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# **EXHIBIT 1**



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.<sup>1</sup> 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.

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<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>2</sup> 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.

<sup>3</sup> 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>.

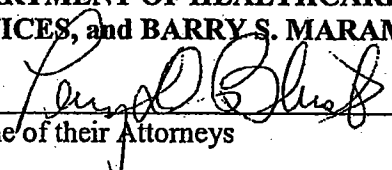
6. HFS will not bill any premiums once a person is determined ineligible. Premiums are collected for current coverage and will not be refunded.

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

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**EXHIBIT 2**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

RICHARD P. CARO, a State of Illinois )  
Taxpayer on Behalf of and for the )  
Benefit of the State of Illinois, )  
RONALD GIDWITZ, AND GREGORY BAISE, )

)  
Plaintiffs and )  
Plaintiff-Intervenors, )

Vs. )

) No. 07 CH 034353

)  
HON. ROD BLAGOJEVICH, Governor of the )  
State of Illinois; THE ILLINOIS )  
DEPARTMENT OF PUBLIC HEALTH; DAMON )  
ARNOLD, Director of IDPH; THE )  
ILLINOIS DEPARTMENT OF HEALTHCARE AND )  
FAMILY SERVICES; BARRY S. MARAM, )  
Director of IDHFS; and DANIEL W. )  
HYNES, Comptroller, )

)  
Defendants, )

)  
GREGORY JACAWAY, ROBIN JACAWAY, )  
ELISSA JESLIS, and DANIEL JESLIS, )  
Individually and on behalf of all )  
Similarly situated people, )

)  
Defendant Intervenors, )

)  
STATE OF ILLINOIS, )

)  
Intervenor. )

Record of proceedings had in the  
hearing of the above-entitled cause, before the  
Honorable JAMES R. EPSTEIN, one of the Judges of said  
Court, on November 25, 2008, in Room 2405, Richard J.  
Daley Center, Chicago, Illinois, at 2:00 p.m.

ABSOLUTE REPORTERS (312) 444-9882

A P P E A R A N C E S

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UNGARETTI & HARRIS  
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Suite 3500  
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Pro Se Plaintiff;

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On behalf of the Governor and the agencies;

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By: Mr. Daniel Lesser  
On behalf of the Defendant Intervenors.

1 THE COURT: Hello, everyone.

2 MR. KOCH: For the record, Peter Koch  
3 on behalf of the Comptroller.

4 MR. BERGETZ: Carl Bergetz on behalf  
5 of the State.

6 MR. LESSER: Dan Lesser, defendant  
7 intervenors.

8 MR. BLUST: Larry Blust on behalf of  
9 the Governor and the agencies.

10 MR. CARO: Richard P. Caro, plaintiff  
11 pro se.

12 MR. HECHT: Thomas Hecht on behalf of  
13 the plaintiff intervenors Gidwitz and Baise.

14 THE COURT: Well, thank you all for  
15 your restraint in not bringing all the minions today.

16 Tell me, what have you all concluded?

17 MR. HECHT: Well, we filed papers with  
18 you indicating that we believe that you can proceed  
19 and should proceed to adjudicate those matters that  
20 are not presently before the appellate court,  
21 non-TANF related items.

22 We believe that at least some of  
23 those, particularly with respect to premiums, don't  
24 raise constitutional issues and you are, therefore,

1 free to adjudicate those.

2 But we also think that the admonition  
3 from the Court for you not to undertake  
4 constitutional issues is not an iron-clad rule, and  
5 we think under these circumstance, that it makes good  
6 sense to reach non-TANF issues, whether or not they  
7 raise constitutional issues.

8 We find ourselves in this curious  
9 position of having a piece of the case, the  
10 TANF-related piece of the case up on appeal and  
11 stayed and what we believe to be an unlawful program  
12 continuing while considerable and serious substantive  
13 critiques of the program remain on hold for an  
14 indeterminate period of time. We don't think that's  
15 the most prudent way to proceed.

16 THE COURT: Well, let me ask you this,  
17 Mr. Hecht.

18 If, for example, I accept your view  
19 and I begin to reach constitutional issues, and if my  
20 ruling on the TANF issues is upheld, haven't I then  
21 done just what I'm -- and we are all admonished not  
22 to do, by reaching an unnecessary constitutional  
23 issue?

24 MR. HECHT: Well, I don't know that --

1 you know, I think the key operative phrase in that is  
2 "unnecessary." And under these circumstances, I  
3 think it is desirable, perhaps not necessary, but  
4 certainly prudent for you to reach those issues,  
5 notwithstanding the fact that you may be affirmed on  
6 the TANF issues on appeal.

7 THE COURT: So you're urging me out on  
8 the plank in what appears to be, to me at least, a  
9 clear violation of the Supreme Court's rule.

10 MR. HECHT: I don't think that --

11 THE COURT: I understand you say you  
12 don't think it is, but I have to tell you that I  
13 respectfully disagree.

14 Because the whole purpose of the rule,  
15 what underlies the rule, is that the Supreme Court  
16 has told us, and the trial courts as well as the  
17 appellate courts, that they don't want judges of the  
18 inferior courts -- and that is a term of art, it  
19 doesn't evidence a lack of respect for those of us  
20 who serve there -- but they don't want us to be  
21 making constitutional determinations where it's not  
22 absolutely necessary.

23 And that is, after all, what they  
24 themselves do when they decide cases. They look

1 first as to whether there is a non-constitutional  
2 basis for reaching those issues. So they're really  
3 telling to do exactly what they do, and they don't  
4 what us to do what they don't do.

5 It strikes me that what you're  
6 inviting me to do is something that really flies in  
7 the face of our direction. And I understand that  
8 it's offered with respect and thoughtfully, but I  
9 can't say that I agree with that.

10 MR. HECHT: There are two things, and  
11 I understand that the Court has ruled, but just so  
12 that the record is clear.

13 We believe that there are issues that  
14 are not constitutionally related particularly  
15 relating to whether the premiums were authorized or  
16 not that would permit you to adjudicate that piece of  
17 this without reference to a constitutional issue.

18 And I think that we feel that this is  
19 one of those circumstances where you could, indeed,  
20 reach the constitutional issues, and to not do so  
21 would be ultimately an imprudent expenditure of all  
22 our time since we're going to have to reach those  
23 issues at some point.

24 THE COURT: Any of the rest of you

1 lawyers have anything you'd like to add on this  
2 issue?

3 MR. BLUST: We also submitted a  
4 response, Your Honor, and needless to say, we  
5 disagree with Mr. Hecht.

6 On one point, I'd just like to set the  
7 record straight. The appeal did not deal with just  
8 TANF. In fact, the other side, pointing out in their  
9 appeals brief, and we briefed all the other issues  
10 also, that all the other issues were in front of the  
11 appeals court. It could decide the case, as it  
12 stated in its own opinion, on any of those issues or  
13 none of them. So can the Illinois Supreme Court.

14 So to say that those issues are  
15 isolated from the TANF issue, I think, ignores, in  
16 fact, the Civil Procedure.

17 The second thing we said, and I don't  
18 know if Your Honor wants to obtain this or not, there  
19 is another piece of this case with breast and  
20 cervical cancer that is not on appeal by anybody,  
21 because Mr. Caro did not appeal.

22 In fact, the plaintiff intervenors  
23 have no oar in that case. The attorney general has  
24 no oar in that case. It's Mr. Caro and us. Your



1 Honor ruled against Mr. Caro on the first go around,  
2 and that could, in fact, be cleaned up by summary  
3 judgment motions, and that's what we suggested to  
4 Your Honor if you want to do something while this is  
5 pending.

6           You'll have to clean that part up, I  
7 believe, no matter what is done on appeal because  
8 it's not on appeal. So it's a piece of the case that  
9 is clearly sitting here in your jurisdiction, and  
10 that's all we think people ought to be doing, because  
11 everything else is kind of a guessing game as to  
12 where the Supreme Court's going to go, etcetera, and  
13 I don't think it's anybody in anybody's interest to  
14 do that.

15           THE COURT: Mr. Caro, do you think  
16 that there's any prohibition against going forward  
17 with the breast and cervical cancer part of the case?

18           MR. BARR: I had some outstanding  
19 discovery on that issue.

20           THE COURT: Well, right now, is there  
21 a summary judgment motion even pending?

22           MR. BLUST: No, but we can file one  
23 right now, if you'd like.

24           MR. CARO: Just before we go forward,

1 I join Mr. Hecht in his statements. I didn't file a  
2 separate paper because I submitted a supplemental  
3 memorandum.

4 And I think the other  
5 non-constitutional issue that the Court could reach  
6 respecting limitation about addressing constitutional  
7 issues is relatively straightforward, whether the  
8 phrase, medical services, includes health insurance.

9 And I based my case law research and  
10 looked at the regulations, I found nothing to say  
11 that medical services means health insurance.

12 THE COURT: But you do recognize, I  
13 think, as Mr. Blust has said, that the Appellate  
14 Court, as well as the Supreme Court, is free to  
15 affirm my ruling on any available ground, even if  
16 it's not the ground on which I rely.

17 MR. CARO: Yes. There is a benefit, I  
18 think, and especially in this case, for a permanent  
19 injunction to be entered as quickly as possible, even  
20 while the appeal is pending, because that would allow  
21 the Supreme Court to expedite final resolution of the  
22 case.

23 You know, we're talking about  
24 expenditure of Lord knows how much millions of

1 dollars.

2 THE COURT: Well, you know what my  
3 view of it was and the Appellate Court's view. And  
4 the Supreme Court is saying, before you begin to  
5 dismantle a program of this nature, in effect,  
6 they're saying, wait a minute. Let us look at it  
7 first if we're going to look at it. And they haven't  
8 said that they're going to, and they have to make  
9 that determination.

10 And I think that that is a responsible  
11 and cautious view, and even if I didn't, I would be  
12 obeying what they told me to do.

13 But I happen to agree with their view.  
14 If they're going to look at it, then I would rather  
15 not dismantle a program if they think it shouldn't be  
16 dismantled.

17 MR. CARO: Going back to the other  
18 issue about the other part of the case, I had made a  
19 document request from January 3rd that was put off.

20 THE COURT: If I may interrupt, with  
21 my apologies.

22 You're anticipating filing a summary  
23 judgment motion also, Mr. Blust?

24 MR. BLUST: If Your Honor is going to

1 go forward on this, I mean --

2 THE COURT: Is there anybody who wants  
3 to weigh in -- I mean, I don't see how this is at all  
4 foreclosed by any of the actions of the Supreme  
5 Court.

6 Anyone disagree?

7 No.

8 Then, obviously, there's outstanding  
9 discovery that touches upon some of the issues in the  
10 motion for summary judgment, as I usually do in those  
11 types of cases once the summary judgment motions are  
12 ready to be briefed.

13 If somebody tells me, wait a minute,  
14 first I need this discovery, I'll take look and see  
15 whether the discovery is reasonably related to the  
16 issues in the motion for summary judgment.

17 But I would suggest that the parties  
18 actually speak to each other about compliance on  
19 that.

20 MR. BLUST: There is, in fact, a  
21 stipulated set of facts on breast and cervical cancer  
22 as there is in the rest of the case. That's one of  
23 the reasons why we didn't respond to the discovery  
24 request.

1 THE COURT: But why don't you have a  
2 201(k) conference between the two of and you find out  
3 whether there's something that he's seeking by way of  
4 discovery that would supplement the issues?

5 Because the issues that were pertinent  
6 for the temporary or the preliminary injunction may  
7 not be exactly the same issues as would be important  
8 on a summary judgment motion. I don't know. But --

9 MR. BLUST: I think they were all --  
10 unless there's some new argument.

11 THE COURT: But you can talk to each  
12 other and find out what --

13 MR. BLUST: No problem. We'll be  
14 happy to do that.

15 But I might say that the new issue I  
16 heard today, which is not in the case, in the  
17 pleadings, is -- and I might say if one would go back  
18 and read the facts in the record, one would find out  
19 that there is no health insurance being provided by  
20 the State of Illinois.

21 When they refer to things like  
22 premiums, they don't mean for health insurance. They  
23 mean for medical services, and that's all there is.  
24 There's no insurance program under Family Care, and

1 there never has been.

2 But that's not even an issue that's in  
3 the pleadings.

4 THE COURT: So why are we talking  
5 about it? Don't we have enough things to talk about?

6 MR. HECHT: One last --

7 THE COURT: Wait. We haven't heard  
8 from everybody. We have this silent group on the  
9 left.

10 Mr. Lesser, is there anything you  
11 would like to say?

12 MR. LESSER: No.

13 THE COURT: Mr. Bergetz?

14 MR. BERGETZ: I have nothing.

15 THE COURT: Mr. Koch?

16 MR. KOCH: Your Honor, if any part of  
17 the case proceeds, I would just ask that the  
18 comptroller be excused from, I guess, participating  
19 in the case until there is an injunction issue in  
20 that case, because I don't think we have a role to  
21 play in any ongoing proceedings.

22 THE COURT: That's been your position  
23 throughout, though, that you're really having, in  
24 effect, a ministerial act that is paying the bills if

1 they're authorized to be paid and not if they're not.

2 MR. KOCH: That's correct, Your Honor.

3 THE COURT: And you're willing to not  
4 take a position on whether they should or shouldn't  
5 be paid, you just want court direction as to whether  
6 to do that act.

7 MR. KOCH: That's correct, Your Honor.

8 And we've taken no position. I just  
9 wanted to state for the record that I think this  
10 would be an appropriate time for us to -- for the  
11 comptroller not to participate in every court date  
12 that we have until there's any final ruling.

13 THE COURT: You've already said that  
14 you're willing to be bound by the determination of  
15 the Court, so I don't see any reason for continued  
16 presence, except if you choose to be here.

17 I mean, other people seem to send two  
18 or three people every time. I never understood why.  
19 I guess that comes from my small-firm background  
20 where overhead wasn't that big a concern.

21 But in any event, I don't see there's  
22 any reason that you should not, Mr. Blust, file the  
23 summary judgment motion.

24 And then once we have both of them on

1 file, we can discuss whatever unresolved issues there  
2 happen to be regarding discovery and set a briefing  
3 schedule thereon as to the breast and cervical cancer  
4 aspect of the litigation.

5 And, Mr. Hecht, you had something else  
6 you wanted to say?

7 MR. HECHT: The one suggestion I had  
8 was to explore the possibility of us at least  
9 conducting discovery which doesn't push you to  
10 constitutional adjudication while the case is  
11 pending.

12 THE COURT: There's no reason not to.  
13 The only reason -- no, there's really  
14 no reason not to.

15 Anyone dissent on that?

16 MR. BLUST: Well, there's a stipulated  
17 set of facts here, Your Honor. I mean --

18 THE COURT: But the stipulation, Mr.  
19 Blust, as I said before, was the stipulated set of  
20 facts to be considered by the Court for purposes of  
21 the preliminary injunction. And I don't hold that as  
22 limiting further inquiry from either side, from any  
23 side.

24 And it may well be that in discussing



1 all of this, somebody might say, well, I think there  
2 should be evidence on this issue, and you would be  
3 free to say there really isn't any factual dispute  
4 and maybe offer a stipulation that would obviate the  
5 need for discovery on that.

6 MR. BLUST: Well --

7 THE COURT: I'm going to finish what  
8 I'm going to say regardless.

9 But that does not foreclose them from  
10 seeking it. Just because they have stipulated to the  
11 facts to the preliminary injunction doesn't mean that  
12 they have yielded, for purposes of this litigation,  
13 any further inquiry into any other facts.

14 Now, what would you like to say?

15 MR. BLUST: I'd just say, I think it's  
16 a tremendous waste of money and time while this is on  
17 appeal to engage in a set of discovery when I suspect  
18 this case will be resolved once again by  
19 cross-summary judgment motions based on the  
20 stipulated facts.

21 We went through an elaborate procedure  
22 here of giving documents and information to people  
23 and negotiating an elaborate stipulation, etcetera,  
24 and I'm just concerned about the expenses and time

1 consumption of this, which I don't believe is in the  
2 interest of the administration of justice. But, you  
3 know, if we want to do it, we'll do it.

4 THE COURT: Mr. Blust, the letter and  
5 the spirit of Rule 201(k) and all our discovery rules  
6 would seem to be the perfect answer for exactly the  
7 objection you raise.

8 All you have to do is sit down and say  
9 to Mr. Hecht, what are you looking for and why? And  
10 he could say, I'm looking for information to support  
11 this point. And you can say, well, we're not  
12 contesting that point. And you may say it's an  
13 irrelevant point for him.

14 But if you don't have a dispute about  
15 what facts underlie it, then you can raise the  
16 relevance at the appropriate time in a motion for  
17 summary judgment or even at trial.

18 And, you know, I think if people sat  
19 down, and I'm not talking about in this case, I'm  
20 talking about in many of the cases that I see before  
21 me, and the lawyers just sit down professional and  
22 civilly -- and you gentlemen are all civil to each  
23 other. I don't mean to imply otherwise -- but sit  
24 down and discuss why somebody wants something, most

1 times people will say, okay, well, I can give you  
2 this that will answer that, or there's no contest  
3 over these facts.

4 But what I do see in many cases are  
5 lawyers who start firing e-mails and nasty letters  
6 back and forth without ever sitting down and really  
7 talking about what it is they are looking for.

8 And the other thing we see is, because  
9 people want to wear suspenders and a belt, they'll  
10 say, and all pieces of paper since the Gutenberg  
11 Press was first invented because they don't want to  
12 have somebody withholding something from them on some  
13 other basis.

14 If you talk to each other about what  
15 you're looking for and why, I'll bet you can solve  
16 the vast majority on whatever outstanding issues on  
17 discovery there may be.

18 MR. BLUST: We're happy to try it  
19 again. We spent over two months doing that already,  
20 and we did arrive at a full stipulation of all the  
21 facts, as Your Honor gave us additional time, you  
22 remember, to do that.

23 THE COURT: Yeah, and I was  
24 appreciative.

1           MR. BLUST:  If there's something more  
2   that we need to go through, that's fine.  But I just  
3   -- if we had not done this, I would be the first one  
4   saying let's get it done.  And we've not had any  
5   problem in coming to agreement on this stuff.

6           If there's something different than  
7   what we've already got, I guess, to me, that's fine.  
8   But if we're simply going to go back through several  
9   months more of the same set of facts, it doesn't make  
10  any sense.

11          THE COURT:  Just so it's clear that  
12  I'm not picking on you, I'll say to Mr. Hecht, be  
13  careful what you're asking for and why, because if  
14  you can't come up with a reason why you need  
15  something, then you shouldn't be asking for it,  
16  because it's a fishing expedition.

17          If you know what you're looking for  
18  and why, tell them what you're looking for and why  
19  and see if you can work something out.  And whatever  
20  you gentlemen can't resolve, I, of course, am happy  
21  to resolve.

22          But I think that you probably have  
23  gone 95 percent of the way that you need to go in  
24  terms of cooperation on this, and I'll bet you can

1 get most of the rest of it done.

2 So why don't we give you the time that  
3 you need to explore those issues, as well as the  
4 filing of your summary judgment motion, Mr. Blust,  
5 and you'll tell me when it is you would like to come  
6 back, roughly.

7 MR. BLUST: I don't think it's very  
8 long that we need to file a summary judgment motion.  
9 We can come back sometime in a couple weeks.

10 THE COURT: With the accompanying  
11 brief of less than 25 pages -- less than 15 pages,  
12 right?

13 MR. BLUST: I would assume we can  
14 certainly do that, Your Honor. We can do that, and I  
15 don't know about the discovery end of this thing.  
16 That probably would take a little longer.

