

NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
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Cleveland, Ohio 44113

Court of Common Pleas

New Case Electronically Filed: COMPLAINT
August 18, 2025 12:31

By: MATTHEW A. MOONEY 0093332

Confirmation Nbr. 3588367

ESTATE OF MARY GRANT DECEASED THROUGH ESTATE REPRE

CV 25 122979

vs.

Judge: JOY KENNEDY

UNITEDHEALTH GROUP INCORPORATED, ET AL

Pages Filed: 50

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF MARY GRANT, DECEASED Through Estate Representative Yolanda Phillips c/o Michael Hill Trial Law 815 Superior Avenue, Suite 623 Cleveland, Ohio 44114 Plaintiff, vs. UNITEDHEALTH GROUP INCORPORATED 9900 Bren Road East Minnetonka, MN 55343 and UNITEDHEALTHCARE, INC. 9800 Health Care Lane Minnetonka, MN 55343 and UNITEDHEALTHCARE OF OHIO, INC. c/o Registered Agent: CT Corporation System 4400 Easton Commons Way, Suite 125 Columbus, OH 43219 and UNITEDHEALTHCARE INSURANCE COMPANY c/o Registered Agent: C T Corporation System 357 East Center Street, Ste. 2 J, Manchester, CT, 06040 and UNITED HEALTHCARE SERVICES, INC. 9700 Health Care Lane Minnetonka, MN 55343	CASE NO.: JUDGE: **COMPLAINT** **WITH JURY DEMAND**

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and)
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OPTUM, INC.)
11000 Optum Circle)
Eden Prairie, MN 55344)
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and)
)
OPTUM CARE NETWORKS, INC.)
c/o Registered Agent:)
CT Corporation System)
4400 Easton Commons Way, Suite 125)
Columbus OH 43219)
)
and)
)
OPTUM CARE, INC.)
c/o Registered Agent:)
CT Corporation System)
4400 Easton Commons Way, Suite 125)
Columbus OH 43219)
)
and)
)
OPTUMHEALTH CARE SOLUTIONS, INC.)
c/o Registered Agent:)
CT Corporation System)
4400 Easton Commons Way, Suite 125)
Columbus OH 43219)
)
and)
)
OPTUMINSIGHT, INC.)
1 Optum Circle)
Eden Prairie, MN 55344)
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Defendants)
)

Plaintiff, the Estate of Mary Grant, Deceased, through Estate Representative, Yolanda Phillips, for this Complaint against the above-named Defendant(s), states and avers upon information and belief:

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INTRODUCTION

1. This action involves multiple claims (negligence, breach of contract, breach of duties of good faith and fair dealing, insurance bad faith, civil conspiracy, fraud, and wrongful death) involving the Defendants' fraudulent scheme to deprive their insured, Mary Grant, life-saving medical care through policies and programs that incentivized and rewarded her nursing home, Harvard Gardens Rehabilitation & Care Center, for "treating in place" instead of sending her to the emergency department after sustaining life-threatening injuries, which led to Mary Grant's untimely and wrongful death on August 19, 2023.

2. Plaintiff has filed suit against the medical providers referenced throughout this Complaint for their roles in the events which led to Mary Grant's wrongful death. This case is before Judge Nancy Fuerst of the Cuyahoga County Court of Common Pleas, Case No. CV-24-101958. Plaintiff incorporates by reference here all statements of fact and allegations contained in the Complaint, Amended Complaint, and Second Amended Complaint filed in the above-referenced matter, and shall join this action to the above-referenced matter upon initiation.

3. The nursing home at issue in Case No. CV-24-101958, Harvard Gardens Rehabilitation & Care Center ("Harvard Gardens"), followed the scheme and directions of the Defendants and kept Mary Grant at their facility, despite her need for emergency medical attention, in order to obtain contractual incentive payments from Defendants designed to minimize hospitalizations and "utilization." This caused the untimely death of 70-year-old Mary Grant.

4. In 2003, the Department of Health through the Centers for Medicare and Medicaid Services ("CMS") authorized the creation of Medicare Advantage Plans for

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individuals with special needs, including institutionalized individuals – people living in a nursing home or long-term care facility. These Special Needs Plans ("SNP") were intended to meet the specialized care needs of the individuals who qualified for the plans. The specialized plans designed specifically for individuals admitted to nursing homes were termed Institutionalized Special Needs Plans or "ISNP."

5. Following CMS' authorization of the creation of ISNP insurance coverage, Defendants created an ISNP insurance product for elderly nursing home residents who qualified for Medicare Advantage insurance. Defendants' ISNP insurance was for patients who: (1) are eligible Medicare Part A; (2) are enrolled in Part B; (3) require a level of care that is usually provided in a nursing home; (4) are currently living in a nursing home that has a contract with the Defendants; (5) have no active discharge plans; and (6) do not have End-Stage Renal Disease at the time of enrollment.

6. Defendants' ISNP coverage not only ostensibly provided insurance coverage for its members, but also heavily incentivized nursing homes like Harvard Gardens to participate in the plan through direct incentive payments made to the nursing homes which contracted with Defendants under various programs that assessed multiple metrics of performance for the nursing homes.

I. Defendants' incentive programs to avoid hospitalizations for ISNP-enrollees, and aggressive illegal sales and solicitation practices to increase enrollee numbers.

7. Defendants created entire departments and teams of employees and agents nationwide intended to maximize enrollment in the ISNP program by nursing homes like Harvard Gardens and their residents. These agents and employees of the Defendants operated as a sales force, heavily promoting the ISNP insurance product to nursing homes and their residents for the purpose of generating revenue for the Defendants.

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8. By 2017, Defendants enrolled 61,694 beneficiaries nationally in their various ISNP insurance products.[1]

9. Defendants drafted an ISNP Agent Training Book ("the Training Book") to train their sales force agents and employees to pitch the ISNP insurance product to nursing homes like Harvard Gardens, which summarizes the "Value of the CarePlus Care Model" to the nursing home as:

a. We provide an added level of care and facility education and support.

b. On-call for evening, holidays and weekends available.

c. Increased efficiency: skilled benefit without the CMS required 3-day qualifying hospitalization.

d. Better communication and enhanced documentation: facilitates communication among care team members and physicians. Supports state survey process and corrective action plans.

e. Improved reimbursement: reimbursement for 4 CPT codes not currently covered by Medicare.

f. Maintain resident satisfaction: care model helps supplement physician visits and avoid unnecessary transfers to the hospital.

10. When a nursing home (including skilled nursing facilities, or "SNFs") such as Harvard Gardens contracts with the Defendants, OptumCare, a health services company which is affiliated with and a subsidiary of the Defendants, provides the nursing home with on-call nurse practitioners and physician assistants to care for their enrollees.

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[1] McGarry BE, Grabowski DC. *Managed care for long-stay nursing home residents: an evaluation of Institutional Special Needs Plans.* Am J Manag Care. 2019 Sep;25(9):438-443. PMID: 31518093.

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11. The care provided by the Nurse Practitioners and Physician Assistants benefits both the UnitedHealth Defendants and the nursing facilities. As explained in the Training Book:

> "The UnitedHealthcare Nursing Home Plan supports census stability for the long term population with a treat-in-place care model because members receive skilled care without leaving the SNF. The care model reduces unnecessary transfers to the emergency room or hospital admissions, resulting in the reduction of empty beds or the potential to lose residents to other SNFs once they are discharged from the hospital."

12. Additionally, contracting with the Defendants provides potential additional revenue streams for the nursing home. As the Defendants explain in their Training Book, the contracts "provide the SNF with the ability to receive revenue above and beyond what they would get with Traditional Medicare. A SNF can bill for additional items in Part A and Part B and get reimbursed by UnitedHealthcare."

13. Traditional Medicare Part A covers skilled nursing care provided in a skilled nursing facility under certain conditions for a limited time. The patients must have a qualifying hospital stay, defined as a three-day inpatient midnight stay in an acute care hospital. Once the patient qualifies, the Part A services are reimbursed under a prospective payment system that pays the skilled nursing facility a daily rate and a daily room charge based on the resource utilization group (RUG) for which the patient is classified. The more skilled the services the patient needs, the higher the RUG, and the greater the reimbursement. If a patient leaves the hospital after only two days, the patient would not qualify for Medicare Part A skilled nursing services. If the patient leaves the skilled nursing facility or refuses daily skilled care resulting in a break of more than 30 days, the patient would need a new 3-day acute care hospital stay to qualify for additional skilled nursing facility care reimbursed under Part A.

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14. By comparison, under a Medicare Advantage ISNP, the Defendants contract with CMS to provide the primary care, skilled care, hospital care, and referral services for each enrolled beneficiary. The Defendants receive a per-member, per-month capitated payment that is supposed to cover the enrolled beneficiary's care. The Defendants then, in turn, pay the nursing homes pursuant to the contracts negotiated.

15. Defendants' profit is derived from the amount of the capitated payments which is left over after the amount spent on their members' healthcare needs, creating a profit motive for Defendants to minimize the amount actually spent on members' medical treatment.

