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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KERIM and ADVIJE MEMISOVSKI by their mother THERESA MEMISOVSKI, LORETTA STURDIVANT; MICHAEL SAMPSON by his mother MICHELLE SAMPSON; and JOSEPH and ADAM HASSAN by their mother MICHELLE I-IASSAN; all on behalf of themselves and all others similarly situated,	
Plaintiffs,	
v.	No. 92 C 1982 Judge Joan Humphrey Lefkow
ANN PATLA, Director of the Illinois Department of Public Aid, and LINDA RENEE BAKER, Secretary of the Illinois Department of Human Services,	
Defendants.	

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UNITED STATES DISTRICT COURT

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

NOW COME Defendants, ANN PATLA, in her official capacity as Director of the Illinois Department of Public Aid, and LINDA RENEÉ BAKER, in her official capacity as Secretary of the Illinois Department of Human Services, by their attorney, JAMES E. RYAN, Attorney General of Illinois, and in support of their FRCP 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiffs' Third Amended Complaint state as follows:

STATEMENT OF FACTS

KERIM and ADVIJE MEMISOVSKI by their mother TERESA MEMISOVSKI (in name only without any factual allegations pleaded, per agreement in the August 19, 1994 pre-trial conference); LORETTA STURDIVANT; MICHAEL SAMPSON, by his mother

MICHELLE SAMPSON; and JOSEPH and ADAM HASSAN by their mother MICHELLE HASSAN filed their Third Amended Complaint on October 30, 2000. The named defendants are ANN PATLA, the current Director of the Illinois Department of Public Aid ("IDPA") and LINDA RENEÉ BAKER, Secretary of the Illinois Department of Human Services ("IDHS"). Neither Secretary Baker nor IDHS were parties to any complaint filed in this action prior to October 30, 2000.

The factual allegations of the named plaintiffs in the Third Amended Complaint do not differ significantly from the factual allegations of the Second Amended Complaint. The factual allegations of the Third Amended Complaint for each named plaintiff are summarized below.

Plaintiff Loretta Sturdivant became pregnant in late September, 199 1. She avers that she was a high risk patient because she had a past addiction to cocaine and alcohol. (3rd Am. Compl., ¶27). Plaintiff Sturdivant had a pregnancy test performed at the north-side clinic near her home, where she had received gynecological services. The clinic performed the pregnancy test, but told Plaintiff Sturdivant that it did not provide prenatal or obstetrical services. (3rd Am. Compl., ¶28).

In early November, 1991, Plaintiff Sturdivant moved to the west-side of Chicago. (3rd Am. Compl., ¶29). She alleges that she had a difficult time finding prenatal care generally, and because she had recently been approved for Supplemental Security Insurance ("SW). (3rd Am. Compl., ¶¶29-34). Plaintiff Sturdivant called a private physician referral service she had seen on television, Prologue, but could not find a physician who would accept Medicaid payments. (3rd Am. Compl., ¶35). In March, 1992, Plaintiff Sturdivant was referred to the University of Illinois Hospital for prenatal care by a community organization, and she began receiving prenatal care from this hospital. (3rd Am. Compl., ¶36).

Plaintiff Susan Sampson for Michael Sampson lived with her husband and son, Michael, on the south side of Chicago. She and Michael began receiving Medicaid from IDPA in September, 1993. (3rd Am. Compl., ¶40). Prior to their receipt of Medicaid, Plaintiff Sampson and Michael had been covered by private health insurance through her employer until she lost her job in August, 1992. (3rd Am. Compl., 7741). Prior to becoming enrolled in Medicaid, Michael Sampson had been treated by Dr. Andrews, a pediatrician affiliated with Children's Memorial Hospital. Michael Sampson had also been treated by an ophthalmologist at Children's Memorial Hospital. (3rd Am. Compl., ¶42).

In December, 1993, after Michael Sampson was enrolled in Medicaid, Plaintiff Sampson took Michael to Dr. Andrews for immunization shots. Dr. Andrews did not accept Medicaid for payment of his services. (3rd Am. Compl., ¶43).

Plaintiff Sampson enrolled in the Healthy Moms/Healthy Kids when she enrolled in Medicaid. (3rd Am. Compl., ¶44). She told the enrollment worker that she wanted to be assigned to a doctor affiliated with Children's Memorial Hospital. The worker gave her a list of doctors affiliated with Children's Memorial Hospital who participated in the Healthy Moms/Healthy Kids program, but she was not referred to a doctor in Chicago. Instead, the doctors were located in the north and northwest suburbs. (3rd Am. Compl., ¶¶45-46).

