UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANK CIARAMELLA, LILLIAN VELAZQUEZ, ANNEMARIE WALKER, ANTONIO MARTIN, CHRISTOPHER RUSSO, MATTHEW ADINOLFI, JODY VIRTUOSO, YVONNE HAWKINS, BLANCA COREAS, and BRENDA PERRY, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

HOWARD ZUCKER, as Commissioner of the Department of Health,

Defendant.

SECOND AMENDED CLASS ACTION COMPLAINT

No. 18 Civ. 6945-JPO

PRELIMINARY STATEMENT

1. This case is about the thousands of low-income New Yorkers who are being denied medically necessary dental care by New York State. Plaintiffs Frank Ciaramella, Lillian Velazquez, AnneMarie Walker, Antonio Martin, Christopher Russo, Matthew Adinolfi, Jody Virtuoso, Yvonne Hawkins, Blanca Coreas, and Brenda Perry (collectively, "Plaintiffs") bring this action individually and on behalf of a class of New York Medicaid-eligible individuals whose expenses associated with medically necessary dental services are not reimbursable by New York's Medicaid program ("New York Medicaid" or the "Program") because of the Program's illegal limitations on dental implants, replacement dentures, root canals, and crowns.

2. Adequate dental care is critical to overall health and well-being. A lack of adequate dental care can lead to tooth decay and loss, gum degeneration, mouth lesions, infection, and other serious conditions. A person afflicted with these conditions, in turn, is

unable to ingest food sufficient to maintain a nutritious diet, which can cause, and exacerbate, other serious health conditions. Individuals with poor oral health can also suffer stigmatization, leading to social isolation and inability to find employment. When patients are unable to access adequate dental care, the State suffers economic burdens including loss of work productivity, increased emergency room use, and higher health care costs.

3. Unfortunately, many New York residents who rely on New York Medicaid to fund their health care needs are denied coverage of the dental care they require to avoid these dire consequences. Although New York Medicaid provides coverage for dental services, it imposes rigid restrictions on crucial services such as dental implants, root canals, crowns, and replacement dentures, which result in denials of coverage for medically necessary care. For many Medicaid-eligible New Yorkers, these services are essential to their overall health and well-being. The restrictions imposed on such treatments violate the requirements of the Medicaid Act, 42 U.S.C. §§ 1396 *et seq.*, the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101 *et seq.* (the "ADA"), and the Rehabilitation Act of 1973, 29 U.S.C.A. §§ 701 *et seq.* (the "Rehabilitation Act").

4. Plaintiffs therefore bring this action on behalf of themselves and all others similarly situated, pursuant to 42 U.S.C. § 1983, against Dr. Howard Zucker, acting in his official capacity as Commissioner of the New York State Department of Health ("Defendant"), to remedy these violations.

5. As set forth below, Plaintiffs seek declaratory and injunctive relief to enjoin Defendant from continued denial of medically necessary dental services and other appropriate relief on the grounds that the dental services regulations and policies at issue, and Defendant's implementation of them, conflict with the Medicaid Act, the ADA, and the Rehabilitation Act.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and the claims asserted herein pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

7. Plaintiffs' claims for declaratory relief are brought pursuant to 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because certain Plaintiffs reside within this judicial district, certain events giving rise to this action occurred in this judicial district, and Defendant is subject to personal jurisdiction in this judicial district.

THE PARTIES

9. Frank Ciaramella is a 57-year-old Medicaid and Medicare recipient who lives alone in Richmond County.

10. Lillian Velazquez is a 54-year-old categorically needy Medicaid recipient who lives in New York County.

11. AnneMarie Walker is a 60-year-old categorically needy Medicaid recipient who lives in Kings County.

12. Antonio Martin is a 57-year-old categorically needy Medicaid recipient who lives in Bronx County.

13. Christopher Russo is a 49-year-old categorically needy Medicaid recipient who lives in Richmond County.

14. Matthew Adinolfi is a 60-year-old categorically needy Medicaid recipient who lives in Columbia County.

15. Jody Virtuoso is a 60-year-old categorically needy Medicaid recipient who lives in Westchester County.

16. Yvonne Hawkins is a 50-year-old categorically needy Medicaid recipient who lives in Queens County.

17. Blanca Coreas is a 58-year-old categorically needy Medicaid recipient who lives in Bronx County.

18. Brenda Perry is a 53-year-old categorically needy Medicaid recipient who lives in Montgomery County.

19. Defendant Howard Zucker is the Commissioner of the New York State Department of Health. As such, he is responsible for the administration of the Program and supervision of the administration of the Program by local social services districts within New York State. He maintains an office at Corning Tower, Empire State Plaza, Albany, New York.

CLASS ACTION ALLEGATIONS

20. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2) on behalf of themselves and a class of all others similarly situated, defined as: All New York Medicaid-eligible individuals whose expenses associated with medically necessary dental services are not reimbursable by New York Medicaid because of the Program's categorical bans and/or limits on dental implants, replacement dentures, root canals, and crowns.

21. The class is so numerous that joinder of all members is impracticable.

22. There are questions of law and fact common to the class, including, but not limited to, whether New York's non-coverage of certain dental services violates the Medicaid Act, the ADA, and the Rehabilitation Act, and whether declaratory and injunctive relief is therefore appropriate.

23. The named Plaintiffs' claims are typical of the claims of the class. The named Plaintiffs' and the class members' claims arise from the promulgation and enforcement of rules,

regulations, and policies governing coverage and non-coverage of dental services under the Program.

24. Declaratory and injunctive relief is appropriate with respect to the class as a whole because Defendant has acted on grounds applicable to the class.

25. The named Plaintiffs and the class are represented by The Legal Aid Society and Willkie Farr & Gallagher LLP, whose attorneys are experienced in class action litigation and will fairly and adequately represent the class.

26. A class action is superior to other available methods for a fair and efficient adjudication of this matter in that the litigation of separate actions by individual class members would unduly burden the Court and create the possibility of conflicting decisions.