16. As the Training Book explains, the Medicare Advantage ISNP "results in payment options & financial incentives that are not usually offered to facilities." For example, the Training Book lists the following types of payment options and incentives:

a) Payment of fees for delivering on-site care when hospitalization can be avoided

b) Reimbursement for skilled days and intensive service days as medically necessary without the required 3-day hospital stay

c) Additional programs in which facilities can participate

17. Defendants' ISNP coverage, by virtue of being Medicare Advantage insurance plans, is typically a primary source of coverage for hospitalization of their insureds – resulting in substantial hospital bills for the Defendants to pay whenever an insured was sent to the hospital. This created a direct monetary incentive for the Defendants to minimize hospitalizations for their insureds, even where this placed insureds in danger of serious harm or death as a result of delayed medical treatment.

18. Defendants directly financially incentivized nursing homes including Harvard Gardens to "treat-in-place" and avoid hospitalization of Defendants' insureds by

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incorporating a system of quality metrics into their insurance contracts with nursing homes such as Harvard Gardens, including the "admissions per thousand" metric which tracked the number of times nursing homes sent Defendants' insureds to the hospital, and provided tiered payments to nursing homes which had the lowest number of "admits per thousand" – i.e. the lowest number of times the Defendants' insureds were sent to the hospital. Defendants called this scheme for incentive payments the "Premium Dividend Program."

19. Defendants aggressively marketed the ISNP plans to nursing homes including Harvard Gardens, encouraging nursing homes to audit their own residents to provide lists of residents who qualified for ISNP plans to Defendants' sales teams, including residents' HIPAA-protected health information such as face sheets and other portions of their medical records, so that Defendants could illegally directly solicit the nursing home residents to enroll with the ISNP plans.

20. Defendants' sales teams pressured nursing homes to assist in enrolling their residents in the ISNP insurance by threatening that if they could not achieve a large percentage of "penetration" – or share of all the Medicare Advantage plans held by the nursing home's residents – that the Defendants would not contract with the nursing facility to provide the ISNP coverage at all.

21. In most instances, neither the patient nor their responsible party would have any idea that the nursing home had improperly provided this private health information to the Defendants in exchange for the opportunity to contract with the Defendants, secure additional funding, and obtain the services of a dedicated Optum nurse practitioner.

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22. The Defendants would also ask the nursing home to directly solicit the family members on behalf of the UnitedHealth Defendants in clear violation of State and Federal regulations barring direct solicitation of nursing home residents for Medicare Advantage plans.

23. An additional incentive for nursing homes including Harvard Gardens to participate in Defendants' illegal efforts to directly solicit and enroll residents like Mary Grant in their ISNP coverage was that Defendants would offer 24-hour-a-day, 7-day-a-week medical provider service coverage through nurse practitioners employed by the Defendants, which the nursing home staff were encouraged to consult with concerns about changes in the Defendants' insureds' medical condition.

24. Defendants encouraged nursing homes including Harvard Gardens to utilize the nurse practitioners Defendants provided, even to the exclusion of residents' primary care providers and in lieu of sending residents directly to the hospital, if the nursing homes' staff had concerns about Defendants' insureds' medical condition.

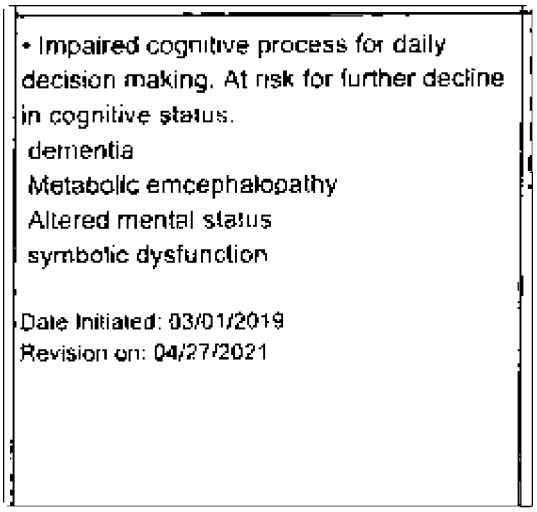
25. Defendants also compensated nursing homes, including Harvard Gardens, to contact Defendants' nurse practitioner employees before transferring ISNP-enrolled residents to the hospital. Defendants termed the nursing homes' failure to do so an "Untimely Optum Notification" or "Bypass" which would result in decreases in incentive payments to the nursing home.

II. Defendants' fraudulent and illegal solicitation of Mary Grant to become an ISNP-enrollee in spite of her known cognitive impairment.

26. On February 28, 2019, Ms. Grant was admitted to Harvard Gardens for long-term care for dementia. Upon admission, Ms. Grant was a Medicare recipient and had a Medicare Advantage insurance plan offered by Anthem BlueCross.

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27. On or about November 1, 2022, Defendants, either through their sales agents and employees or through the employees of Harvard Gardens acting illegally on Defendants' behalf for Defendants' benefit and at Defendants' direction, fraudulently induced Ms. Grant to agree to enroll in their ISNP coverage. At that time, Ms. Grant suffered from impaired cognitive function due to her dementia and was incapable of making an informed decision regarding her health insurance coverage:


• Impaired cognitive process for daily decision making. At risk for further decline in cognitive status.
dementia
Metabolic emcephalopathy
Altered mental status
symbolic dysfunction

Date Initiated: 03/01/2019
Revision on: 04/27/2021

Mary Grant's medical chart at Harvard Gardens reflecting her impaired cognition and decision making.

28. Ms. Grant's daughter and medical power of attorney, Yolanda Phillips, was never consulted by Harvard Gardens or the Defendants regarding this change of Medicare Advantage providers from Anthem BlueCross to Defendants' ISNP coverage, and was completely unaware of the change until after her mother's passing.

29. Defendants knew that Mary Grant suffered from dementia with impaired cognition and decision making, and knew Mary Grant was incapable of making an informed decision regarding her health insurance coverage at the time Defendants' agents

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and employees and/or the agents or employees of Harvard Gardens illegally solicited Mary Grant to enroll in Defendants' ISNP insurance product.

30. The Defendants' agents and employees represented to the families of nursing home residents and the residents themselves who Defendants intended to enroll in the ISNP insurance product, including Mary Grant, that the ISNP product would provide insurance coverage to pay for the necessary treatment to meet their medical needs, including emergency treatment and hospitalizations in the event the resident needed such treatment.

31. The Defendants' agents and employees represented to the families of nursing home residents and the residents themselves who Defendants intended to enroll in the ISNP insurance product, including Mary Grant, that through Defendants' ISNP product and its "CarePlus Model" that the residents would have 24-hour-a-day, 7-day-a-week access to nurse practitioners employed by the Defendants to consult with the nurses providing care to the resident at the nursing home to ensure the residents' medical needs are promptly met, including emergency medical needs.

32. Defendants made the above representations to nursing home residents and their families, including Mary Grant, with the intent to induce them to enroll in the Defendants' ISNP insurance product, directly resulting in increased revenue for the Defendants in the form of capitated payments from CMS per enrollee, insurance premiums from residents, and rebate payments from CMS.

33. At all times relevant, Defendants knew that the above representations made to nursing home residents' families and the nursing home residents themselves, including Mary Grant, were entirely false and that in fact the Defendants' ISNP product in general and the CarePlus Model in particular were designed by Defendants to prevent their

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enrolled members from receiving emergency medical treatment including admission to the emergency department and/or being sent out for hospitalization.

34. At all times relevant, Defendants knew that in fact the ISNP product in general and the CarePlus Model in particular were designed by Defendants to allow Defendants' nurse practitioner employees to intercept medical decision-making from the residents' doctors and primary care providers, with the intent to enter "treat-in-place" orders for the ISNP-enrolled residents and avoid hospitalizations – even when the residents' conditions required hospitalization or emergency medical treatment.

35. At all times relevant, Defendants knew and intended that their nurse practitioner employees behaved more like adjusters than care providers, interjecting themselves directly into the medical decision-making process for Defendants' insureds to not just deny payment for covered hospitalizations and emergency medical treatment, but to prevent hospitalizations and emergency department admissions from happening entirely – thus eliminating any possibility for Defendants to be obligated to pay for this treatment.

36. At all times relevant, Defendants knew that the financial incentives offered to the nursing homes of their ISNP members, including Harvard Gardens, through the "Premium Dividend Program" and other financial incentive programs relying on "admits per thousand" metrics would result in nursing homes and their nurses willfully choosing not to send ISNP-enrolled residents to the hospital or emergency department even when the residents' conditions necessitated hospitalization and/or emergency medical treatment.

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37. As a direct result of Defendants' false, misleading, and fraudulent misrepresentations, Mary Grant was induced to enroll in Defendants' ISNP insurance product. After Mary Grant's fraudulently-induced enrollment in Defendants' ISNP insurance product, Harvard Gardens applied copious conspicuous labels throughout Ms. Grant's medical chart indicating she was an "Optum" patient anywhere her name appeared:

Harvard Gardens Rehabilitation & Care Center

Resident: Grant, Mary (OPTUM)

Date Range: 8/1/2023 to 8/31/2023

Resident: Grant, Mary (OPTUM) (100607)	Diagnosis Date Ra		
Diagnosis	Date	Rank	Created By/ Date
Grant, Mary (OPTUM) (100607) - Discharged			
ALTERED MENTAL STATUS, UNSPECIFIED (R41.82)	02/28/2019	Other Diagnosis #5	bfoster 03/01/201

38. The intent of clearly and conspicuously labeling Mary Grant's chart with "Optum" was to ensure that Harvard Gardens' nurses were aware that they must contact the Defendants' nurse practitioners to consult on Mary Grant whenever she had a change in condition, or required emergency medical treatment, before contacting her primary care provider or sending her to the hospital.

