. Medicaid is administered by the states, according to both federal and state requirements, and the federal government provides approximately half the funding for Maryland’s Medicaid program, also known as the Medical Assistance program.

128. The General Assembly has designated DHMH as the State agency responsible for administering Maryland’s Medicaid program. *See* Md. Code Ann., Health-Gen. § 15-103.

129. To participate in, and receive payments from, the Medicaid program, a nursing facility must enter into and have in effect a Provider Agreement with DHMH. *See* COMAR 10.09.10.03(E). Each of the five NMS facilities has entered into a Provider Agreement with DHMH in which the facility promised to comply with all of the applicable requirements of the Medicaid program, including requirements imposed on the facility by

statute and regulation. Defendant Matthew Neiswanger personally signed most of the current provider agreements between the NMS facilities and DHMH.

130. Since January 1, 2010, NMS has submitted to Maryland's Medicaid program 64,971 claims for reimbursement for "nursing facility services," seeking a total of \$280,831,056. During this period, the program has paid NMS a total of \$124,335,581 for nursing facility services.

131. Social work and discharge planning are among the services for which NMS claims reimbursement when it submits a claim to Maryland's Medicaid program for nursing facility services. Although federal and State law require that nursing facilities provide social work and discharge planning services, NMS does not provide such services in the cases of all or almost all of the residents whom it unlawfully evicts from its facilities.

132. From January 1, 2010 to the present, each time that NMS submitted a claim to Maryland's Medicaid program for nursing facility services in the case of an unlawfully evicted resident, NMS implicitly claimed that it provided social work services and discharge planning that it did not in fact provide. These claims therefore violated Maryland's False Health Claims Act. *See* Md. Code Ann., Health-Gen. § 2-602(a).

133. To be eligible to participate as Medicaid providers and to submit claims to Maryland's Medicaid program for reimbursement for nursing facility services, nursing homes must comply with the statutory and regulatory law protecting Maryland nursing home residents against unfair and unsafe evictions. Indeed, commensurate with the State's profound commitment, as codified in the Patient's Bill of Rights, to protecting nursing home residents from being unsafely evicted, the Medicaid program's provider regulations

make responsible discharge planning an *express* condition for the participation of nursing facilities as Medicaid providers. *See, e.g.*, COMAR 10.09.10.01(B)(55) (defining “pre-discharge plan” to include the implementation of sound “discharge planning” policies); COMAR 10.09.10.03(M) (making it an express condition of participation in Medicaid for a nursing facility to “[h]ave in effect a pre-discharge plan”); COMAR 10.09.10.03(Q) (making it an express condition of participation in Medicaid for a nursing facility, before discharging a Medicaid-eligible resident, to inform the resident, among other things, of his or her “right to remain in the discharging facility and have the cost of care paid by the Medical Assistance Program,” of the anti-eviction protections set forth in Maryland law, and of “the services provided by and the location of the alternative placement” to which the resident would be discharged).

134. From January 1, 2010 to the present, each time that an NMS facility submitted a claim to Maryland’s Medicaid program for reimbursement for nursing facility services, it impliedly certified that it complied with Maryland’s statutory and regulatory requirements protecting residents against unfair and safe eviction. These implied certifications are false, because, as discussed above, NMS systematically and often inhumanely violates these legal requirements. Medicaid will not reimburse a nursing facility that violates this law. NMS’s claims for reimbursement for nursing facility services therefore violated Maryland’s False Health Claims Act. *See* Md. Code Ann., Health-Gen. § 2-602(a).

135. Maryland law makes it presumptively unlawful for a nursing facility to evict a Medicaid-eligible resident for failure to pay, and nursing facilities may only evict a

Medicaid-eligible resident if the resident, or his or her legal representative, fails, after reasonable and appropriate notice of nonpayment, to arrange to have Medicaid pay for the resident's stay at the facility. *See* Md. Code Ann., Health-Gen. §§ 19-345(a)(4) & (c)(2); *see also* COMAR 10.09.10.03(Q). In numerous cases, NMS has unlawfully evicted a Medicaid-eligible resident for a supposed failure to pay and then, nonetheless, has pursued reimbursement from Medicaid for care provided to that resident.