17 MR. HECHT: We can have a conversation  
18 about that.

19 THE COURT: So you want to come back  
20 the week of the 15th of December?

21 MR. BLUST: That would be fine with  
22 me.

23 THE COURT: Let me give you a date and  
24 time right now. I can see you gentlemen at 11:00

1 o'clock on the 15th if that's agreeable with  
2 everybody.

3 MR. HECHT: That's fine.

4 THE COURT: Thank you all for your  
5 assistance today.

6 (Which were all the proceedings had in  
7 the above-entitled cause, November 25,  
8 2008, at 2:00 p.m.)  
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REPORTER'S CERTIFICATE


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I, JERRI ESTELLE, CSR, RPR, doing  
business in the City of Chicago, County of Cook and  
State of Illinois, do hereby certify that I reported  
in computerized shorthand the foregoing proceedings  
as appears from my stenographic notes.

I further certify that the foregoing  
is a true and accurate transcription of my shorthand  
notes and contains all the testimony had at said  
proceedings.

IN WITNESS WHEREOF, I hereunto set my  
hand as Certified Shorthand Reporter in and for the  
State of Illinois on December 2, 2008.

*Jerri Estelle*  
Jerri Estelle, CSR, RPR  
License Number: 084-0032



**EXHIBIT 3**



No. 1-08-2854  
 IN THE  
 APPELLATE COURT OF ILLINOIS  
 FIRST JUDICIAL DISTRICT

FILED APPELLATE COURT  
 1ST DIST  
 2008 DEC -4 PM 1:50  
 STEVEN L. BAYH  
 CLERK OF COURT

RICHARD P. CARO, a State of Illinois Taxpayer )  
 on Behalf of and for the Benefit of the State of )  
 Illinois, )

Plaintiff-Appellee, )

RONALD GIDWITZ and GREGORY BAISE, )

Plaintiffs-Intervenors-Appellees, )

v. )

HONORABLE ROD BLAGOJEVICH, Governor )  
 of the State of Illinois, THE ILLINOIS )  
 DEPARTMENT OF HEALTHCARE AND )  
 FAMILY SERVICES, BARRY S. MARAM, )  
 Director of IDHFS, )

Defendants-Appellants, )

GREGORY JACAWAY, ROBIN JACAWAY, )  
 ELISSA JESLIS, and DANIEL JESLIS, )  
 individually and on behalf of all similarly situated )  
 people, )

Defendants-Intervenors-Appellants. )

STATE OF ILLINOIS, )

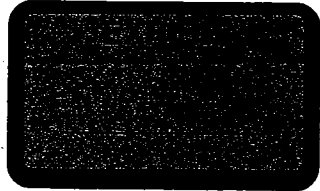
Intervenor. )

On Appeal from the  
 Circuit Court of Cook  
 County,  
 County Department,  
 Chancery Division.  
 No. 07 CH 34353.

Hon. James R.  
 Epstein, Judge  
 Presiding.

**DEFENDANTS' AND DEFENDANTS-INTERVENORS' JOINT  
 MOTION FOR AN EXTENSION OF TIME TO FILE OPENING BRIEFS**

Defendants-Appellants Honorable Rod Blagojevich, Governor of the State of Illinois, the Illinois Department of Healthcare and Family Services ("HFS"), and Barry S. Maram, Director of IDHFS, and Defendants-Intervenors-Appellants Gregory Jacaway, Robin Jacaway, Elissa Jacaway, and Daniel Jeslis, by their undersigned counsel, hereby jointly move this Court for an order extending the date on which their opening briefs and



appendices are due to February 10, 2009, or such other date as the Court deems appropriate, and in support hereof, state as follows:

1. Defendants' and Defendants-Intervenors' opening briefs and appendices in this matter are due to be filed with this Court on December 7, 2008.

2. This case is the subject of a prior appeal, No. 1-08-1061 ("the Prior Appeal"), which resulted in this Court's affirmance of the trial court's April 15, 2008 Order preliminarily enjoining HFS from continuing to provide medical assistance under the FamilyCare Program. The FamilyCare Program is a federally assisted program created pursuant to Section 5-2(2) of the Illinois Public Aid Code, which provides health care to qualifying adults. 31 Ill. Reg. 15854 (Nov. 26, 2007). The issue in the Prior Appeal was whether HFS's operation of the FamilyCare Program pursuant to an Emergency Rule conformed with the requirements of the Public Aid Code. *See Caro v. Blagojevich*, No. 1-08-1061, 2008 WL 4389833, at \*1 (1<sup>st</sup> Dist. Sept. 26, 2008) (a copy of which is appended hereto as Exhibit A). This Court held that in order to receive medical assistance under Section 5-2(2)(b),

a would-be recipient must qualify under the limited eligibility requirements of TANF [Temporary Assistance for Needy Families]. As the FamilyCare Program admittedly does not limit itself in this regard, defendants' operation of it is not proper under the statutory law upon which it relies.

*Id.* at \*9. Accordingly, this Court affirmed the trial court's imposition of a preliminary injunction of HFS's operation of the FamilyCare Program under the Emergency Rule.

3. Following the trial court's April 15, 2008 Order, HFS continued to operate the FamilyCare Program under both a Permanent and a Peremptory Rule. Plaintiff and Plaintiffs-Intervenors then sought a second preliminary injunction to enjoin HFS's operation of the FamilyCare Program under both the Permanent and Peremptory Rules.

On October 15, 2008, the trial court granted Plaintiff's and Plaintiffs-Intervenors' second motion for a preliminary injunction. A copy of the October 15, 2008 Order is appended hereto as Exhibit B.

4. On that same date, Defendants-Intervenors orally moved the trial court to stay the Order pending further appeal of the April 15<sup>th</sup> Order to the Supreme Court, and Defendants joined in that motion. The trial court denied the motion for a stay.

5. On October 17, 2008, Defendants and Defendants-Intervenors filed their Notices of Appeal in this Court, and on October 27, 2008, Defendants filed an Amended Notice of Appeal ("the Instant Appeal").

6. On October 27, 2008, the Defendants then moved this Court to stay enforcement of the October 15<sup>th</sup> Order, which motion this Court denied on October 28, 2008.

7. On October 29, 2008, Defendants filed an Emergency Motion for a Stay, or in the Alternative, for a Supervisory Order, in the Illinois Supreme Court seeking a stay of enforcement of the October 15<sup>th</sup> Order (a copy of which is appended hereto as Exhibit C).

8. On November 12, 2008, the Illinois Supreme Court allowed that Motion, stating that

[t]he order of the Circuit Court of Cook County of October 15, 2008, in *Caro, et al. v. Blagojevich, et al.*, Cook County No. 07 CH 34353, is stayed pending filing and disposition of a petition for leave to appeal in this Court, or expiration of the time therefore.

A copy of the November 12, 2008, Supreme Court Order is appended hereto as Exhibit D.

9. On November 26, 2008, Defendants timely filed their Petition for Leave to Appeal with the Illinois Supreme Court (a copy of which is appended hereto as Exhibit E). Defendants-Intervenors will file a motion to join and adopt Defendants' Petition for Leave to Appeal.

10. The Illinois Supreme Court's November 12<sup>th</sup> Order should be read as a stay for all purposes. The issue raised in the Instant Appeal is exactly the same as that in the Prior Appeal: whether HFS has legal authority to operate the FamilyCare Program. The only difference between the two is that the Prior Appeal involved operation of the FamilyCare Program under the Emergency Rule whereas the Instant Appeal involves operation of the FamilyCare Program under the Permanent and Peremptory Rules.

11. Accordingly, in the interests of economy of judicial resources and the speedy and uniform resolution of all issues raised by this case affecting the public interest, Defendants and Defendants-Intervenors ask this Court to extend the due date for filing their opening briefs and appendices to February 10, 2009, or such other date as the Court deems appropriate, pending disposition in the Supreme Court of Defendants' Petition for Leave to Appeal in the Prior Appeal.

12. Because enforcement of the circuit court's order of October 15<sup>th</sup> has been stayed by the Illinois Supreme Court's November 12<sup>th</sup> Order, the Plaintiff and Plaintiffs-Intervenors will not be prejudiced by the extension of time requested in this motion.

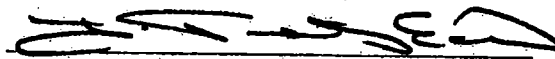
WHEREFORE, Defendants-Appellants Honorable Rod Blagojevich, Governor of the State of Illinois, the Illinois Department of Healthcare and Family Services, and Barry S. Maram, Director of IDHFS, and Defendants-Intervenors-Appellants Gregory Jacaway, Robin Jacaway, Elissa Jacaway, and Daniel Jeslis jointly request this Court to enter an

extending the filing date of their opening briefs and appendices to February 10, 2009, or such other date as the Court deems appropriate, pending disposition in the Illinois Supreme Court of Defendants' Petition for Leave to Appeal the Prior Appeal.

Dated: December 4, 2008

Respectfully submitted,  
HONORABLE ROD BLAGOJEVICH,  
Governor of the State of Illinois, THE  
ILLINOIS DEPARTMENT OF  
HEALTHCARE AND FAMILY  
SERVICES, and BARRY S. MARAM,  
Director of IDHFS, Defendants-Appellants,

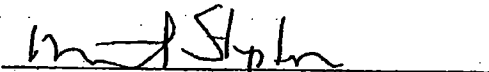
By:



One of their Attorneys

GREGORY JACAWAY, ROBIN  
JACAWAY, ELISSA JACAWAY, and  
DANIEL JESLIS, Individually  
and on Behalf of All Similarly Situated  
People, Defendants-Intervenors-Appellants,

By:



One of their Attorneys

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Chicago, IL 60602

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**EXHIBIT 4**

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED  
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RICHARD P. CARO, *et al.*

Plaintiff and Plaintiffs-Intervenors,

v.

HON. ROD BLAGOJEVICH, *et al.*

Defendants,

STATE OF ILLINOIS, Intervenor.

CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.

Case No. 07-CH 34353  
CLERK

The Honorable James R. Epstein

**HON. ROD R. BLAGOJEVICH, BARRY S. MARAM AND HFS'  
OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION  
CONCERNING THE FAMILYCARE PROGRAM**

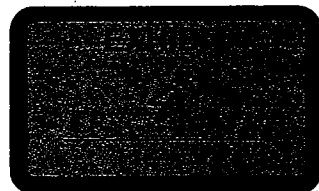
The above named Defendants hereby oppose Plaintiffs' Motion for a Preliminary Injunction (the "Motion") concerning the FamilyCare Program (the "FCP"):

**I. Introduction.**

Plaintiffs, led by Gidwitz and Baise, are instituting this action as anti-tax crusaders to wage a campaign against universal healthcare. This case, however, is neither about universal healthcare nor Illinois Covered, which was the Governor's proposed \$358 million healthcare initiative. Rather, the FCP expansion by HFS is the next logical, statutorily authorized, incremental expansion of a program that has been in existence since 2002 and has been repeatedly expanded, without challenge, to address new healthcare issues and the availability of additional funding.

**II. Relevant Facts**

In 1997, the federal government passed the State Children's Health Insurance Program ("SCHIP") to help children whose families cannot afford private health insurance, but do not qualify for Medicaid to obtain the health insurance coverage they needed. (Stip. ¶12.) Under





SCHIP, Illinois receives a 65% match from the federal government versus only a 50% match under Medicaid. (Stip. ¶13.) Illinois participated in SCHIP by enacting the Children' Health Insurance Program Act, 215 ILCS 106 ("CHIPA"). (Stip. ¶14.)

In 2001, the federal government permitted states to submit waivers to obtain federal funds for health insurance coverage for parents of children enrolled in the SCHIP program. (Stip. ¶15.) In 2002, the General Assembly added § 40 in CHIPA to authorize adding parents under a waiver and HFS submitted a waiver to provide for the expansion of coverage to eligible parents. (Stip. ¶16.) Section 40(c) directed HFS to set the income eligibility level at no more than 65% of the Federal Poverty Level ("FPL"). 215 ILCS 106/40(c). HFS initially set the income level at 49% of FPL. (Stip. ¶19(a).) In 2003, the legislature amended § 40(c) both to allow HFS to establish the income eligibility level and to require a minimum level of 90% of FPL (removing the 65% cap). 215 ILCS 106/40(c).

To comply with the minimum income eligibility threshold of § 40(c), HFS set the level in 2003 at 90% of FPL. (Stip. ¶19(b).) Thereafter, HFS increased income eligibility levels as more funds became available by raising the income level to 133% of FPL in 2004 and to 185% of FPL in 2006. (Stip. ¶19(c) & (d).)<sup>1</sup> None of these increases or HFS' authority to set the income level was ever challenged.

In March of 2007, Governor Blagojevich proposed Illinois Covered, a new overall universal health plan for the State estimated to cost \$358 million. (Stip. ¶8-11.) Although it progressed through two readings in the Senate, Illinois Covered was never voted on. (*Id.*)

In the fall of 2007 the scope of SCHIP and the waiver became uncertain as Congress and President Bush disagreed on the breadth of funding and, thus, the breadth of coverage under state

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<sup>1</sup> Plaintiffs incorrectly identify the income eligibility for parents before the expansion at issue as being up to 200% of FPL. The 200% level in CHIPA, however, applies to the eligibility of children and not to their parents covered under the waiver. Compare § 20(a)(2) of CHIPA with § 40(c). The pre-expansion level was 185%.

waivers. SCHIP and the corresponding waiver for parents were set to expire in September of 2007. (Stip. ¶24.) SCHIP was subsequently extended to December 31, 2007. *Id.* In August and November of 2007, Congress passed two separate bills to reauthorize SCHIP and expand its funding, which would enable states to set higher income eligibility levels for the waiver. (Stip. ¶¶27-40.) Congress desired to expand funding to permit coverage of families of four earning almost \$83,000 (400% of the FPL). President Bush vetoed these bills and the vetoes were not overridden. (*Id.*)

The outcome of the SCHIP legislation was crucial to Illinois because it would lose the extra 15% of federal match from SCHIP versus Medicaid, if the waiver was not reauthorized. Thus, HFS waited to see whether an expansion of the waiver would occur. (Stip. ¶26.) When the battle between the President and Congress was lost and HFS could not wait any longer, it promulgated on November 7, 2007, the emergency rule at issue. (Stip. ¶31.) The emergency rule expanded coverage to 400% of FPL, matching the level approved by Congress and the percentage suggested by the General Assembly's Adequate Health Care Task Force ("Task Force"). Similarly, New York proposed an expansion of its CHPlus program to 400% of FPL. (Stip. ¶28.)

On December 19, 2007, Congress passed a third SCHIP bill that reauthorized SCHIP without additional funding and without the waiver. (Stip. ¶41.) As a result, Illinois' waiver, and thus the authority under § 40(c), expired. Therefore, on December 26, 2007, HFS submitted a state Medicaid plan to bring the people encompassed by the Emergency Rule under Medicaid to capture at least the 50% federal match for covered families. (Stip. ¶42-3.)

Under the Illinois Public Aid Code, as under § 40(c), HFS has the authority to disregard federal income eligibility levels and establish a cap of 400% of FPL. 305 ILCS 5/5-2(2)(b).

Under § 5-2(2)(b), HFS can disregard the maximum earned income permitted by federal law to provide medical assistance for all persons who would be determined eligible for basic maintenance under Article IV of the Public Aid Code, Temporary Assistance for Needy Families ("TANF"). Plaintiffs do not challenge any of the prior expansions of the FCP and they concede that it was appropriate for HFS to promulgate the emergency rule for coverage up to 200% of FPL and, after the waiver expired, to transfer those covered families to Medicare. (Sec. Am. Complaint ¶¶ 34, 70-1.)<sup>2</sup> Plaintiffs thereby concede that there is authority, funding, and even an emergency for the expansion of the FCP to cover individuals who earn up to 200% of FPL. Plaintiffs only contention is whether HFS can expand eligibility from 200% to 400%.

### III. The FCP Expansion Is Authorized, Funded and Constitutional.

#### A. The collection of premiums in the FCP does not violate Medicaid or the Constitution's revenue article.

Plaintiffs claim that there is no authority for HFS to collect premiums under Medicaid and that only the General Assembly authorizes the collection of fees. (Trial Brief at 5.) Plaintiffs do not cite any prohibition against premiums in Medicaid to support their claim, because there is no such prohibition in Article V. Moreover, it is stipulated that premiums were charged prior to the expansion at issue to families between 150-185% of FPL. (Stip. ¶ 21.) Under the expansion, individuals from 150-200% of FPL "pay premiums at the pre-expansion rate." (*Id.* at ¶ 45(a).) As Plaintiffs are not challenging the FCP providing coverage under 200% of FPL, they necessarily concede the propriety of premiums charged to those individuals.

Plaintiffs also claim that the imposition of premiums constitutes the unconstitutional raising of revenue. (Brief at 5.) The premiums charged for participation are not a tax but a fee

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<sup>2</sup> Plaintiffs incorrectly divide the Emergency Rule into two parts. They claim that § 120.32 concerns pre-expansion SCHIP up to 200% of FPL (which Plaintiffs do not challenge) and that § 120.33 embodies the expansion from 200-400%. Actually, the entire FCP is embodied in § 120.33; only the title of § 120.32 was changed.

for the services provided. “[A] tax may be distinguished from a fee by observing that a tax is a charge having no relation to the service rendered and is assessed to provide general revenue rather than compensation.” *Church of Peace v. City of Rock Island*, 357 Ill. App. 3d 471, 475 (3d Dist. 2005). “A fee, on the other hand, is proportional to a benefit or service rendered.” *Id.* Because the premiums for the FCP are only charged to enrollees of FCP and used to pay for the services rendered, they are a permissible fee and not an unconstitutional tax.

**B. Statutory authority exists for the FCP expansion and HFS acted within the scope of that statutory authority.**

It cannot be disputed that under § 5-2(2)(b), HFS has the authority to “disregard[] the maximum earned income level permitted by federal law.” That authority is the current law of Illinois and HFS has the right to rely on the statute. Nevertheless, Plaintiffs contend based only on the legislative history that § 5-2(2)(b) cannot be used as authority for the expansion because it “was designed for a very different purpose.” (Brief at 7.) Plaintiff’s argument is merely a policy argument as they do not want families who work and earn over 200% of FPL, but cannot afford health insurance, to receive State subsidized coverage. It is not this Court’s role, however, to rewrite the statute to accommodate policy changes. *Schultz v. Lakewood Electric Corp.*, 362 Ill. App. 3d 716, 722, 841 N.E.2d 37, 45 (1st Dist. 2005).

Plaintiffs’ argument is substantively without merit. First, the authority granted HFS under § 5-(2)(2)(b) is the same the authority HFS had under § 40 of CHIPA. 215 ILCS 106/40(c). HFS is doing the same thing under § 5-2(2)(b) to get a 50% federal funds match under Medicaid that it did under § 40(c), without challenge, to get a 65% match under CHIPA.

Second, the language now codified in § 5-2(2)(b) does not conflict with the purposes of Medicaid. The authority to disregard income was passed by Congress in 1986, when welfare consisted primarily of Aid to Families with Dependent Children (“AFDC”). As AFDC recipients

transitioned into the workforce, problems arose because, as their incomes increased, they earned too much to qualify for AFDC, but too little to obtain medical coverage. In order to encourage people to work, the legislature authorized AFDC income levels to be disregarded so that those working families could receive medical coverage. Contrary to Plaintiffs' claim, § 5-2(2)(b) was not intended for welfare recipients, but rather to help the working poor. As Senator Smith stated: "This bill only begins to address the problem of the medically uninsured among working people." Ex. 12, p. 100. That is the very same purpose for which HFS is exercising its authority under § 5-2(2)(b), to provide medical coverage for working families who cannot afford it. See Ex. 7, p. 3. ("over the past year there has been repeated recognition that families with incomes up to 400% of the [FPL] have a difficult time financing healthcare.") Moreover, despite Plaintiffs' claim that § 5-2(2)(b) authority is at odds with Medicaid, it has remained in force since 1986 even though § 5-2 was amended in 1991, 2000, and 2002.