FEDERAL STATUTORY AND REGULATORY SCHEME

27. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, creates the federal Medicaid program, through which the federal government provides matching funds to states to provide medical assistance to residents who meet certain eligibility requirements. 42 U.S.C. § 1396b. The objective of the Medicaid program is to enable each state to furnish medical assistance to individuals whose incomes and resources are insufficient to meet the costs of necessary medical services. 42 U.S.C. § 1396-1.

28. States are not required to participate in the Medicaid program, but if they choose to, they must comply with federal Medicaid statutes and their implementing regulations. 42 U.S.C. §§ 1396-1, 1396a, 1396c.

29. The federal Medicaid program requires a participating state to establish or designate a single state agency that is responsible for administering or supervising the administration of that state's Medicaid program. 42 U.S.C. § 1396a(a)(5).

30. Participating states also must submit a "state plan" to the Secretary of the United States Department of Health and Human Services ("HHS") for approval before that state may receive Medicaid funds. 42 U.S.C. §§ 1396-1, 1396(a).

31. An individual is "categorically needy" and eligible for Medicaid if he or she falls into one of the nine eligibility categories set forth in 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I)-(IX); *see also* 42 C.F.R. § 435.100 ("This subpart prescribes requirements for coverage of categorically needy individuals."). Individuals who receive Supplemental Security Income ("SSI") are considered "categorically needy" and therefore eligible for Medicaid. 42 U.S.C. § 1396a(a)(10)(A)(i)(I); 42 C.F.R. § 435.120. Certain individuals whose income is below 133 percent of the federal poverty level are also considered "categorically needy" and therefore eligible for Medicaid. 42 U.S.C. § 1396a(a)(10)(A)(i)(VII); 42 C.F.R. § 435.119(b).

32. Section 1396a(a)(10)(A) of the Medicaid Act (the "Availability Provision") mandates that a state plan make medical assistance available to all categorically needy individuals by covering, at a minimum, certain enumerated services. 42 U.S.C. § 1396a(a)(10)(A). One of the enumerated services is "medical and surgical services furnished by a dentist." 42 U.S.C. § 1396d(a)(5).

33. Federal law and regulations list services that are not required but that may be furnished under the state plan at the state's option. 42 U.S.C. § 1396d(a); 42 C.F.R. § 440.225. Dental services for adults 21 years of age and older are not mandatory services, and therefore "may be furnished under the State plan at the State's option." 42 C.F.R. §§ 440.210, 220, 225. Dental services are defined in the Medicaid Act's implementing regulations as "diagnostic, preventative, or corrective procedures provided by or under the supervision of a dentist in the practice of his profession, including treatment of – (1) The teeth and associated structures of the

oral cavity; and (2) Disease, injury, or impairment that may affect the oral or general health of the beneficiary." 42 C.F.R. § 440.100(a).

34. Once a state decides to provide Medicaid coverage, all services offered by the state under the Medicaid Act, including optional services such as dental services, are subject to the requirements of the Medicaid Act and its implementing regulations. Under the Medicaid Act's implementing regulations, "[e]ach service must be sufficient in amount, duration, and scope to reasonably achieve its purpose." 42 C.F.R. § 440.230(b).

35. Section 1396a(a)(10)(B) of the Medicaid Act (the "Comparability Provision") requires both that "the medical assistance made available to any [categorically needy] individual . . . shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual," and that such medical assistance "shall not be less in amount, duration, or scope than the medical assistance made available to [non-categorically needy] individuals." 42 U.S.C. § 1396a(a)(10)(B).

36. Federal regulations likewise require that medical assistance be provided in equal amount, duration, and scope to all categorically needy Medicaid recipients. 42 C.F.R. § 440.240(b)(1).

37. Section 1396a(a)(8) of the Medicaid Act (the "Reasonable Promptness Provision") further requires that states "provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8).

38. The ADA was enacted to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

39. Title II of the ADA prohibits discrimination against individuals with disabilities by any public entities, including state and local governments, their departments, and agencies. 42 U.S.C. §§ 12131, 12132. "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

40. The regulations implementing the ADA require state governments and their agencies and designees to make reasonable modifications to policies, practices and procedures to protect against discrimination on the basis of disability and to ensure services are provided in the most integrated setting appropriate to the needs of individuals with disabilities. *See* 28 C.F.R. § 35.130(b)(7); *see also* 28 C.F.R. § 35.130(d).

41. Section 504 of the Rehabilitation Act prohibits discrimination against individuals with disabilities by any program or activity, including any department or agency of a state government receiving federal financial assistance. 29 U.S.C. § 794(a), (b). It provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a); *see also* 45 C.F.R. §§ 84.4(a), 84.4(b)(1)(i), (iv), (vii); 84.4(b)(2); 84.52(a)(1), (4), (5).

NEW YORK STATE STATUTORY AND REGULATORY SCHEME

42. New York has opted to participate in the federal Medicaid program. N.Y. Soc. Serv. L. § 363-a.

43. New York also has opted to provide coverage for dental services under the Program. N.Y. Soc. Serv. L. § 365-a.

44. The Program is administered in accordance with Sections 363-369 of the New York Social Services Law, and the regulations promulgated thereunder. N.Y. Soc. Serv. L. §§ 363-369; 18 N.Y.C.R.R. §§ 358, 360, 505 *et seq*.

45. New York has assigned responsibility for administering the Program to the New York State Department of Health ("DOH").

46. New York defines the "medical assistance" to be provided under the Program very broadly to include payment for "medical, *dental* and remedial care, services and supplies . . . which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap." N.Y. Soc. Serv. Law § 365-a(2) (emphasis added); *see also* 18 N.Y.C.R.R. § 513.0. The statute also provides that "dental prosthetic appliances furnished in accordance with the regulations of the department" are considered standard care in certain circumstances. N.Y. Soc. Serv. Law § 365-a(2)(g).

47. The implementing regulations under the New York Social Services Law state that "only preventive, prophylactic and other routine dental care, services and supplies, and dental prosthetic and orthodontic appliances required to alleviate a serious health condition including one which affects employability" must be provided, and the regulation defines dental care, services and supplies as those "deemed essential to maintain an adequate level of dental health."

18 N.Y.C.R.R. § 506.2. Another regulation lists ten services for which prior authorization is not required and states that prior authorization is required for all services not listed and "all dental prosthetic appliances which shall be furnished only if required to alleviate a serious health condition including one which affects employability." 18 N.Y.C.R.R. § 506.3.