136. From January 1, 2010 to the present, each time NMS submitted claims for reimbursement to Medicaid for an evicted resident, it omitted to inform Medicaid that it had unlawfully evicted the resident for a supposed failure to arrange for Medicaid reimbursement. Medicaid would not have reimbursed NMS for nursing facility services provided to residents in cases in which Medicaid knew that NMS had already unlawfully evicted the resident based on the resident's supposed failure to arrange for Medicaid reimbursement. These claims for nursing facility services therefore violated Maryland's False Health Claims Act. *See* Md. Code Ann., Health-Gen. § 2-602(a).

## **CAUSES OF ACTION**

### **Count One**

#### **(Violations of Patient's Bill of Rights, Health-Gen. §§ 19-342 to 19-353)**

137. The State of Maryland brings this cause of action against all of the defendants under the Maryland Patient's Bill of Rights. *See* Md. Code Ann., Health-Gen. §§ 19-342 to 19-353.

138. As detailed more fully in the allegations set forth above, which are incorporated herein, the defendants, as a matter of practice, unsafely evict hundreds of frail,

infirm, mentally ill and physically and intellectually disabled people from their five Maryland nursing facilities, thereby systematically violating at least the following provisions of Maryland law:

(a) Section 19-345(a)(4) of the Health-General Article and COMAR 10.07.09.10(A)(4), by failing to provide “reasonable and appropriate notice” to residents of asserted nonpayment, and by initiating the process of evicting residents for asserted nonpayment before the resident has actually failed to pay any due and owing amount;

(b) Section 19-345.1(a) of the Health-General Article and COMAR 10.07.09.10(C), by failing to provide notice of involuntary discharge to certain residents, often those with mental illness or intellectual disabilities;

(c) COMAR 10.07.09.10(D)(8), by failing to provide 30 days’ advance notice to residents of the actual date of their involuntary discharge;

(d) Section 19-345.1(c)(2) of the Health-General Article, by failing to provide 30 days’ advance notice of involuntary discharge to certain residents’ “next of kin, guardian, or . . . other individual known to have acted as the [resident’s] representative”;

(e) COMAR 10.07.09.09(F)(4), by failing to inform certain residents’ “appropriate legal representative, or interested family member,” or by failing to “promptly consult with the resident’s physician” when a decision to discharge the resident has been made;

(f) Section 19-345.2(b)(5) of the Health-General Article, by failing to provide residents and their families, at the time of discharge, with “[a] written statement containing the date, time, method, mode, and destination of discharge”;

(g) Section 19-344(c)(5)(ii) of the Health-General Article, COMAR 10.07.09.11(E)(2) and COMAR 10.07.09.04(A)(7), by failing to “cooperate with and assist” residents in applying for Medicaid long term care benefits;

(h) Section 19-345.2(a)(1)(ii) of the Health-General Article, COMAR 10.07.09.11(A)(1)(b), and COMAR 10.07.09.12(F), by failing to engage in discharge planning prior to evicting residents, including by failing to develop a “post-discharge plan of care”;

(i) Section 19-345.2(a)(1)(i) of the Health-General Article and COMAR 10.07.09.11(A)(1)(a), by failing to obtain, within 48 hours before resident discharges, “[a] comprehensive medical assessment and evaluation of the resident, including a physical examination”;

(j) Section 19-345.2(a)(1)(iii) of the Health-General Article and COMAR 10.07.09.11(A)(1)(c), by failing to obtain, within 48 hours before resident discharges, “[w]ritten documentation from the resident’s attending physician indicating that the . . . discharge is in accordance with the post-discharge plan of care and is not contraindicated by the resident’s medical condition”;

(k) Section 19-345.2(b) of the Health-General Article and COMAR 10.07.09.11(B), by failing to arrange for post-discharge medical care for discharged residents, including by failing to provide discharged residents with a 3-day supply of the medications they are currently taking;