Plaintiffs challenge HFS' compliance with 5-2(2)(b) by claiming that "there is no evidence in the record that such a coverage plan exists or was submitted to the Governor by DHFS." (Brief at 10.) Plaintiffs stipulated that the Governor approved the FCP expansion submitted in the emergency rule. (Stip. ¶38.) He thus necessarily approved the coverage plan as they are one and the same.

**C. The current expansion of the FCP is based on the same delegated power as all of the prior unchallenged expansions.**

Plaintiffs do not challenge any of the prior four expansions since 2002 and they concede that it was appropriate for HFS to expand the eligibility limits by the emergency rule to 200%. (Sec. Am. Complaint ¶¶34, 70-1.) Plaintiffs' challenge is limited to whether HFS was authorized to raise the eligibility limits from 200% to 400%. However, the statutory basis for extending the income eligibility limit to 200% is the same as it is for extending it to 400%. If the

authority is proper for HFS to put families earning up to 200% of FPL on Medicaid, then HFS can use the same authority to set the limit to 400%. Moreover, by challenging the underlying authority, Plaintiffs actually attack the entire program and not just the expansion over 200%, as they rest on the same authority. If the expansion falls based on Plaintiffs' claims, then the entire program must fall.

**D. The Emergency Rule does not exceed the statutory authority.**

An administrative rule or regulation enjoys a presumption of validity. *Rivera v. Illinois Dep't of Pub. Aid*, 132 Ill. App. 3d 213, 217 (1st Dist. 1985). Plaintiffs bear the burden to show that the rule is clearly arbitrary, unreasonable or capricious before it can be invalidated. *Begg v. Bd. of Fire & Police Comm'rs*, 99 Ill. 2d 324, 331-32 (1984).

**i. The Emergency Rule imposes all the TANF Requirements.**

Plaintiffs erroneously claim the emergency rule does not incorporate all Article IV (TANF) requirements. (Brief at 9.) Plaintiffs claim the FCP fails to require participants to enroll in the Article IV job registration and training requirements. (Brief at 9.) Fulfillment of this requirement is irrelevant because 89 Ill. Admin. Code 112.79(f), provides that the receipt of medical assistance may not be affected by non-compliance with this requirement. Plaintiffs also claim that the FCP does not "appear" to require enrollees to cooperate with child support enforcement. (Brief at 9.) But, it is stipulated that "As a result of federal de-linking of TANF and medical assistance, implementation of the medical programs mandates cooperation with child support enforcement only for the population covered by Title XIX of the Social Security Act (Medicaid)." (Stip. ¶54(i).) Finally, Plaintiffs' contention that the requirement that persons with multiple convictions for public aid fraud be ineligible for TANF is not satisfied is contradicted by the stipulated fact that "this requirement has only been applied to cash assistance programs and not to medical programs." (Brief at 9, citing Stip. ¶54(g).)

**ii. The 400% eligibility limit is appropriate.**

Plaintiffs also contend that the FCP expansion from 200% to 400% of FPL is beyond statutory authority because it supposedly contradicts the purposes expressed in legislative history of § 5-2(2)(b) as it extends coverage to persons of "substantial wealth." There is no evidence in the record to support Plaintiffs' claim, and it is wrong. First, the FCP is limited to those individuals who demonstrate that they have been without insurance for 12 months. Second, the recipients must meet the identified TANF requirements. Third, the 400% figure was recommended by the bipartisan Task Force. (Stip. ¶¶ 47-9.) Fourth, other states, like New York, have proposed expansions up to 400% of FPL. (*Id.* at ¶ 28.) Fifth, participation in the program requires payment of high premiums, which persons of means who had other sources of coverage would avoid. Finally, Plaintiffs want this Court to reject the Task Force's finding and apply their desired limits on expansion of the FCP, as if they are the healthcare experts. HFS, however, is the agency charged with administering the FCP and its decisions within its area of expertise should be honored. *Miller v. Illinois Dep't of Pub. Aid*, 94 Ill. App. 3d 11, 17-18 (1<sup>st</sup> Dist. 1981).

**E. The delegation of authority under 305 ILCS 5/5-2(2)(b) is constitutional.**

Plaintiffs argue that because the statute does not cap the income limit it is unconstitutional as it gives HFS "*carte blanche*" authority. (Brief at 8-9.) The grant of authority by § 5-2(2)(b), however, is constitutional and meets the minimum delegation requirements established by *Stofer v. Motor Vehicle Cas. Co.*, 68 Ill. 2d 361, 372 (1977). The Public Aid Code contains intelligible standards to guide HFS in providing medical assistance under 305 ILCS 5/5-2(2)(b). First, the activities and persons affected are identified in article IV of the statute itself. The General Assembly indicates the activity regulated is medical services and the people potentially affected are those "unable, because of inadequate resources, to meet their essential medical needs." 305 ILCS 5/5-1. Second, the harm sought to be prevented is sickness

and poor health. *Id.* Third, the general means by which HFS may prevent the identified harm is the rulemaking process provided for in 305 ILCS 5/12-13. In addition, any coverage plans must be submitted to and approved by the Governor. 305 ILCS 5/5-2(2)(b).

Section 5/5-2(2)(b) further limits the discretion of HFS beyond the *Stofer* requirements by identifying limited classes of persons who, with the exception of the maximum income requirement, would qualify for medical assistance under article IV. The only requirement at HFS' discretion is earned income, which needs to be flexible as the provision of healthcare is a highly complex matter, affected by spiraling medical costs and sudden shifts in coverage. Absolute criteria are not necessary for the grant of authority to be constitutional. *Hill v. Relyea*, 34 Ill. 2d 552, 555 (1966). Courts have upheld delegations of authority containing ambiguous language as long as the delegation also contains standards to interpret that language. See *Sangamon Fair Ass'n v. Stanard*, 9 Ill. 2d 267, 274 (1956); *South 51 Dev. Corp. v. Vega*, 335 Ill. App. 3d 542, 549 (1st Dist. 2002).

Plaintiffs improperly reliance on *Thygesen* to claim that agency discretion to set "appropriate" interest rates is unconstitutional. The *Thygesen* Court invalidated that delegation based on the lack of any identified harm or purpose in the statute that would support the reference to "appropriate" rates, not merely because of the use of the language "appropriate rates." 74 Ill. 2d 404. *Thygesen* does not apply here because any claimed ambiguity is limited by the purpose of the delegation, the TANF requirements, and the overall framework of the Public Aid Code. As HFS' discretion is sufficiently limited by the Public Aid Code, its authority is constitutional.

**F. There are appropriations for the FCP expansion in the Illinois 2008 Budget.**

The Illinois 2008 fiscal year Budget contains appropriations for the FCP, including any expansion. (Stip. ¶¶ 56-60.) Under the Budget, HFS has the authority to spend almost \$ 7 billion



for medical services including those applying to the FCP. (*Id.*) As the FCP expansion is only estimated to cost approximately \$43 million for the current fiscal year, all the funds necessary to implement it are available from funds appropriated to HFS. This is undisputed.

Plaintiffs raise two arguments to contend that funds used for the FCP expansion violate the Illinois Constitution. (Brief at 10-11.) First, Plaintiffs claim that because there is no specific line item appropriation for the FCP expansion, it has no funding. Plaintiffs rely on the fact that although the Governor proposed a separate appropriations bill with line items for Illinois Covered, it was never voted on. (*Id.* at 10.)<sup>3</sup> There is no law (and none is cited by Plaintiffs) requiring a separate line item appropriation for a program to exist. If Plaintiffs' argument were true, then there would be line item appropriations for all programs and prior FCP expansions, such as the State's 35% share under SCHIP. No such appropriations, however, exist confirming that a specific line item is not required. All appropriations to HFS for medical care are made as to purposes such as "physicians," "appliances" and "transportation," not as to programs. (Stip. Ex. 29, Article 280, § 10.)

Second, Plaintiffs claim that the transfer provision that allows HFS to move funds from one purpose to another (*e.g.* transportation to physicians' services) is unconstitutional under *County of Cook v. Ogilvie*, 50 Ill. 2d 379 (1972). (Brief at 11.) The argument is irrelevant as the transfer provision is not necessary to fund the expansion due to the \$7 billion appropriation to HFS to spend on medical services. (Stip. ¶57.) Also, the *Ogilvie* decision is inapplicable because it is based on Article IV, § 17 of the 1870 Illinois Constitution, which was abandoned in the 1970 Illinois Constitution, and the provision here authorizes transfers between purposes, not programs.

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<sup>3</sup> Plaintiffs miss-cite Defendants' Answer and the Stipulation at ¶¶ 10-11 as supposed support for their claim that Defendants have conceded that there is no appropriation for expanding FCP. Defendants made no such concession.

**G. The suspension by JCAR of the emergency rule is unconstitutional.**

Plaintiffs claim that the expansion is illegal because the emergency rule is void as JCAR suspended it pursuant to § 125 of the IAPA. An emergency rule, however, is valid upon filing. 5 ILCS 100/5-45. Any act suspending the emergency rule must be constitutional or the suspension is without effect. JCAR cannot legally override the General Assembly's delegation of rulemaking authority to the executive branch under § 5-2. JCAR's power under §§ 115 and 125 of the IAPA to suspend emergency or prohibit proposed administrative rules violates the Illinois Constitution's Separation of Powers, Enactment, and Presentment Clauses.

**i. JCAR unlawfully suspended the rule due to the lack of an emergency.**

Section 5-45 states that the agency may adopt an immediately effective rule if "the agency finds that an emergency exists ..." The IAPA defines "emergency" as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." 5 ILCS 100/5-45(a) (underscore added). Pursuant to § 5-45, HFS found that an emergency existed and filed the necessary statement explaining the specific reasons for its finding. (Stip. ¶¶ 34-8.)

Plaintiffs have not met their burden to overcome the discretion afforded to the agency to determine the existence of an emergency. Plaintiffs merely claim that the "expansion was designed to deal with a chronic problem, not an emergency, and has been rejected both by the General Assembly and JCAR." (Brief at 10-11) Plaintiffs' challenge is without merit. First, there is no evidence in the record that lack of insurance coverage (whether chronic or not) is not an emergency. Second, the General Assembly never voted on this expansion or Illinois Covered. (Stip. ¶ 11) Third, Plaintiffs already conceded that an emergency was present for those with incomes up 200% of the FPL. (Sec. Am. Complaint ¶¶ 34, 70-1.)

Finally, Plaintiffs' reliance on JCAR's determination that an emergency did not exist for

the whole rule is misplaced as JCAR has no authority to determine the validity of the agency's finding of an emergency. The legislature has delegated to HFS the authority to determine if an emergency exists under § 5-45, as "the agency finds that an emergency exists and requires adoption. . . ." (underscore added.) The existence (of lack thereof) of an emergency is not one of the standards specified by statute for JCAR's review in § 5-125. Thus, the legislature did not permit JCAR to second-guess the agency's determination of an emergency. Accordingly, HFS' promulgation of the emergency rule is within its statutorily delegated powers and JCAR's interference with it is unconstitutional.

**ii. JCAR's legislative veto of agency rules violates the constitution.**

Sections 115 and 125 authorize 8 members of the General Assembly to circumvent the lawmaking procedures and separation of powers provisions of the Illinois Constitution by legislative veto.

**a. The U.S. Supreme Court and nine states have found that legislative vetoes by JCAR type committees are unconstitutional.**

In *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983) (App. Ex. A), the U.S. Supreme Court addressed the constitutionality of legislative vetoes under the Federal Constitution. In *Chadha*, the House passed a resolution under § 244(c)(2) of the Immigration and Nationality Act that purported to veto the Attorney General's decision to suspend a deportation. *Id.* Because § 244(c)(2) permitted actions by the House that ignored bicameralism and presentment requirements of the Federal Constitution, it was unconstitutional. *Id.* at 958.<sup>4</sup>

In addition, nine states have declared that legislative vetoes of executive branch rulemaking by legislative bodies comparable to JCAR are unconstitutional. These states have each determined that legislative veto provisions violate the enactment and presentment clauses

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<sup>4</sup> The Illinois Supreme Court has historically followed the decisions of the United States Supreme Court interpreting federal constitutional provisions when construing analogous provisions of the Illinois Constitution. *People v. DiGuida*, 152 Ill. 2d 104, 118 (1992).

and the separation of powers provisions of their respective state constitutions.<sup>5</sup>

**b. Illinois has a tripartite system of government and presentment, enactment, and separation of powers provisions in its Constitution.**

Article IV of the Constitution establishes a separation of powers by vesting the legislative power in a Senate and House of Representatives and sets forth the procedures for the enactment of bills. Under the enactment requirements, all laws must be passed by a bill by the majority of both legislative houses. ILL. CONST. art. IV, § 8. If passed, the bill must be presented to the Governor for signing or veto. ILL. CONST. art. IV, § 9. *Id.* The legislature has the right to override any veto by a two-thirds vote of both houses. *Id.* If the veto is not so overridden, then the bill does not become law. *Id.* The General Assembly cannot act to create laws without adhering to the enactment and presentment clauses of the Illinois Constitution.

The General Assembly, however, may delegate authority to an administrative agency to promulgate rules and to exercise discretion. *People ex rel. Mosco v. Serv. Recognition Bd.*, 403 Ill. 442, 448 (1949). Once the General Assembly has delegated rulemaking power, it may not unilaterally control the execution of that rulemaking authority by means of a suspension or statement of prohibition of the administrative rule. The suspension or prohibition of an administrative rule is a legislative action and all legislative actions must conform to the law making and presentment requirements of the Illinois Constitution. The General Assembly is not without recourse if it does not agree with a proposed rule, as it has the power to pass a bill that repeals the agency's authority. The bill must then be presented to the Governor for approval.

<sup>5</sup> *Alaska v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Ala. 1980) (App. Ex. B); *State ex rel. Stephan v. Kansas House of Representatives*, 236 Kan. 45 (Kan. 1984) (App. Ex. C); *Opinion of the Justices*, 121 N.H. 552 (N.H. 1981) (App. D); *General Assembly of New Jersey v. Byrne*, 90 N.J. 376 (N.J. 1982) (App. Ex. E); *State ex rel. Barker v. Manchin*, 167 W. Va. 155 (W. Va. 1981) (App. Ex. F); *Missouri Coal. for the Env't v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125 (Mo. 1997) (App. Ex. G); *Gilliam Co. v. Oregon Dep't of Env't Quality*, 316 Or. 99 (Or. 1993) *rev'd on other grounds sub nom. Oregon Waste Systems v. Oregon Dep't of Env't Quality*, 511 U.S. 93 (1994) (App. Ex. H); *Legislative Research Comm'n by Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984) (App. Ex. I); *Blank v. Dep't of Corr. and Office of Regulatory Reform*, 462 Mich. 103, 611 N.W.2d 530 (Mich. 2000) (App. Ex. J).

- c. Sections 115 and 125 of the IAPA violate the separation of powers clause of the Illinois Constitution by violating the enactment provisions in Article IV and the presentment provision in Article IV, § 9.**

Just as in *Chada* and the rulings by the other nine states, the procedures outlined in the IAPA conflict with the enactment requirements of Article IV of the Illinois Constitution. By giving JCAR the power to suspend emergency or veto proposed rules of HFS, the General Assembly has shifted its legislative power to a smaller legislative body, thereby evading the requirements that legislation must arise by bill and be approved by a majority of each house. Ill. CONST. art. IV, §§ 1, 8. The delegation of legislative power to a single committee also violates the fundamental concept of representative government, which is rooted in the idea that the power to legislate be vested in a body elected in conformity with the one-person, one-vote principle and be representative of the entire electorate. (Stip. Ex. No. 17).

Moreover, like the statutes held unconstitutional by Alaska and New Jersey, the IAPA makes no reference and grants no authority to the Governor, thereby violating the presentment requirement of Article IV, § 9. Section 9(a) provides that every bill passed by the General Assembly shall be presented to the Governor. Because there is no provision in §§ 115 and 125 for the bicameral passage of a bill nor for presentment to the executive for approval or veto of the General Assembly's or JCAR's rejection or suspension of a rule, the legislature's power goes unchecked and, thereby, violates the separation of powers clause.

- iii. JCAR's legislative veto has long been recognized as unconstitutional.**

The unconstitutionality of the legislative vetoes in the IAPA was recognized over 25 years ago by then Governor James Thompson, when he amendatorily vetoed House Bill 2351 (Stip. ¶¶ 64-5; Ex. 16). Governor Thompson obtained an independent review of the constitutionality of the proposed legislation by the Administrative Rules Commission (the "Commission"), which concluded that the amendments to the IAPA "would violate the

separation and delegation of powers provisions of the Illinois Constitution and seriously jeopardize the fair and orderly processes of government in Illinois." (*Id.*)

In addition, the Bureau of the Budget, in a memorandum to Jim Edgar, then Governor Thompson's legislative director, concurred with both Governor Thompson and the Commission's opinion that the powers conferred on JCAR by House Bill 2351 are unconstitutional. (Stip. ¶ 63; Ex. 18). The Bureau of the Budget found that JCAR's authority to suspend rules is tantamount to "legislation by committee or joint resolution." *Id.*

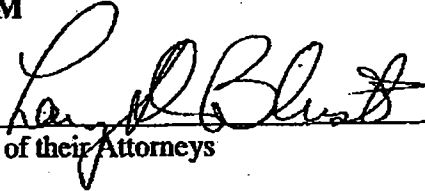
The Attorney General has opined that it is unconstitutional for a legislative commission to assume functions reserved for the executive. (Stip. Ex. 19). In 1978, the Attorney General issued an opinion that a proposed legislative transfer of the functions of the Vehicle Recycling Board, an executive branch agency, to the Motor Vehicle Laws Commission, a legislative body, would violate the separation of powers provision of the Illinois Constitution. (Stip. Ex. 19).

#### **IV. Conclusion.**

Plaintiffs' Motion for a Preliminary Injunction should be denied because the expansion was authorized by law and any interruption in the healthcare system will have catastrophic effects on public health. An injunction will leave citizens without critical healthcare. Since November 7, 2007, individuals (many of whom have paid premiums) have received care; the termination of this program will strand them and providers, who expect payment. Plaintiffs' challenge threatens not only the FCP expansion, but also the FCP itself and all other programs that rest on the same authority, and if successful, would invalidate multiple healthcare programs beyond the FCP expansion and hamper the agency's ability to protect the public health and welfare.

Respectfully submitted,

**HON. ROD R. BLAGOJEVICH, THE  
ILLINOIS DEPARTMENT OF HEALTHCARE  
AND FAMILY SERVICES, and BARRY S.  
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**EXHIBIT 5**



# 2007 ILLINOIS

## REGISTER RULES OF GOVERNMENTAL AGENCIES

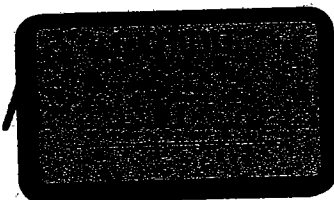


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## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
120.32	Amendment
120.33	New Section
- 4) Statutory Authority: Sections 5/5-2(2) and 12-13 of the Illinois Public Aid Code [305 ILCS 5/5-2(2) and 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: This proposed rulemaking preserves FamilyCare benefits for approximately 15,000 to 20,000 parents and other caretaker relatives with income above 133 percent up to and including 185 percent of poverty who were previously covered under 89 Ill. Adm. Code 125. Further, the proposed rulemaking expands FamilyCare to cover an additional 147,000 uninsured parents and other caretaker relatives with income up to and including 400 percent of poverty.  
  

