

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

KELLY BOWLIN on behalf of herself and all)
others similarly situated,)

Plaintiffs,)

v.)

NANCY MONTANEZ, as the Director of the)
Nebraska Department of Health and Human)
Services,)

Defendant.)

Case No. _____

**BRIEF IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER
(Class Action)**

Plaintiff brings this action for declaratory and injunctive relief under 42 U.S.C. § 1983 on behalf of herself and a class of needy Nebraska parents and other caretaker relatives, challenging the Defendant’s refusal to provide them with Transitional Medical Assistance (TMA) once they have become ineligible for Medicaid because of their earned income. Plaintiff and the proposed class members (hereafter Plaintiffs) allege that they are covered by the language of 42 U.S.C. § 1396u-1, a section of the Medicaid Act which requires certain people to be “treated as” recipients of Aid to Families with Dependent Children (AFDC), thereby making them eligible for TMA benefits pursuant to 42 U.S.C. § 1396r-6.

Following extensive conversations with the Nebraska Department of Health and Human Services (NDHHS) prior to the filing of this action, it appears that the only dispute between the parties is whether the Plaintiffs fall within the ambit of § 1396u-1, not whether they are entitled to receive TMA if they do. By the current Motion, Plaintiffs seek a temporary restraining order requiring the Defendant to provide TMA benefits to the named Plaintiff, Kelly Bowlin.

STATUTORY AND REGULATORY SCHEME

Medicaid is a jointly funded state and federal program that provides medical services to certain low-income people pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 to 1396u. State participation in the Medicaid program is optional. However, a state that chooses to participate, and thereby receive federal matching funds for its Medicaid program expenditures, must comply with the requirements of the federal Medicaid Act. *Kai v. Ross*, 336 F.3d 650, 651 (8th Cir. 2003). *See also Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1982); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1036 (8th Cir. 2002) (finding state obligated to comply with analogous requirements of the Child Welfare Act). Nebraska has chosen to participate in the Medicaid program and accepts federal matching funds for its program expenditures.

Medicaid is not available to everyone who is poor. Rather, it only covers certain categories of needy individuals, those being children, their parents or caretaker relatives, pregnant women, the elderly and the blind or disabled. While there can be only one Medicaid program in Nebraska, states further divide the eligible populations into mandatory categories and optional categories. 42 U.S.C. § 1396a(a)(1). Among those that Nebraska must cover are children and their parents or caretaker relatives who receive Aid to Families with Dependent Children (AFDC). 42 U.S.C. § 1396a(a)(10)(a)(i)(I).

For many years, AFDC was the primary public assistance program in the United States and worked in tandem with the Medicaid program. *Kai v. Ross*, 336 F.3d 650, 651 (8th Cir. 2003). States were required to provide Medicaid to all AFDC recipients. However, in 1996 Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) which repealed the AFDC program and replaced it with a program known as Temporary Assistance to Needy Families (TANF). *Id.* With the passage of PRWORA the

TANF program was de-linked from Medicaid, and therefore, states were not required to provide Medicaid to TANF recipients. *Id.* However, Congress wanted to make certain that families similar to those receiving AFDC in 1996 would continue to receive Medicaid. *Id.* at 652. Thus, at the same time it enacted TANF, Congress amended the Medicaid Act to treat certain people as recipients of AFDC, and therefore as mandatory recipients of Medicaid under § 1396a(a)(10)(A)(i)(I). 42 U.S.C. § 1396u-1(b)(1)(A). Whether the Plaintiffs are the type of people described in this section of the Act is the issue in this case.

Nebraska has also chosen, as it is permitted to do, to provide Medicaid through an optional category to caretaker relatives who would be eligible to receive AFDC if they were sufficiently poor. 42 U.S.C. §§ 1396d(a)(ii) and 1396a(a)(10)(C). Nebraska categorizes this population as being “medically needy.” However, as is the case with its choice to participate in the Medicaid program, once Nebraska has chosen to cover an optional group, it must follow the requirements of the Medicaid Act with regard to that group just as it would if the group were a mandatory one. It is the Plaintiffs’ contention that because the Defendant chose to set the eligibility limit for the medically needy category at a lower level than the eligibility limit Nebraska used in its AFDC program in 1996, § 1396u-1(b)(1)(A) converts Ms. Bowlin and the class she seeks to represent from recipients under the medically needy optional category described in §§ 1396d(a)(ii) and 1396a(a)(10)(C) to recipients under the mandatory category described in § 1396a(a)(10)(A)(i)(I) and therefore makes them eligible for TMA.