(l) Section 19-345.2(c)(2) of the Health-General Article and COMAR 10.09.07.11(C)(2), by evicting residents to places other than those identified in a “post-



discharge plan of care” and to places other than a “safe and secure environment,” including by dumping unwanted residents in homeless shelters and trafficking residents to predatory operators of sham assisted living facilities;

(m) Section 19-345(b)(1)(ii) of the Health-General Article, by evicting residents receiving Medicaid benefits because they are Medicaid benefits recipients;

(n) COMAR 10.07.09.09(C), by failing to establish and maintain “identical policies and practices regarding transfer [and] discharge . . . for all individuals, regardless of source of payment”;

(o) Section 19-345(b)(2) of the Health-General Article, by evicting, on the basis of supposed non-payment for services, Medicaid-eligible residents who have not failed to cooperate with NMS in obtaining reimbursement from the Medicaid program for those services; and

(p) COMAR 10.09.10.03(Q), by failing, “[b]efore discharging any Medical Assistance recipient” who requires long term care, to inform the resident of his or her “right to remain in the discharging facility and have the cost of care paid by the Medical Assistance Program,” of the anti-eviction protections set forth in Maryland law, and of “the services provided by and the location of the alternative placement” to which the resident would be discharged.

139. These violations are ongoing. Current residents of NMS facilities are at risk of being subjected to these unlawful practices, including the inhumane practices of dumping frail and disabled residents in homeless shelters and consigning such residents to predatory operators of sham assisted living facilities.

140. Section 19-344(c)(6)(iii) of the Health-General Article authorizes the Attorney General to bring an action to enforce the obligation of nursing facility administrators, under § 19-344(c)(5)(ii) of the Health-General Article, to “cooperate with and assist” residents in seeking assistance from the Medicaid program.

141. Section 19-345.3(c) of the Health General Article authorizes the Attorney General to bring an action seeking injunctive relief based on belief that a violation of the anti-dumping provisions of the Patient’s Bill of Rights (“Anna Mae’s Law”) “is imminent or has taken place.”

142. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the defendants and issue an order:

(a) Enjoining each of the defendants’ violations of §§ 19-344 to 19-345.2 and COMAR 10.07.09, including all of those described above;

(b) Prohibiting the defendants from issuing to any resident a notice of involuntary discharge citing failure to pay until (i) there has been actual non-payment by the resident for care already provided, in an amount that is due and owing, and that is not subject to Medicaid cost containment rules for co-payments; (ii) the resident and his or her next of kin, legal guardian or responsible representative, if any, have received reasonable and appropriate written notice of the non-payment; (iii) the resident and his or her legal guardian, next of kin, or responsible representative have been afforded a reasonable amount of time since receipt of the notice to rectify the non-payment; and (iv) the resident has failed to pay, or to arrange to have paid, the amount at issue;

(c) Prohibiting the defendants from evicting, for non-payment, any resident who is a Medicaid participant or who is Medicaid-eligible, in the absence of a documented failure by the resident or his or her legal representative to cooperate in applying for Medicaid benefits or in arranging for reimbursement from the Medicaid program;

(d) Prohibiting the defendants from evicting, for non-payment, any resident who has a pending application for Medicaid long term care benefits unless it has a good faith basis for believing that the resident is ineligible for such benefits;

(e) Prohibiting the defendants from evicting any resident to any unlicensed assisted living facility or to any person whom the defendants know is an operator of an unlicensed assisted living facility, including but not limited to Troy Brown, Sharon Isaacs and Rosemary Ogbenna, and further prohibiting the defendants from incorporating discharge to an unlicensed assisted living facility into any post-discharge plan of care; and

(f) Prohibiting the defendants from evicting any resident to a homeless shelter and from evicting any resident without an identified discharge destination and from incorporating discharge to a homeless shelter into any post-discharge plan of care.