Illinois provides benefits to parents and other caretaker relatives raising dependent children under the authority of the *Public Aid Code* and the *Children's Health Insurance Program Act (CHIPA)*. The coverage of adults under CHIPA is contingent upon federal approval of a waiver to permit the State to receive matching funds under the federal State Children's Health Insurance Program (SCHIP) for their costs. As SCHIP has not been reauthorized, Illinois cannot obtain federal matching funds using that statute.

With this rulemaking, the Department will establish eligibility for all parents and other caretaker relatives using its authority under the *Public Aid Code*.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF PROPOSED AMENDMENTS

- 11) **Statement of Statewide Policy Objectives:** This rulemaking does not affect units of local government. This rulemaking preserves FamilyCare coverage at levels in place since January 1, 2006 and further expands coverage to uninsured parents and caretakers with income up to and including 400 percent of poverty.
- 12) **Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking:** Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Tamara Tanzillo Hoffinan  
Chief of Staff  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East, 3<sup>rd</sup> Floor  
Springfield IL 62763-0002

217/557-7157

The Department requests the submission of written comments within 30 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 13) **Initial Regulatory Flexibility Analysis:**
- A) **Types of small businesses, small municipalities and not-for-profit corporations affected:** None
- B) **Reporting, bookkeeping or other procedures required for compliance:** None

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

- C) Types of professional skills necessary for compliance: None
- 14) Regulatory agenda on which this rulemaking was summarized: This rulemaking was not anticipated by the Department when the two most recent regulatory agendas were published.

The full text of the Proposed Amendments is identical to the text of the Emergency Amendments that appears in this issue of the Illinois Register on page 15854:

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Medical Assistance Programs
- 2) Code Citation: 89 Ill. Adm. Code 120
- 3) 

<u>Section Numbers:</u>	<u>Emergency Action:</u>
120.32	Amendment
120.33	New Section
- 4) Statutory Authority: Sections 5/5.2(2) and 12-13 of the Illinois Public Aid Code [305 ILCS 5/5.2(2) and 5/12-13]
- 5) Effective Date: November 7, 2007
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: These emergency amendments will not expire before the end of the 150-day period unless the identical proposed rulemaking is adopted.
- 7) Date Filed with the Index Department: November 7, 2007
- 8) A copy of the emergency amendments, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: The emergency amendment is necessary to respond to the President's veto of federal legislation reauthorizing the federal State Children's Health Insurance Program (SCHIP). Just before sunset of SCHIP on September 30, 2007, the U.S. Congress sent the President reauthorizing legislation that the President vetoed on October 3, 2007. On October 18, 2007, the U.S. House of Representatives failed to override the President's veto. This federal action puts the healthcare of between 15,000 and 20,000 parents in jeopardy.

In addition, the Department has determined that FamilyCare coverage must be extended immediately to approximately 147,000 parents and other caretaker relatives with income up to 400 percent of the federal poverty level. Many working families in Illinois lack access to affordable health insurance. Numerous studies show that lack of insurance negatively affects the health status of individuals posing a threat to their health and wellbeing. In addition, worker productivity is affected to the detriment of the economy of Illinois. The health care system shifts the cost of the uninsured to those that pay for insurance, increasing costs to Illinois companies that provide insurance to their

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

employees and making them non-competitive in the global economy. The lack of access to insurance has reached a crisis level requiring immediate action.

HFS has examined the relationship between enrollment of children and making coverage available to their parents. The Department has identified a close positive correlation between making coverage available to parents and increasing the enrollment of children. One of the themes emerging from the national debate concerning the reauthorization of SCHIP is that, states may be held accountable for very high performance enrollment targets among children. That is, when SCHIP is eventually reauthorized, it is likely to make some portion of funding contingent on states having very low numbers of uninsured children. It is therefore incumbent upon the State to act now to do all it can, including covering more parents, to enroll all eligible children.

- 10) Complete Description of the Subjects and Issues Involved: This emergency rulemaking preserves FamilyCare benefits for approximately 15,000 to 20,000 parents and other caretaker relatives with income above 133 percent up to and to include 185 percent of poverty who were previously covered under 89 Ill. Adm. Code 125. Further, the emergency rulemaking expands FamilyCare to cover an additional 147,000 uninsured parents and other caretaker relatives with income up to and including 400 percent of poverty.

Illinois provides benefits to parents and other caretaker relatives raising dependent children under the authority of the *Public Aid Code* and the *Children's Health Insurance Program Act (CHIPA)*. The coverage of adults under CHIPA is contingent upon federal approval of a waiver to permit the State to receive matching funds under the federal State Children's Health Insurance Program (SCHIP) for their costs. As SCHIP has not been reauthorized, Illinois cannot obtain federal matching funds using that statute.

With this rulemaking, the Department will establish eligibility for all parents and other caretaker relatives using its authority under the *Public Aid Code*.

- 11) Are there any other proposed rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objectives: These emergency amendments neither create nor expand any State mandate affecting units of local government. These emergency amendments preserve FamilyCare coverage at levels in place since January 1, 2006 and further expand coverage to uninsured parents and caretakers with income up to and including 400 percent of poverty.



DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

- 13) Information and questions regarding these emergency amendments shall be directed to:

Tamara Tanzillo Hoffman  
Chief of Staff  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East, 3<sup>rd</sup> Floor  
Springfield IL 62763-0002

217/557-7157

The full text of the Emergency Amendments begins on the next page:

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

## TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES  
SUBCHAPTER b: ASSISTANCE PROGRAMS

## PART 120

## MEDICAL ASSISTANCE PROGRAMS

## SUBPART A: GENERAL PROVISIONS

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EMERGENCY

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EMERGENCY

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## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

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## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

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## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

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 120.385 Property Transfers for Applications Filed Prior to October 1, 1989 (Repealed)  
 120.386 Property Transfers Occurring On or Before August 10, 1993  
 120.387 Property Transfers Occurring On or After August 11, 1993  
 120.390 Persons Who May Be Included In the Assistance Unit  
 120.391 Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG And  
 Children Born October 1, 1983, or Later  
 120.392 Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The  
 Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically  
 Needy  
 120.393 Pregnant Women And Children Under Age Eight Years Who Do Not Qualify As  
 Mandatory Categorically Needy Demonstration Project  
 120.395 Payment Levels for MANG (Repealed)  
 120.399 Redetermination of Eligibility  
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## SUBPART I: SPECIAL PROGRAMS

- Section  
 120.500 Health Benefits for Persons with Breast or Cervical Cancer  
 120.510 Health Benefits for Workers with Disabilities  
 120.520 SeniorCare (Repealed)  
 120.530 Home and Community Based Services Waivers for Medically Fragile,  
 Technology Dependent, Disabled Persons Under Age 21  
 120.540 Illinois Healthy Women Program  
 120.550 Asylum Applicants and Torture Victims
- 120.TABLE A Value of a Life Estate and Remainder Interest  
 120.TABLE B Life Expectancy

AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].

## DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

SOURCE: Filed effective December 30, 1977; preemptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; preemptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; preemptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; preemptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; preemptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; preemptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; preemptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; preemptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; preemptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; preemptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; preemptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; preemptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; preemptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982;

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amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8264, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; peremptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989;



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emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days;

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amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 16098, effective December 1, 2001; amended at 26 Ill. Reg. 409, effective December 28, 2001; emergency amendment at 26 Ill. Reg. 8583, effective June 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 9843, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11029, effective July 1, 2002, for a maximum of 150 days; emergency amendment at 26 Ill. Reg. 15051, effective October 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 16288, effective October 25, 2002; amended at 27 Ill. Reg. 4708, effective February 25, 2003; emergency amendment at 27 Ill. Reg. 10793, effective July 1, 2003, for a maximum of 150 days; amended at 27 Ill. Reg. 18609, effective November 26, 2003; amended at 28 Ill. Reg. 4701, effective March 3, 2004; amended at 28 Ill. Reg. 6139, effective April 1, 2004; emergency amendment at 28 Ill. Reg. 6610, effective April 19, 2004, for a maximum of 150 days; emergency amendment at 28 Ill. Reg. 7152, effective May 3, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 11149, effective August 1, 2004; emergency amendment at 28 Ill. Reg. 12921, effective September 1, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 13621, effective September 28, 2004; amended at 28 Ill. Reg. 13760, effective October 1, 2004; amended at 28 Ill. Reg. 14541, effective November 1, 2004; amended at 29 Ill. Reg. 820, effective January 1, 2005; amended at 29 Ill. Reg. 10195, effective June 30, 2005; amended at 29 Ill. Reg. 14939, effective September 30, 2005; emergency amendment at 30 Ill. Reg. 521, effective January 1, 2006, for a maximum of 150 days; amended at 30 Ill. Reg. 10314, effective May 26, 2006; emergency amendment at 30 Ill. Reg. 15029, effective September 1, 2006, for a maximum of 150 days; amended at 31 Ill. Reg. 2629, effective January 28, 2007; emergency amendment at 31 Ill. Reg. 7323, effective May 1, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 11667, effective August 1, 2007; amended at 31 Ill. Reg. 12756, effective August 27, 2007; emergency amendment at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days.

## SUBPART B: ASSISTANCE STANDARDS

**Section 120.32 Family Care Kid Care Parent Coverage Waiver Eligibility and Income Standard****EMERGENCY**

- a) A caretaker relative (see Section 120.390) who is 19 years of age or older qualifies for medical assistance when countable income is at or below the appropriate income standard and all MANG(C) eligibility requirements in this Part, with the exception of Sections 120.320 through 120.323, are met.

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- b) The appropriate income standard is 133 per cent of the Federal Poverty Income Guidelines, as published annually in the Federal Register, for the appropriate family size.
- c) If income is greater than this amount, it is compared to the MANG(C) Income Standard in Section 120.30 to determine the spenddown amount.

(Source: Amended by emergency rulemaking at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days)

Section 120.33 FamilyCare Expansion Eligibility  
EMERGENCY

- a) A caretaker relative (see Section 120.390), including a pregnant woman or her spouse if living together, who is 19 years of age or older qualifies for medical assistance under Section 120.32 if all of the following are met:
- 1) The individual is not otherwise eligible under this Part or 89 Ill. Adm. Code 123 or 125.200;
  - 2) All MANG(C) eligibility requirements in this Part, with the exception of Sections 120.320 through 120.323, are met, and
  - 3) The individual meets one of the following:
    - A) Upon initial determination of eligibility:
      - i) The individual has been without health insurance for at least 12 months prior to the date of application unless the individual is a pregnant woman, in which case the individual was without health insurance when her pregnancy was medically confirmed;
      - ii) The individual lost employer-sponsored health insurance when their job or their spouse's job ended;
      - iii) The individual has exhausted the lifetime benefit limit of his or her health insurance;

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- iv) The individual's health insurance is purchased under the provisions of Consolidated Omnibus Budget Reconciliation Act (COBRA);
- v) The individual was disenrolled for medical assistance under the Public Aid Code or benefits, including rebates, under the Children's Health Insurance Program Act or the Covering ALL KIDS Health Insurance Act within one year prior to applying under this Section unless the individual has State-sponsored health insurance;
- vi) The individual aged out of coverage under a parent's health insurance; or
- vii) The individual's income, as determined for establishing the appropriate premium payment under subsection (g) of this Section, is at or below 200 percent of poverty.

B) Upon determination of eligibility:

- i) The individual's income, as determined for establishing the appropriate premium payment under subsection (g) of this Section, is at or below 200 percent of poverty;
- ii) The individual was initially enrolled under subsection (a)(3)(A)(i), (v) or (vi) of this Section; or
- iii) Affordable health insurance is not available to the individual. For the purpose of this Section, affordable health insurance for the individual does not exceed four percent of the family's monthly countable income. The amount of income disregarded under subsection (b) of this Section shall not be disregarded when making this determination.
- iv) For the purposes of this subsection (a)(3)(B), health insurance shall be considered unavailable to the individual if subsection (a)(3)(A)(iii) or (iv) apply.

1/21/2000  
53000  
94000

267% of FPL = 53K

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400  
133

267%

- b) For the purpose of determining eligibility under this Section, the Department shall disregard income in an amount equal to the difference between 133 percent and 400 percent of the Federal Poverty Level Guidelines for the appropriate family size.
- c) If after the application of subsection (b) of this Section, the caretaker relative is not eligible, total countable income is compared to the MANG(C) Income Standard in Section 120.30 to determine the spenddown amount.
- d) Eligibility shall commence as follows:
  - 1) Eligibility determinations for the program made by the 15<sup>th</sup> day of the month will be effective the first day of the following month. Eligibility determinations for the program made after the 15<sup>th</sup> day of the month will be effective no later than the first day of the second month following that determination.
  - 2) Individuals with income at or below 200 percent of the Federal Poverty Level Guidelines found eligible under this Section may obtain coverage for a period prior to the date of application for the program subject to the following:
    - A) The individual must request prior coverage within six months following the initial date of coverage.
    - B) The prior coverage shall be individual specific and will only be available the first time the individual is enrolled under this Section.
    - C) The prior coverage shall begin with services rendered during the two weeks prior to the date the individual's application was filed and will continue until the individual's coverage under subsection (d)(1) of this Section is effective.
- e) Eligibility shall be reviewed annually.
- f) Caretaker relatives enrolled under this Section must pay monthly premiums as follows:

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- 1) Individuals who are not American Indians or Alaska Natives in families with countable incomes above 150 percent and at or below 200 percent of poverty shall pay premiums as set forth in 89 Ill. Adm. Code 125.320(b).
  - 2) Individuals in families with countable income above 200 percent but at or below 300 percent of the Federal Poverty Level Guidelines shall pay premiums of \$80 per person per month.
  - 3) Individuals in families with countable income above 300 percent but at or below 400 percent of the Federal Poverty Level Guidelines shall pay premiums of \$140 per person per month.
- g) Individuals who are American Indians or Alaska Natives shall have no co-payments if their family income is at or below 200 percent of the Federal Poverty Level Guidelines.
  - h) The amount of income disregarded under subsection (b) of this Section shall not be disregarded in determining premium levels, or co-payments or eligibility for prior coverage or rebates.
  - i) Premiums are billed by and payable to the Department or its authorized agent, on a monthly basis.
  - j) The premium due date is the last day of the month preceding the month of coverage.
  - k) Individuals will have a grace period through the month of coverage to pay the premium.
  - l) Failure to pay the full monthly premium by the last day of the grace period will result in termination of coverage.
  - m) Partial premium payments will not be refunded.
  - n) When termination of coverage is recorded by the 15<sup>th</sup> day of the month, it will be effective the first day of the following month. When termination of coverage is recorded after the 15<sup>th</sup> day of the month, it will be effective no later than the first day of the second month following that determination.

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- o) Following termination of an individual's coverage under this Section, the following action is required before the individual can be re-enrolled:
- 1) A new application must be completed and the individual must be determined otherwise eligible;
  - 2) There must be full payment of premiums due under this Part or 89 Ill. Adm. Code 123 or 125, for periods in which a premium was owed and not paid for the individual;
  - 3) If the termination was the result of non-payment of premiums, the individual must be out of the program for three months before re-enrollment; and
  - 4) The first month's premium must be paid if there was an unpaid premium on the date the individual's previous coverage was canceled.
- p) For the purposes of this Section, "Health Insurance" means any health insurance coverage as defined in 215 ILCS 105/2.

(Source: Added by emergency rulemaking at 31 Ill. Reg. 15854, effective November 7, 2007, for a maximum of 150 days)

**EXHIBIT 6**



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

RICHARD P. CARO, et al., )  
)  
Plaintiff and Plaintiff-Intervenors, )  
)  
v. )  
)  
HON. ROD BLAGOJEVICH, et al., )  
)  
Defendants, )  
)  
GREGORY JACAWAY, et al., )  
)  
Defendant-Intervenors, )  
----- )  
STATE OF ILLINOIS, )  
Intervenor. )

Case No. 07 CH 34353

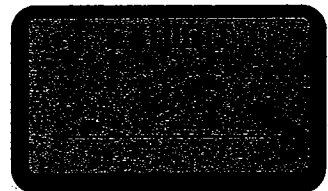
The Honorable James R. Epstein

2008 OCT 20 PM 5:13

**DEFENDANTS' RESPONSE TO PLAINTIFF'S AND PLAINTIFF-INTERVENORS'  
RENEWED MOTION FOR ENTRY OF COMPLIANCE AND ENFORCEMENT  
ORDER OR APPOINTMENT OF COMPLIANCE MONITOR AND THE  
SUPPLEMENT TO THAT MOTION**

Defendants, Rod R. Blagojevich, the Department of Healthcare and Family Services ("HFS"), and Barry S. Maram (collectively, the "Defendants"), respond to Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise and Plaintiff Richard P. Caro's (collectively, the "Plaintiffs") Renewed Motion for the Entry of a Compliance and Enforcement Order or in the Alternative for Appointment of a Compliance Monitor and the Supplement to that Motion as follows:

1. On October 15, 2008, this Court entered an order (the "Order") "preliminarily enjoining [Defendants] from expending any public funds in the name of the FamilyCare Program, be it under the permanent rule, 89 Ill. Adm. Code 120.33, or the purported peremptory rule, 89 Ill. Admin Code 120.328, for purposes of providing medical assistance pursuant to 305 ILCS 5/5-2(2)(b) to any individuals who fail to meet all the eligibility requirements under Article



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.<sup>1</sup> 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.

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<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>2</sup> 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.

<sup>3</sup> 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>.

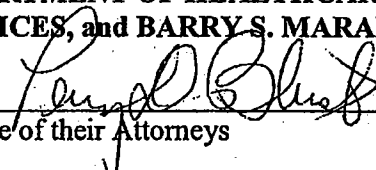
6. HFS will not bill any premiums once a person is determined ineligible. Premiums are collected for current coverage and will not be refunded.

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  
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**EXHIBIT 7**

(Ch. 122, par. 2-3.80)

*Sec. 2-3.80. Alternative education diplomas. The State Board of Education shall award diplomas to students who successfully complete alternative education programs, including those programs which utilize student learning objectives and goals, when such programs are approved by the State Superintendent of Education and the organization providing the alternative program does not have the authority to award secondary education diplomas.*

Section 2. This Act takes effect July 1, 1986.

#### PUBLIC ACT HISTORY

Passed in the General Assembly June 18, 1986.

Approved September 14, 1986.

Effective September 14, 1986.

#### PUBLIC ACT 84-1384

(House Bill No. 3230. Approved September 14, 1986.)

#### PUBLIC ACT TEXT

AN ACT to amend Section 6-1 of the "Township Law of 1874" approved March 4, 1874, as amended.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 6-1 of the "Township Law of 1874" approved March 4, 1874, as amended, is amended to read as follows:

(Ch. 139, par. 50)

Sec. 6-1. (a) The annual town meeting, in the respective towns for the transaction of the business of the town, shall be held on the second Tuesday of April in each year, at the place appointed for such meetings. Elections for township officers shall be held in accordance with the consolidated schedule of elections prescribed by the general election law.

(b) *Whenever the date designated in paragraph (a) of this Section conflicts with the celebration of Passover, the board of trustees of the township may postpone the annual town meeting to the first Tuesday following the last day of Passover.*

Section 2. This Act shall take effect upon becoming law.

#### PUBLIC ACT HISTORY

Passed in the General Assembly June 18, 1986.

Approved September 14, 1986.

Effective September 14, 1986.