Finally, in determining whether a family or individual is financially eligible for Medicaid, the state does not look at a person’s gross income. Rather, they look at “countable income.” Nebraska has developed what the Medicaid Act calls an “income methodology,” which describes how much of a person’s gross income the state chooses to count for purposes of determining the

person's eligibility for Medicaid. The figure that results from the application of this methodology is known as "countable income." Nebraska then measures the person's countable income against the Medicaid financial eligibility standard that it has established and reported to the federal government. If the countable income is below that standard, the family qualifies for Medicaid. If the countable income is above that standard, the family or individual is not eligible for Medicaid, and Nebraska would not be able to receive reimbursement from the federal government for the cost of providing medical assistance to such a person or family.

The Medicaid Act affords Nebraska a great deal of latitude in deciding the income methodology it will employ to determine exactly what income to count or disregard. Plaintiff contends that the "less restrictive" income methodology used by Nebraska in calculating eligibility for Medicaid under the medically needy category left Ms. Bowlin with countable income at a lower level than the eligibility level used by Nebraska in its AFDC program, thereby placing her within the ambit of § 42 U.S.C. 1396u-1.

STATEMENT OF FACTS

A. Background

Effective October 21, 2002, Nebraska changed the way it counts income when determining eligibility for the medically needy component of its Medicaid program. As a result of this change in methodology, 10,000 families were terminated from the Medicaid program. A number of families on the list to be terminated actually continued to be eligible for Medicaid under the medically needy category. This was because the Defendant chose to use a more liberal or less restrictive income methodology when calculating eligibility for the medically needy program than was used for the AFDC program in 1996 or is used for the current TANF program.

This less restrictive income methodology includes a child care disregard and a child support disregard. 468 NAC 4-007.02B.

However, as time passed, many of these caretaker relatives experienced a change in their circumstances that caused their income to exceed the medically needy income standard. These caretaker relatives were then terminated from the Medicaid program. Pursuant to 42 U.S.C. § 1396r-6, such caretaker relatives are entitled to receive transitional medical assistance, but the Defendant has not and does not intend to provide them with TMA.

B. The Named Plaintiff

Plaintiff Kelly Bowlin lives in Ogallala, Nebraska with her son Trisden who is 5 and daughter Morgan who is 3. For the past two years, Ms. Bowlin has worked as a Detailer at Bill Summers Ford of Ogallala averaging about 42 hours a week. The dealership offers health insurance to its employees, but the premium is \$450.00 a month, which is an entire paycheck for Ms. Bowlin and is therefore not an option for her.

Ms. Bowlin received Medicaid under Nebraska's medically needy category continuously from at least August of 2002 to December of 2003. In December of 2003, she received a notice that her Medicaid benefits were being terminated because the \$0.50 an hour raise she received from her employer in September of 2003 caused her countable income to exceed the income guidelines to be eligible for the medically needy program.

Even though she manages to work full time to support her family, Ms. Bowlin suffers from a serious health problem. Starting in August 2002, Ms. Bowlin began to experience constant and abnormal menstrual bleeding. Over the course of the past two years she has undergone numerous tests and tried a variety of treatments including hormone therapy. Shortly before she lost her Medicaid, a specialist detected some abnormalities in her uterus and one week

before she lost her Medicaid, surgery was performed to remove the abnormalities and stop the bleeding.

At the present time, the bleeding has not stopped and Ms. Bowlin's doctors have told her she needs to have more tests done to determine the cause of the bleeding. Without Medicaid, Ms. Bowlin cannot afford to see her doctors or undergo the additional testing. If left untreated, Ms. Bowlin's condition threatens not only her ability to work, but potentially her life.

ARGUMENT

I. DEFENDANT SHOULD BE TEMPORARILY RESTRAINED AND REQUIRED TO PROVIDE TEMPORARY MEDICAL ASSISTANCE BENEFITS TO MS. BOWLIN.