III. Defendants financially incentivize their nurse practitioners to issue "treat-in-place" orders to prevent hospitalizations, and reduce compensation for those who send too many residents to the hospital.

39. Defendants provided their nurse practitioners with a ISNP Clinical Manual (the "ISNP Playbook"), which provided requirements for how Defendants' nurse

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practitioners would respond when nursing homes contacted them for consultation on an ISNP-enrollee who was experiencing a change in condition ("CIC") and/or emergency medical condition. The ISNP Playbook required that:

a. The "Advanced Practice Clinician" or "APC" -- i.e., a nurse or physician's assistant, receives a call that a patient has had a CIC;

b. The APC provides immediate diagnostic testing, orders, and/or treatment if needed;

c. The APC assesses the patient within 24 hours of the CIC and makes a differential diagnosis;

d. The APC calls the Optum Clinical Service Manager ("CSM"), Optum Clinical Advisor ("CA"), and the Optum Regional Medical Director ("MD") to discuss diagnosis and treatment plan in the SNF/ALF/home vs. hospital;

e. The APC notifies and collaborates with the SNF's primary care physician ("PCP"), paid by Defendants;

f. The APC discusses assessment and treatment plan with the patient or person responsible for the patient ("RP");

g. The APC works with the PCP, SNF staff, and RP to determine where member will be treated;

h. The APC writes orders for care and determines if ISD/SNF benefit is appropriate.

40. This protocol can take anywhere from an hour if all parties timely respond to more than a day to complete. Nowhere does the protocol provide for medical emergencies.

41. Defendants' CSMs, CAs, and Regional Medical Directors regularly took action to reverse and interfere with Defendants' nurse practitioners' plans to hospitalize a resident and/or send the resident to the emergency room when contacted per the ISNP

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Playbook protocol, in an effort to minimize hospitalizations of Defendants' ISNP insureds.

42. The ISNP Playbook also sets forth the "Transfer Alternative Program," which is a "standardized process of collecting, assessing and reviewing information surrounding a transfer" of a resident. One of the stated aims of the program is to "reduce overall costs by avoiding unnecessary hospitalizations."

43. Defendants tracked the hospitalization or "utilization" rates of their nurse practitioners to monitor how frequently the nurse practitioners were sending Defendants' ISNP-insureds to the hospital or emergency department.

44. Defendants incentivized their nurse practitioners to prevent nursing home staff from sending Defendants' insureds to the hospital for treatment in cases of medical emergencies by ordering that nurses "treat-in-place" at the nursing home, regardless of the severity of the residents' condition or even the residents' wishes. Defendants' nurse practitioners received bonus payments which were based on maintaining a low "utilization" rate - the rate which the nurse practitioners ordered Defendants' ISNP-insureds to go to the hospital or emergency department.

45. Additionally, Defendants created disincentives for their nurse practitioners who sent ISNP-insureds to the hospital or emergency department too frequently, resulting in a high "utilization" rate. These disincentives included disciplinary action against the nurse practitioner such as placing the employee on a performance improvement plan, increased volumes of residents designed to discourage careful analysis of each resident's case and to encourage attrition of the nurse practitioner, and direct financial disincentives including reduction of Quarterly Variable Compensation for the nurse practitioner which totaled in the thousands of dollars.

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46. Defendants additionally made it a common practice to take punitive action against their nurse practitioners who reported concerns about resident safety and wellbeing related to Defendants' "treat-in-place" policy and protocols to minimize hospitalizations of Defendants' ISNP-insureds, creating a culture of silence and obedience among their nurse practitioners that minimized governmental scrutiny of Defendants' practices and resulted fatal outcomes for Defendants' ISNP-insureds.

47. Defendants knew that the culmination of the above-described protocols, financial incentives, disincentives, punitive measures and culture of silence and obedience among their nurse practitioners directly and proximately resulted in serious harm and even death to Defendants' ISNP-insureds due to delayed or denied hospitalizations and/or emergency medical treatment. Defendants maintained this model of minimizing hospitalizations and promoting "treat-in-place" orders from their nurse practitioners consulted by nursing homes for their ISNP-insureds with full knowledge that the model resulted in preventable injuries and death.

IV. Defendants financially incentivize primary care providers to allow Defendants' nurse practitioners to have "first dibs" on responding to nursing home consults on ISNP-insureds.

48. Defendants knew that if nursing home nurses contacted an ISNP-insured's primary care provider when the resident suffered a change in condition or emergency medical condition, that the primary care provider may order treatment at the hospital or admission to the emergency department instead of "treating in place," which would result in significant expense for the Defendants.

49. Defendants paid financial incentives to nursing home medical directors and area primary care providers to have "first dibs" on any consultation for a change in

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condition and/or emergency medical condition for ISNP-insureds, to ensure that Defendants' nurse practitioners could implement "treat-in-place" orders for the resident.

50. These incentive payments led to nursing home medical directors and primary care providers directing nursing home nurses to contact Defendants' nurse practitioners when an ISNP-insured had a change in condition or emergency medical condition, ensuring that "treat-in-place" orders were implemented and a hospitalization and/or emergency department admission avoided.

51. Defendants also encouraged and/or financially incentivized medical directors and primary care providers to prepare official death certificates for ISNP-insureds who died at the nursing home after "treat-in-place" orders were implemented, attributing the residents' deaths to chronic conditions and natural causes while omitting references to treatable emergency conditions and/or traumatic injuries. Defendants encouraged medical directors and primary care providers to interfere with the reporting of accidental and/or unexpected deaths of ISNP residents to county coroners and/or medical examiners to avoid tort liability and government scrutiny of Defendants' "treat-in-place" protocols that had deprived residents of life-saving treatment resulting in their deaths.

V. Defendants' aggressive efforts to convert ISNP-insureds to Do Not Resuscitate and/or Do Not Hospitalize status to avoid costly hospitalizations.

52. Nursing home residents – just like any other individual – are empowered under Ohio law to make decisions about the level of care they desire towards the end of their lives, together with their doctors and medical providers after careful consultation, who then enter orders reflecting the residents' end-of-life care decisions. These orders are called generally Do Not Resuscitate ("DNR") orders. The DNR orders are clearly

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documented in the nursing home residents' charts kept by their medical providers so that the individuals caring for the residents are aware of their end-of-life care preference.

53. DNR orders have two subsets: DNR-CC Arrest meaning the patient wishes to undergo life-saving treatment but forego resuscitation efforts in the event of cardiac arrest, and DNR-CC meaning the patient wishes to receive only care and treatment to make them comfortable but does not wish to receive life-saving treatment and/or cardiopulmonary resuscitation – also referred to as "comfort care." Ohio does not recognize a Do Not Hospitalize or "DNH" order.

54. A patient may revoke a DNR order at any time under Ohio law by simply stating to a treating physician, medical provider, or other healthcare provider that the patient no longer wishes to remain DNR status. If the DNR order was requested by a patient's power of attorney, then the power of attorney also has the same ability to revoke the DNR order at any time.

55. Defendants' nurse practitioners applied pressure to Defendants' insureds and their family to convert the residents to DNR and DNH status by engaging in repeated coercive and misleading Serious Illness Conversations – which Defendants also termed "disease trajectory conversations" – with the residents and their family. These DNR and DNH orders made it more likely that nursing homes would not send residents to the hospital in the event of a medical emergency, and instead "treat-in-place" at the nursing home. Defendants pressured their nurse practitioners to have at least three Serious Illness Conversations with each enrollee to discuss changing the enrollee's status to DNR and/or DNH.

56. Defendants even provided printouts of "patient-tested language" and "suggested surrogate language" to their nurse practitioners to be used during Serious

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Illness Conversations. Defendants' nurse practitioners were instructed that, in those conversations, they were to inform the patient that, even if they were feeling well, they might only have days, weeks, or months to live. The providers were directed to see if the patients were willing to change their code status to DNR, DNR Comfort Care, and DNH.

57. Defendants' nurse practitioners would even engage in these Serious Illness Conversations with residents like Mary Grant who Defendants knew were not in a position to alter decisions about end-of-life care due to their cognitive impairment.

58. Defendants' nurse practitioners' use of Serious Illness Conversations to aggressively convert Defendants' insureds to DNR and DNH orders resulted in Defendants' insureds not receiving life-saving treatment during medical emergencies and instead dying in place at the nursing homes – avoiding large hospitalization bills which Defendants would otherwise be responsible for paying.

59. Defendants incentivized their nurse practitioners to engage in these Serious Illness Conversations with residents and their families to convert their insureds to DNR and DNH status through performance bonuses tied to the number of residents converted to DNR and DNH status. Defendants also disciplined their nurse practitioners who did not engage in sufficient amounts of these conversations and/or who did not successfully convert enough ISNP-enrollees to DNR and DNH status.