Plaintiff Sampson alleged that IDPA did not follow-up with her to determine if Michael's medical needs were met, and that upon her further inquiry, she was told that IDPA had no record of her enrollment in the Healthy Moms/Healthy Kids program. As of August, 1994, Plaintiff Sampson had not found a pediatrician for Michael in Chicago who would accept Medicaid. (3rd Am. Compl., ¶47).

Plaintiff Michelle Hassan lives with her two sons, Joseph and Adam on the north side of Chicago. Plaintiff Hassan received Medicaid from IDPA for herself and her two children, along with Aid to Families with Dependent Children (now called Temporary Assistance to Needy Families benefits) for herself and Adam and SSI benefits for Joseph because he is disabled. (3rd Am. Compl., ¶52).

Until March, 1994, Joseph Hassan was enrolled in Chicago HMO's Medicaid coverage plan, and was treated by a psychiatrist, Dr. Goldstein. After March, 1994, when Joseph began receiving SSI childhood disability benefits, he was no longer eligible to be a member of Chicago HMO and Dr. Goldstein stopped treating Joseph because he does not accept patients on Medicaid who do not belong to Chicago HMO. (3rd Am. Compl., ¶¶53-54).

Plaintiff Hassan has attempted to find a psychiatrist and pediatrician for Joseph, but has been unable to find doctors who accept Medicaid. (3rd Am. Compl., ¶¶55-56).

ARGUMENT

THE THIRD AMENDED COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY. THE STATE OF ILLINOIS' SOVEREIGN IMMUNITY EMBODIED IN THE ELEVENTH AMENDMENT TO THE U.S. CONSTITUTION BARS ALL THE RELIEF SOUGHT.

Pursuant to FRCP 12(b)(l) and (6), a motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiffs can prove no set of facts which would entitle them to relief. Hishon v. King & Snaldinq, 467 U.S. 69, 73, 104 S. Ct. 2229, 2232 (1984). In resolving such motions, all well pleaded allegations in the complaint must be taken as true. Additionally, the complaint and all reasonable inferences must be drawn in favor of the plaintiffs. The court must conclude that the plaintiffs here cannot plead or prove any facts which

would entitle them to relief under any of the claims they assert and must, therefore, dismiss this action with prejudice. Plaintiffs raise, essentially, three claims described at Paragraphs 22 through 24 and 63 of the Third Amended Complaint. Defendants will set forth legal principles applicable to the complaint, generally, and will separately analyze each claim.

The Eleventh Amendment to the U.S. Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Eleventh Amendment evidences respect of a broad concept of state sovereign immunity which, among other things, protects an unconsenting state from suits brought by its own citizens. Hans v. Louisiana, 134 U.S. 1, 10, 10 S. Ct. 504, 505 (1890); Idaho v. Coeur d'Alene Tribe of Idaho 521 U.S. 261, 267-268, 117 S. Ct. 2028, 2033 (1997).

It is also well established that even though a state or one of its departments has not been named a party to the action, the suit may still be barred by the Eleventh Amendment. Ford Motor Co. v. Deuartment of Treasury, 323 U.S. 459, 464, 65 S. Ct. 347,350 (1945); Edelman v. Jordan, 415 U.S. 651, 663, 94 S. Ct. 1347, 1355-1356 (1974). When the suit is by private parties seeking to impose a liability which must be paid from public funds in the state treasury, then the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity even though individual officials are the nominal defendants. Ford Motor Co., 323 U.S. at 464, 65 S. Ct. at 350; Edelman, 415 U.S. at 663, 94 S. Ct. at 1355-1356. When the state is the real party in interest, the Eleventh Amendment bars the suit against state officials, regardless whether the plaintiff seeks damages or injunctive relief. Seminole Tribe of Florida v. Florida, 5 17 U.S. 44,

58, 116 S. Ct. 1114, 1124 (1996). Here, the State of Illinois is the real party in interest in respect to all the claims asserted.

A. The Class A Plaintiffs And 42 U.S.C. § 1396a(a)(30).

1. The Claims Asserted By The Class A Plaintiffs To Remedy Defendants' Alleged Violation Of 42 U.S.C. § 1396a(a)(30) And Corresponding Federal Regulations Are Barred By The Eleventh Amendment.