A temporary restraining order is appropriate in this case because the Plaintiffs can demonstrate (1) a threat of irreparable harm; (2) a likelihood of success on the merits; (3) that the balance between the harm to the Plaintiffs and the harm to the Defendant tips decidedly in favor of the Plaintiffs; and (4) that the injunction is in the public interest. *Dataphase Systems., Inc. v. CL Systems., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc), *followed by Randolph v. Rogers*, 170 F.3d 850, 857 (8th Cir. 1999).

A. The Loss Of Medical Assistance Is Causing Plaintiff Irreparable Harm.

The Eighth Circuit has described irreparable harm as injury for which a monetary award cannot be adequate compensation. *Baker Elec. Co-op v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994). Because the termination of Medicaid services poses grave risks to health, temporary restraining orders and preliminary injunctions are frequently granted in Medicaid cases. It is self-evident that the loss of the ability to obtain necessary medical treatment constitutes irreparable harm. *Harris v. Blue Cross Blue Shield of Missouri*, 995 F.2d 877, 879 (8th Cir. 1993).

In *Kai v. Ross*, 336 F.3d 650 (8th Cir. 2003) (preliminarily enjoining the state from refusing to provide TMA to caretaker relatives who were receiving Medicaid under Nebraska's medically needy category), the Court found "the danger to the plaintiffs' health, and perhaps even their lives, gives them a strong argument of irreparable injury." The court recognized that Nebraska would suffer fiscal injury if an injunction was entered, but found that "the injury to the State, should the preliminary injunction prove to have been erroneously granted, is not so significant as the injury to the plaintiffs." *Kai* at 656. See also *Kansas Hosp. Ass'n v. Whiteman*, 835 F. Supp. 1548, 1552 (D. Kan. 1993) (enjoining increase in Medicaid co-payments); and *Massachusetts Association of Older Americans v. Sharp*, 700 F.2d 749, 753 (1st Cir. 1983) (finding irreparable harm in the inability to acquire needed medications and treatment when Medicaid was improperly terminated). The harm addressed in *Kai* is exactly the same harm that confronts the Plaintiffs in this case.

Moreover, Ms. Bowlin, in particular has an existing serious medical condition that requires immediate treatment. The abnormal menstrual bleeding that Ms. Bowlin has been suffering with since she lost her Medicaid can be a symptom of uterine cancer. The only way for Ms. Bowlin to determine if she has cancer or some other condition is for her to undergo the testing recommended by her doctor. While the loss of Medicaid in and of itself constitutes irreparable harm, the loss of Medicaid when you require immediate medical treatment is even more devastating.

B. Plaintiff Is Likely to Succeed on the Merits.

1. Ms. Bowlin Is Among Those Described in 42 U.S.C. § 1396u-1 and Is Therefore Entitled to TMA Now That She Has Lost Her Medicaid Coverage.

The Plaintiff presents a strong likelihood of success on the merits. An examination of § 1396u-1 and the budgeting practices of the Defendant reveal that Ms. Bowlin is within the group

of people identified in § 1396u-1 as being entitled to TMA when they lose Medicaid benefits due to the amount of earned income they have.

In 1996 Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which repealed the AFDC program and replaced it with the Temporary Assistance to Needy Families (TANF) program. As noted above, following the passage of PRWORA, people did not automatically received Medicaid because they were receiving TANF, as had been the case with AFDC. However, Congress wanted to continue to provide Medicaid to people who, based on their countable income and resources, would have qualified for AFDC if that program had continued in existence. The mechanism that Congress chose to accomplish this result is important to the understanding of the current case. Section 1396u-1 does not itself authorize the provision of Medicaid benefits to anyone. Rather, as is relevant to this case, § 1396u-1(b)(1)(A) requires that people “be treated as receiving” AFDC if their income and resources are determined to be below certain defined limits. This provision creates a legal fiction, for no one in fact receives benefits from the AFDC program, which no longer exists. The significance of this legal fiction becomes clear, however, when one examines two other sections of the Medicaid Act that are critical to this case.