Changes or additions indicated by *italics* deletions by ~~strikeout~~

## PUBLIC ACT 84-1385.

(House Bill No. 1865. Approved September 15, 1986.)

## PUBLIC ACT TEXT

AN ACT to amend Section 5-2 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 5-2 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, is amended to read as follows:

(Ch. 23, par. 5-2)

Sec. 5-2. Classes of Persons Eligible. Medical assistance under this Article shall be available to any of the following classes of persons in respect to whom a plan for coverage has been submitted to the Governor by the Illinois Department and approved by him:

1. Recipients of basic maintenance grants under Articles III and IV.

2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care, *including but not limited to, all persons who would be determined eligible for such basic maintenance under Article IV by disregarding the maximum earned income permitted by federal law.*

3. Persons who would otherwise qualify for Aid to the Medically Indigent under Article VII.

4. Persons not eligible under any of the preceding paragraphs who fall sick; are injured; or die, not having sufficient money, property or other resources to meet the costs of necessary medical care or funeral and burial expenses.

5. Pregnant women after the fact of pregnancy has been determined by medical diagnosis and the woman and child would be eligible for assistance under Article IV of this Code if in fact the child had already been born.

6. Persons under the age of 18 who demonstrate a need under Section 4-1.6 of this Act, but who fail to qualify as dependent under Section 4-1.3 of this Act.

The Illinois Department and the Governor shall provide a plan for coverage of the persons eligible under paragraph 6 as soon as possible after January 1, 1984.

7. Persons who are 18 years of age or younger and would qualify as disabled as defined under the Federal Supplemental Security Income Program, provided medical service for such persons would

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

PUBLIC ACT 84-1385.

be eligible for Federal Financial Participation, and provided the Illinois Department determines that:

(a) the person requires a level of care provided by a hospital, skilled nursing facility, or intermediate care facility, as determined by a physician licensed to practice medicine in all its branches;

(b) it is appropriate to provide such care outside of an institution, as determined by a physician licensed to practice medicine in all its branches;

(c) the estimated amount which would be expended for care outside the institution is not greater than the estimated amount which would be expended in an institution.

The Illinois Department and the Governor shall provide a plan for coverage of the persons eligible under paragraph 7 as soon as possible after July 1, 1984.

The eligibility of any such person for medical assistance under this Article is not affected by the payment of any grant under the "Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act." In determining eligibility for medical assistance, for which federal reimbursement is available under Title XIX of the Social Security Act, the assets of a single person not exceeding \$1,500, and of a married couple not exceeding \$2,250, shall be disregarded.

The eligibility of persons who, on the effective date of this Code, are receiving aid under Article VII-B of the 1949 Code, for aid under this Article, and the continuity of their medical assistance, shall not be affected by the enactment of this Code.

To the extent permitted under federal law, any person found guilty of a second violation of Article VIIIA shall be ineligible for medical assistance under this Article, as provided in Section 8A-8.

In determining those persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify on the basis of need under this Section, the Illinois Department shall utilize the maximum income standard permitted under Title XIX of the federal Social Security Act and its implementing regulations.

Section 2. This Act takes effect upon its becoming law.

PUBLIC ACT HISTORY

Passed in the General Assembly June 19, 1986.

Approved September 15, 1986.

Effective September 15, 1986.

PUBLIC ACT 84-1386.

(House Bill No. 3371. Approved September 15, 1986.)

Changes or additions indicated by *italics* deletions by ~~strikeout~~



## PUBLIC ACT TEXT

AN ACT to amend Section 8 of "The Illinois Library System Act", approved August 17, 1965, as amended.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Section 8 of "The Illinois Library System Act", approved August 17, 1965, as amended, is amended to read as follows:

(Ch. 81, par. 118)

Sec. 8. There shall be a program of state grants within the limitations of funds appropriated by the Illinois General Assembly together with other funds made available by the Federal government or other sources for this purpose. This program of state grants shall be administered by the State Librarian in accordance with rules and regulations as provided in Section 3 of this Act, and shall include the following: (a) Annual equalization grants; (b) Annual per capita and area grants; (c) Annual grants to Research and Reference Centers; (d) Per capita grants to public libraries; and (e) Construction grants to public libraries and library systems. Public libraries, in order to be eligible for grants under this Section, must be members of a library system.

An annual equalization grant shall be made to all public libraries for which the corporate authorities levy a tax for library purposes at a rate not less than .13% of the value of all the taxable property as equalized and assessed by the Department of Revenue, if the amount of tax revenue obtained from a rate of .13% produces less than \$4.25 per capita. In such a case, the State Librarian is authorized to make an equalization grant equivalent to the difference between the amount obtained from a rate of .13% and an annual income of \$4.25 per capita. If a library receiving an equalization grant reduces its tax levy below the amount levied at the time the original application is approved, it shall be ineligible to receive further equalization grants.

An annual per capita and area grant shall be made, upon application, to each library system approved by the State Librarian on the following basis:

(1) For cooperative public library systems, public library systems or multitype library systems, the sum of ~~\$1.293~~ ~~\$1.233~~ per capita of the population of the area served plus the sum of ~~\$43.2461~~ ~~\$45.3944~~ per square mile or fraction thereof of the area served.

(2) For multitype library systems, additional funds may be appropriated. Such appropriation shall be distributed on the same proportional per capita and per square mile basis as provided in paragraph (1) of this Section.

Changes or additions indicated by *italics* deletions by ~~strikeout~~.

**HB-1860 CHURCHILL**

**Notary Public Act**

April 14 1985 PUBLIC ACT 84-0322

**HB-1861 TATE - MAUTINO.**

(New Act)

Creates the High Voltage Power Lines Safety Act. Prohibits any person from engaging in an activity where it is possible during the course of such activity that he or any equipment used by him, will come within 10 feet of any high voltage electrical line or conductor. Prohibits the transportation or storing of any equipment within 10 feet of a high voltage power line. Provides that equipment capable of hitting a high voltage power line by vertical, lateral or swinging motion shall have a warning affixed to it. Provides for exceptions where arrangements for mechanical barriers or deenergization of the power lines have been made. Specifies that violation of Act is a petty offense; provides for civil liability. Effective immediately.

Apr 12 1985 First reading

Apr 15

May 02

Jan 13 1987 Session Sine Die

Rfrd to Comm on Assignment  
Assigned to Energy Environment &  
Nat. Resource  
Interim Study Calendar ENRGY  
ENVRMNT

**HB-1862 FRIEDRICH, DP.**

(Ch. 141, par. 111)

Amends the Uniform Disposition of Unclaimed Property Act to provide that no person shall be required to report to the Director of Financial Institutions any property which has not been presumed abandoned under a specific provision of the Act. Effective immediately.

Apr 12 1985 First reading

Apr 15

May 03

Mar 05 1986

Jan 13 1987 Session Sine Die

Rfrd to Comm on Assignment  
Assigned to Financial Institutions  
Interim Study Calendar FIN INSTMNT  
Exempt under Hse Rule 29(C)  
Interim Study Calendar FIN INSTMNT

**HB-1863 FRIEDRICH, DP.**

(Ch. 111, pars. 7501, 7502 and 7509)

Amends the Illinois Roofing Industry Licensing Act to exclude from the scope of said Act roofing in connection with the construction of new buildings or new additions to existing buildings. Effective July 1, 1985.

Apr 12 1985 First reading

Apr 15

May 02

Mar 05 1986

Jan 13 1987 Session Sine Die

Rfrd to Comm on Assignment  
Assigned to Registration & Regulation  
Interim Study Calendar REGIS  
REGULAT  
Exempt under Hse Rule 29(C)  
Interim Study Calendar REGIS  
REGULAT

**HB-1864 GIORGI - BULLOCK.**

(Ch. 48, pars. 138.1, 138.3 and 138.10)

<sup>1</sup> Fiscal Note Act may be applicable.

...jockey, exercise person, groom or hot-walker at any lawfully operated horse track as an enterprise to which the Act applies. Provides any horse owner who has contracted with an individual for the performance by that individual of any such services shall be liable to that individual and his dependents, as though he were an employee of such horseowner, for any injury sustained by him in the performance of such services on any horse owned by the horseowner where the performance of such services does not otherwise qualify the individual as an employee under the Act.

Apr 12 1985 First reading  
 Apr 15  
 May 02

Rfrd to Comm on Assignment  
 Assigned to Labor & Commerce  
 Interim Study Calendar LABOR  
 COMMRCE

Jan 13 1987 Session Sine Die

**HB-1865 DUNN,JOHN - TURNER AND FLOWERS.**  
 (Ch. 23, par. 5-2)

Amends Public Aid Code. Provides that medical assistance shall be available to persons who are determined eligible for basic maintenance under the Aid to the Aged, Blind or Disabled and the Aid to Families with Dependent Children Articles by disregarding the maximum earned income permitted by federal law. Effective immediately.

**HOUSE AMENDMENT NO. 1.**

Extends medical assistance provisions to persons who "would be" eligible for such basic maintenance.

**HOUSE AMENDMENT NO. 2.**

Deletes provision that persons who would be determined to be eligible for Aid to the Aged, Blind and Disabled by disregarding the maximum earned income permitted by federal law shall be eligible for medical assistance.

**FISCAL NOTE, AS AMENDED**

(Prepared by IL Dept. of Public Aid)

The additional annual costs for extending medical eligibility for an estimated 600 AFDC cases are estimated at \$241,000.

**STATE DEBT IMPACT NOTE, AS AMENDED**

HB-1865, as amended, has no effect on the appropriation or authorization of State bond funds, and thus has no impact on Illinois bonded indebtedness.

Apr 12 1985 First reading  
 Apr 15  
 May 02

Rfrd to Comm on Assignment  
 Assigned to Human Services  
 Recommended do pass 008-000-000

May 10

Placed Calndr, Second Reading  
 Second Reading

Amendment No.01 DUNN,JOHN Adopted  
 Placed Calndr, Third Reading

May 24

Interim Study Calendar HUMAN SERVICE

Mar 05 1986

Exempt under Hse Rule 29(C)  
 Interim Study Calendar HUMAN  
 SERVICE

Apr 16

Recommended do pass as amend  
 008-004-000

May 06

Placed Calndr, Second Reading

Fiscal Note Requested WOJCIK AND  
 PULLEN

May 07

Placed Calndr, Second Reading  
 Second Reading

Amendment No.02 DUNN,JOHN Adopted  
 State Debt Note. ReQuested PULLEN

Held on 2nd Reading

Fiscal Note Act may be applicable.

May 08	Held on 2nd Reading	Fiscal Note filed
May 13	Held on 2nd Reading Placed Calndr, Third Reading	State Debt Note Filed AS AMENI
May 14	Third Reading - Passed 060-046-001	
May 15	Arrive Senate Placed Calendr, First Reading	
May 20	Sen Sponsor SMITH Placed Calendr, First Reading	
May 21	First reading	Referred to
Jun 04	Ruled Exempt Under Sen Rule 05 SRUL	Re-referred to Assignment of Bills
		Assigned to
Jun 12	Placed Calndr, Second Reading	Recommended do pass 006-003-000
Jun 18	Second Reading Amendment No.01	SCHAFFER 026-026-000
		Lost
Jun 19	Placed Calndr, Third Reading Third Reading - Passed 033-018-000 Passed both Houses	
Jul 18	Sent to the Governor	
Sep 15	Governor approved PUBLIC ACT 84-1385	Effective date 09-15-86

**HB-1866 TERZICH**

Muni Cd-Foreign Fire Tax  
May 03 1985

Tbld pursuant Hse Rule 27D

**HB-1867 PHELPS**

Smithland Reservoir-Recreation  
Sep 20 1985 PUBLIC ACT 84-0643

**HB-1868 LEVERENZ - CURRAN - MAUTINO - BRUNSVOLD - DELEO  
HICKS.**

(Ch. 121, par. 3-105)

Amends the Highway Code to require that federal reimbursements for ex-  
itures from the State Construction Account Fund shall be deposited in that Fu

Apr 12 1985	First reading	Rfrd to Comm on Assignment
Apr 17		Assigned to Transportation
May 02		Recommended do pass 020-000-000
May 02	Placed Calndr, Second Reading	
May 10	Second Reading Placed Calndr, Third Reading	
May 24	Interim Study Calendar TRANSPORTATN	
Jan 13 1987	Session Sine Die	

**HB-1869 MCGANN - KEANE.**

(Ch. 121, par. 7-202.1c)

Amends The Illinois Highway Code. Provides that 25% of the Motor Fuel  
Funds received by municipalities over 500,000 shall be expended for reconstru  
or improvement on any residential street rather than non-arterial residential

Apr 12 1985	First reading	Rfrd to Comm on Assignment
Apr 15		Assigned to Transportation
May 02		Recommended do pass 020-000-000
May 02	Placed Calndr, Second Reading	

May 23 Second Reading  
 Held on 2nd Reading  
 May 24 Interim Study Calendar TRANSPORTATN  
 Jan 13 1987 Session Sine Die

**HB 1870 CURRAN AND MCAULIFFE.**

(Ch. 108 1/2, pars. 4-109.1 and 4-118.1; Ch. 85, new par. 2208.9)

Amends the Downstate Firefighters Article of the Pension Code to increase the annual increase in retirement pension from 3% to 4%, and to increase the rate of member contributions therefor from 1% to 1.5%; lowers the age for beginning to receive the annual increase from 60 to 55, and makes the initial increase cumulative to the beginning of retirement for persons retiring on or after July 1, 1985; provides a one-time increase of \$1 per year of creditable service for persons retiring on or before January 1, 1978. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

**STATE MANDATES ACT MAY REQUIRE REIMBURSEMENT TO LOCAL GOV'TS.  
 PENSION IMPACT NOTE**

Increase in accrued liability .....	\$69,300,000
Increase in total annual cost .....	5,842,000
Increase in total annual costs as a percent of payroll .....	4.0%
Increase in member contributions .....	5%

Apr 12 1985 First reading

Rfrd to Comm on Assignment  
 Assigned to Personnel and Pensions  
 Pension Note Filed  
 Interim Study Calendar PERS  
 PENSION

Apr 15

May 02

Jan 13 1987 Session Sine Die

**HB 1871 CURRAN**

Firemen-Hm Rule Preemption  
 Sep 23 1985 PUBLIC ACT 84-0866

**HB 1872 FLOWERS**

Inc Tax Day Care/Credit  
 May 03 1985  
 Tbl'd pursuant Hse Rule 27D

**HB 1873 GIGLIO**

Alcohol & Drug Abuse Educ  
 May 03 1985  
 Tbl'd pursuant Hse Rule 27D

**HB 1874 LAURINO - CHRISTENSEN - LEVERENZ - FLOWERS, STECZO, BERRIOS, DUNN, JOHN, PANAYOTOVICH, RICE, SHAW, TERZICH, VANDUYNE, YOUNG, A, PANGLE AND BROOKINS.**

(Ch. 15, par. 210.10; Ch. 23, par. 3-1.2, 3-5, 4-1.6, 4-2, 5-2, 5-4, 6-1.2, 6-2, 7-1.2, 7-2; Ch. 67 1/2, par. 401, 402, 404, 452, 458, Ch. 70, par. 76.1; Ch. 95 1/2, par. 3-806.3; Ch. 120, par. 1207; Ch. 144, par. 1801)

Amends the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, the public utilities Act and numerous other Acts. Beginning in 1986 for claims based on the year 1985, provides for a fuel cost relief grant of at least \$40, based on increases in home fuel costs, to persons currently eligible under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act and requires the Illinois Commerce Commission to certify

Note Act may be applicable.

Revenue, the Municipal League and the City of Chicago and it is supported by them and a number of the other groups who are obviously well affected. It deals with the...an acceleration of...or an advancement and acceleration of the sales tax revenues that are collected on behalf of local governments, and basically it provides for a...an advanced distribution of those, a one-time major acceleration in March 1987 which will involve some fifty to sixty million dollars for the municipalities and counties on whose behalf the State collects the sales tax and thereafter it will be phased...worked into a regular schedule. I should point out that this will obviously be of considerable help to municipalities in their cash flow...plans. It does not involve any increase in money available to them. It is just an acceleration as we have done with respect to some of our State taxes from time to time. There is no State money involved. This is all money that is collected and kept in a separate fund for the units of local government to begin with. So, we will in no way be affecting the cash flow problems of the State of Illinois, but we will be of great help to our municipalities. I would be happy to answer any questions, and if not, I would solicit your support on House Bill 1675.

PRESIDING OFFICER: (SENATOR LUFT)

Is there any discussion? Is there any discussion? If not, the question is, shall House Bill 1675 pass. Those in favor vote Aye. Those...Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, the Ayes are 55, none voting Nay, none voting Present. House Bill 1675 having received the required constitutional majority is declared passed. On the Order of 3rd Reading is House Bill...1865, Senator Smith. Read the bill, please, Mr. Secretary.

SECRETARY:

House Bill 1865.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR LUFT)

Senator Smith.

SENATOR SMITH:

Thank you, Mr. President and members of the Senate. House Bill 1865 is better described as the keep working mothers working Legislature, for it is a small change in the State Medicaid Program to extend the length of time that former AFDC families can receive health care once they have secured employment and have stayed on the job for at least thirteen months and often longer, realizing at the same time that the primary beneficiaries will be children who would otherwise have no health benefits even though their parents are working. Currently our program provides for nine months of Medicaid after the maximum time limit for receiving AFDC to supplement extremely low paying jobs have been exhausted. Congress has provided an option for states to extend this limit to...by six months, which is what this bill does. Nine states have already established this option. The only person eligible are working parents and their children who were once AFDC recipients and whose income is extremely low, that's...minimum wage or slightly higher and who do not have employment paid health benefits. The Chicago Tribune stated in its article about... "That the number of ex-welfare families who fit this category is so small that the total annual cost to the State is estimated at only two hundred and forty thousand dollars and half of that is paid by the government, but any...disincentive to be self-supportive no matter how narrow its impact should be revised." That was quoted in the Chicago Tribune. And so I say that all of us who talk about...with our constituents know that the greatest, single concern about our State welfare program is that we need to

get more people off the welfare rolls. The greatest fear that any of us would have as parents is to have a sick child with no health benefits. This bill only begins to address the problem of the medically uninsured among working people. It makes a small step towards helping people to get off welfare. It is only a...this is the only bill pending in the Senate that would make policy changes to encourage people to take jobs. It probably does not go far enough, but it certainly takes a step in the right direction. Mr. Chairman and members of the Senate, I encourage your favorable support.

PRESIDING OFFICER: (SENATOR LUFT)

Is there any discussion? Senator Macdonald.

SENATOR MACDONALD:

Thank you, Mr. President. I reluctantly have to rise opposing this particular piece of legislation. The department is very much opposed to this concept. While it is a small beginning, it may be just exactly that and it not...is only what this particular bill might do but what precedent it might be starting for the future. At this particular time, the department feels there is just no way that they can comply with this and the estimated number of families are just exactly that, it is an estimated number and we have no assurance of exactly how much this increase will be. While the estimate is...the estimate is two hundred and forty-one thousand dollars with a matching grant from the Federal Government, we still are unsure at this point and the department has registered strong opposition to this piece of legislation.

PRESIDING OFFICER: (SENATOR LUFT)

Is there any further discussion? Senator Kustra.

SENATOR KUSTRA:

Thank you, Mr. President. Question of the sponsor.

PRESIDING OFFICER: (SENATOR LUFT)

She indicates she'll yield.



SENATOR KUSTRA:

Senator, could you clarify just what the cost of this is? I...again, recognizing that we don't know the cost down to the last dollar, I have something on my desk; in fact, the Tribune article which you referred to, the Tribune editorial in favor of your bill, says two hundred and forty thousand dollars, but I have a note here that lists the State cost as a hundred and twenty thousand dollars. Is that because half if it is reimbursed by the Federal Government?