60. Defendants circulated reports to their nurse practitioners with instructions to "target" patients who were full code and/or high risk for hospitalization according to Defendants' "Mortality Risk Assessment" tool, as well as nursing homes that had higher percentages of full-code patients than others. These reports contained lists of patients that Defendants instructed their nurse practitioners to approach and engage in Serious

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Illness Conversations, applying pressure to get the resident or resident's family to agree to converting to DNR and/or DNH.

61. Once Defendants' nurse practitioners convinced an ISNP-insured to convert to DNR and/or DNH, Defendants' nurse practitioners would never revisit the issue with the resident to give the resident an opportunity to change their DNR and/or DNH status back to "full code."

62. Defendants intended the above-described practices by their nurse practitioners to increase the number of ISNP-insureds with DNR and/or DNH status, resulting in reductions in hospitalization and emergency department admission rates with the associated expense to Defendants, because the residents' nursing home providers would note the DNR and/or DNH whenever a resident suffered a change in condition or needed emergency medical treatment, and keep the resident at the nursing home to die instead of sending them to the hospital and/or emergency department for treatment.

63. Mary Grant's daughter and power of attorney, Yolanda Phillips, elected to make her a hospice patient with DNR Comfort Care orders on or about May 14, 2021. Following this date, Ms. Grant's condition remained stable and on February 16, 2022, she "graduated" from hospice care and her DNR status was converted to DNR-CC Arrest – meaning she would receive life-saving treatment up to the point of cardiac arrest, but not resuscitation if she went into cardiac arrest:

HISTORY OF PRESENT ILLNESS

Member is a 70 year old AA female, DNR CC. Resides in locked dementia unit. Seen today sitting in w/c in hall. Pleasant and cooperative. Denies pain, chest pain, shortness of breath Denies abdominal pain. No recent falls, hospitalizations. Chart/meds/labs reviewed. No recent labs due to refusal. The facility records indicate she graduated from hospice in 2/2022. Vitals/weight stable per trends. Spoke with FSN Charlene, member is compliant with some treatment. Has been refusing all Lantus, accuchecks.

Defendants' documentation indicating Mary Grant was no longer a hospice patient, meaning she would receive life-saving care if needed.

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64. On the date she "graduated" from hospice care and on multiple occasions thereafter, Mary Grant and her family communicated to her healthcare providers through her daughter and power of attorney, Yolanda Phillips, that she wished to receive life-saving treatment in the event of a medical emergency and/or change in condition, including being taken to the hospital for testing and treatment.

65. On an undocumented date after Mary Grant "graduated" from hospice care on February 16, 2022, and following the date Defendants fraudulently induced Ms. Grant to convert her Medicare Advantage plan to Defendants' ISNP plan in November of 2022, Defendants' nurse practitioners coerced and/or misled Ms. Grant to agree to change her treatment preferences to "Do Not Hospitalize" or "DNH" through repeated disease trajectory conversations/Serious Illness Conversations, or converted her status to "Do Not Hospitalize" or "DNH" without any participation in the decision-making by Ms. Grant or her daughter and power of attorney, Yolanda Phillips.

66. Ms. Grant lacked the capacity and cognitive function to agree to a change in her end-of-life care wishes, and Defendants never consulted with her daughter and power of attorney, Yolanda Phillips, nor Ms. Grant's primary care physician prior to changing her status to DNH.

67. Defendants intended the inducement of Ms. Grant to convert her status to DNH, and/or the fraudulent conversion of her status to DNH without Ms. Grant's consent, to increase the likelihood that Ms. Grant would die-in-place at the nursing home if she suffered a change in condition or emergency medical condition, thus avoiding Defendants incurring the expense of a hospitalization and/or emergency department admission.

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VI. Defendants knew that their fraudulent ISNP practices and "treat-in-place" protocols were effective at stopping hospitalizations and decreasing expenses at the cost of their ISNP-insureds' lives.

68. Defendants knew the above-described schemes were effective at reducing hospitalization rates among their ISNP-insureds, and indeed intended to reduce the rates of hospitalizations for their ISNP-insureds whether or not they had life threatening and/or emergency medical conditions which required treatment at a hospital.

69. Compared to fee-for-service Medicare beneficiaries, Defendants' ISNP-insureds had 51% fewer admissions to the emergency department and 38% fewer hospitalizations.[2]

70. Defendants knew that these reduced rates of hospitalizations and emergency department admissions led to their ISNP-insureds suffering serious harm and death as a direct result of the delayed and/or denied treatment directly flowing from Defendants "treat-in-place" protocols.

71. Defendants' "treat-in-place" protocols and the above-described schemes to reduce hospitalizations and emergency department admissions operated as a denial of coverage for necessary and life-saving medical treatment for their ISNP-insureds, including Mary Grant, with no good-faith basis for denial and premised on nothing more than a desire to minimize expenditures for medical treatment and maximize Defendants' profits.

72. Defendants' "treat-in-place" protocols and the above-described schemes to reduce hospitalizations and emergency department admissions were a failure to deliver

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[2] McGarry BE, Grabowski DC. *Managed care for long-stay nursing home residents: an evaluation of Institutional Special Needs Plans.* Am J Manag Care. 2019 Sep;25(9):438-443. PMID: 31518093.

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contractually agreed-to insurance coverage for necessary medical treatment which their ISNP-insureds, including Mary Grant, had contracted with the Defendants to receive. This constituted a breach of the contract of insurance by the Defendants.

VII. Defendants' fraudulent ISNP practices and "treat-in-place" protocols caused the death of Mary Grant.

73. On August 17, 2023, the staff of Harvard Gardens negligently struck Ms. Grant with a laundry cart as she was sitting in her wheelchair near the nurses' station. Ms. Grant fell out of her chair to the floor, striking her head and injuring her left knee.

74. Amanda Hoose, NP, a nurse practitioner employed by the Defendants, was contacted by Harvard Gardens' staff to advise of the fall. Ms. Hoose then came to Harvard Gardens to assess Mary Grant, and noted a bump on her forehead:

Member Information

Member: MARY GRANT	**Member DOB:** 9/27/1952
Visit Type: Follow-up	**Date:** 8/17/2023
Member New or Established: Established	**Place of Service:** Nursing Facility
	How was visit completed: Face to Face
Facility: WILLOW PARK CONVALESCENT HOME	**Provider Signature:** Amanda Hoose, MSN, NP-C, 1871878199, 08/17/2023 3:57 PM

CC: Member seen for follow up visit.
HPI: Member is a 70 year old AA female. DNR CC. Resides in locked dementia unit. Seen today sitting in w/c in activities. Spoke with FSN Jennifer, states member feel out of her chair d/t dietary cart bumping her w/c. C/o bump to forehead, member refusing assessment at this time. Uncooperative at times with medications. No recent hospitalizations. Chart/meds/labs reviewed. Weight stable per trends. Spoke with FSN Alisa, member is compliant with treatment today.
Risk Level: Green

Defendants' documentation of Mary Grant's injuries on August 17, 2023, noting a bump on her forehead.

75. Defendants, as providers of health insurance coverage to elderly individuals and through their own internal actuarial analysis, knew that traumatic head injuries in the elderly are a major risk factor for subdural hematoma, or bleeding inside the patient's skull, which is often fatal if not timely detected and treated. Defendants also knew the only way to determine if a person is suffering from bleeding inside their skull after a head injury is to send them to the hospital to obtain CT or MRI scans of the head.

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76. Defendants knew that Harvard Gardens was unable to obtain scans of Mary Grant's head because – like nearly all nursing homes – Harvard Gardens did not have a CT or MRI machine. Defendants also knew that Harvard Gardens could not possibly provide the necessary treatment for brain bleeding, which requires highly specialized medical assessment and/or surgery to treat.

77. However, Defendants also knew that sending Mary Grant to the hospital and/or emergency department would result in significant expenses for the Defendants, including expenses for the head CT and/or MRI, hospitalization, and potentially surgery.