On October 8, 1992, the court certified plaintiff Class A as follows:

> All women in Cook County, Illinois who, on or after July 1, 1990: (a) have been, are, or will be eligible for the Medical Assistance Program ("Medicaid") established under Title XIX of the Social Security Act; and (b) have been, are, or will be pregnant and therefore have required, do require, or will require obstetrical services from a licensed medical provider.

This plaintiff class complains that the Illinois Department of Public Aid does not, in Cook County, have a Medicaid plan in effect and does not operate its Medicaid program in a manner that enlists, and does not provide methods and procedures relating to payment for care and services under its Medicaid plan sufficient to enlist, enough providers of obstetrical care to Medicaid eligible women pursuant to 42 U.S.C. § 1396a(a)(30)(A). (3rd Am. Compl., ¶¶22; 63). When suit is commenced against state officials, even if they are named and served as individuals, the state itself will have a continuing interest in the litigation whenever state policies or procedures are at stake. Idaho v. Coeur d'Alene, 521 U.S. at 269, 117 S. Ct. at 2034. Paragraphs 22 through 24 of the Third Amended Complaint acknowledge this.

Section 1396a(a)(30)(A), commonly called the equal access requirement, provides that the state plan for medical assistance must:

> provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan

(including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

The Seventh Circuit construed this statute to permit providers of medical care a private right of action, derived through 42 U.S.C. § 1983, to enforce it for payments of reimbursement that would produce a certain supply of providers of goods and services to medical assistance recipients in the marketplace. Methodist Hosnitals. Inc. v. Sullivan, 91 F.3d 1026, 1029-1030 (7th Cir. 1996). As the Seventh Circuit observed, higher levels of remuneration mean higher take home pay for physicians and other providers, but also lead to extra care for needy persons. Methodist Hosnitals, 91 F.3d at 103 1. Although section 1396a(a)(30), as construed, would appear to give medical assistance providers a remedy to secure more money to enlist more competitors, the practical effect of the decision does no such thing. In contrasting section 1396a(a)(30) with the former version of the Boren Amendment, (42 U.S.C. §1396a(a)(13) renrinted in 42 U.S.C.A. §1396a(a)(13) (1992)), the Seventh Circuit found that the determination of whether the supply of providers was adequate was placed squarely on the state, without its having to make studies or provide assurances to the federal government. Methodist Hospitals, 91 F.3d at 1030. In other words, the state is clearly empowered under the Medicaid statute to set the prices paid for services furnished to Medicaid recipients and determine for itself whether those prices are adequate. The Eleventh Amendment, apparently, was not an issue in Methodist Hospitals.

Defendants do not concede that Methodist Hospitals gives the Class A plaintiffs standing to assert the rights of physicians and other providers concerning the providers' reimbursement for services rendered through the Illinois medical assistance program. Nevertheless, all plaintiffs' claims under section 1396a(a)(30), whether for retroactive rate adjustments for providers, future rate increases for providers, or in the form of compensatory damages for recipients who failed to receive services in the past (3rd Am. Compl., ¶¶26-39), or who will in the future fail to receive services because of a dearth of providers enrolled in the Illinois medical assistance program due to inadequate reimbursement rates pursuant to section 1396a(a)(30), seek relief that is compensatory, in the form of restitution, damages, or as a direct future payment from the state treasury, and, as such, are barred by the Eleventh Amendment. Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 65 S. Ct. 347 (1945); Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347 (1974); Florida Association of Rehabilitation Facilities v. State of Florida, 225 F.3d 1208, 1219-1226 (11th Cir. 2000). The factual allegations of the named plaintiff representing the Class A plaintiffs (3rd Am. Compl., ¶¶22-39), make this conclusion inescapable.

Moreover, defendant Linda Reneé Baker is the Secretary of the Illinois Department of Human Services. (3rd Am. Compl., ¶6). The Illinois Department of Human Services did not exist at the time of the acts of which Ms. Sturdivant complains. 20 ILCS 1305/80-15; 305 ILCS 5/2-12. Defendant Baker is not alleged to have participated in the acts described in Paragraphs 26 through 59 of the Third Amended Complaint. No liability for allegedly past unlawful conduct can be visited upon Linda Reneé Baker under any theory and she must be dismissed as a defendant without further inquiry.