### **Count Two**

#### **(Violations of False Health Claims Act, Health-Gen. §§ 2-601 to 2-611)**

143. The State of Maryland brings this cause of action against defendants Neiswanger Management Services, LLC; NMS Healthcare of Hyattsville, LLC; NMS Healthcare of Hagerstown, LLC; NMS Healthcare of Silver Spring, LLC; NMS Healthcare of Springbrook, LLC; New Annapolis Nursing, LLC; Cleatus Health, LLC; Nancy Moore and Company, LLC; and Matthew Neiswanger (“the NMS False Claims defendants”)

under the Maryland False Health Claims Act. *See* Md. Code Ann., Health-Gen. §§ 2-601 to 2-611.

144. Under Maryland’s False Health Claims Act, a person may not, among other things, “[k]nowingly present or cause to be presented a false or fraudulent claim for payment or approval,” “[k]nowingly make, use, or cause to be made or used a false . . . statement material to a false or fraudulent claim,” “[c]onspire to commit a violation” of the False Health Claims Act, or “[k]nowingly make any other false or fraudulent claim against a State health plan or State health program.” *See id.* § 2-602(a).

145. The NMS False Claims defendants have repeatedly violated the False Health Claims Act.

146. As more fully discussed in the allegations set forth above, which are incorporated herein, from January 1, 2010 to the present, each of the NMS False Claims defendants, on behalf of the NMS nursing facilities, has:

(a) Knowingly submitted or caused to be submitted claims for reimbursement to the Maryland Medicaid program for social work and discharge planning services that NMS did not in fact provide;

(b) Knowingly submitted or caused to be submitted claims for reimbursement to the Medicaid program containing the false implied certification that NMS nursing facilities comply with the provisions of the Patient’s Bill of Rights and its implementing regulations identified in Paragraph 138 above; and

(c) Knowingly submitted or caused to be submitted claims for reimbursement to the Medicaid program for services provided to a resident who was evicted for a supposed

failure to arrange for Medicaid to pay for the services, while omitting to inform the Medicaid program that the resident had been evicted for that supposed failure.

147. Each of these submissions was a “false claim,” within the meaning of the False Health Claims Act.

148. These false claims are material to the Medicaid program in determining whether to pay a claim for reimbursement for nursing facility services.

149. In reliance on these false claims, the Medicaid program has reimbursed NMS for providing nursing facility services.

150. In addition, as a result of the NMS facilities’ failure to provide the social work and discharge planning services for which the NMS False Claims defendants submitted false claims to the Medicaid program, numerous discharged residents required post-discharge medical care, including emergency room care. The Medicaid program was often required to pay for this post-discharge care, causing substantial additional financial harm to the State.

151. Section 2-603 of the Health-General Article authorizes the State of Maryland to file a civil action against a person who has violated the False Health Claims Act. Under §§ 2-602 and 2-603, the State may obtain, through such an action, civil penalties of up to \$10,000 for each violation of the Act, an award of three times the amount of damages that the State sustained as a result of the violations of the Act, and court costs and attorney’s fees.

152. Wherefore, the State of Maryland requests that this Court enter judgment in its favor and against each of the NMS False Claims defendants and issue an order:

(a) Requiring each of the NMS False Claims defendants to pay \$10,000 for each false claim it submitted or caused to be submitted to the Medicaid program;

(b) Holding the NMS False Claims defendants jointly and severally liable to pay to the State three times the amount of damages the State sustained as a result of the defendants' violations of the False Health Claims Act, an amount that exceeds \$75,000; and

(c) Awarding court costs and attorney's fees to the State.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland



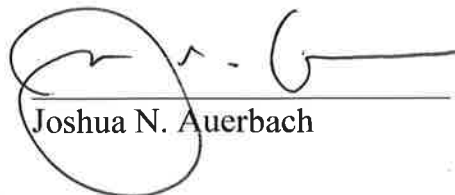
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December 21, 2016

**DEMAND FOR JURY TRIAL**

The State demands trial by jury of all issues so triable.



Joshua N. Auerbach