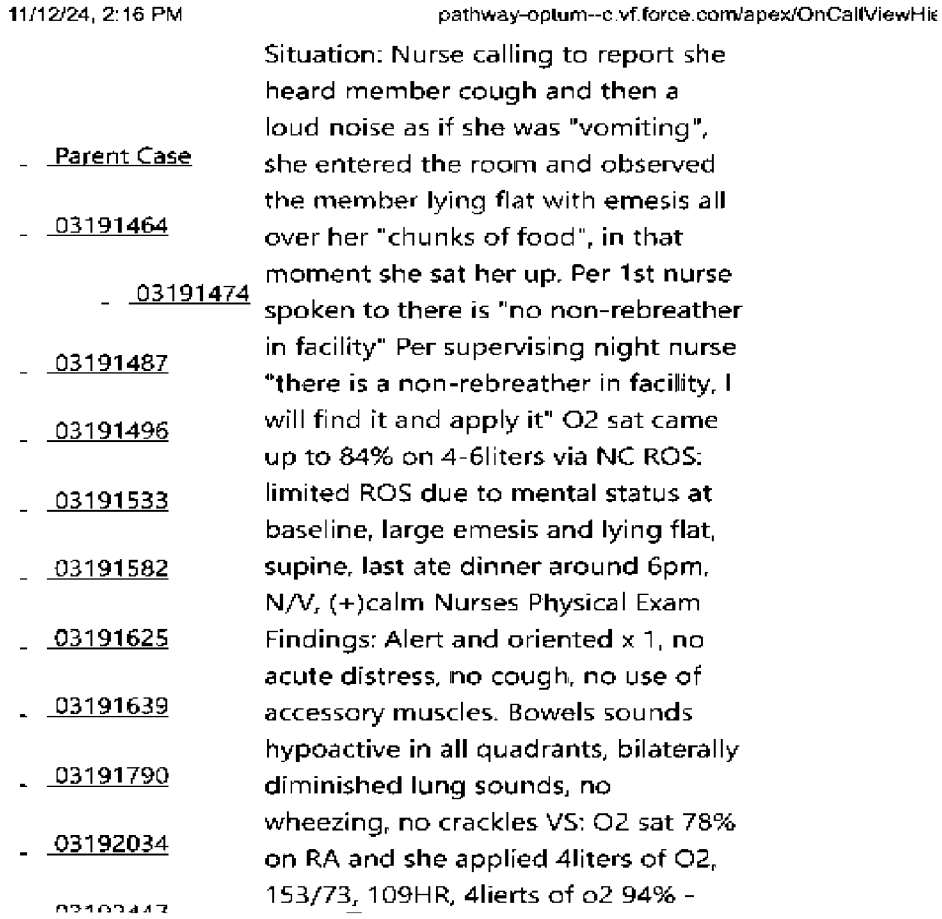
78. Defendants' employee, Amanda Hoose, acting within the scope of her employment for the Defendants and for the benefit of the Defendants, acted consistently with Defendants' "treat-in-place" protocols described above and ordered not to send Mary Grant to the emergency department for evaluation of her head injury. Amanda Hoose's decision was influenced entirely by Defendants' financial incentives for nurse practitioners like herself to maintain a low "utilization" rate and Defendants' disciplinary measures including reduced pay that came with sending too many residents to the hospital, not any medical and/or professional judgment. Amanda Hoose was acting as an insurance adjuster for the Defendants to preemptively deny Mary Grant necessary medical care covered by her insurance contract with the Defendants, not as an independent and objective medical professional.

79. Amanda Hoose then contacted Mary Grant's daughter and power of attorney, Yolanda Phillips, and communicated to her that her mother had been knocked to the floor by a Harvard Gardens staff member pushing a cart, that she sustained a head injury, but that she was not going to send Ms. Grant to the hospital for further evaluation.

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80. Ms. Grant's daughter and power of attorney, Yolanda Phillips, told Ms. Hoose that she wanted her mother transported to the hospital for evaluation to ensure that she did not have a concussion or other serious head injury. Ms. Hoose, again followed Defendants' "treat-in-place" protocols out of concern for her own financial wellbeing and to avoid disciplinary action by her employers, and denied Yolanda Phillips' request to send Ms. Grant to the emergency room.

81. At around 9pm on August 18, 2023, Harvard Gardens' staff found Ms. Grant in her room nauseous, having vomited while laying in bed and short of breath, with critically low blood oxygen saturation levels at 78% indicating critical problems with her lung function:


11/12/24, 2:16 PM pathway-optum--c.vf.force.com/apex/OnCallViewHis

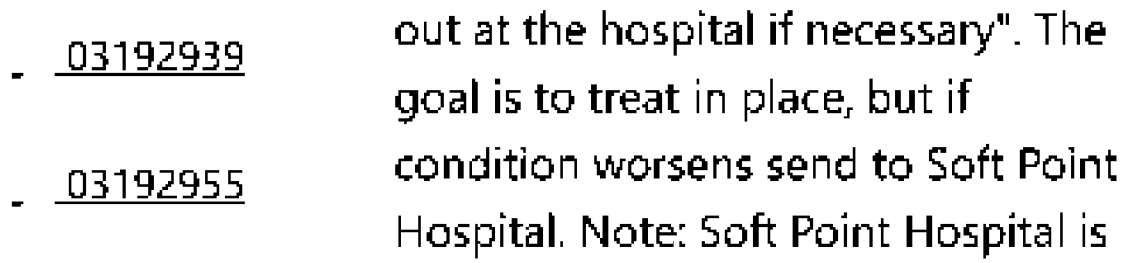
- Parent Case
- 03191464
- 03191474
- 03191487
- 03191496
- 03191533
- 03191582
- 03191625
- 03191639
- 03191790
- 03192034

Situation: Nurse calling to report she heard member cough and then a loud noise as if she was "vomiting", she entered the room and observed the member lying flat with emesis all over her "chunks of food", in that moment she sat her up. Per 1st nurse spoken to there is "no non-rebreather in facility" Per supervising night nurse "there is a non-rebreather in facility, I will find it and apply it" O2 sat came up to 84% on 4-6liters via NC ROS: limited ROS due to mental status at baseline, large emesis and lying flat, supine, last ate dinner around 6pm, N/V, (+)calm Nurses Physical Exam Findings: Alert and oriented x 1, no acute distress, no cough, no use of accessory muscles. Bowels sounds hypoactive in all quadrants, bilaterally diminished lung sounds, no wheezing, no crackles VS: O2 sat 78% on RA and she applied 4liters of O2, 153/73, 109HR, 4lierts of o2 94% -

Defendants' documentation of Mary Grant's sudden change in condition following her head injury on the night of August 18, 2023.

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82. Instead of calling 911, and consistent with the financial incentives Defendants paid nursing homes to do exactly this, Harvard Gardens' staff contacted Defendants' on-call nurse practitioner, Ariane Coyle, NP. Ms. Coyle, at all times acting within the scope of her employment with Defendants and for Defendants' benefit, did not order Ms. Grant to go to the hospital, but instead ordered Harvard Gardens to "treat-in-place" consistent with Defendants' above-described protocols:



Defendants' documentation of their decision to apply Defendants' "treat-in-place" protocol for Mary Grant on the night of August 18, 2023.

83. Ms. Coyle followed Defendants' protocols described above when she ordered not to send Mary Grant to the emergency department for evaluation of her head injury. Ms. Coyle's decision was influenced entirely by Defendants' financial incentives for nurse practitioners like herself to maintain a low "utilization" rate and Defendants' disciplinary measures including reduced pay that came with sending too many residents to the hospital, not any medical and/or professional judgment. Ms. Coyle was acting as an insurance adjuster for the Defendants to preemptively deny Mary Grant necessary medical care covered by her insurance contract with the Defendants, not as an independent and objective medical professional.

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84. Ms. Coyle then called Mary Grant's daughter and power of attorney, Yolanda Phillips, and communicated the decision to "treat in place" and not send Ms. Grant to the hospital for an evaluation.

85. According to Ms. Coyle's own notes of the call, Ms. Coyle told Ms. Phillips that her mother had "Do Not Hospitalize" orders in place. Ms. Phillips responded and made it abundantly and unequivocally clear to Ms. Coyle that she never agreed to a "Do Not Hospitalize" order, and wanted her mother to go to the hospital for an evaluation:

. 03191639 . 03191790 . 03192034 . 03192447 . 03192621 . 03192909 . 03192939 . 03192955	Yesterday she observed a bump on her mom's forehead that was sensitive and the knot in the back of her head has been there for years. Discussed ACP and wanted to confirm if she is a DNRCC, DNH Dtr states, "I have never had a conversation stating I do not want my mother to go to the hospital to be checked out, why would I even say that, I absolutely would want my mom to be checked out at the hospital if necessary". The goal is to treat in place, but if condition worsens send to Soft Point Hospital. Note: Soft Point Hospital is

Defendants' documentation of the call between Yolanda Phillips and their employee, Ariane Coyle, on August 18, 2023.

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86. Ms. Coyle, continuing to act out of concern for adhering to the Defendants' protocols to avoid hospitalization of their ISNP insureds as well as her own financial interest to keep utilization rates low, denied Ms. Phillips' adamant request to send her mother to the emergency department – falsely and fraudulently charting the conversation to make the decision appear to be one reached mutually with Ms. Phillips:

> Hospital. Note: Soft Point Hospital is where the dtr would want her mother to go for an ER evaluation if condition worsens. Dtr wants to be updated on labs results and any additional testing. Informed her that STAT labs and CXR will be ordered, informed her that the difference between hospital and facility could be tests being carried out and results Will keep her updated and will start treatment in house, she is aware of O2 level and that her mother is on a significant amount of oxygen at this time

Defendants' documentation of the call between Yolanda Phillips and their employee, Ariane Coyle, on August 18, 2023.

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87. Ms. Coyle later called Harvard Gardens' nurse caring for Mary Grant, and communicated her daughter's wishes to the nurse – documenting clearly that Ms. Phillips did not want her mother to be "do not hospitalize" status:

03191625 03191639 03191790 03192034	pleasant and was talking to the nurse per nurse report, resting in bed asleep at this time CXR not yet completed, no labs completed as of yet Updated nurse on daughter's wishes as it pertains to CIC, member is not a DNH

Defendants' documentation of the call between Harvard Gardens' nurse and their employee, Ariane Coyle, on August 18, 2023.

88. All the while that the Defendants' employees and Harvard Gardens were adhering to Defendants' "treat-in-place" protocols and trying to spare Defendants the expense of an emergency department admission, Mary Grant was in serious danger. Ms. Grant was in fact suffering from a subdural hematoma – bleeding inside her skull caused when she was knocked from her wheelchair and struck her head on the concrete floor of Harvard Gardens' facility on August 17, 2018. As the blood collected inside her skull, it began to squeeze and compress her brain, resulting in dizziness, nausea, and increased blood pressure.

