

IV of the Illinois Public Aid Code, 305 ILCS 5/4-1 *et seq.*, other than the federal maximum earned income requirement.” (October 15, 2008 Memorandum Opinion and Order, at 9.)

2. In compliance with that Order, on October 15, 2008, HFS ceased submitting any vouchers to the Comptroller for payment of services rendered under the FamilyCare Program to adult participants at all income levels who are not receiving cash assistance under Article IV of the Public Aid Code (TANF). Furthermore, following entry of this Court’s April 15, 2008, order enjoining the FamilyCare Program under the emergency rule, HFS ceased submitting vouchers to the Comptroller for payments of services rendered during the pendency of the emergency rule.¹ HFS has therefore acted consistently with this Court’s mandates against expenditures.

3. As of April 15, 2008, HFS also ceased the enrollment of new participants with incomes above 133% of the Federal Poverty Level (“FPL”).

4. With respect to the status of current FamilyCare enrollees, HFS respectfully requests clarification of this Court’s Order so that it may take proper action to ensure compliance. HFS needs to know the scope of the Order so that it may identify those recipients whose benefits need to be terminated under the Order. With respect to those who are covered by the Order, HFS in conjunction with DHS will take necessary steps to determine whether such individuals qualify for any other medical assistance programs under the Public Aid Code such as those for persons with disabilities, acquired immunodeficiency syndrome, or pregnant women or whether they satisfy the TANF non-economic requirements. In order to prevent the unnecessary termination of medical assistance to those who are deemed ineligible under the Order but eligible for other medical assistance, HFS needs guidance as to the proper interpretation of the Order.

¹ The emergency rule was filed on November 7, 2007, and expired under its own terms on March 9, 2008.

5. The Court's Order is susceptible to at least two reasonable interpretations. The first possible reading, which is one that is urged by the Defendant-Intervenors and possibly acquiesced in by Plaintiff-Intervenors,² is that the Order and the injunction applies to individuals with incomes above 133% of the FPL as suggested by the fact that the Order references only 89 Ill Admin. Code 120.33, which authorizes the expansion from 133% FPL to 400% FPL but omits reference to 89 Ill. Admin. Code 120.32, which authorizes medical assistance for individuals with incomes up to and including 133% FPL. There are approximately 25,000 adult participants in the FamilyCare Program with incomes from 133% FPL to 400% FPL. The Court's mandate that HFS not expend any public funds in the name of the FamilyCare Program and the fact that 89 Ill. Admin. Code 120.32 was part of both the emergency and permanent rules and was thereby modified to move some of the existing CHIPA waiver participants to medical assistance suggests that the Order, although not final, may be construed more broadly to require that the non-economic TANF requirements apply to all recipients of medical assistance under section 5-2(2)(b), thereby affecting the benefits of approximately 536,689 individuals.³ As of December of 2007, approximately 11,220 of the 536,689 individuals received TANF and would qualify for continued medical assistance under this Court's construction of section 5-2(2)(b). The scope of the Order directly impacts the course of action that HFS needs to take with regard to transferring individuals or removing them and the time in which it can accomplish the necessary objective.

² Defendants understand from Defendant-Intervenors that Plaintiff-Intervenors admit that their challenge to the FamilyCare Program is limited to provision of benefits to persons with incomes from 133% to 400% of the FPL. However, if there is a final decision in this case interpreting section 5-2(2)(b) in the manner construed by this Court in its Opinion, Defendants will be required to apply this interpretation to all FamilyCare participants irrespective of income level.

³ Of these 536,689 individuals approximately 373,832 have incomes below 35% FPL, 137,691 have incomes from 35% to 133% FPL, 20,166 have incomes from 133% to 185% FPL, and approximately 5,000 have incomes from 185% to 400% FPL. See Ill. Dep't of Healthcare and Family Servs. Medicaid Advisory Comm. Minutes, at 6 (Jan. 18, 2008) available at <http://www.hfs.illinois.gov/assets/011808minutes.pdf>.

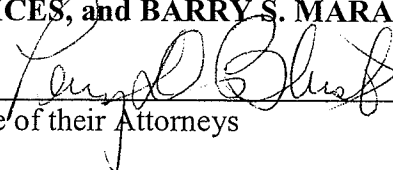
6. HFS will not bill any premiums once a person is determined ineligible. Premiums are collected for current coverage and will not be refunded.

7. Although Defendants have taken immediate measures to comply with this Court's Order, Defendants request clarification of the scope of the Order so that HFS may limit the disruption of benefits to current recipients as it continues to implement the intended mandate of this Court. Because the ability to provide services is inextricably dependent on the ability to pay providers for rendering those services, Defendants request that this Court not apply the prohibition against expenditure for services rendered to those who are determined eligible for benefits upon redetermination.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiffs' Renewed Motion for the Entry of a Compliance Order or in the Alternative for Appointment of a Compliance Monitor, clarify the scope of its Order and grant such further relief as the Court deems proper.

Respectfully submitted,

**HON. ROD R. BLAGOJEVICH, THE ILLINOIS
DEPARTMENT OF HEALTHCARE AND FAMILY
SERVICES, and BARRY S. MARAM,**

By: 
One of their Attorneys

Larry D. Blust
Marc S. Silver
Katarzyna K. Dygas
BARNES & THORNBURG LLP
One N. Wacker Dr., Suite 4400
Chicago, Illinois 60606
Telephone: (312) 357-1313
Firm ID: 32715