DEFENDANT'S PRIOR VIOLATIONS OF THE MEDICAID ACT

48. Lack of coverage for medically necessary dental care is only the latest example of DOH's denial of medically necessary care.

49. In 2015, DOH was found to have violated the Medicaid Act by refusing to provide medically necessary care to transgender Medicaid recipients. *See Cruz v. Zucker*, 195 F. Supp. 3d 554 (S.D.N.Y. 2016), *on reconsideration*, 218 F. Supp. 3d 246 (S.D.N.Y. 2016).

50. In particular, the court found that the categorical bans on treatment imposed by DOH violated the Availability Provision. It also found that DOH violated the Comparability Provision because certain of the same treatments sought by the plaintiffs were covered by New York Medicaid for other diagnoses.

51. DOH was also found to have violated the Comparability Provision in 2014 by providing coverage for orthopedic footwear and compression stockings only to individuals with certain conditions, and not others, because such restrictions, based solely on the nature of a patient's medical condition, violated the Medicaid Act. *See Davis v. Shah*, No. 12-cv-6134 (CJS), 2012 WL 1574944, at *6 (W.D.N.Y. May 3, 2012), *aff'd in relevant part*, 821 F.3d 231 (2d Cir. 2016).

52. Although DOH amended (i) the challenged regulation and (ii) a related guidance publication (purporting to explain aspects of the regulation to providers) over the course of the lawsuit, the court found that, even in amended form, the regulation still barred medically

necessary care and that the nonbinding changes to the guidance publication failed to remedy DOH's violation of the Medicaid Act.

FACTS

53. There are 32 teeth in the adult mouth: 12 anterior teeth and 20 posterior teeth. The specific rules on how and when New York will provide Medicaid coverage for care and services for adult teeth are outlined in The New York State Medicaid Program Dental Policy and Procedure Code Manual (the "Manual"). Of course, poor oral health can adversely affect health outcomes beyond the mouth. The rigid rules set forth in the Manual, however, restrict coverage for many services that may be necessary for Medicaid recipients to maintain their overall health.

54. On September 11, 2018, DOH gave notice that it had modified the Manual's restrictions on dental implants and replacement dentures, with such modifications to take effect on November 12, 2018. The most recent version of the Manual (the "Revised Manual") was issued on January 1, 2019. We refer to the "Revised Manual" only when referring to the revised rules for dental implants and replacement dentures that went into effect on November 12, 2018.

55. The Manual states that the Program "shall include only ESSENTIAL SERVICES rather than comprehensive care. The provider should use this Manual to determine when the Medicaid program considers dental services 'essential'. The application of standards related to individual services is made by the DOH when reviewing individual cases." Section II, page 7. The Revised Manual did not alter this rule.

56. The Manual operative prior to November 2018 (the "Prior Manual") explicitly excluded "[d]ental implants and related services" from the scope of Medicaid coverage. Prior Manual Section II, page 9. We refer to the "Manual" or the "Prior Manual" only when referring

to the rules for dental implants and replacement dentures that were in effect prior to November 12, 2018.

57. Section VIII of the Revised Manual states that dental implants will be covered "when medically necessary." Section VIII at 50. To receive dental implants, a patient must submit a prior approval request including a letter from a physician explaining "how implants will alleviate the patient's medical condition." Section VIII at 50.

58. Upon information and belief, New York provides coverage for dental implants for some individuals in some circumstances. New York Medicaid publishes procedure codes for covered services. In its list of procedure codes for surgery, the Program lists codes for both subperiosteal and endosteal implants when involved in the "[r]econstruction of mandible or maxilla." New York State Medicaid Program Physician – Procedure Codes, Section 5- Surgery at 37 (2018).

59. Upon information and belief, individuals receiving dental implants with respect to jaw reconstruction are not required to show that the implants are necessary to alleviate a medical condition.

60. According to the American Academy of Implant Dentistry, "[e]ndosteal [implants] . . . are placed in the jawbone[, are t]ypically . . . shaped like small screws, [and] are the most commonly used type of implant," whereas "[s]ubperiosteal [implants] . . . are placed under the gum but on, or above, the jawbone."[1] *Types of Implants and Techniques*, American Academy of Implant Dentistry (2018).

[1] Available at https://www.aaid-implant.org/dental-implants/types-of-implants-and-techniques/.

61. The restriction of dental implants to instances where they are necessary to alleviate a separate medical condition violates the Medicaid Act, the ADA, and the Rehabilitation Act.

62. The Prior Manual provided that "[c]omplete dentures and partial dentures will not be replaced for a minimum of eight (8) years from initial placement except when they become unserviceable through trauma, disease or extensive physiological change. Prior approval requests for premature replacement will not be reviewed without supporting documentation of medical necessity. Dentures which are lost, stolen or broken will not be replaced unless there exists a serious health condition that has been verified and documented." Section IV at 44.

63. Following the revisions announced on September 11, 2018, the Revised Manual states that dentures that are "unserviceable, lost, stolen, or broken" can be replaced prior to eight years "when determined medically necessary by the Department or its agent." Section VI at 45. However, the Revised Manual omits a prior provision authorizing replacement of dentures any time they become "unserviceable through trauma, disease or extensive physiological change." Instead, in any case in which replacement dentures are sought, the patient must demonstrate via a letter from a physician "how dentures would alleviate the patient's serious health condition or improve employability." Section VI at 45. This provision imposes a more stringent burden on Medicaid recipients whose dentures have become unserviceable through disease, trauma or extensive physiological change.

64. The restriction of replacement dentures to instances where they are necessary to alleviate a separate health condition violates the Medicaid Act.

65. The Revised Manual and the Prior Manual both specify that "[e]ight (8) posterior natural or prosthetic teeth (molars and/or bicuspids) in occlusion (four (4) maxillary and four (4)

mandibular teeth in functional contact with each other) will be considered adequate for functional purposes. Requests will be reviewed for necessity based upon the presence/absence of eight (8) points of natural or prosthetic occlusal contact in the mouth (bicuspid/molar contact)." Section V at 24. Known as the "8 points of contact rule," this rule is contrary to current standards of care and results in denial of medically necessary procedures in circumstances in which a person's teeth have the requisite eight points of contact – just four pairs of bicuspid or molar teeth.