PRESIDING OFFICER: (SENATOR LUFT)

Senator Smith.

SENATOR SMITH:

Yes, but first let me say that any up-front costs will be immediately saved when families who we help with health care do not quit their jobs to go back on AFDC to get...needed health care. You're saving money there. He want to pay for health care for a sick child rather than to see its mother quit her job and go on cash...go on cash assistance and return back...return to Medicaid. The specific answer to your question is that the department estimate as many as six hundred families will be eligible for an annual cost of two hundred and forty thousand dollars in the Medicaid budget, half of the cost is paid by the Federal Government. If we can help these mothers to stay on their jobs, you are saving the State money when you can take these women off of welfare and it's not for the rest of their life, it's only for a short time, that's all it is. We're trying to help mothers to help themselves, to help them to become independent. You don't want to maintain...you're talking about your welfare rolls are increasing, increasing, increasing and when you have a program that's going to help them to help themselves and get off of welfare, then you want to fight it. That's all we're asking.

PRESIDING OFFICER: (SENATOR LUFT)

Any further discussion? Any further discussion? Senator Newhouse.

SENATOR NEWHOUSE:

Thank you, Mr. President. Mr. President and Senators, I...among those who are in this Body have a great deal of respect for Greg Coler who is the director of the Department of Public Aid and I recognize his dilemma. His dilemma is that he's fooling with a series of figures that somehow he must fit into the program that's before him and his job is not to project what might be coming down the line over the next ensuing months during the term of this fiscal year, but it's clear that one thing is going to happen and that is that if we do this, we'll go back into the punitive mode of punishing people who are trying to help themselves, and I don't think we want to do that. The second thing we're doing is this, if we look at this from a cost benefit ratio, certainly we can understand that it's going to cost us a good deal more when a family goes off a payroll and back onto the public aid rolls in the course of a sickness. The person who goes back onto the rolls at the intervention of that sickness is likely to stay on those rolls and that's where the cost to us is going to occur. So it would seem to me that the better logic would be to look at the short-term dollars we might have to spend...might have to spend and think about the long-term dollars we won't have to spend provided we keep working mothers working. That's the thrust of this bill. I hope we all consider it in that way and I would cast an Aye vote and ask that we all do the same.

PRESIDING OFFICER: (SENATOR LUFT)

Is there any further discussion? Senator Smith, do you wish to close?

SENATOR SMITH:

Thank you, sir. I merely wish your favorable vote. Thank you.

PRESIDING OFFICER: (SENATOR LUFT)

All right, the question is, shall House Bill 1865 pass. Those in favor vote Aye. Those...opposed vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record, Mr. Secretary. On that question, the Ayes are 32, 18 voting Nay, none voting Present. And House Bill 1865 having received the required constitutional majority is declared passed. Next bill on the Calendar is House Bill 1945, Senator DeAngelis. Okay, on the Order of 3rd Reading is House Bill 2537, Senator Newhouse. Read the bill, please, Mr. Secretary.

SECRETARY:

House Bill 2537.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR LUFT)

Senator Newhouse.

SENATOR NEWHOUSE:

Thank you, Mr. President and Senators. This provision, I think we all know about. It provides for the General Assembly to be able to make interim payments in the event that our budget...that our affairs are not settled by July 1. It means that...that public aid recipients will not then be off the rolls or without monies for an intervening period of time and I think it's a good idea and would ask a...favorable roll call.

PRESIDING OFFICER: (SENATOR LUFT)

Is there any discussion? Is there any discussion? Senator Schaffer.

SENATOR SCHAFFER:

Senator Newhouse, I watched the debacle last year and I...I think I shared your frustrations. My concern is that if that particular technique was to be used again this year, they'd use the Department of Mental Health or DCFS and next

STATE OF ILLINOIS  
84th GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

117th Legislative Day

May 14, 1986

Section (C) of the affected fireworks, what are we talking? We're talking about cherry bombs, smoke bombs. Some of these firecrackers and torpedos are enough. They're not only blowing your hand off or blinding you permanently, but also cause you your life. This is something that we cannot tolerate, as well as a number of other states throughout the United States. The sparklers are extremely dangerous. We're not trying to moralize on whether or not a child should use them. But, they are the ones that do use them. They are the ones that usually do get injured, and they are also the ones that do cause fires. And this is simply putting the sparklers in the Class C category. And as far as the moralizing is concerned, where's the product liability involved with this when someone gets burned or dies or injured? I don't see any of them. I don't see anybody talking against that. And certainly this is a Bill that is sponsored by the State Fire Marshall, the Illinois Fire Advisory Board, as well as the Chicago Fire Department. And I would urge your support of this legislation."

Speaker Braun: "The Gentleman has moved the passage of House Bill 1647. All in favor vote 'aye', opposed vote 'no'. Voting is open. This is final action. Have all voted who wish? Have all voted who wish? The Clerk will take the record. On this question there are 34 voting 'aye', 68 voting 'no', 5 voting 'present'. This Bill, having failed to receive the required Majority, is hereby declared lost. House Bill 1699, Representative Younge. Out of the record. House Bill 1865, Representative Dunn. Mr. Clerk, read the Bill."

Clerk O'Brien: "House Bill 1865, a Bill for an Act to amend Sections of the Illinois Public Aid Code. Third Reading of the Bill."

Speaker Braun: "Gentleman from Macon, Representative Dunn."

STATE OF ILLINOIS  
84th GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

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Dunn: "Thank you, Madam Speaker. With the adoption of Amendment #2, which is now on the Bill, the fiscal impact of this legislation has been drastically reduced. The fiscal cost is in the range of about 240,000 dollars statewide. And what this legislation will do, if enacted, is allow people who want to get off the welfare rolls but at entry level jobs don't earn a lot of money to make that transition and still be assured that they will have medical care by means of a green card. So, I would ask for a favorable vote on this piece of legislation, which will help people go back to work."

Speaker Braun: "The Gentleman has moved the passage of House Bill 1865. On that question, is there any discussion? The Chair recognizes the Gentleman from DuPage, Representative McCracken."

McCracken: "Will the Sponsor yield for a question?"

Speaker Braun: "He indicates he will."

McCracken: "Representative, I note that the fiscal impact is reduced dramatically. What does this Bill do now?"

Dunn: "What this Bill does is enables people, who get off the welfare rolls and go back to work, to obtain medical coverage the same as they previously had when they were on the welfare rolls. And the purpose, of course, is to encourage them to leave the welfare rolls. We find that there are people in this state who do the things we want them to do. They jump through the hoops to get job training, and then they find that they have an entry level job which pays minimum wage probably and has no fringe benefits. So, they have a terrible dilemma. Do they remain at the taxpayers' expense on the welfare rolls and have medical coverage or do they take a chance with an entry level job at minimum wage, no insurance coverage and hope they don't get sick?"

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McCracken: "So, this is for the working indigent, and you disregard the federal maximum earned income to determine eligibility."

Dunn: "That's right. This is currently federally authorized. As I indicated earlier, it doesn't affect a lot of people. About 240,000 dollars is the expected cost statewide, but it sends a strong signal that if you... if you do try to get off the welfare rolls, we'll help you make that transition."

McCracken: "Okay. Under current law, aren't these same people getting nine months worth of benefits, or is that not correct?"

Dunn: "Yes, they are, and this would extend those benefits another six months on top of that."

McCracken: "Okay. To the Bill, Madam Speaker. If, in fact, the nine month period is current law, I'm not certain what the substantial justification is for extending it another six months. I think that if it were a question of receiving or not receiving any of this for the working indigent, then maybe there would be a case for this... for this Bill. But, I mean, what difference is 15 months going to make? I just don't see it. If it's an either/or proposition, I can understand that; but, to extend it on the theory that these people in the next six months are going to move on to some higher level of job or income, I think, just is not demonstrated. Thank you."

Speaker Braun: "Is there further discussion? The Chair recognizes the Gentleman from Morgan, Representative Ryder."

Ryder: "Thank you, Madam Chairman. Would the Sponsor yield for questions?"

Speaker Braun: "He indicates he will."

Ryder: "Representative, I'm certain that you just heard the

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previous speaker make reference and I'd like to give you an opportunity to answer one of the questions that he raised in his argument against this. Can you cite to me specific examples that are opportunities lost because this six months does not exist?"

Dunn: "Sure. I would..."

Ryder: "Please do."

Dunn: "I wouldn't want, particularly if I had concern about any kind of health problem, to give up medical coverage for a minimum wage job for nine months of employment and go to work for an employer who doesn't have benefits and take a chance that I wouldn't get sick. The point of this legislation is that this would put the State of Illinois in parallel operation with the Federal Government. The current administration in Washington, the Reagan administration has recognized the need for an additional six months. This is federal rule now. We're just trying to take advantage of what the Federal Government has... this particular administration had said and recognized as something which needs to be done. It doesn't cost much. And if we really want to get people off the welfare rolls, we need to say we're going to give them a helping hand to do that. And no one knows if or when they're going to get sick. And if you can't get a job the first time out with fringe benefits, maybe you can work six months, nine months, 15 months and then move to some... some other job. But you need some... some assurance that support will be there at least on a temporary basis and the current federal administration has discovered that nine months is too short a time period and you need another six months."

Ryder: "Representative, I appreciate a very thorough answer. In fact, it would make an excellent closing for your debate. But, I think that you may have misconstrued my question."

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What is so magic about nine months or six months beyond? In the event that the person attempts, during that nine month period, to find the job or to go on the job and go off of the welfare rolls, then, in the event the job doesn't work out, in the event that they are fired or they have other problems, are they in some way now prohibited from reapplying for public aid?"

Dunn: "The answer to your question is, if we follow your logic, we might as well say that one or two weeks support is plenty. Because once you get out, get that minimum wage job, then... then you can apply for a better job. You and I know that if you go to work frying hamburgers for minimum wage it's not likely that you'll get a better job in the first or the second week. And if you've come to areas of the State of Illinois which don't have a large influx of tax dollars, like the community from which I am from, Decatur, Danville, Rockford, Peoria, the blue collar industrial belt cities of this state, not to mention Chicago and East St. Louis, you come from any of the hard hit areas, if you can get a minimum wage job and have the spunk to get off the welfare rolls, it really isn't too likely that you're going to have employers knocking at your door to... to step up quickly to a better job. You need all the time you can get. And what I'm saying to the General Assembly is that what we all know is a very conservative administration with regard to social programs out in Washington has recognized that nine months plus an additional six months is a reasonable time period. It's not my administration out of Washington. It's the Reagan administration. And if they recognize this, I think that we ought to take advantage of it here in the State of Illinois. I think we need to get people off welfare rolls. I talk about that. We all talk about that. This is



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something that has a very low price tag to put our money where our mouth is. Two hundred and forty thousand dollars is not too much to try this experiment and encourage people to do what we want them to do."

Ryder: "Representative, then, I'll ask you a more concise question and hopefully receive a more concise answer. When, under your Act, these folks are receiving the 15 months of eligibility, are they required to report in on a monthly basis?"

Speaker Braun: "Before you respond, Representative Dunn, I'd like the Body to recognize the presence of former Representative Harold Katz, who's joined us in here in the front. Continue. Proceed, Representative Dunn. I'm sorry."

Dunn: "Yeah. I'm told that the Department gives them an automatic pass for the first nine months. And during the second period of time, it would be appropriate to review the determination. I don't think anybody is trying to make it cushy for someone to take advantage of a boondoggle program. This... Don't forget, this contemplates employment and contemplates employment to where it is not likely to have fringe benefits and lots of jobs don't these days. There are a lot of temporary jobs out there in fast food operations and shopping malls, for example, where people are only hired for 20 hours a week. And the purpose of that is to avoid paying fringe benefits. Those jobs are everywhere. If someone is willing to get off the welfare rolls and take a job like that, let's encourage him to do that to... to develop some self confidence. That doesn't happen overnight either. It may take six or nine months. If we can't spend 240,000 dollars statewide to do what we all preach about both in here and on the campaign trail, then we're not really being honest with ourselves."

Speaker Braun: "Is there further discussion?"

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Ryder: "May I speak to the Bill?"

Speaker Braun: "Proceed, Representative Ryder."

Ryder: "Thank you, Madam Chairman. Since my questions were not answered, except for three closing statements, I would indicate to the body that what we're talking about is not an either/or situation. No one is indicating that these people should not have the opportunity for nine months. What is being requested is that the nine months be extended to 15 months. And I have attempted to ask the Sponsor for examples where the additional six months would be of some benefit; and, although he indicates that he may know of some, I am afraid that in the conversations that we had, he was unable to provide same. No one is saying that the nine months should be abolished. I'm not. The Sponsor is not. But we're talking about an additional quarter of a million dollars here, and we are not provided justification for that. Again, it's more money. It's money that's being spent and, in this situation, I don't believe it's being wisely spent because the reasons have not been established. And I would urge a 'no' vote. Thank you, Madam Chairman."

Speaker Braun: "Representative Dunn, to close."

Dunn: "Well, I guess maybe the best way to close is to say that we are either last or next to last in return of federal dollars from Washington. I'm trying to pass a Bill that would appropriate 240,000 dollars and get a few bucks back from Washington in a program which is authorized by Washington, but I guess the people on the other side of the aisle don't want to do that. They want to remain last getting taxpayer dollars back from Washington and maybe that's why we are in that position. I don't know. I'd like to get people off the welfare rolls. I'd like to start doing it. I'd like to start doing it today. This will help do that. This is a program authorized and

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encouraged by the Reagan administration. So, I guess I'm standing up here supporting one of their programs which is not a typical thing for me to do, but it's a good program. So, I support it. Let's pass this Bill. It doesn't have much of a price tag and will be very helpful to a lot of people in the State of Illinois."

Speaker Braun: "The Gentleman has moved the passage of House Bill 1865. All in favor vote 'aye', opposed vote 'no'. Voting is open. This is final action. Have all voted who wish? Have all voted who wish? For what reason, the Lady... The Chair recognizes the Lady from Champaign, Representative Satterthwaite."

Satterthwaite: "Speaker and Members of the House, we frequently are concerned about the fact that there is a drain of state dollars to subsidize federal programs and that we do not get our fair share back. Although the money for this program would have to be expended by the state upfront, it's my understanding that half of the funds would be reimbursed to us and would help us to address that imbalance. If federal law permits states to provide this benefit and we are among a few states who do not, it essentially means that our federal tax dollars are going to other states to provide for this program to recipients in those states. And I think that it is a benefit that we should be extending to our own citizens in order to help them get back on the payrolls instead of being additional burdens for a long time to the State of Illinois and to the Federal Government."

Speaker Braun: "Have all voted who wish? Have all voted who wish? The Clerk will take the record. On this question there are 60 voting 'aye', 46 voting 'no', 1 voting 'present'. This Bill, having received the Constitutional Majority, is hereby declared passed. House Bill 2060,

**EXHIBIT 8**

**Joint Committee on Administrative Rules**  
**ADMINISTRATIVE CODE**

**TITLE 89: SOCIAL SERVICES**  
**CHAPTER IV: DEPARTMENT OF HUMAN SERVICES**  
**SUBCHAPTER b: ASSISTANCE PROGRAMS**  
**PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**  
**SECTION 112.250 GRANT LEVELS**

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**Section 112.250 Grant Levels**

- a) The amount of a recipient unit's grant is the unit's appropriate payment level minus that unit's nonexempt income.
- b) If the amount of a recipient unit's grant, as determined under the appropriate provisions of the program, would be greater than \$0 but less than \$1, the recipient unit is not eligible to receive a grant. However, such recipient units may be eligible for medical assistance.
- c) If the amount of a recipient unit's grant, as determined under the appropriate provisions of the program, is not a whole dollar amount, the amount of the grant shall be rounded down to the next whole dollar amount.

(Source: Amended at 23 Ill. Reg. 7896, effective July 1, 1999)

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**SECTION 112.251 PAYMENT LEVELS**

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**Section 112.251 Payment Levels**

The Payment Levels are flat, monthly standard amounts. The amount for an assistance unit is based on three variables:

- a) the number in the assistance unit;
- b) the presence or absence of an adult in the assistance unit; and
- c) the grouping of the county in which the assistance unit lives.

(Source: Amended at 31 Ill. Reg. 15080, effective October 24, 2007)

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TITLE 89: SOCIAL SERVICES  
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 SUBCHAPTER b: ASSISTANCE PROGRAMS  
 PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES  
 SECTION 112.252 PAYMENT LEVELS IN GROUP I COUNTIES

**Section 112.252 Payment Levels in Group I Counties**

- a) The following Payment Levels are established for Group I Counties.
- b) The counties included in Group I are:

Boone	Kane	Ogle
Champaign	Kankakee	Whiteside
Cook	Kendall	Winnebago
DeKalb	Lake	Woodford
Dupage	McHenry	

SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE OR RELATIVES AND CHILD OR CHILDREN	CHILD OR CHILDREN ONLY
1	223	107
2	292	211
3	396	261
4	435	335
5	509	398
6	572	427
7	603	460
8	634	492
9	667	528
10	702	565
11	740	605
12	778	645
13	820	689

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14	863	734
15	909	781
16	957	833
17	1,007	885
18	1,061	

(Source: Amended at 26 Ill. Reg. 17182, effective November 15, 2002)

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**PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**  
**SECTION 112.253 PAYMENT LEVELS IN GROUP II COUNTIES**

**Section 112.253 Payment Levels in Group II Counties**

- a) The following Payment Levels are established for Group II Counties.
- b) The counties included in Group II are:

Adams	Lee	Stephenson
Bureau	Livingston	Tazewell
Carroll	Logan	Vermilion
Clinton	Macon	Wabash
Coles	Macoupin	Warren
DeWitt	Madison	Will
Douglas	McDonough	
Effingham	McLean	
Ford	Mercer	
Fulton	Monroe	
Grundy	Morgan	
Henry	Moultrie	
Iroquois	Peoria	
Jackson	Piatt	
Jo Daviess	Putnam	
Knox	Rock Island	
LaSalle	Sangamon	
	St. Clair	

SIZE OF	CARETAKER RELATIVE OR RELATIVES AND	CHILD OR
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ASSISTANCE UNIT	CHILD OR CHILDREN	CHILDREN ONLY
1	214	102
2	282	204
3	383	254
4	423	327
5	495	387
6	555	417
7	585	448
8	617	482
9	650	516
10	684	551
11	719	589
12	757	629
13	798	665
14	839	710
15	883	756
16	930	805
17	981	856
18	1,031	

(Source: Amended at 26 Ill. Reg. 17182, effective November 15, 2002)

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 SECTION 112.254 PAYMENT LEVELS IN GROUP III COUNTIES

**Section 112.254 Payment Levels in Group III Counties**

- a) The following Payment Levels are established for Group III Counties.
- b) The counties included in Group III are:

Alexander	Edgar	Jasper	Montgomery	Shelby
Bond	Edwards	Jefferson	Perry	Stark
Brown	Fayette	Jersey	Pike	Union
Calhoun	Franklin	Johnson	Pope	Washington
Cass	Gallatin	Lawrence	Pulaski	Wayne
Christian	Greene	Marion	Randolph	White
Clark	Hamilton	Marshall	Richland	Williamson
Clay	Hancock	Mason	Saline	
Crawford	Hardin	Massac	Schuyler	
Cumberland	Henderson	Menard	Scott	

SIZE OF ASSISTANCE UNIT	CARETAKER RELATIVE OR RELATIVES AND CHILD OR CHILDREN	CHILD OR CHILDREN ONLY
1	182	99
2	270	197
3	366	249
4	408	317
5	476	377
6	537	406
7	565	435
8	594	467
9	627	501
10	659	536
11	695	572
12	731	610

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13	770	635
14	810	678
15	853	723
16	898	771
17	945	821
18	995	

(Source: Amended at 26 Ill. Reg. 17182, effective November 15, 2002)

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**Joint Committee on Administrative Rules**  
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**TITLE 89: SOCIAL SERVICES**  
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**PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**  
**SECTION 112.100 UNEARNED INCOME**

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**Section 112.100 Unearned Income**

- a) All currently available, unearned income which is not specified as exempt shall be considered in the determination of eligibility, the level of the assistance payment and the basis of issuance for food stamps.
- b) Unearned income is all income other than that received in the form of salary for services performed as an employee or profits from self-employment.
- c) Unearned income such as need based payments, cash assistance, compensation in lieu of wages and allowances received through the Jobs Training Partnership Act.