The first such provision is 42 U.S.C. § 1396a(a)(10)(A). Unlike § 1396u-1, this section does in fact authorize, and indeed mandate, the provision of Medicaid benefits to certain groups of people. One group that Nebraska must cover pursuant to this section is people receiving AFDC benefits. § 1396a(a)(10)(A)(i)(I). AFDC was codified in Part A of Title IV of the Social Security Act and is referred to in that manner throughout the Medicaid Act. The TANF program that replaced AFDC now occupies that same place in the Social Security Act. That is the reason for 42 U.S.C. § 1396u-1(a), which provides that all references in the Medicaid Act to Part A of

Title IV are deemed to be references to that Part as it existed on July 16, 1996, *i.e.*, to AFDC, for TANF was not yet enacted on that date. Thus by mandating in § 1396u-1(b)(1)(A) that people meeting certain characteristics “be treated as receiving” AFDC benefits, Congress was ensuring that those people would be mandatory recipients of Medicaid pursuant to the terms of § 1396a(a)(10)(A)(i)(I).

Under the terms of the Medicaid Act, there is another benefit that flows from being a recipient of AFDC and that is transitional medical assistance (TMA), the very benefit at issue in this case. 42 U.S.C. § 1396r-6(a)(1). The relevant language of this section provides:

Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid...under part A of title IV [AFDC] in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative...shall,...without any reapplication for benefits under the plan, remain eligible for [Medicaid] during the immediately succeeding 6-month period in accordance with this subsection.

Hence, Congress created the legal fiction found in § 1396u-1(b)(1)(A) not only to preserve the entitlement of certain people to Medicaid, but also to preserve, under the language of § 1396r-6(a)(1), their entitlement to TMA should they lose Medicaid because of income from employment. This point is verified by § 1396u-1(c), which specifically refers readers to § 1396r-6(a)(1). This section provides:

(2) TRANSITION IN THE CASE OF EARNINGS FROM EMPLOYMENT. –

For continued medical assistance in the case of individuals (and families composed of individuals) described in subsection (b)(1)(A) who would otherwise become ineligible because of hours or income from employment, see sections 1925 and 1902(e)(1) of this title.¹

Had Congress not chosen to create the legal fiction that it did in § 1396u-1(b)(1)(A), it would instead have had to rewrite § 1396r-6(a)(1), § 1902a(a)(10)(A)(i)(I) and numerous other

¹ These references are to the Social Security Act, not the United States Code. Section 1925 of the Social Security Act correlates to 42 U.S.C. § 1396r-6.

provisions of the Medicaid Act, all of which continue to refer to the old AFDC program. Thus, what at first might appear to have been an unnecessarily cumbersome approach is revealed, upon examination to have been remarkably efficient.

Whether or not the Plaintiffs are entitled to TMA therefore depends on whether they are among those people described in § 1396u-1(b). A comparison of the clear language of that provision to the determinations made by the Defendant in this case reveals that they are.

As discussed earlier, determining income eligibility for Medicaid consists of measuring a person's countable (essentially net) income against an income eligibility standard. Section 1396u-1(b)(1) sets forth the starting point for determining both the income eligibility standard and the income counting methodology for determining whether or not a caretaker relative will be deemed to be a recipient of AFDC, and therefore be eligible for TMA upon the loss of Medicaid because of earned income. That starting point is the income eligibility limit and the income counting methodology that the state was using in its AFDC program on July 16, 1996. 42 U.S.C. § 1396u-1(b)(1)(A) and (B).

However, for purposes of determining who will be "treated as receiving AFDC," § 1396u-1(b)(2) allows a state to vary its Medicaid eligibility standards and income counting methodologies in certain ways. As noted earlier, states may, and Nebraska does, use different income standards and different methodologies for different categories of Medicaid recipients (infants, children, the elderly, the disabled, caretaker relatives, pregnant women, etc.). Pursuant to § 1396u-1(b)(2)(A) and (B), respectively, a state may lower or raise its income eligibility standards within prescribed parameters, thereby making it more or less difficult to qualify for Medicaid. Finally, for purposes of determining how much income to count against any income eligibility limit it has adopted, a state may use a method of determining countable income that is

“less restrictive” (i.e., more liberal) than the one it was using in its AFDC program on July 16, 1996. § 1396u-1(b)(2)(C).

Nebraska uses a less restrictive methodology for determining the Medicaid eligibility of caretaker relatives under the medically needy category. This methodology involves a number of income disregards that are applied to an applicant’s gross income to determine the amount of countable income. Specifically, the Defendant uses an earned income disregard of \$100.00, a child care disregard consisting of the amount of money the family pays for child care a month and any amount the state contributes to the child care expenses for the month, a medical disregard, which includes any health insurance premiums, and a child support disregard, which disregards from the adult’s budget any child support collected. After the disregards are applied, an applicant’s countable income must fall below the medically needy income limit for a person to be eligible for Medicaid.