66. The Manual specifically excludes from Medicaid coverage "molar root canal therapy for individuals 21 years of age and older, except when extraction would be medically contraindicated or the tooth is a critical abutment for an existing serviceable prosthesis." Section II at 9. The Revised Manual does not alter the rules and requirements regarding coverage for root canals. This rule requires pulling a molar tooth rather than providing a root canal to preserve a tooth for individuals 21 years old and older. For many years, the standard in dentistry has been to save a natural tooth with a root canal over extraction when possible. When teeth are missing, the existing teeth can shift and cause harm to the remaining teeth and surrounding tissue. When missing teeth are replaced with a partial denture, it can also necessitate further procedures for the neighboring teeth and supporting tissue.

67. The Manual also states that "[c]rowns will not be routinely approved for a molar tooth in those members age 21 and over which has been endodontically treated without prior approval from the Department of Health." Section V at 38. This results in denials of medically necessary care in circumstances when a person needs a root canal and a crown to preserve existing teeth. The Revised Manual does not alter the rules and requirements regarding coverage for crowns.

68. The Manual also excludes Medicaid coverage for crowns "in association with an existing or proposed prosthesis in the same arch, unless the tooth is a critical abutment for a prosthesis provided through the NYS Medicaid program, or unless replacement by addition to an existing prosthesis or new prosthesis is not feasible." Section V at 24. This results in denials of medically necessary care in circumstances when a person needs both dentures to replace missing teeth and crowns to preserve existing teeth. The Revised Manual does not alter the rules and requirements regarding coverage for crowns.

69. The above Manual provisions result in frequent denials of Medicaid coverage of root canals and crowns, often leaving Medicaid recipients with no or little alternative but to have the affected teeth pulled, further compromising their oral health. In doing so, the Manual provisions also ignore the close connection between poor oral health and a range of other health problems. This is particularly true for the Medicaid-eligible population, which is more likely to experience untreated tooth decay, relative to their higher-income counterparts.

70. Periodontal disease is associated with an increased risk of cancer and cardiovascular disease. Poor oral health and tooth loss can lead to poor nutrition, which also compounds health problems. Poor nutrition in turn increases the odds of oral disease, thus trapping individuals in a vicious cycle.

71. Diabetes, which is also closely connected to oral health, is particularly common within the Medicaid population. In 2011, DOH found that the prevalence of adult diabetes in New York has steadily increased. *Adult Diabetes Prevalence in New York State*, New York State Dept. of Health (2011).[2] The study found that adults with annual household incomes of

[2] Available at https://www.health.ny.gov/diseases/conditions/diabetes/docs/adult_diabetes_prevalence.pdf.

less than $15,000 were nearly three times as likely to report having diabetes as adults with an annual household income of more than $50,000.

72. Diabetes patients can experience impaired and delayed wound healing in the mouth and have an increased incidence and severity of infections.

73. Individuals with diabetes are at much higher risk for gum disease than non-diabetic individuals. In turn, gum disease and the resulting tooth loss threaten diabetic individuals' overall health, increasing the risk of non-oral, diabetes-related complications. For example, diabetic individuals with severe gum disease are far more likely to suffer end-stage renal disease and kidney failure than diabetic individuals without severe gum disease.

74. To date, DOH has supplied no express guarantee that the changes contained in the Revised Manual will be maintained permanently, and DOH is under no legal obligation to adhere to the Revised Manual. Rather, DOH retains full discretion to change the Revised Manual in the future.

Plaintiff Ciaramella

75. Frank Ciaramella is a 57-year-old, Medicaid recipient living in Staten Island, New York.

76. Mr. Ciaramella qualifies for Medicaid as "categorically needy."

77. Mr. Ciaramella suffers from end-stage renal disease. He has received dialysis treatment three times a week since 2014. He is on the wait list for a kidney transplant.

78. Mr. Ciaramella also suffers from hypertension, coronary artery disease, diabetes mellitus, and has been diagnosed as protein malnourished with low albumin levels.

79. Prior to January 2015, Mr. Ciaramella had several of his teeth extracted. In January 2015, Mr. Ciaramella's dentist removed all of his remaining teeth. As a result, Mr. Ciaramella has no teeth.

80. In 2016, he was fitted for and received upper and lower dentures. Although his upper dentures fit well, the lower dentures do not and cause him substantial discomfort. On one occasion, the dentures slid back in his mouth while he was eating, choking him. Mr. Ciaramella's lower dentures are effectively unusable, forcing him to abandon them completely.

81. In addition, Mr. Ciaramella's upper dentures recently fell out of his mouth and were destroyed when a car ran over them. Under the Program's rules Mr. Ciaramella is not eligible for replacement upper dentures until 2024.

82. Mr. Ciaramella's dental needs are inextricably related to his medical conditions. Mr. Ciaramella must be able to chew high-fiber foods in order to treat his low albumin levels. Because he is not able to do so, he is protein malnourished, leaving him more susceptible to disease. His renal condition limits his ability to intake fluids and calcium, which prevents him from subsisting on protein shakes.

83. Upon information and belief, Mr. Ciaramella's weakened immune system, by increasing his susceptibility to diseases, increases his risk of being hospitalized and/or institutionalized.

84. His lack of teeth also causes Mr. Ciaramella emotional harm. He is embarrassed to go out in public and feels sad and anxious.

85. Given the failure of his dentures and the critical importance of being able to follow his prescribed diet, Mr. Ciaramella sought treatment from an oral surgeon, who

determined that he does not have enough bone support for dentures and requires two dental implants to hold his dentures in place. Based on a recent medical assessment, it also appears that Mr. Ciaramella will need lower implants and various corollary services.

86. Mr. Ciaramella applied for Medicaid coverage of dental implants.

87. Despite New York providing coverage for dental implants for some Medicaid recipients, Mr. Ciaramella's request was denied on August 12, 2016. The reasons given for the denial were that the service was not covered and is not billable after placement of dentures.