(Source: Amended at 8 Ill. Reg. 12333, effective June 29, 1984)

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**PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**  
**SECTION 112.130 EARNED INCOME**

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**Section 112.130 Earned Income**

- a) All currently available income which is not specified as exempt shall be considered in the determination of eligibility and the level of the assistance payment.
- b) Earned income is remuneration acquired through the receipt of salaries or wages for services performed as an employee or profits from an activity in which the individual is self-employed.
- c) In determining eligibility and level of assistance, the earned income of a parent of a person under age 18 who is receiving assistance as a parent or dependent child if they are all living in the same household is considered.
- d) The amount of the total available income of the parent under subsection (c) of this Section shall be the income remaining after the following amounts have been deducted:
  - 1) As employment expenses, \$90 from the gross earned income or income remaining after deducting self-employment business expenses for an employed person (see Section 112.145);
  - 2) An amount equal to 3 times the TANF payment level for a family size taking into account the needs of the parent and the needs of individuals residing with the parent not included in the assistance unit whom the parent claims or could claim as federal tax dependents;
  - 3) Amounts paid by the parent for alimony or child support to individuals outside the home;
  - 4) Amounts paid by the parent to individuals outside the home whom the parent claims or who could be claimed as federal tax dependents.
- e) Earned income received by all dependent children.

(Source: Amended at 29 Ill. Reg. 8161, effective May 18, 2005)

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SUBCHAPTER b: ASSISTANCE PROGRAMS  
PART 112 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES  
SECTION 112.140 EXEMPT EARNED INCOME**

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**Section 112.140 Exempt Earned Income**

The earned income of an individual receiving assistance as a dependent child is exempt.

(Source: Amended at 21 Ill. Reg. 15597, effective November 26, 1997)

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SECTION 112.150 ASSETS

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**Section 112.150 Assets**

- a) The value of nonexempt assets shall be considered in determining eligibility for an assistance payment.
- b) The entire equity value of a jointly-held liquid asset or the client's proportional share of a jointly-held non-liquid asset shall be considered in determining eligibility for an assistance payment, unless:
  - 1) the asset is a joint income tax refund;
  - 2) the client can document the amount of his or her legal interest in the asset, and that such amount is less than the entire value of the asset, the documented amount shall be considered. Appropriate documentation, may include, but is not limited to, bank documents, trust documents, signature cards, divorce papers, or court orders;
  - 3) the asset is held jointly with a client or clients of any Department assistance program other than food stamps;
  - 4) the client documents that he or she does not have access to the asset. Appropriate documentation may include but is not limited to, bank documents, trust documents, signature cards, divorce papers, or court orders;
  - 5) the client documents that the asset or a portion of the asset is not owned by the client and the client's accessibility to the asset is changed (see subsections (b)(2) and (4) of this Section for examples of documentation);
  - 6) the co-owner refuses to make the asset available; or
  - 7) the co-owner has engaged in violent activity against a family member in the past.
- c) Income tax refunds shall be considered available assets and are to be considered against the appropriate non-exempt asset limitation of the

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assistance unit. One-half of joint tax refunds shall be considered available for each payee. A client who declares that less than one-half of the joint income tax was received may claim an exception. Only the amount claimed to be received shall be considered.

- d) An applicant or recipient can appeal the Department's decision relating to consideration of assets in accordance with 89 Ill. Adm. Code 14.
- e) Pension plans are exempt from consideration as an asset, including accounts owned solely by an individual, such as an Individual Retirement Account (IRA), 401 K or Keogh Plan.

(Source: Amended at 29 Ill. Reg. 8161, effective May 18, 2005)

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SECTION 112.151 EXEMPT ASSETS

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**Section 112.151 Exempt Assets**

- a) The following assets are exempt from consideration in determining eligibility for assistance and the amount of the assistance payment:
- 1) A home that is the usual residence of the assistance unit.
  - 2) Clothing, personal effects and household furnishings.
  - 3) One automobile per assistance unit.
  - 4) The value of the coupon allotment under the Food Stamp Act of 1977 (7 USC 2011 et seq.).
  - 5) The value of the U.S. Department of Agriculture donated foods (surplus commodities).
  - 6) The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 USC 1771 et seq.) and the special food service program for children under the National School Lunch Act (42 USC 1751 et seq.).
  - 7) The principal and interest of a trust fund which the court refuses to release and one-time only payments released for a specific purpose other than income maintenance needs of the child.
  - 8) Burial spaces and additions or improvements to a burial space.
  - 9) Prepaid Funeral Agreements worth \$1500 or less per person.
  - 10) Donations or benefits from fund raisers held for a seriously ill client provided the client or a responsible relative of the client does not have control (that is, not available to the client or the responsible relative) over the donations or benefits or the disbursement of the donations or benefits.
  - 11) A nonrecurring lump-sum SSI payment and a nonrecurring lump-

sum SSA payment based on the individual's disability and made to that individual in a TANF assistance unit is exempt as an asset for the month of receipt and the following month. For the third month, any remainder must be counted as a nonexempt asset.

- 12) The value of any savings in which the money is accumulated from the earning of a child. The interest is also exempt as well as gifts to the child not exceeding \$50 per quarter.
- 13) The value of micro-equipment and inventory needed for a functioning self-employment enterprise or being held in accordance with a Responsibility and Services Plan for the establishment of a self-employment enterprise.
- 14) Funds held in Individual Development Accounts meeting the requirements of Section 404(h) of the Social Security Act or in a program approved by the Department.

b) In addition to the above, the following assets are exempt. The assets listed in this subsection (b) remain exempt only as long as they can be separately identified if they are added to an existing account. If the amount of combined assets at any time, from the time of the receipt of the exempt asset or assets until the date of the eligibility determination or redetermination, fall below the amount of the exempted assets, only the lowest balance remains exempt.

- 1) The assets of a stepparent for purposes of determining the stepchild's eligibility.
- 2) Any benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965 (42 USC 3045 et seq.), as amended.
- 3) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC 4601 et seq.).
- 4) Any payments distributed per capita or held in trust for members of any Indian Tribe under P.L. 92-254, P.L. 93-134 or P.L. 94-540.
- 5) Tax-exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et seq.).
- 6) Federally subsidized housing payments under Section 8 of the Housing and Community Development Act of 1974 (42 USC 1437f) of the U.S. Housing Act of 1937.
- 7) Effective October 17, 1975, receipts distributed to certain Indian Tribunal members of marginal land held by the United States government.

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- 8) Payments for supporting services or reimbursement for out-of-pocket expenses made to volunteers serving as senior health aides, senior companions, foster grandparents, and persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and any other programs under Titles II and III, pursuant to Section 418 of P.L. 93-113.
- 9) Any grant or loan to an undergraduate student for educational purposes made or insured under any programs administered by the Commissioner of Education.
- 10) For those individuals who have approved self-employment plans under Section 112.78, business assets must be separate from personal assets. Business assets are those assets that are directly related to producing goods and services that have been purchased after the business begins or as part of an approved self-employment plan (see Section 112.78). Business assets are considered exempt unless it is determined that the equity value (the value for which the asset can be sold less any amount owned on the asset) exceeds \$1,000. If the assets are determined to exceed \$1,000 but are less than \$5,000, the case will be reviewed in the DHS central office to ensure that the assets in excess of \$1,000 are appropriate as business assets. A determination of business assets will be completed two years after the plan is approved.
- 11) Any payments received under Title I of P.L. 100-383 of the Civil Liberties Act of 1988 (50 USC 1989b through 1989b-8).
- 12) Any payment received under Title II of P.L. 100-383 of the Aleutian and Pribilof Islands Restitution Act (50 USC 1989c through 1989c-8).
- 13) Payments made to veterans who receive an annual disability payment or to the survivors of deceased veterans who receive a one-time lump-sum payment from the Agent Orange Settlement Fund or any other fund referencing Agent Orange product liability under P.L. 101-201.
- 14) Payments made by the Illinois Department of Mental Health and Developmental Disabilities under the Family Assistance Program for Mentally Disabled Children under P.A. 86-921.
- 15) Assets accumulated from income earned through employment under the federal "Health Start" Project.
- 16) Disaster relief payments provided by federal, State or local government or a disaster assistance organization.
- 17) Earmarked child support payments received by a client for the support of a child not included in the assistance unit.

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- 18) Payments received under the federal Radiation Exposure Compensation Act (42 USC 2210 nt).
- 19) Payments made to individuals because of their status as victims of Nazi persecution pursuant to P.L. 103-286.

(Source: Amended at 25 Ill. Reg. 10336, effective August 3, 2001)

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**EXHIBIT 9**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

RICHARD P. CARO, a State of Illinois  
Taxpayer on Behalf of and for the Benefit of  
the State of Illinois, RONALD GIDWITZ,  
and GREGORY BAISE,

Plaintiff and Plaintiffs-Intervenors,

v.

HON. ROD BLAGOJEVICH, Governor of  
the State of Illinois; THE ILLINOIS  
DEPARTMENT OF PUBLIC HEALTH;  
DAMON ARNOLD, Director of IDPH; THE  
ILLINOIS DEPARTMENT OF  
HEALTHCARE AND FAMILY SERVICES;  
BARRY S. MARAM, Director of IDHFS;  
and DANIEL W. HYNES, Comptroller,

Defendants,

STATE OF ILLINOIS,

Intervenor.

Case No. 07 CH 34353

The Honorable James R. Epstein

JOINT STIPULATION

Plaintiff Richard P. Caro and Plaintiff-Intervenors, Ronald Gidwitz and Gregory Baise, and Defendants, Governor Rod R. Blagojevich, the Illinois Department of Public Health, the Director of the Department of Public Health Damon Arnold, the Department of Healthcare and Family Services, the Director of the Department of Healthcare and Family Services Barry S. Maram (the "Parties"), have agreed to stipulate to the facts and to the admissibility of the exhibits set forth below.

Plaintiffs withdraw the written discovery they propounded on Defendants on January 2, 2008. The Parties forego all oral and written discovery for the purposes of the hearing on Plaintiffs' Motion for Preliminary Injunction. Any further discovery shall

commence pursuant to the Illinois Rules of Civil Procedure after the resolution of the Motion for Preliminary Injunction. The Parties agree that the facts and exhibits stipulated herein shall be the sole evidence submitted for the hearing. To the extent that there are legal conclusions or statements of law set forth below, the Parties do not stipulate. The Parties reserve their right to object to any of the facts and exhibits stipulated to herein on the basis of relevance.

1. Plaintiff Richard P. Caro is a citizen and taxpayer of the State of Illinois and a resident of County of Cook, State of Illinois.
  2. Plaintiff-Intervenors Ronald Gidwitz and Gregory Baise are citizens, residents and taxpayers of the State of Illinois.
  3. Defendant Rod R. Blagojevich is the Governor and the chief Executive Officer of the State of Illinois. Governor Blagojevich has taken an oath to uphold the Illinois Constitution and the laws of the State of Illinois.
  4. Defendants the Illinois Department of Healthcare and Family Services ("DHFS") and the Illinois Department of Public Health ("DPH") are State agencies which implement, manage and oversee various public health related programs, including the expanded FamilyCare and Free Breast and Cervical Cancer Screening ("BCC") programs, respectively that are at issue here.
  5. Defendant Barry S. Maram is the Director of DHFS.
  6. Defendant Damon Arnold is the Director of DPH.
  7. Defendant Daniel W. Hynes is the Comptroller of the State of Illinois.
- Pursuant to Article V, §17 of the Illinois Constitution and the State Comptroller Act, 15 ILCS 405, Comptroller Hynes is authorized to order payments out of funds held by the State Treasurer.



8. On March 7, 2007, before a joint session of the Illinois House and Senate, Governor Rod Blagojevich delivered a budget address. The Governor proposed an expansion of State-sponsored healthcare programs, known as "Illinois Covered."

9. Illinois Covered had three main components: 1) coverage for uninsured adults in Illinois; 2) assistance to middle class families so that they can get, keep and afford the healthcare they need; and 3) assistance to help small business pay for health insurance for their workers. FamilyCare was among the programs to be expanded under Illinois Covered.

10. The Fiscal year 2008 budget submitted by the Governor stated that appropriations and spending for Illinois Covered would be included in the FY 08 budget as a separate line item.

11. The Governor proposed a separate line item in the budget for Illinois Covered requesting the sum of \$358 million for Illinois Covered in Senate Bill 1834. The Governor's Illinois Covered appropriation request was not called or voted upon by either house of the General Assembly.

12. In 1997, the federal government passed the State Children's Health Insurance Program ("SCHIP"). The purpose of the program was to help children whose families cannot afford private health insurance but do not qualify for Medicaid to obtain the health insurance coverage they needed.

13. Under SCHIP, Illinois receives a 65% match from the federal government versus only a 50% match under Medicaid. Federal law precludes states switching coverage from Medicaid to SCHIP by requiring maintenance of Medicaid program coverage. However, states have had some flexibility in choosing whether to expand

coverage with Medicaid versus SCHIP funds. States have sought to fund health insurance expansions through SCHIP rather than Medicaid in order to take advantage of the higher federal match.

14. Illinois participated in SCHIP by enacting and implementing the Children's Health Insurance Program Act, 215 ILCS 106 ("CHIPA"). CHIPA enables eligible children who are residents of Illinois, to the extent funding permits, to have access to health benefits coverage. 89 Ill. Admin. Code 125.100. Under CHIPA, DHFS provides health benefits coverage to eligible children through purchasing or providing health care benefits or by subsidizing the cost of privately sponsored health insurance, including employer-based health insurance.

15. In 2001, the federal government permitted States to submit waivers to obtain federal funds to extend health insurance coverage for parents of children enrolled in the State's CHIP program.

16. In 2002, Illinois submitted the KidCare Parent Coverage Waiver to provide for the expansion of coverage to eligible parents. The waiver was approved and the FamilyCare program was created. 89 Ill. Admin. Code 120.32.

17. The KidCare Parent Coverage Waiver authorized Illinois to enroll parents and receive matching funds for parents who met an income eligibility requirement of up to and including 185% of the federal poverty limit ("FPL").

18. Illinois chose 185% income limit as the cut off for receipt of the federal 65% match funds under its SCHIP waiver. Illinois is not prohibited from expanding eligibility beyond this limit as long as it uses other sources of funding and has legislative authority and appropriated funds.

19. Illinois implemented the FamilyCare program authorized by the waiver in stages.

- a. In October 2002, Illinois made parents whose income was up to and including 49% of the FPL eligible for FamilyCare.
- b. In July 2003, Illinois expanded the FamilyCare program to parents whose income was up to and including 90% of the FPL.
- c. In September 2004, Illinois again expanded the income eligibility for the FamilyCare program to parents whose income was up to and including 133% of the FPL.
- d. In January 2006, Illinois further expanded the FamilyCare program to cover parents whose income was up to and including 185% of the FPL.

20. For purposes of cost sharing for direct coverage of benefits by Illinois, adults in the FamilyCare program are enrolled into either FamilyCare Share or FamilyCare Premium. 89 Ill. Admin. Code 125.240(c). If eligible individuals' monthly countable income is above 133% and at or below 150% of the FPL for the number of individuals in the family, the individual will be enrolled in FamilyCare Share and not required to pay a premium. If eligible individuals' monthly countable income is above 150% and at or below 185% of the FPL for the number of individuals in the family, an eligible adult will be enrolled in FamilyCare Premium program and be required to pay certain premiums.

21. Under 89 Ill. Adm. Code § 125.320, the premium amounts charged under the FamilyCare Premium program for families above 150% but below 185% of the FPL are \$15 for one individual, \$25 for two individuals, \$30 for three individuals, \$35 for four individuals, and \$40 for five or more individuals.

22. The premiums charged are used to offset the cost to the State of services under the FamilyCare program.

23. The KidCare Parent Coverage Waiver expired September 30, 2007.

24. SCHIP was to have expired on September 30, 2007 but continuing resolutions extended that date to December 31, 2007, pending reauthorization legislation which, as set forth below, was signed into law December 29, 2007.

25. With the KidCare Parent Coverage Waiver set to expire, DHFS waited to see what action Congress would take to reauthorize and expand SCHIP.

26. To preserve its option to obtain as much federal revenue to the state as possible, DHFS chose not to file an amendment to the State Medicaid Plan to claim federal matching funds at the lower rate of 50% for parents under Title XIX while Congressional action on SCHIP expansion was uncertain. DHFS waited in order to preserve its ability to obtain the 65% federal match for the people currently covered under the KidCare Parent Coverage Waiver and any additional people who would be covered should Congress expand SCHIP.

27. On August 2, 2007, Congress passed a bill to reauthorize SCHIP and to expand funding authorization for the program to enable states to set higher income eligibility levels.

28. In 2007, New York proposed expansion of New York's CHPlus program, contingent upon the availability of federal financial participation, to uninsured children whose family's gross income is at or below 400% FPL.

29. On October 3, 2007, President Bush vetoed the SCHIP reauthorization bill. In his Message to the House of Representatives withholding his approval, President

Bush noted that the bill would turn SCHIP "into a program that would cover children from some families of four earning almost \$83,000 a year."

30. On November 1, 2007, Congress passed another, similar bill that again reauthorized SCHIP and expanded funding authorization for the program to enable states to set higher income eligibility levels.

31. Due to President Bush's prior veto and the likelihood that the second SCHIP expansion would also fail, on November 7, 2007, DHFS promulgated an immediately effective emergency rule (the "Emergency Rule") pursuant to the Public Aid Code, under 89 Ill. Adm. Code 120, entitled "Medical Assistance Programs" (the "Emergency Rule"). DHFS also proposed a permanent rule making the same changes.

32. The Emergency Rule had two parts. One part proposed an amendment to an existing rule, § 120.32, that authorized an earlier expansion of coverage under the FamilyCare program to parents/caretaker relatives with incomes up to 133% of the FPL. The amendment to § 120.32 was simply a change in the title.

33. The other part of the Emergency Rule created a new § 120.33 that, in relevant part, would preserve FamilyCare coverage at levels already in place under §§ 120.32 and 125.200 and further expand coverage to uninsured parents and other caretaker relatives with incomes up to and including 400% of the FPL.

34. DHFS promulgated the Emergency Rule based on Sections 5-2 and 12-13 of the Public Aid Code, 305 ILCS 5/5-2 and 12-13.

35. DHFS determined that an emergency existed warranting the promulgation of the Emergency Rule and submitted the Emergency Rule pursuant to Section 5-45 of the Illinois Administrative Procedure Act. 5 ILCS 100/5-45.

36. In accordance with emergency rulemaking procedures, the DHFS filed along with the Emergency Rule a statement containing its reasons for its finding that an emergency existed.