The medically needy income limits are set based on household size. At all times relevant to this case, the Defendant’s medically needy income eligibility limit for a given household size was lower than the income limit used for Nebraska’s AFDC program in 1996. For example, the medically needy income limit for Ms. Bowlin’s household of three is \$492.00 while the 1996 AFDC income limit for a household of three was \$673.00. 468 NAC 4-010 (effective September 8, 1993), Nebraska Administrative Code Appendix 468-000-204 (effective February 1, 2000), and 468 NAC 2-009.01E (effective February 27, 1994). Since Ms. Bowlin was determined to have countable income below the 1996 AFDC income limit, she should have been “treated as receiving [AFDC]” under the plain language of 42 U.S.C. § 1396u-1(b).

It is true, of course, that Nebraska chose to count less of Ms. Bowlin’s gross income than it would have counted under its AFDC program, but that is a choice it was free to make under §

1396u-1(b)(2)(C). Now, as a result of that choice, the Defendant must provide TMA to Ms. Bowlin because she lost eligibility for Medicaid due to her earned income.

Moreover, this case is nearly identical to *Kai v. Ross*, 336 F.3d 650 (8th Cir. 2003). The issue presented in *Kai* was whether caretaker relatives receiving Medicaid under Nebraska's medically needy category were eligible for TMA if they lost their Medicaid due to earned income. *Kai* at 652. The plaintiffs in *Kai* sought a preliminary injunction to require NDHHS to provide TMA to over 10,000 caretaker relatives who were being terminated from Medicaid due to a legislatively mandated change in the income methodology being used for Nebraska's medically needy category. *Id* at 653. The Eighth Circuit Court of Appeals, in reviewing the District Court's decision that the plaintiffs were not likely to succeed on the merits, found that the plain language of § 1396u-1 included Nebraska's medically needy caretaker relatives within the groups that are entitled to TMA and therefore, the plaintiffs were likely to succeed on the merits of their claim. *Id* at 654.

Ms. Bowlin is in an identical situation to the plaintiffs in *Kai*. She is a caretaker relative who was receiving Medicaid under Nebraska's medically needy program. The Defendant used a less restrictive income methodology to determine her eligibility for Medicaid and under this less restrictive methodology, Ms. Bowlin was deemed to have countable income below the 1996 AFDC income guideline. As a result, under the plain language of § 1396u-1, Ms. Bowlin is entitled to receive TMA if she meets the mandates of that program.

2. Ms. Bowlin Meets the Eligibility Requirements for Transitional Medical Assistance.

Once an individual falls within § 1396u-1(b) they must still meet the other eligibility requirements for TMA. 42 U.S.C. § 1396r-6(a)(1) sets out these requirements. The relevant language of this section provides:

Notwithstanding any other provision of this title, each State plan approved under this title must provide that each family which was receiving aid...under part A of title IV [AFDC] in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative...shall,...without any reapplication for benefits under the plan, remain eligible for [Medicaid] during the immediately succeeding 6-month period in accordance with this subsection.

The first requirement is that the individual be treated as receiving AFDC. As is discussed above, Ms. Bowlin falls within § 1396u-1 and should have been treated as receiving AFDC.

Second, an individual must have received at least three months of Medicaid in the six months before they were terminated. Ms. Bowlin received Medicaid continuously from August 2002 to September 2003, receiving 13 months of Medicaid before she was terminated. Finally, the individual must lose their Medicaid due to hours of or income from employment. Ms. Bowlin lost her Medicaid due to the \$0.50 raise she received from her employer in September 2003.

Clearly Ms. Bowlin falls within the ambit of § 1396u-1 and meets the eligibility requirements for TMA contained in § 1396r-6 and therefore is likely to succeed on the merits of her claim.

C. The Balance Of The Hardships Favors The Plaintiffs

The balance of the hardships tip decidedly in favor of Ms. Bowlin. Ms. Bowlin has suffered the loss of medical benefits necessary for her health, safety and continued productivity. In contrast, Ms. Bowlin, by this motion seeks only that the Defendant comply with the plain language of controlling federal law and afford her the benefits to which she is so clearly entitled. The proposed relief thus provides Defendant with an opportunity to meet her legal obligations. If, however, Defendant fails to comply with the requirements of law, the proposed relief prevents Ms. Bowlin from bearing the full brunt of the Defendant's failures. As stated by the Seventh Circuit,

Because the defendants are required to comply with the [law in question], we do not see how enforcing compliance imposes any burden on them. The Act itself

imposes the burden; this injunction merely seeks to prevent the defendants from shirking their responsibilities under it.