89. This dizziness and nausea caused Ms. Grant to vomit while laying in bed the evening of August 18, 2023. Ms. Grant aspirated her own vomit – breathing her vomit into her lungs causing her to drown in her own vomit and preventing her body from

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getting the oxygenated blood needed to survive. The aspiration also brought bacteria from her stomach contents into her lungs, infecting her lungs with bacteria which – combined with the irritation of her stomach acid coating the sensitive tissues of her lungs – caused a rapid onset of aspiration pneumonia.

90. Mary Grant's subdural hematoma and aspiration pneumonia were both survivable emergency conditions that, if left untreated, are most often fatal. With timely admission to the emergency department to receive testing and treatment unavailable at the nursing home, Mary Grant's life would have been saved.

91. Defendants' "treat-in-place" protocols resulted in Mary Grant being left to die in place at Harvard Gardens, as her deadly subdural hematoma and aspiration pneumonia evolved and progressed unchecked until she was found dead by Harvard Gardens' staff in her bed on the morning of August 19, 2023 – mere hours after aspirating her own vomit and less than two full days after being knocked out of her wheelchair and sustaining a brain bleed.

92. The harms caused by Defendants' scheme did not stop with Ms. Grant's death. Shortly after her passing, Mary Grant's daughter, Yolanda Phillips, called the Cuyahoga County Coroner to request an investigation into the cause of her mother's death.

93. Defendants' incentive payments to the medical director of Harvard Gardens, Dr. Haithem Azem, incentivized him to take steps to ensure he personally completed Mary Grant's death certificate and avoided the county coroner taking jurisdiction of the case and making a determination on cause of her death that would potentially implicate the Defendants, Harvard Gardens, and himself.

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94. In Ohio as in most states of the Union, the county coroner has exclusive jurisdiction to determine if a person's death is "accidental" in nature. By law, county coroners must be contacted by the treating physician and informed whenever a person's death follows shortly after traumatic injury and/or suspicious circumstances.

95. Dr. Azem, acting at the explicit or implied direction of the Defendants, called the Cuyahoga County Coroner to inform them that Mary Grant had passed away from natural causes – deliberately concealing the traumatic injury on August 17, 2023, and aspiration event on August 18, 2023.

96. This plan worked, and the Cuyahoga County Coroner did not investigate Mary Grant's death. Instead, Dr. Azem was able to certify her cause of death, attributing her death to multiple unrelated chronic conditions and making no mention of the head injury or aspiration that had occurred in the preceding 48 hours:

26a. Certifier Name and Title: HAITHAM MOUAID AZEM MD		26b. License number: 35.056391	26g. Date Signed (Month/Day/Year): SEPTEMBER 27, 2023
27. Name and Address of Person who Completed Cause of Death: HAITHAM MOUAID AZEM, 88 CENTER RD, BEDFORD, OH 44146			
CAUSE OF DEATH — 28. Part I. Enter the disease, injuries, or complications that caused the death. Do not enter the mode of dying, such as cardiac or respiratory arrest, shock, or heart failure. List only one cause on each line. Type or print in permanent blue or black ink.			Approximate Interval: Onset and Death
Immediate Cause (Final disease or condition resulting in death)	a. ATHEROSCLEROTIC HEART DISEASE		YEARS
Sequentially list conditions, if any, leading to immediate cause.	b. Due to (or as Consequence of): HYPERTENSION		YEARS
Enter Underlying Cause (Disease or injury that initiated events resulting in death)	c. Due to (or as Consequence of): DIABETES MELLITUS		YEARS
	d. Due to (or as Consequence of): DEMENTIA		YEAR
Part II. Other significant conditions contributing to death but not resulting in the underlying cause given in Part I.		29a. Was An Autopsy Performed? NO	29b. Were Autopsy Findings Available Prior To Completion Of Cause of Death? NOT APPLICABLE
30. Did Tobacco Use Contribute to Death? UNKNOWN	31. If Female, Pregnancy Status: NOT PREGNANT WITHIN LAST YEAR.	32. Manner of Death: NATURAL	

Death certificate of Mary Grant prepared by Dr. Haitham Azem, medical director of Harvard Gardens, which conspicuously makes no mention of the head injury or aspiration events that occurred over the previous 48 hours.

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97. This action by Dr. Azem, performed due to the incentives offered by Defendants, frustrated any investigation into the treatment and insurance coverage decisions of Ms. Grant before her passing – reducing scrutiny of Defendants and their accomplices in the "treat-in-place" scheme.

98. Defendants' "treat-in-place" scheme and its effect on maximizing Defendants' profits at the cost of the health, safety, and lives of their ISNP-insureds like Mary Grant, are more thoroughly detailed in multiple whistleblower complaints filed by former employees of the Defendants with intimate knowledge of these schemes:

a. United States of America *ex rel.* Maxwell Ollivant v. UnitedHealth Group, Inc., et al., U.S. Dist. Ct. for the Eastern Dist. of Washington, Case No. 2:20-cv-00175-SAB.

b. United States of America *ex rel.* Brook Gonite v. UnitedHealthcare of Georgia, Inc., et al., U.S. Dist. Ct. for the Middle Dist. of Georgia, Case No. 5:19-cv-00246-MTT.

99. Any ability to appeal Defendants' decision-making relating to the "treat-in-place" scheme, or decision-making by the nursing homes and/or primary care providers incentivized by the scheme to "treat-in-place," is futile by design – the ISNP-insured is often in critical medical condition at the time of the decision to "treat-in-place" and passes away shortly after the decision is made, with no opportunity for independent review prior to their death. This was true in Mary Grant's case, and an appeal of the decision to "treat-in-place" was not possible.

100. Additionally, any attempt to appeal Defendants' employees/agents' decision to "treat-in-place" was futile in practice, as Defendants' employees were trained and incentivized by Defendants to override the demands and requests of the ISNP-insureds and their families to send the resident to the hospital by maintaining orders to

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"treat-in-place" all the same. The daughter and power of attorney for Mary Grant, Yolanda Phillips, did attempt to appeal the decision directly with Defendants' nurse practitioners, who ignored her requests to send Mary Grant to the hospital for treatment and ordered the nursing home to "treat-in-place," sealing Mary Grant's fate.

101. Plaintiff requests a trial by jury.

102. Plaintiff brings this action for compensation for the harms and losses sustained as the result of the negligence, recklessness, conscious disregard, reckless disregard, malicious, and fraudulent conduct by which—through heedless indifference to the consequences—the Defendants or their agents and employees disregarded a substantial and unjustifiable risk that the insurance provider's conduct is likely to cause, at the time when Plaintiff required life-saving emergency medical treatment and services, an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct, and other wrongful conduct described herein or discovered during litigation.

DEFENDANTS

103. UnitedHealth Group Incorporated is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as UnitedHealthcare.

104. UnitedHealthcare Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as UnitedHealthcare.

105. UnitedHealthcare of Ohio, Inc. is an Ohio corporation with its principal place of business within the state of Ohio that holds itself out to the public as a provider

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of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as UnitedHealth.

106. UnitedHealthcare Insurance Company is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as UnitedHealthcare.

107. United Healthcare Services, Inc. is a Minnesota corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as UnitedHealthcare.

108. Optum, Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as Optum.

109. Optum Care Networks, Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as Optum.

110. Optum Care, Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as Optum.

111. OptumHealth Care Solutions, Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as Optum.

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112. OptumInsight, Inc. is a Delaware corporation that holds itself out to the public as a provider of medical insurance products, including Medicare Advantage plans, through its agents, operatives and / or employees and does business as Optum.

113. The Defendants control their subsidiaries and the other identified corporations in a way that is so complete that the corporations have no separate mind, will, or existence of their own, is exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity; and injury or unjust loss resulted to the plaintiff from such control and wrong, meaning the Defendants should be held directly liable for such harms and losses.

114. The Defendants collectively own, manage, control, and/or are responsible for the UnitedHealthcare Medicare Advantage ISNP insurance product and its above-described incentive programs either directly or through their domination and control of any putative entity insurance provider(s).

VICARIOUS LIABILITY

115. The Defendants manage, control or employ the individuals who made representations to and/or sold insurance products to Mary Grant, the individuals who manage and/or administer the insurance product sold to Mary Grant, and/or the individuals who operate the insurance product's incentive program(s) for contracting health care providers.

116. The Defendants contracted with Harvard Gardens and Dr. Azem to facilitate denials of hospital and emergency medical treatment to their residents/patients, including Mary Grant.

117. The Defendants are vicariously liable for the negligent actions of their employees and agents (respondeat superior and agency liability) and/or independent

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contractors (agency by estoppel), including nurses, nursing staff, care providers, physicians and nurse practitioners contracted with any of the Defendants and / or provided to ISNP-insureds to make treatment coverage decisions including hospitalizations and emergency department admissions.

JURISDICTION AND VENUE

118. This Court has Jurisdiction over Defendant(s) because, among other things, all Defendant(s) do, and all times relevant did, purposefully avail themselves of the laws of the State of Ohio, and/or committed tortious acts within the State of Ohio.