2. No Exceptions To The Eleventh Amendment Apply To Overcome The Prohibitions For The Class A Plaintiffs.

There are three recognized exceptions to the state's sovereign immunity. First, a state may waive the protections of the Eleventh Amendment and consent to suit in federal court. Edelman, 415 U.S. at 671-674, 94 S.Ct. at 1360-1361. Second, Congress may abrogate the state's Eleventh Amendment immunity through an unequivocal expression of its intent to do so and pursuant to a valid exercise of power. Fitzpatrick v. Bitzer, 427 U.S. 445,456, 96 S. Ct. 2666, 2670 (1976) (waiver of immunity effected through Congress' Fourteenth Amendment enforcement powers); Atascadero State Hosnital v. Scanlon, 473 U.S. 234,242, 105 S. Ct. 3 142, 3 147 (1985) (Spending Clause waiver theory). Third, Ex parte Young, 209 U.S. 123, 28 S. Ct. 44 1 (1908) established an additional exception to sovereign immunity that, under certain circumstances, allows prospective injunctive relief to restrain state officials from violating federal law even where the state itself is immune from suit under the Eleventh Amendment. None of these exceptions is applicable here.

a. The State Of Illinois Did Not Waive The Protection Of The Eleventh Amendment And Does Not Consent To This Suit.

Nothing in Illinois law evidences the state's consent to these types of cases being heard against it in this forum. Indeed, Illinois has a blanket rule of sovereign immunity set forth at 745 ILCS 5/1 which provides that "... the State of Illinois shall not be made a defendant or party in any court."

Secondly, the Seventh Circuit has held that the mere fact that the Illinois Attorney General filed an appearance to represent the state's interests is not sufficient to show consent by the state to be sued in the federal forum. Stevens v. Illinois Department of Transportation, 210

F.3d 732, 736 n. 3 (7th Cir. 2000).

Lastly, the record contains no evidence of consent on the state's part. This lawsuit had been effectively stayed from August, 1994 until mid-October, 2000. Within the time permitted to answer or otherwise plead to the Third Amended Complaint filed on or about October 30, 2000, defendants asserted the sovereign immunity defense that regardless of the manner in which they have been named and served, the State of Illinois is the real party in interest. The State of Illinois has neither consented to having these claims heard against it nor waived the protection of the Eleventh Amendment.

b. No Act Of Congress Effectuated A Waiver Of The State Of Illinois' Constitutional Immunity.

Defendants are unaware of any Act of Congress concerning the medical assistance program which contains an unequivocal indication by Congress that states accepting Medicaid funds do so on the condition they have knowingly waived their Eleventh Amendment protection. Florida Association, 225 F.3d at 1226, n. 13; College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666, 119 S. Ct. 2219, 2229-2231 (1999) (repudiating the doctrine of constructive waiver).

c. The Exception Established In Ex parte Young, 209 U.S. 123, 28 S. Ct. 441 (1908) Does Not Apply.

A state official may be subject to prospective injunctive relief. Ex parte Young, 209 U.S. 123, 28 S. Ct. 441 (1908). This is because illegal actions by the state official are not the acts of the state and do not enjoy its immunity. Ex parte Young, 209 U.S. at 159-160, 28 S. Ct. at 454. Prospective injunctive relief is barred by the Eleventh Amendment, regardless of Ex parte Young when the relief has an effect on the state treasury that is not merely ancillary, but is the essence of

the relief sought. Ford Motor Co., 323 U.S. at 464, 65 S. Ct. at 350; MSA Realty Corn v. State of Illinois, 990 F. 2d 288,293 (7th Cir. 1993). Equitable relief against a state official may be barred, Ex parte Young notwithstanding, when it in practice amounts to a money judgment against the state. Edelman, 415 U.S. at 665-667, 94 S. Ct. at 1357.

Defendants do not concede that the Class A plaintiffs present justiciable claims for prospective equitable relief. As previously stated, the only facts alleged in reference to the Class A plaintiffs concern a pregnancy which occurred in 1991, an event long since past. Even if the Third Amended Complaint can be read to assert a claim for prospective injunctive relief, it is evident that such relief would be barred under the Eleventh Amendment in light of the Seventh Circuit's construction of 42 U.S.C. § 1396a(a)(30) in Methodist Hospitals, 91 F. 3d at 1029-1030. Under Methodist Hospitals, no matter what the relief is called, the remedy would be money from the State's treasury to pay higher rates to providers. Such monetary relief is not ancillary, but is the essence of the relief sought.