88. Dental implants, which would allow him to safely wear a bottom denture, are medically necessary for Mr. Ciaramella and would address his other serious health conditions. New York's denial of such care has trapped him in a cycle of poor health.

89. Denial of Medicaid coverage for Mr. Ciaramella's dental implants violates the Medicaid Act, the ADA, and the Rehabilitation Act.

90. Defendant's promulgation and enforcement of policies excluding dental implants from Medicaid coverage violates the Medicaid Act's Availability and Comparability Provisions, the ADA, and the Rehabilitation Act.

91. In addition, Mr. Ciaramella was denied coverage for a new pair of upper dentures because he received his last dentures fewer than eight years ago.

92. Denial of Medicaid coverage for Mr. Ciaramella's upper dentures violates the Medicaid Act's Availability Provision and Reasonable Promptness Provision.

Plaintiff Velazquez

93. Lillian Velazquez is a 54-year-old Medicaid recipient who lives in New York City.

94. Ms. Velazquez receives SSI and qualifies for Medicaid as categorically needy.

95. Ms. Velazquez needs a root canal on tooth 15, a molar tooth on the left side of her mouth.

96. Ms. Velazquez is currently missing five teeth: four molars and one bicuspid. She is experiencing pain, sensitivity, and cannot chew on the left side of her mouth. Ms. Velazquez has had a cavity filled on tooth 15 a number of times because the filling has repeatedly fallen out.

97. In approximately September 2017, Ms. Velazquez's dentist requested prior authorization for a root canal on tooth 15. The prior authorization request was denied. Ms. Velazquez requested a fair hearing to challenge the denial.

98. Defendant's designee upheld the denial citing the Manual's prohibition on molar root canal therapy for beneficiaries 21 years of age and over except where extraction would be medically contraindicated or the tooth is a critical abutment for an existing prosthesis provided by Defendant.

99. Ms. Velazquez continues to experience severe pain. Ms. Velazquez is avoiding using the left side of her mouth due to the pain and sensitivity and in an effort to preserve the delicate tooth. This makes it extremely difficult for her to eat.

100. Under Defendant's rules, Ms. Velazquez must have the tooth extracted rather than receive a root canal because if tooth 15 is extracted, Ms. Velazquez will still have eight points of contact.

101. Extraction of tooth 15 will leave Ms. Velazquez with only one pair of bicuspid teeth and will cause her teeth to move, which can cause damage to the surrounding teeth and tissue. This will cause her to lose any points of occlusion on the left side of her mouth. Moreover, chewing on only one side of the mouth can cause traumatic injury for the jaw and jaw joint and cause damage to the side of the mouth undertaking all of the mastication.

102. Because of the eight points of contact rule, even if Ms. Velazquez did have the tooth pulled she would not be eligible for Medicaid coverage for dentures, placing her at even more risk of her teeth shifting.

103. A root canal is medically necessary for Ms. Velazquez. Denial of coverage for Ms. Velazquez's root canal violates the Medicaid Act's Availability Provision.

Plaintiff Walker

104. AnneMarie Walker is a 60-year-old Medicaid recipient living in Brooklyn, New York.

105. Ms. Walker qualifies for Medicaid as categorically needy because she is low-income. Her income is from her work as a home attendant.

106. Ms. Walker suffers from uncontrolled insulin dependent Type 2 Diabetes, hypertension, and generalized anxiety and depression.

107. Ms. Walker is missing all but one of her upper molars and many of her bottom molars. She is missing teeth 2, 3, 4, 5, 12, 13, 14, 15, 16, 17, 19, 30, 31, and 32.

108. Ms. Walker had received upper dentures approximately three years ago, but subsequently had additional teeth extracted and is no longer able to wear her previous dentures.

109. In 2018, Ms. Walker's dentist requested root canal treatment, a post and core, and a crown on tooth 9; a crown, post and core on tooth 8, and upper and lower partial dentures. While the partial upper and lower dentures were approved, the root canal, post and core, and crown procedures on Ms. Walker's two front teeth were all denied in favor of extraction based on the Manual's restrictions on root canal and crown treatments. The two extracted teeth will then be "added" to the approved partial upper denture.

110. Extracting teeth that can be saved with a root canal and crown is unnecessary and inconsistent with the prevailing standard of care. Pulling and replacing the teeth with a partial denture will cause the neighboring teeth to move and can result in further damage for the neighboring teeth, which in turn is likely to result in further extractions. This approach may also cause damage to the supporting tissue, and hasten bone loss. Additionally, as a diabetic patient Ms. Walker's gums will take longer to heal from the unnecessary extractions, which may cause further complications for the creation of dentures.

111. The root canal and related treatments Ms. Walker seeks are medically necessary for her. Denial of Medicaid coverage for Ms. Walker's root canal and crown violates the Medicaid Act's Availability Provision.

Plaintiff Russo

112. Christopher Russo is a 49-year-old Medicaid recipient residing in Staten Island.

113. Mr. Russo is completely edentulous. He requires replacement upper and lower dentures.

114. In 2017, Mr. Russo obtained a set of upper and lower dentures through the Medicaid program.

115. In 2018, Mr. Russo was hospitalized for injuries sustained after falling down stairs. While in the hospital, Mr. Russo's dentures were mistakenly thrown away.

116. Without teeth, Mr. Russo has difficulty eating and he feels embarrassed.

117. Under the Manual, Mr. Russo will not be eligible for replacement dentures until 2025. Under the Revised Manual, Mr. Russo will be eligible for replacement dentures only if he provides (in addition to other requirements) a letter from a physician explaining how dentures would alleviate a serious health condition or improve employability. Mr. Russo is not being

treated for a serious health condition that results in symptoms that would be alleviated by dentures. But replacement dentures are medically necessary for Mr. Russo. Denial of Medicaid coverage for replacement dentures for Mr. Russo violates the Medicaid Act's Availability Provision and Reasonable Promptness Provision.

Plaintiff Adinolfi

118. Matthew Adinolfi is a 60-year-old Medicaid recipient who lives in Columbia County, New York.

119. In 2010, Mr. Adinolfi had all of his remaining upper teeth extracted and received complete upper and partial lower dentures from the Medicaid program.

120. The upper and lower dentures never fit properly. They slipped out of his mouth and he was not able to chew with them.