119. Venue is proper in Cuyahoga County, Ohio under Civil Rule 3(B) because, among other reasons: (a) Defendant UnitedHealthcare of Ohio, Inc. maintains its principal place of business in Ohio and there is thus not complete diversity of parties; and (b) part of the claim for relief arose in that county.

FIRST CAUSE OF ACTION (NEGLIGENCE / RECKLESSNESS)

120. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

121. Defendants owed Mary Grant a duty of reasonable care under the circumstances and to refrain from engaging in conduct that was negligent, careless, reckless, willful and/or wanton with respect to Ms. Grant's safety.

122. The Defendants, including their employees and/or agents, failed to exercise reasonable care under the circumstances in violation of their duty to Mary Grant, which they knew or should have known was likely to result in her injuries and/or death, and their negligence was the direct and proximate cause of the injuries that Mary Grant suffered.

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123. The Defendants' failure to exercise reasonable care under the circumstances included, but is not limited to:

a. Choosing to put in place incentive programs for nursing homes that would lead to the denial of lifesaving care to residents like Mary Grant;

b. Choosing to put in place incentive programs for their agent/employee adjustors that would lead to the denial of lifesaving care to residents like Mary Grant;

c. Choosing to put in place incentive programs for primary care providers that would lead to the denial of lifesaving care to residents like Mary Grant;

d. Choosing to financially disincentivize nursing homes for sending residents out for hospitalizations and/or emergency care, which would lead to the denial of lifesaving care to residents like Mary Grant;

e. Choosing to financially punish and/or discipline their agent/employee adjustors for approving hospitalizations and/or emergency care, which would lead to the denial of lifesaving care to residents like Mary Grant;

f. Such other acts or omissions described in this Complaint or discovered in litigation.

124. These actions constituted a conscious disregard for Mary Grant's rights and safety with a great probability of causing substantial harm from this misconduct, by which—through heedless indifference to the consequences—the Defendants or their agents/employees disregarded a substantial and unjustifiable risk that the health care provider's conduct was likely to cause, at the time Defendants engaged in the misconduct, constituting an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct. The Defendants were aware of the great probability of the harm that could result from their willful, wanton, and/or reckless misconduct.

125. The Defendants' disregard for the rights and safety of residents like Mary Grant created circumstances under which it became substantially certain that serious

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injuries would result, entitling Plaintiff to awards for compensatory and punitive damages.

126. The Defendants are directly liable for their own willful, wanton, and/or reckless misconduct.

127. The Defendants are also vicariously liable for their employees' and agents' willful, wanton, and/or reckless misconduct.

128. As a direct and proximate result of the negligent and/or willful, wanton and/or reckless actions of the Defendants described above, Mary Grant sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and death.

129. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-five Thousand Dollars ($25,000.00) – or one-tenth of a percent (0.1%) of Defendants' reported Earnings from Operations for the year Mary Grant died – for conscious pain and suffering, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the Plaintiff may be entitled to and/or that the court finds is appropriate and/or equitable.

SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

130. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

131. On or about November 1, 2022, Plaintiff's Decedent, Mary Grant, entered into a contractual agreement with the Defendants to provide health insurance coverage

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under a Medicare Advantage Plan insurance product offered by the Defendants, the Medicare Advantage Institutionalized Special Needs Plan ("ISNP").

132. The Parties agreed that in exchange for health insurance premiums paid by Mary Grant, the Defendants would provide health insurance coverage to Mary Grant from November 1, 2022, onward, including but not limited to that Defendants would make payment to Mary Grant's healthcare providers for covered medical expenses incurred by Mary Grant resulting from medically necessary treatment and care she received from her healthcare providers.

133. The Parties also agreed that in exchange for health insurance premiums paid by Mary Grant, the Defendants would provide 24-hours-a-day, 7-days-a-week coverage by nurse practitioners employed by the Defendants to provide consultation on Mary Grant's care needs to her nursing home care providers. This particular duty of the Defendants under the Medicare Advantage ISNP insurance contract included a duty by Defendants that their nurse practitioners would provide consultation in Mary Grant's best interests to meet her medical needs.

134. The above-described duties of the Defendants were detailed within the Medicare Advantage ISNP coverage documents signed by Plaintiff's Decedent, and were represented to her by Defendants' agents/employees as the duties Defendants would undertake in exchange for Mary Grant's health insurance premiums at the time the agreement was executed between the Parties.

135. The Parties knew that the nature of agreeing to provide healthcare coverage to Mary Grant under the Medicare Advantage ISNP insurance contract meant that the failure of Defendants to perform their duties would result in physical harm to the

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Decedent, Mary Grant, by virtue of depriving her of access to lifesaving medical treatment.

136. Plaintiff's Decedent, Mary Grant, performed her duties under the Medicare Advantage ISNP insurance contract by paying all health insurance premiums in full at the times provided by the agreement.

137. On or about August 17, 2023, Defendants breached their duty to provide healthcare insurance coverage to Plaintiff when their agents/employees, without any acceptable cause to do so contained within the Medicare Advantage ISNP insurance contract, denied Plaintiff's requests to be sent to the hospital and receive medically necessary and lifesaving treatment following a serious head injury.

138. On or about August 18, 2023, Defendants again breached their duty to provide healthcare insurance coverage to Plaintiff when their agents/employees, without any acceptable cause to do so contained within the Medicare Advantage ISNP insurance contract, denied Plaintiff's requests to be sent to the hospital and receive medically necessary and lifesaving treatment following an episode of vomiting and aspiration leading to a serious chang in her medical condition.

139. At all times relevant, Defendants and their agents/employees were acting in their role as healthcare insurance providers and adjusters under the Medicare Advantage ISNP insurance contract entered into with the Plaintiff, not as medical care providers.

140. Defendants above-described breaches of their duties were material breaches of the contract for health insurance entered into with Plaintiff's Decedent, Mary Grant.

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141. As a direct and proximate result of the Defendants' breach of their contractual duties, Plaintiff's Decedent, Mary Grant, sustained injuries that caused her untimely and wrongful death.

142. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount in excess of Twenty-five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

THIRD CAUSE OF ACTION
(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

143. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

144. Plaintiff entered into a written insurance agreement with Defendants that provided for coverage for medical services administered by healthcare providers.

145. Pursuant to the contract, Defendants implied and covenanted that they would act in good faith and follow the law and the contracts with respect to the prompt and fair payment of Plaintiff's claims.

146. Defendants have breached their duty of good faith and fair dealing by, among other things:

a. Improperly creating a scheme to financially incentivize Plaintiff's nursing home and primary care physician to deny her life-saving and medically necessary treatment including emergency department admissions and hospitalization;

b. Improperly creating a scheme whereby the Defendants' nurse practitioners would intercept the medical decision-making of Plaintiff's health care providers to preemptively deny her life-saving and medically necessary treatment including emergency department admissions and hospitalization by implementing "treat-in-place" orders;

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c. Improperly financially incentivizing Defendants' nurse practitioners, adjusters, and other agents/employees to reduce "utilization" rates by denying her life-saving and medically necessary treatment including emergency department admissions and hospitalization by implementing "treat-in-place" orders;

d. Improperly financially incentivizing Defendants' nurse practitioners to apply coercive pressure and/or deceive Plaintiff to alter her DNR/DNH status to preemptively deny her life-saving and medically necessary treatment including emergency department admissions and hospitalizations;

e. Improperly financially incentivizing Defendants' nurse practitioners to alter Plaintiff's DNR/DNH status without her knowledge or consent to preemptively deny her life-saving and medically necessary treatment including emergency department admissions and hospitalizations;

f. Such other acts as are described within the Complaint.

147. Defendants' practices as described herein violated their duties to Plaintiff under the insurance contract.

148. Defendants' practices as described herein constitute an unreasonable denial of Plaintiff's rights to a thorough, fair, individualized, and objective investigation of each of their claims in breach of the implied covenant of good faith and fair dealing arising from Defendants' insurance agreements.

149. Defendants' practices as described herein further constitute an unreasonable denial to pay benefits due to Plaintiff in breach of the implied covenant of good faith and fair dealing arising from the Defendants' insurance agreements.

150. The Defendants' wrongful denial of Plaintiff's right to a thorough, fair, and objection investigation and a wrongful denial of claims caused harm to the Plaintiff.

151. The Defendants' intentional, willful, wanton, malicious, and/or fraudulent misconduct constituted a conscious disregard for Mary Grant's rights and safety with a

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great probability of causing substantial harm from this misconduct, by which—through heedless indifference to the consequences—the Defendants or their agents/employees disregarded a substantial and unjustifiable risk that the health care provider's conduct was likely to cause, at the time Defendants engaged in the misconduct, constituting an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct. The Defendants were aware of the great probability of the harm that could result from their intentional, willful, wanton, malicious, and/or fraudulent misconduct.

152. As a direct and proximate result of Defendants' breaches, Plaintiff's Decedent, Mary Grant, sustained injuries that caused her untimely and wrongful death.

153. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount in excess of Twenty-five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FOURTH CAUSE OF ACTION
(INSURANCE BAD FAITH)

154. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

155. Defendants used and continue to use the "treat-in-place" protocol to unreasonably refuse coverage for – and prevent their insureds from receiving entirely – medically necessary hospitalizations and emergency department admissions.