B. The Class B Plaintiffs And 42 U.S.C. § 1396a(a)(30).

1. The Claims Asserted By The Class B. Plaintiffs To Remedy Defendants' Alleged Violation of 42 U.S.C. § 1396a(a)(30) And Corresponding Federal Regulations Are Barred By The Eleventh Amendment.

On October 8, 1992, the court certified plaintiff Class B as follows:

> All children (persons under the age of 18) in Cook County, Illinois who, on or after July 1, 1990 have been, are, or will be eligible for the Medical Assistance Program ("Medicaid") established under Title XIX of the Social Security Act.

This plaintiff class complains, in part, that the Illinois Department of Public Aid does not, in Cook County, have a state Medicaid plan in effect and does not operate its Medicaid program in

a manner that enlists, and does not provide methods and procedures relating to payment for care and services under its Medicaid plan sufficient to enlist, enough providers of pediatric care to Medicaid eligible children pursuant to 42 U.S.C. § 1396a(a)(30)(A). (3rd Am. Compl., ¶¶23; 63; 40-59). For all the reasons set forth in Part A(1) of this Memorandum, which defendants adopt as their arguments and authorities here, the claims of the Class B plaintiffs to enforce section 1396a(a)(30) and corresponding federal regulations are barred by the Eleventh Amendment.

2. No Exceptions To The Eleventh Amendment Apply To Overcome the Prohibitions For The Class B Plaintiffs.

There is no exception to the Eleventh Amendment into which the claims of the Class B plaintiffs would fall. For all the reasons set forth in Part A(2) of this memorandum, which defendants adopt as their arguments and authorities here, this suit to enforce 42 U.S.C. § 1396a(a)(30)(A) and the corresponding federal regulations cannot proceed under any exception to the rule of sovereign immunity embodied in the Eleventh Amendment.

C. The Class B Plaintiffs And EPSDT.

1. The Claims Asserted By The Class B Plaintiffs To Remedy Defendants' Alleged Violations of 42 U.S.C. § 1396a(a)(43) and 42 U.S.C. § 1396d(r) And Corresponding Federal Regulations Are Barred By The Eleventh Amendment.

The Class B plaintiffs, previously described, also claim that the Illinois Department of Public Aid does not have in effect in Cook County a state Medicaid plan that provides, and does not operate its Medicaid program in Cook County in a manner that provides, EPSDT services to Class B plaintiffs pursuant to 42 U.S.C. § 1396a(a)(43) and § 1396d(r). (3rd Am. Compl., ¶¶24; 63). The acronym EPSDT means "early and periodic screening, diagnostic, and treatment services." 42 U.S.C. § 1396d(r). The only allegations from any plaintiff concerning EPDST are

found at Paragraph 50 of the Third Amended Complaint. In conclusory fashion, plaintiff Michael Samspon alleged that "IDPA has failed to ensure that Michael Sampson received all medically necessary screening examinations and immunizations, in violation of Medicaid law." (3" Am. Compl., ¶50). Defendants adopt all the arguments and authorities contained at Part A(1) of this Memorandum as their arguments here and further state:

First, federal law does not confer any substantive right to have defendants ensure that EPSDT services are provided to children eligible for medical assistance. Section 1396a(a)(43) imposes no such obligation on either defendant. Section1396d(r), by its plain terms, merely defines what services are in the ambit of the acronym EPSDT, and does not create a substantive right to have defendants ensure that all possible EPSDT services have been provided. The federal laws dealing with EPSDT services simply describe the services for which federal matching funds will be made to the state and are not a mandate enforceable through the defendants that the services be provided in all instances. Stanton v. Bond, 504 F.2d 1246, 1251 (7th Cir. 1974) (Indiana state officials enjoined to "follow the law."); Woodruff v. Lavine, 417 F. Supp. 824 (S.D.N.Y. 1976); Wisconsin Welfare Rights Organization v. Newgent, 433 F. Supp. 204 (E.D. Wis. 1977).