121. Mr. Adinolfi requires implants in order to hold an upper denture in place. In 2017, Mr. Adinolfi paid out-of-pocket for a scan to determine if he had enough bone for implants for an upper denture. Mr. Adinolfi was told that he had very limited bone in the upper jaw and that he required bilateral sinus augmentation before he could obtain upper implants and implant-supported dentures for his upper arch.

122. In approximately 2012, Mr. Adinolfi paid out-of-pocket for a permanent bridge for teeth 22 through 27. The permanent bridge does not include back teeth because he could not afford it. Mr. Adinolfi does not have back teeth, which are needed to chew food.

123. Mr. Adinolfi feels depressed and isolated because of his lack of teeth. He limits his social life and has not pursued a romantic partnership since being unable to wear his upper dentures.

124. In addition, as a result of his not being able to properly chew his food, he has choked numerous times.

125. Under the Manual, Mr. Adinolfi is not eligible for implants that are needed for his upper arch. Under the Revised Manual, Mr. Adinolfi would be eligible for implants if he could provide, in part, a letter from a physician explaining how implants would alleviate a medical condition. Mr. Adinolfi is not being treated for a medical condition that results in symptoms that would be alleviated by upper implants and implant-supported dentures. Rather, Mr. Adinolfi requires upper implants to hold his upper dentures in order to ingest food properly. Those treatments are thus medically necessary for Mr. Adinolfi.

126. Denial of Medicaid coverage for dental implants for Mr. Adinolfi violates the Medicaid Act's Availability Provision, Comparability Provision, and the ADA and Rehabilitation Act.

Plaintiff Virtuoso

127. Jody Virtuoso is a 60-year-old Medicaid recipient who lives in Westchester County, New York.

128. Ms. Virtuoso has total edentulism and requires upper and lower dental implants in order to secure dentures in place.

129. In June 2014, Ms. Virtuoso's dentist requested root canals and crowns for 5 teeth. When the root canals were denied, Ms. Virtuoso had all of her remaining teeth extracted and was given complete upper and lower dentures. While the dentures fit at first, over time they started to become loose, rub her gums and cause pain.

130. A family member paid out-of-pocket to have her dentures relined, which helped the dentures fit her mouth for a time, but did not last long. Soon after, the dentures started to rub against her gums again causing pain and bleeding.

131. Ms. Virtuoso had to stop wearing her dentures because they caused her a lot of pain and they made her mouth bleed. She has difficulty chewing her food without teeth. A few times she has choked because she was not able to break down her food enough. Ms. Virtuoso continues to have pain and sores on her gums from trying to chew food with her gums.

132. Ms. Virtuoso suffers from depression. Ms. Virtuoso also has a diagnosis of fibromyalgia. She was until recently in remission with lymphoma, but recently learned that her cancer has recurred. She has not yet started cancer treatment.

133. Ms. Virtuoso's depression has worsened as a result of her lack of teeth. Ms. Virtuoso finds it very hard to go outside because she feels embarrassed of her appearance. Nonetheless, she must go outside to attend medical appointments and fulfill her responsibilities as the guardian of her teenage niece and nephew with whom she has lived since their mother was killed approximately ten years ago. She has sometimes missed appointments because she is too embarrassed or depressed to go outside.

134. Ms. Virtuoso has lost approximately 15 pounds since losing her teeth.

135. Under the Manual, Ms. Virtuoso is not eligible for Medicaid coverage for dental implants. Under the Revised Manual, Ms. Virtuoso would be eligible for implants only if she can provide, in part, a letter from a physician explaining how implants would alleviate a medical condition. Implant-supported dentures would alleviate Ms. Virtuoso's depression. However, the Revised Manual does not define a "medical condition" to include a psychiatric condition. While Ms. Virtuoso is not being treated for any other medical condition that results in symptoms that

would be alleviated by dental implants and implant-supported dentures, she needs such dental treatments in order to properly ingest food. Accordingly, dental implants and implant-supported replacement dentures are medically necessary for Ms. Virtuoso.

136. Denial of Medicaid coverage for Ms. Virtuoso's implants and implant-supported dentures violates the Medicaid Act's Availability Provision, Comparability Provision, and the ADA and Rehabilitation Act.

Plaintiff Martin

137. Antonio Martin is a 57-year-old Medicaid recipient and SSI recipient.

138. After being homeless for over 30 years, Mr. Martin now resides in supportive housing in the Bronx where he receives onsite case management services.

139. Mr. Martin suffers from schizophrenia. He also has several medical diagnoses including diabetes, high blood pressure, asthma, and high cholesterol.

140. Mr. Martin has no teeth on his upper arch and is missing several back teeth on his lower arch. Approximately two years ago, Mr. Martin received complete upper dentures and partial lower dentures through the Medicaid program.

141. Mr. Martin lost both the upper and lower dentures.

142. Since losing his dentures Mr. Martin can only eat soft foods, cannot eat vegetables, and has lost approximately 20 pounds. His lack of teeth makes Mr. Martin's speech difficult to understand, which in turn, frustrates his ability to access necessary care and services.

143. In 2018, Mr. Martin requested replacement upper and lower dentures.

144. On May 9, 2018, Mr. Martin received a denial notice citing the Manual prohibition against replacement dentures within eight years of initial placement.

145. In January 2019, following promulgation of the Revised Manual, Mr. Martin's dentist re-requested complete upper dentures for him.

146. On January 6, 2019, the request was denied again. The letter stated that "this service is allowed one time every 96 months. Our records show that you had this service less than 96 months ago."

147. Under the Revised Manual, Mr. Martin will not be eligible for replacement dentures until approximately 2025.

148. Under the Revised Manual, Mr. Martin will be eligible for replacement dentures only if he provides (in addition to other requirements) a letter from a physician explaining how dentures would alleviate a serious health condition. Mr. Martin is not currently being treated for a serious health condition that results in symptoms that would be alleviated by dentures. But replacement dentures are medically necessary for Mr. Martin. Denial of Medicaid coverage for replacement dentures for Mr. Martin violates the Medicaid Act's Availability Provision.