Haskins v. Stanton, 794 F.2d 1273, 1277 (7th Cir. 1986) (granting preliminary injunction requiring defendant's compliance with federal timeliness standards for processing food stamp applications). *See also Massachusetts Ass'n of Older Americans v. Sharp*, 700 F.2d 749, 754 (1st Cir. 1983) (In light of the strong likelihood that plaintiffs would prevail on the merits, "[d]efendant's claimed injury from the loss of public funds to ineligible individuals is, in reality, no injury at all, just a remote possibility of injury."); *Illinois Hosp. Ass'n v. Illinois Dep't of Pub. Aid*, 576 F. Supp. 360, 371 (N.D. Ill. 1983) ("Once a state has voluntarily elected to participate in the Medicaid program, . . . [it cannot] characterize its duty to comply with the requirements of [the program] as constituting a hardship to its citizens.")

Moreover, in this Circuit, budgetary harm to a state in delaying Medicaid changes has been found "not very significant in comparison to the irreparable harm that would be caused [to hospitals] and individual Medicaid beneficiaries The state is in a much better position to absorb the budgetary impact of delayed implementation of the amendment as compared to individual plaintiffs." *Kansas Hosp. Ass'n.*, *supra*, 835 F. Supp. at 1553. Changing Medicaid coverage "significantly alters the status quo to the detriment of the individual plaintiffs, while its positive budgetary impact on state coffers is negligible in a relative sense." *Id.* *See also Clarinda Home Health v. Shalala*, 1996 WL 211799 at *2 (S.D. Ia. 1996) (finding provider's interest in staying in business outweighed government's interest in protecting integrity of Medicaid program and inability to recoup overpayments).

There is other precedent in the Eighth Circuit courts for enjoining a state from denying Medicaid benefits to individuals pending a final determination of their claims. *Arkansas Med. Soc'y. v. Reynolds*, 819 F. Supp. 816, 819 (E.D. Ark. 1993), *aff'd*, 6 F.3d 519, 522 (8th Cir.

1993) (verbal order and then preliminary injunction froze a twenty percent cut in reimbursement rates meant to offset \$60 million shortfall in state's Medicaid budget); *Lutz v. Reagen*, 1988 WL 125708 (W.D. Mo. 1988) (dissolving three-year-old preliminary injunction preventing state from denying, reducing or terminating welfare benefits, including Medicaid); *Olson v. Norman*, 830 F.2d 811 (8th Cir. 1987) (sustaining preliminary injunction and summary judgment against state for terminating welfare and Medicaid benefits); and *Kai v. Ross*, 336 F.3d 650, (8th Cir. 2003) (granting a preliminary injunction against the State of Nebraska requiring them to provide TMA benefits).

D. The Injunction Is In The Public Interest.

Finally, Plaintiffs satisfy the requirement that the injunction sought be in the public interest. As this circuit has noted, enforcement of laws passed by Congress is in the public interest, even when that means enjoining allegedly illegal action by another government body. *Glenwood Bridge, Inc. v. City of Minneapolis*, 940 F.2d 367, 372 (8th Cir. 1991). *See also Heather K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1263 (N.D. Ia. 1995) (finding public interest expressed by federal legislation). Moreover, "while achieving budgetary savings is also in the public interest of state and federal taxpayers, that interest must give way if it is in conflict with federal substantive law." *Kansas Hosp. Ass'n, supra*, 835 F. Supp. at 1553. *See also Nemnich*, 1992 WL 178963 at *2.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that their Motion for a Temporary Restraining Order be granted.

Dated: June 16, 2004.

Respectfully submitted:

KELLY BOWLIN, on behalf of
herself and all others similarly
situated, Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2004 the foregoing Brief in Support of Plaintiffs' Motion for a Temporary Restraining Order was emailed in PDF format to Royce N. Harper, rharp@notes.state.ne.us and Michael J. Rumbaugh, michael.rumbaugh@hss.state.ne.us

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