Secondly, even if the Class B plaintiffs had a federal right to EPSDT services enforceable against the defendants, the Third Amended Complaint demonstrates that plaintiffs here only complain, in a conclusory fashion, about violations of federal law which occurred seven years ago, when plaintiff Michael Sampson was six years old. The only appropriate remedy to make plaintiff Sampson whole now for missed screening examinations or corrective treatment is compensatory damages from the state. As argued at length in Part A of this memorandum, such

retrospective relief is improper under the Eleventh Amendment.

2. No Exceptions To The Eleventh Amendment Apply To Overcome The Prohibitions For The Class B Plaintiffs In Reference To The EPSDT Claims.

Defendants adopt all the arguments and authorities set forth in Part A(2)(a) and (b) of this memorandum as their arguments here.

c. The Exception Established In Ex parte Young, 209 U.S. 123, 28 S, Ct. 44 1 (1908) Does Not Apply.

The Class B plaintiffs alleged at Paragraph 63 of the Third Amended Complaint that policies and practices described in Paragraphs 22 through 24 have violated and continue to violate plaintiffs' rights under federal law. Among other things, the Class B plaintiffs seek injunctive relief to restrain defendants from maintaining customs and practices declared to violate federal law. (3" Am. Compl. at p. 17). An allegation of an ongoing violation of federal law is ordinarily sufficient to invoke the Ex parte Young fiction. Idaho v. Coeur d' Alene, 521 U.S. at 281, 117 S. Ct. at 2040. The Ex parte Young fiction does not apply, however, when the State's special sovereignty interests are involved, Idaho v. Coeur d' Alene, 52 1 U.S. at 28 1, 117 S. Ct. at 2040, or when an examination of the relief requested demonstrates that the suit is one against the state, regardless of the designation of the parties. Idaho v. Coeur d' Alene, 521 U.S. at 296, 117 S. Ct. at 2047.

First, the gravamen of the relief sought is to require defendants to implement an EPSDT program to ensure that the Class B plaintiffs are provided services set forth in sections 1396a(a)(43) and 1396d(r). Only the State of Illinois, through funds duly appropriated from the state treasury, can furnish that relief. The relief the Class B plaintiffs seek is money from the state treasury and defendants adopt all the arguments and authorities set forth at part A(2)(c) of

this memorandum as their arguments here.

Secondly, the conclusion that the Class B plaintiffs' EPSDT claims are a suit against the state is further buttressed by the fact that the practice of the healing arts is traditionally a subject of state regulation, most notably through the state's licensing authority. See. e.g., 225 ILCS (West 1998) 60/1 et seq.; Rios v. Jones, 63 Ill. 2d 488,348 N.E.2d 825, 829-830 (1976). ("The State's inherent police power gives it the right to enact reasonable legislationto secure the public health, morals, safety or welfare. That power includes the right to establish licensing procedures for the medical profession.")

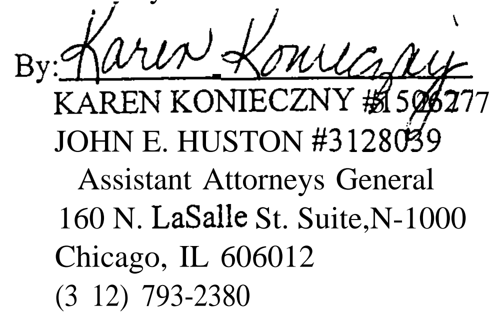
Congress did not alter or impair the state's prerogatives concerning the practice of medicine by Title XIX. See. e.g., 42 U.S.C. § 1396d. Nothing in Title XIX can be read to suggest that the federal government set the standards for the practice of medicine, that the state shall be a guarantor that health care providers furnished certain services to Medicaid eligible persons, or that Medicaid recipients utilized the services offered. There are no federal rights, privileges or immunities involved here and Ex parte Young does not apply. Idaho v. Coeur d' Alene Tribe of Idaho, 52 1 U.S. 261, 117 S. Ct. 2028 (1997); Snowden v. Hughes, 321 U.S. 1, 6-7, 64 S. Ct. 397, 400 (1944). (Rights, privileges and immunities secured by federal law do "... not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law.")

CONCLUSION

WHEREFORE, for the foregoing reasons, the Defendants, ANN PATLA, Director of the Illinois Department of Public Aid and LINDA RENEÉ BAKER, Secretary of the Illinois Department of Human Services pray that the Third Amended Complaint be dismissed.

Respectfully submitted,

JAMES E. RYAN
Attorney General of Illinois



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