Plaintiff Hawkins

149. Ms. Hawkins is a 50-year-old Medicaid recipient who lives alone in Queens.

150. Ms. Hawkins is completely edentulous. She requires replacement lower dentures, which the Medicaid Program has denied.

151. Years ago, Ms. Hawkins was diagnosed with head and neck cancer and as a result, she underwent extensive chemotherapy, radiation, and surgical skull base resection surgeries in which about two-thirds of her maxilla was removed. She has a large gap opening to the nasal cavity, and requires a maxillary obturator-prosthesis and lower dentures to close this gap, allow her to masticate and swallow, and to facilitate intelligible speech. Ms. Hawkins also

has been diagnosed with periodic iron deficiency anemia, osteoarthritis, rheumatoid arthritis, asthma, and diabetes.

152. On June 10, 2019, Ms. Hawkins's dentist requested prior authorization for a replacement upper obturator-prosthesis and replacement lower dentures.

153. On June 10, 2019, the request for a replacement upper prosthesis was approved but the request for replacement lower dentures was denied because the Medicaid Program had covered lower dentures fewer than eight years ago.

154. Ms. Hawkins's internal appeal challenging the denial was denied by a Final Adverse Determination notice on July 22, 2019 for the same reason. On or around July 29, 2019, Ms. Hawkins requested a fair hearing.

155. Ms. Hawkins received the lower dentures she is currently using in approximately 2011. The Medicaid Program covered another denture for Ms. Hawkins on September 9, 2016 according to her Medicaid managed care plan, but these dentures did not fit and Ms. Hawkins was required to use the set from 2011 instead.

156. According to Ms. Hawkins's dentist, her previous dentures are unserviceable due to extensive physiological change caused by aftereffects from extensive chemotherapy and radiation. She has undergone and continues to undergo long-term sequelae, which causes instability in the soft tissue and causes her gums to reshape. As a result, her mandibular denture is ill-fitting and unstable. Still, she is required to wear it continuously because the lower denture anchors her upper obturator-prosthesis in place, which closes the gap to her naval cavity.

157. Ms. Hawkins will face these cancer aftereffects for the remainder of her life.

158. Because her lower denture is ill-fitting, Ms. Hawkins suffers from severe pain, especially when eating and speaking. The pain also disrupts her sleep. The dentures move and

rub on her gums, causing perpetual sores, cuts, and bleeding. She lines her dentures with cotton balls soaked in olive oil to alleviate the rubbing pain and bleeding. She also uses lidocaine gel in an attempt to soothe the sore areas. Ms. Hawkins cannot speak intelligibly and has extreme difficulty eating.

159. Under the Revised Manual, Ms. Hawkins will not be eligible for replacement dentures until approximately 2024.

160. Under the Revised Manual, Ms. Hawkins has been denied replacement lower dentures but she likely would have been eligible for replacement dentures under the previous Manual, which authorized replacement of dentures any time they become "unserviceable through trauma, disease or extensive physiological change." Under the Revised Manual, Ms. Hawkins will be eligible for replacement dentures only if she provides (in addition to other requirements) a letter from a physician explaining how dentures would alleviate a serious health condition. Replacement dentures will not alleviate Ms. Hawkins's serious health conditions: she will face aftereffects from cancer treatment for the rest of her life and will likely continue to need replacement dentures more frequently than every eight years. But replacement dentures are medically necessary for Ms. Hawkins to function, eat, speak intelligibility, and maintain her overall health.

161. Ms. Hawkins's wounds in her mouth caused by her ill-fitting dentures increases her risk of being hospitalized and/or institutionalized. Ms. Hawkins's diabetes complicates her wound healing, increasing her risk of infection which can be life-threatening.

162. Denial of Medicaid coverage for Ms. Hawkins's replacement dentures violates the Medicaid Act's Availability Provision.

Plaintiff Coreas

163. Blanca Coreas is a 58-year-old Medicaid recipient who lives alone in the Bronx.

164. Ms. Coreas needs six implants for teeth 3, 5, 7, 10, 12, and 14; abutments for 19 and 21; and implant supported retainers.

165. In March 2019, Ms. Coreas's dentists requested prior authorization for six implants and upper and lower implant-supported retainers.

166. With the prior approval request, the dentists submitted a letter from Ms. Coreas's internist stating that Ms. Coreas is vitamin deficient given a history of gastric bypass and atrophic gastritis and needs implants to be able to effectively chew food. The dentists also submitted a letter from a provider who treats Ms. Coreas for depression; the letter stated that Ms. Coreas's dental condition has negatively impacted her depression and that her condition will not improve without dental implants.

167. On April 17, 2019, the request was denied; the denial stated that not enough information was provided to demonstrate medical necessity.

168. The Revised Manual purports to authorize coverage for dental implants "when medically necessary" if a patient submits a prior approval request including a letter from a physician explaining "how implants will alleviate the patient's medical condition." Despite the letters from her providers, Ms. Coreas has been denied implants under the Revised Manual.

169. Dental implants, which will allow Ms. Coreas to wear dentures, are medically necessary. New York's denial of such care has trapped her in poor health.

170. Ms. Coreas is at increased risk of hospitalization and institutionalization if she does not receive the dental care she needs. Given her vitamin deficiency and history of gastric

bypass surgery, eating only soft foods can lead to neuropathy and other serious health conditions that could require hospitalization and/or institutionalization.

171. Denial of Medicaid coverage for Ms. Coreas's dental implants under the Revised Manual violates the Medicaid Act's Availability and Comparability Provisions, the ADA, and the Rehabilitation Act.

Plaintiff Perry

172. Ms. Perry is a 53-year-old Medicaid recipient who lives with her mother in Montgomery County.

173. Ms. Perry is completely edentulous and has primary diagnoses of anxiety and depression.

174. In 2017, Ms. Perry received complete upper and lower dentures. While the bottom dentures fit at the time, the upper dentures did not.

175. Ms. Perry returned to the dentist several times for adjustment, which did not correct the problem.

176. From 2017 to 2018, Ms. Perry visited four additional dentists, all of whom informed her that the dentures could not be adjusted to resolve the fit issue and that she required replacement dentures. She was informed that she would not be eligible for new dentures for eight years.