156. The "treat-in-place" protocol does not account for individuals' unique circumstances medical needs, and is designed and intended by Defendants to deny coverage that is legally guaranteed to Defendants' insureds.

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157. Defendants lacked a reasonable basis for refusing to cover and/or preventing their insureds from receiving medically necessary hospitalizations and emergency department admissions. Defendants' use of financial incentive programs for nursing homes, primary care providers, and their own nurse practitioners to implement "treat-in-place" protocols without regard for individual circumstances, doctors' recommendations, and patients' actual conditions is unreasonable.

158. Defendants' denials breach the insurance agreements with heir insureds, including Mary Grant, and are made in bad faith to save money on costly hospitalization and emergency department treatment coverage. Defendants ignored patients' medical records, individual circumstances, and even the explicitly communicated wishes of the insureds and their families while strictly adhering the "treat-in-place" protocol to deny hospitalizations and emergency department admissions.

159. Defendants knew or reasonably should have known that the "treat-in-place" protocol was not a suitable substitute for individual holistic review of Plaintiff's claims and/or medical needs. Due to the enormous increase in the number of insureds who suffered increased morbidity and death at the nursing home after "treat-in-place" orders were put in effect, Defendants have been put on notice that their "treat-in-place" protocol leads directly to serious harm and even death of their insureds. By implementing blanket "treat-in-place" orders for insured nursing home residents who suffered a change in condition and/or required emergency medical care, including Mary Grant, Defendants failed to conduct an adequate investigation before denying their claims.

160. Defendants exploited Mary Grant's vulnerable position as a nursing home resident suffering from an emergency medical condition when they denied her coverage for medically necessary emergency medical treatment by implementing "treat-in-place"

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orders, because Defendants knew that Mary Grant was likely to die before any possible appeal of this decision.

161. Defendants did not investigate or consider individual factors that affected the level of medical care Mary Grant required, the capability of the Mary Grant's nursing homes to provide that medical care, and the fatal consequences for Mary Grant if that medical care was delayed or denied entirely.

162. Defendants had no reasonable justification to implement the above-described decision to enter "treat-in-place" orders for Mary Grant and deny her medically necessary emergency medical care.

163. As a direct and proximate result of Defendants' insurance bad faith, Mary Grant suffered injuries and death.

164. Defendants have engaged in insurance bad faith and are liable to Plaintiff for any and all damages that they sustained as a result of their bad faith conduct.

165. Defendants' bad faith conduct is the actual and proximate cause of the harm sustained by Plaintiff.

166. Defendants' bad faith conduct, as alleged herein, was and continues to be malicious and intentionally designed to deprive Plaintiff and their other ISNP-insureds of their rights under the ISNP insurance agreement. Defendants knew of the dire consequences of denying elderly patients' medical treatment, yet still denied claims without any reasonable or arguable reason for doing so, recklessly and maliciously disregarding the health and lives of their ISNP-insureds, including Mary Grant.

167. The Defendants' intentional, willful, wanton, malicious, and/or fraudulent misconduct constituted a conscious disregard for Mary Grant's rights and safety with a great probability of causing substantial harm from this misconduct, by which—through

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heedless indifference to the consequences—the Defendants or their agents/employees disregarded a substantial and unjustifiable risk that the health care provider's conduct was likely to cause, at the time Defendants engaged in the misconduct, constituting an unreasonable risk of injury, death, or loss to person or property, or intentional misconduct or willful or wanton misconduct. The Defendants were aware of the great probability of the harm that could result from their intentional, willful, wanton, malicious, and/or fraudulent misconduct.

168. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount in excess of Twenty-five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

FIFTH CAUSE OF ACTION
(CIVIL CONSPIRACY)

169. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

170. Defendants had an express agreement, mutual understanding, or tacit agreement to, and/or their agents maliciously combined efforts to:

a. Defraud nursing home residents and their families by inducing them to enter into ISNP contracts for insurance coverage which the Defendants knew would not deliver payment for – and effectively deny the insured from receiving entirely – medically necessary hospitalizations and emergency treatment;

b. Financially incentivize the residents' nursing homes and primary care providers from sending the insured to the hospital and/or emergency department for life-saving and medically necessary treatment without the insured's knowledge;

c. Intercept medical decision-making from the insureds' doctors and primary care providers, with the intent to enter "treat-in-place" to avoid

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hospitalizations – even when the insureds' conditions required hospitalization or emergency medical treatment;

d. Apply coercive pressure to insureds' nursing homes, primary care providers, and Defendants' own nurse practitioners and other agents/employees to prevent any deviation from Defendants' scheme to avoid hospitalizations and/or emergency department admissions for their insureds;

e. Apply coercive pressure and mislead their insureds to change their DNR/DNH status, and/or fraudulently change their insureds' DNR/DNH status without their knowledge or consent, so that their insureds were more likely to die in place at the nursing home before going to the hospital or emergency department;

f. Compel the medical directors of the nursing homes where the insureds reside and/or the insureds' primary care physicians to hide the deadly consequences of Defendants' scheme by falsifying their insureds' death certificates to eliminate evidence of acute injuries or emergency medical conditions and attribute their deaths to unrelated chronic illness;

g. Perform all of these activities, and the activities described elsewhere in this Complaint, to enrich themselves by garnering Medicare-provided capitated payments per insured, premium payments from insureds, and rebate payments from Medicare while minimizing the expense of hospitalizations and emergency department admissions; and

h. Such other conduct as otherwise may be described in the Complaint or learned through discovery.

171. This understanding constitutes a malicious combination to injure Defendants' insureds, including Mary Grant.

172. In pursuance of this common plan or design to commit tortious acts, the Defendants actively took part in it, or furthered it by cooperation or request, or lent aid or encouragement to the wrongdoers, or ratified and adopted the wrongdoers' acts done for their benefit.

173. The conspiracy caused injury and death to Mary Grant.

174. WHEREFORE, Plaintiffs demand judgment against the Defendants, jointly, in an amount in excess of Twenty-five Thousand Dollars ($25,000.00), together with

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costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and / or equitable.

SIXTH CAUSE OF ACTION
(FRAUD)

175. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

176. The Defendants concealed facts concerning the true nature and intent of the ISNP insurance product from their insureds, including Mary Grant. The true nature and intent of the ISNP insurance product was to deny lifesaving medical treatment including hospitalization and emergency medical care by implementing the "treat-in-place" protocol resulting in the deaths of their insureds before Defendants would incur substantial expenses for covered hospitalizations and emergency department admissions.

177. Defendants knew, and in fact intended, that their ISNP insureds would receive lower rates of medically necessary hospitalizations and emergency department admissions compared to fee-for-service Medicare recipients, however concealed this information from their ISNP insureds including Mary Grant.

178. Not only did the Defendants conceal this information, they publicly and privately represented that the ISNP insurance product actually saved lives and resulted in better healthcare outcomes for their ISNP insureds in an effort to induce the family of Mary Grant and other potential customers to enroll in the ISNP insurance product.

179. These inducements were made falsely, with knowledge of their falsity, or with such utter disregard and recklessness as to whether they were true or false that knowledge may be inferred with the intent of misleading Mary Grant, and other nursing

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home residents and/or their family members into enrolling their loved ones in the Defendants' ISNP insurance product.

180. Mary Grant, and other nursing home residents and/or their family members reasonably relied on the Defendants' representations and concealments regarding the quality of the ISNP insurance product to provide coverage for medically necessary treatment including hospitalizations and emergency department admissions.

181. The result of these inducements and concealments was that Mary Grant's family, and the family of numerous other nursing home residents, allowed their loved one to be enrolled in the Defendants' ISNP insurance product.

182. Defendants knew that Mary Grant lacked the capacity to knowingly enter into the contract for ISNP coverage due to her cognitive limitations related to dementia, however induced her to enroll in the ISNP insurance product without the knowledge or consent of her daughter and power of attorney, Yolanda Phillips.

183. As a direct and proximate result of Defendants' actions, representations, and concealments, Mary Grant suffered conscious pain and suffering and death.

184. As a direct and proximate result of the Defendants' actions, representations, and concealments, Mary Grant's next-of-kin have experienced harms and losses as a result of their death, including those damages set forth in Ohio's wrongful death statute, Ohio Revised Code section 2125.02 *et seq*.

185. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount in excess of Twenty-five Thousand Dollars ($25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and/or equitable.

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SEVENTH CAUSE OF ACTION
(WRONGFUL DEATH)

186. Plaintiff(s) incorporate all other paragraphs of this Complaint as if fully rewritten herein.

187. As a direct and proximate result of the Defendants' wrongful conduct described above, Mary Grant sustained injuries that caused their untimely and wrongful death.

188. Mary Grant's next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, R.C. 2125.01 et seq., including mental anguish and grief and loss of Decedent's society and companionship.

189. WHEREFORE, Plaintiff demands judgment against Defendants, in an amount more than Twenty-five Thousand Dollars ($25,000.00) to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorneys' fees and expenses, and any other relief the court finds is appropriate and / or equitable.

A TRIAL BY JURY IS HEREBY DEMANDED

Respectfully Submitted,

/s/ Matthew A. Mooney

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