177. In 2019, another dentist informed Ms. Perry that she required dental implants and implant-supported dentures.

178. Ms. Perry submitted a letter from a nurse practitioner and a therapist with her request for implants. The letter from her therapist states that Ms. Perry has been in treatment

since August 2017 and that her mental health symptoms are significantly exacerbated by her dental issues.

179. The letter from the nurse practitioner stated that Ms. Perry was undernourished, and had difficulty eating as a result of her lack of teeth.

180. The request was denied on June 28, 2019. The reason for the denial was that "the request did not have enough information to determine if the service is medically necessary."

181. Following the denial, Ms. Perry filed an internal appeal and provided a letter from a physician. The physician's letter largely mirrored the nurse practitioner's but added that "[i]t is medically necessary for her to have dentures and implants."

182. On September 11, 2019, a denial of this appeal was issued by a Final Adverse Determination notice, which stated that "the benefit coverage limit has been reached. […] Your dentist sent a bill to us for a service that cannot be done after you have been given dentures. Our records show you have had this tooth replaced with a type of denture."

183. Ms. Perry's lack of teeth has caused her to become depressed and seek mental health treatment. Ms. Perry is at risk of institutionalization for her depression and anxiety. Ms. Perry has spoken to her mental health providers about seeking in-patient psychiatric treatment.

184. Ms. Perry is also clinically underweight at 5'1" and 90 pounds and has lost approximately 20 pounds since losing her teeth.

185. Denial of Medicaid coverage for Ms. Perry's dental implants and implant-supported dentures under the Revised Manual violates the Medicaid Act's Availability and Comparability Provisions, the ADA, and the Rehabilitation Act.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF THE AVAILABILITY PROVISION OF THE MEDICAID ACT

186. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 185 above.

187. Defendant's policies violate the Availability Provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(10)(A), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

188. Recent revisions to the Manual do not moot or otherwise affect Plaintiffs' First Claim For Relief because Defendant retains complete discretion to revoke, or otherwise modify, the voluntary changes contained in the Revised Manual.

189. If legally effective, Defendant's restrictions in the Prior Manual and the Revised Manual violate the Availability Provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(10)(A), and its implementing regulations, which are enforceable by Plaintiff pursuant to 42 U.S.C. § 1983.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF THE COMPARABILITY PROVISION OF THE MEDICAID ACT

190. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 189 above.

191. Defendant's policies violate the Comparability Provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(10)(B)(i)-(ii), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

192. Recent revisions to the Manual do not moot or otherwise affect Plaintiffs' Second Claim For Relief because Defendant retains complete discretion to revoke, or otherwise modify, the voluntary changes contained in the Revised Manual.

193. If legally effective, Defendant's policy in the Prior Manual and the Revised Manual violates the Comparability Provision of the Medicaid Act, 42 U.S.C. § 1396a(a)(10)(B)(i)-(ii), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF THE REASONABLE PROMPTNESS PROVISION OF THE MEDICAID ACT

194. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 193 above.

195. Defendant's unreasonable waiting period for certain dental services violates the Reasonable Promptness Provision of the Medicaid Act, 42 U.S.C. § 1396a(8), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

196. Recent revisions to the Manual do not moot or otherwise affect Plaintiffs' Third Claim For Relief because Defendant retains complete discretion to revoke, or otherwise modify, the voluntary changes contained in the Proposed Revised Manual.

197. If legally effective, Defendant's policy in the Prior Manual and the Revised Manual violates the Reasonable Promptness Provision of the Medicaid Act, 42 U.S.C. § 1396a(8), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

FOURTH CLAIM FOR RELIEF

VIOLATIONS OF THE ADA

198. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 197 above.

199. Defendant's policy of providing dental services to certain disabled individuals but not to others violates the ADA, 42 U.S.C. § 12132, and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

200. Recent revisions to the Manual do not moot or otherwise affect Plaintiffs' Third Claim For Relief because Defendant retains complete discretion to revoke, or otherwise modify, the voluntary changes contained in the Revised Manual.

201. If legally effective, Defendant's policy in the Prior Manual and the Revised Manual of providing certain dental services to some disabled individuals and not others violates the ADA, 42 U.S.C. § 12132, and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

FIFTH CLAIM FOR RELIEF

VIOLATIONS OF THE REHABILITATION ACT

202. Plaintiffs repeat and reallege each and every allegation set forth in paragraphs 1 through 201 above.

203. Defendant's provision of certain dental services to some disabled individuals but not to others violates the Rehabilitation Act, 29 U.S.C. § 794(a), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

204. Recent revisions to the Manual do not moot or otherwise affect Plaintiffs' Fourth Claim For Relief because Defendant retains complete discretion to revoke, or otherwise modify, the voluntary changes contained in the Revised Manual.

205. If legally effective, Defendant's policy in the Prior Manual and the Revised Manual of providing certain dental services to some disabled individuals and not others violates

the Rehabilitation Act, 29 U.S.C. § 794(a), and its implementing regulations, which are enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Issue a permanent injunction pursuant to 42 U.S.C. § 1983 and the Court's inherent power:

   i. ordering Defendant Zucker to provide Plaintiffs with coverage for medically necessary dental services;

   ii. enjoining Defendant Zucker from denying medically necessary dental coverage to Medicaid-eligible individuals;

   iii. ordering Defendant Zucker to update the New York State Medicaid Program Dental Policy and Procedures Code Manual to provide coverage for medically necessary dental implants, replacement dentures, root canals and crowns;

   iv. ordering Defendant Zucker to issue an Informational Letter ("INF") informing local social services districts and Medicaid managed care plans of the coverage changes in paragraphs (ii) and (iii) above;

B. Enter a declaratory judgment declaring that:

   i. Defendant's exclusion from the scope of Medicaid coverage of certain types of medically necessary dental services violates the Medicaid Act, which is enforceable pursuant to 42 U.S.C. § 1983;

   ii. Defendant's exclusion from the scope of Medicaid coverage of certain types of medically necessary dental services for some disabled individuals

but not others violates the ADA and the Rehabilitation Act, which is enforceable pursuant to 42 U.S.C. § 1983.

C. Award Plaintiffs costs and disbursements, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and

D. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Dated: November 12, 2019
New York, New York

Respectfully submitted,

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