37. The DHFS submitted its Emergency Rule along with documentation to JCAR.

38. The Governor approved the FamilyCare program expansion submitted in the Emergency Rule.

39. The enrollment and application process began on the effective date of the Emergency Rule, November 7, 2007. Eligibility determinations for the program made by the 15<sup>th</sup> day of the month became effective the first day of the following month and those made after the 15 day of the month became effective no later than the first day of the second month following that determination. Similarly, when termination of coverage is recorded by the 15 day of the month it will become effective the first day of the following month and if termination of coverage is recorded after the 15<sup>th</sup> day of the month, it will be effective no later than the first day of the second month following that determination.

40. On December 12, 2007, President Bush vetoed the second SCHIP bill.

41. On December 19, 2007, Congress passed a third SCHIP bill that reauthorized SCHIP without any expansion of the income eligibility levels.

42. On December 26, 2007, DHFS submitted a state Medicaid plan amendment to bring the people encompassed by the Emergency Rule under Medicaid to capture at least the 50% federal match.

43. DHFS can file a state plan amendment at any time during a quarter and it will apply retroactively to the first day of the quarter, if approved. 42 CFR 430.20.

44. On December 29, 2007, President Bush signed the third SCHIP bill that reauthorized SCHIP without any expansion.

45. DHFS charges fees and premiums to FamilyCare program participants based upon their income levels and family size as follows:

- a. Individuals with countable income above 150% and at or below 200% of the FPL pay premiums at the pre-expansion rate.
- b. Individuals with countable income above 200% and at or below 300% of the FPL pay \$80 per adult per month and \$40 per child per month capped at \$80 for two or more children.
- c. Individuals with countable income above 300% and at or below 400% of the FPL pay \$140 per adult and \$70 per child per month capped at \$140 for two or more children.

46. Premiums are collected to offset costs of the program.

47. Pursuant to the 2004 Health Care Justice Act, 20 ILCS 4045/1, the Adequate Health Care Task Force ("Task Force") was charged with developing a healthcare access plan to ensure that Illinoisans have access to affordable quality health care. The Task Force was comprised of 29 voting members, 5 appointed by the Governor and 6 appointed by each of the 4 leaders of the General Assembly.

48. On January 26, 2007, under its healthcare coverage expansion model, the Task Force recommended that Illinoisans under 400% of the FPL should have subsidized healthcare insurance coverage.

49. DHFS followed the recommendation of the Task Force to make healthcare insurance available to a currently uninsured population by setting the income eligibility level for FamilyCare at 400% of the FPL.

50. The statutory authority DHFS relies on for the expansion of FamilyCare is 305 ILCS 5/5-2(2)(b), which permits the provision of medical assistance for all persons who would be determined eligible for basic maintenance under Article IV of the Public Aid Code, the Temporary Assistance for Needy Families ("TANF"), by disregarding the maximum earned income permitted by federal law.

51. Article IV of the Public Aid Code lists the eligibility criteria in 305 ILCS 5/4-1, which provides, in part, "Financial aid in meeting basic maintenance requirements for a livelihood compatible with health and well-being shall be given under this Article to or in behalf of families with dependent children who meet the eligibility condition of Sections 4-1.1 through 4-1.11."

52. The Executive Branch Defendants contend that Section 120.33 includes all of the applicable eligibility conditions in Sections 4-1.1 through 4-1.11.

53. Under section 120.33(a)(2), one of the criteria for eligibility for FamilyCare is that all Medical Assistance-No Grant eligibility requirements of Part 120 on Medical Assistance Programs, with the exception of Sections 120.320 through 120.323, be met.

54. Each of the applicable TANF requirements outlined in sections 4-1.1 through 4-1.11 has a counterpart in Part 120 on Medical Assistance. 89 Ill. Adm. Code 120.

(a) Section 4-1.1 states that the family must have a child under the age of 18 or an 18-year old attending school. The FamilyCare program also has that requirement, codified at 89 Ill. Adm. Code 120.312(d).



- (b) Section 4-1.2 states that the person requesting benefits must be a caretaker relative. FamilyCare has this requirement in sections 120.32(a) and 120.309.
- (c) Section 4-1.2a states that the person cannot be a resident of a public institution. FamilyCare has that requirement in section 120.318.
- (d) Section 4-1.2b has been repealed and thus is not a condition for the FamilyCare Program.
- (e) Section 4-1.2c sets forth eligibility requirements for children. Since the FamilyCare program applies to those who are 19 years of age or older (89 Ill. Adm. Code 120.32-33), Section 4-1.2c is inapplicable.
- (f) Sections 4-1.3, 1.4 and 1.5 have been repealed and are thus not applicable to the FamilyCare Program.
- (g) Section 4-1.5(a) states that a person with multiple convictions of Public Aid Fraud under 305 ILCS 5/8A-1 et seq. cannot be eligible. This requirement has only been applied to cash assistance programs and not to medical programs.
- (h) Section 4-1.6 addresses the income requirements which DHFS is permitted to disregard under section 5-2(2)(b).
- (i) Section 4-1.7 requires cooperation with child support enforcement. As a result of federal de-linking of TANF and medical assistance, implementation of the medical programs mandates cooperation with child support enforcement only for the population covered by Title XIX of the Social Security Act (Medicaid).
- (j) Sections 4-1.8 through 4-1.10 require that the adult be employed or engaged in a job search. This mandate does not apply to medical programs under 89 Ill. Admin. Code 112.79(f).

(k) Section 4-1.11 has been repealed and thus is not applicable to FamilyCare.

55. On August 23, 2007, after exercising his veto power to cut approximately \$463 million in spending, the Governor signed what would become Public Act 95-0348, an act making appropriations and reappropriations for the 2008 fiscal year (the "Appropriations Act").

56. Article 280 of the Appropriations Act enumerates the appropriations to DHFS. Section 10 of Article 280 identifies the amounts appropriated to DHFS for Medical Assistance under the Illinois Public Aid Code, CHIPA and the Covering All Kids Health Insurance Act.

57. Under this section, the General Assembly has appropriated \$6,987,030,100 payable from the General Revenue Fund ("GRF") for medical services, including the development, implementation, and operation of managed care.

58. The Appropriations Act provides that "[DHFS], with the consent in writing from the Governor, may re-appropriate not more than four percent of the total [GRF] appropriations in Section 10 above among the various purposes therein enumerated." (the "Transfer Provision").

59. The Transfer Provision states that DHFS has the authority to add \$279,481,204 to the various appropriations that fund the FamilyCare program, including but not limited to the appropriations for physicians, dentists, optometrists, podiatrists, chiropractors, hospital in-patient care, skilled, intermediate, and other related long term care, community health centers, hospice care, independent laboratories, home healthcare, therapy, and nursing services, and the development, implementation, and operation of managed care and children's health programs.

60. In addition to the \$279.4 million available under the Transfer Provision, the General Assembly also "appropriated, the amount of \$40,000,000 . . . to the [DHFS] from the Family Care Fund for (i) Medical Assistance payments on behalf of individuals eligible for

Medical Assistance programs administered by the Department of Healthcare and Family Services . . ." in Section 15 of Article 280 of the Appropriations Act.

61. DHFS estimates the FamilyCare program expansion will cost approximately \$43 million for the current fiscal year.

62. JCAR was established in 1977 as a legislative support services agency that reviews administrative rules before they go into effect or, in the case of an emergency rule, reviews the rules as soon as it next meets after the adoption of that emergency rule. JCAR consists of twelve legislators, three each appointed by the respective leaders of the majority and minority caucuses of the Illinois General Assembly. 5 ILCS 100/5-90.

63. In July 26, 1980, the Bureau of Budget submitted a Memorandum for Jim Edgar on House Bill 2351.

64. On September 8, 1980, at the request of Governor James R. Thompson, the Administrative Rules Commission conducted an independent review of House Bill 2351 and made recommendations.

65. On September 15, 1980, Governor Thompson amendatorily vetoed House Bill 2351. Governor Thompson's veto, however, was overridden by the General Assembly.

66. Under Public Act 81-1514, JCAR had the authority to temporarily prohibit the filing of a permanent rule for 180 days and temporarily suspend an emergency rule for 180 days. The rule would become effective after the 180 days, unless in that time the General Assembly passed a joint resolution permanently prohibiting or suspending the permanent rule or the emergency rule, respectively.

67. On September 10, 2004, Governor Blagojevich signed Public Act 93-1035, which modified the procedure by making JCAR's prohibition of a permanent rule and the suspension of

an emergency rule permanent, unless the General Assembly discontinues the prohibition or the suspension by joint resolution.

68. 5 ILCS 100/5-120 provides that JCAR can examine any rule to determine whether it is within the statutory authority granted the agency for the rule and whether the rule is in proper form.

69. 5 ILCS 100/5-120 provides that, if JCAR objects to an emergency rule, it shall, within five days of the objection, certify its objection to the adopting agency and include within the certification a statement of its specific objections.

70. 5 ILCS 100/5-125 provides that, if JCAR determines that an emergency rule is objectionable, JCAR may issue a statement to that effect to the Secretary of State. The effectiveness of the emergency rule shall be suspended immediately upon receipt of the certified statement by the Secretary of State.

71. At its meeting on November 13, 2007, JCAR considered and voted to object to and suspend the Emergency Rule.

72. JCAR's statement of objection, filed with and published by the Illinois Secretary of State, states that:

At its meeting on 11/13/07, the Joint Committee on Administrative Rules voted to object to and suspend the Department of Healthcare and Family Services' emergency rule titled Medical Assistance Programs (89 Ill. Adm. Code 120), which becomes effective 11/7/07, because, contrary to Section 5-45 of the Illinois Administrative Procedure Act, no emergency situation existed that warranted adoption of this entire emergency rule. The agency is maintaining that the loss of the federal SCHIP waiver warrants the adoption of an emergency rule to continue coverage of adults served under that waiver. However, this emergency rule is not limited to that issue. It contains other provisions that this Committee does not recognize as an emergency situation. JCAR recommends that the Department adopt a rule that addresses the loss of the SCHIP waiver. The Committee finds that inclusion of policy within this emergency rule that does not address a valid emergency is not in the public interest.

73. The Illinois Breast and Cervical Cancer Screening Program ("BCC") is administered by DPH through the Office of Women's Health.

74. The Public Health Powers and Duties Law of the Civil Administrative Code of Illinois (the "Public Health Law"), (20 ILCS 2310/2310-1 et seq.), authorizes DPH to distribute state and federal funds to local health authorities and public and private entities for the development of health programs or services and to make payments on behalf of individuals suffering from diseases from appropriations made available to the Department for those purposes, 20 ILCS 2310/2310-25.

75. The Public Health Law permits DPH to enter into contracts with various entities and governmental bodies for the purchase or sale of products benefiting the health of the people of Illinois. 20 ILCS 2310/2310-30.

76. DPH receives a federal grant from the Center for Disease Control and Prevention ("CDC") to fund the BCC program pursuant to the federal Breast and Cervical Cancer Mortality Act of 1990. The Breast and Cervical Cancer Prevention and Treatment Act of 2000 authorizes a state to extend full Medicaid benefits for otherwise uninsured individuals who are screened by a program funded in whole or in part by grants to DPH and are identified as in need of treatment for breast and cervical cancer.

77. The Federal program leaves it up to the participating state's discretion to set the income eligibility limits for the program but limits the eligibility to be screened with CDC funds to women with incomes up to 250% of the FPL.

78. On May 14, 2006, DPH expanded the BCC program by increasing the income eligibility from 200% to 250% of the FPL, pursuant to the powers conferred by Public Health Law.

79. Effective October 1, 2007, DPH expanded the BCC program beyond the 250% federal poverty level to all uninsured women who are under age 65, pursuant to the claimed powers conferred on it by the Public Health Law.

80. There are two sources of state funds for the BCC Program expansion: appropriations from the General Revenue Fund (GRF) to DPH and a grant from DHFS.

81. Under appropriation number 001-48260-1900-0000, \$5.9 million has been appropriated from GRF to DPH for expenses for breast and cervical cancer screening and other related activities for the State's 2008 fiscal year. DHFS, via an inter-agency agreement, has allotted a grant of \$4 million for the expansion of screening. Therefore, \$9.9 million of state funds is available to fund the program.

82. For the 2008 fiscal year, CDC, a division of HHS, has made a grant to DPH in excess of \$5.6 million for the provision of screening and related services to women eligible under the federal program.

83. Adequate funding is available for the BCC Program for the 2008 fiscal year.

84. The October 1, 2007 change in eligibility requirements for the BCC program does not require approval by HHS because CDC monies are not being used to fund the expansion.

85. Payments made to providers for the BCC program for screening services rendered to women who do not satisfy the pre-October 1, 2007 eligibility criteria for that service may not be paid, in whole or in part, by money provided by CDC for Breast Cancer Screening Services.

86. In implementing the expanded BCC Program, DPH is implementing a State program involving, in part, the expenditure of taxpayer funds.

87. As of November 30, 2007, DPH had expended less than \$2.5 million of the \$15.1 million available for the BCC Program.

88. DPH has implemented and administers at least 22 programs in addition to the BCC Program, without resort to rulemaking under the IAPA (the "Additional Health Programs").

89. The Additional Health Programs include: WISEWOMAN; Women's Health Initiative; Women's Health Mini-Grants; HIV/AIDS Communities of Color Initiative; Breast and Cervical Cancer Communities of Color Initiative; Prostate Cancer Communities of Color Initiative; Brothers and Sisters United Against HIV/AIDS; Immunization Outreach; Immunization Services; Chicago Area Immunization Campaign; HIV/Aids County Jail Prevention Projects; Transitional Housing for Persons with HIV; HIV Regional Implementations Grants; HIV Treatment and Adherence Grants; Community Health Center Expansion Grant Program; Violence Prevention; Lead Poisoning Prevention Program; Sexually Transmitted Diseases Program; Tanning Facilities Program; State Fair Food Inspection Program; West Nile Virus Prevention Program; and Sickle Cell.

90. The Additional Health Programs, like the BCC Program expansion, are implemented pursuant to DPH's power to contract under 20 ILCS 2310/2310-30 and its power to spend appropriated moneys under 20 ILCS 2310/2310-25 of the Department of Public Health Duties and Powers Law. *See* 20 ILCS 2310/2310-1 *et seq.*

#### **EXHIBITS ADMISSIBLE BY STIPULATION**

91. The permanent and emergency rules filed by DHFS and Director Maram as published in the Illinois Register, Vol. 31, Issue 47 at 15424-26 and 15854-70 (November, 26, 2007), a true and accurate copy of which is attached as Stipulated Exhibit 1.

92. The official minutes of JCAR's November 13, 2007 meeting, true and accurate copies of which are attached as Stipulated Exhibit 2.

93. JCAR's statement of objection to the Emergency Rule as published in the

Illinois Register, Vol. 31, Issue 48 at 16059-16060 (November 30, 2007), a true and accurate copy of which is attached as Stipulated Exhibit 3.

94. The federal poverty guidelines from the United States Department of Health and Human Services' website, true and accurate copies of which are attached as Stipulated Exhibit 4.

95. The pre-November 2007 and post-November 2007 FamilyCare program income and premium terms from DHFS' website, true and accurate copies of which are attached as Stipulated Exhibits 5 and 6, respectively.

96. Governor Blagojevich's August 14, 2007 and August 23, 2007 press releases, true and correct copies of which are attached as Stipulated Exhibits 7 and 8, respectively.

97. DPH's announcement about the expanded BCC program and a supporting letter from the Governor from DPH's website, true and accurate copies of which are attached as Stipulated Exhibits 9 & 10, respectively.

98. FY2008 materials submitted by DHFS to the General Assembly appropriation committees describing the Governor's proposed appropriation for DHFS, true and correct copies of which are attached hereto as Stipulated Exhibit 11.

99. The legislative debates on Section 5-2(2) of the Public Aid Code (P.A. 84-1385), true and correct copies of which are attached hereto Stipulated Exhibit 12.

100. The 2006 United States census reports for Illinois including median income figures, a true and accurate copy of which is attached hereto as Stipulated Exhibit 13.

101. Regulations pertaining to need/income limits under the Temporary Aid to Needy Families Act, 89 Ill. Admin. Code §112.250 -112.254, true and accurate copies of



which are attached hereto as Stipulated Exhibit 14.

102. The August 17, 2007 letter to State Health Officials from the Director of the Centers for Medicare and Medicaid Services, a true and accurate copy of which is attached hereto as Stipulated Exhibit 15.

103. Governor's Amendatory Veto Message to the House of Representatives, a true and accurate copy of which is attached hereto as Stipulated Exhibit 16.

104. Administrative Rules Commission Recommendation to the Governor on House Bill 2351 Providing for Veto of Rules by Joint Resolution, a true and accurate copy of which is attached hereto as Stipulated Exhibit 17.

105. Statement of Illinois Bureau of the Budget on Enacted Legislation House Bill 2351, a true and accurate copy of which is attached hereto as Stipulated Exhibit 18.

106. Opinion No. S-1374 of The Office of the Attorney General of the State of Illinois, a true and accurate copy of which is attached hereto as Stipulated Exhibit 19.

107. State of Illinois Adequate Health Care Task Force Final Report, January 26, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 20.

108. The materials submitted to JCAR by DHFS in support of the Emergency Rule, true and accurate copies of which are attached hereto as Stipulated Exhibit 21.

109. Text of Governor Rod R. Blagojevich's Budget Address, March 7, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 22.

110. October 3, 2007, Message to the House of Representatives from George W. Bush, a true and accurate copy of which is attached hereto as Stipulated Exhibit 23.

111. The Grant Agreement between DPH and a lead agency to conduct the BCC Program, a true and accurate copy of which is attached hereto as Stipulated Exhibit 24.

112. The December 26, 2007, state plan amendment, a true and accurate copy of which is attached hereto as Stipulated Exhibit 25.
113. Illinois' Model Application Template for State Child Health Plan Under Title XXI of the Social Security Act State Children's Insurance Program, a true and accurate copy of which is attached hereto as Stipulated Exhibit 26.
114. Inter-Agency Agreement pursuant to which DHFS has allotted a grant of \$4 million to DPH for expansion of screening under the BCC Program, a true and accurate copy of which is attached hereto as Stipulated Exhibit 27.
115. CDC grant letter to DPH for the BCC Program, a true and accurate copy of which is attached hereto as Stipulated Exhibit 28.
116. Public Act 95-0345 pages 1-289, the act making appropriations and reappropriations for the 2008 fiscal year, a true and accurate copy of which is attached hereto as Stipulated Exhibit 29.
117. Senate Bill 1834 requesting in a separate line item the sum of \$358 for Illinois Covered, a true and accurate copy of which is attached hereto as Stipulated Exhibit 30.
118. DHFS' JCAR submissions and JCAR statements of no-objection for the income eligibility expansions under the waiver, true and accurate copies of which are attached hereto as Stipulated Exhibit 31.
119. KidCare Parent Coverage Waiver and related documents, true and accurate copies of which are attached hereto as Stipulated Exhibit 32.
120. Hearing on Reconsideration of Disapproval of NY's CHPlus Program, 72 FR 68888, a true and accurate copy of which is attached hereto as Stipulated Exhibit 33.
121. HHS Press Release, Sept. 12, 2002, a true and accurate copy of which is

attached hereto as Stipulated Exhibit 34.

122. H.J. Res. 52; H.J.3222; H.J. Res. 69; H.J. Res. 72 and associated White House Press Releases, true and accurate copy of which is attached hereto as Stipulated Exhibit 35.

123. White House Press Release (Sept. 29, 2007), a true and accurate copy of which is attached hereto as Stipulated Exhibit 36.

124. 110 Cong. Rec. S10719-61 (daily ed. Aug. 2, 2007), a true and accurate copy of which is attached hereto as Stipulated Exhibit 37.

125. H.R. 976, a true and accurate copy of which is attached hereto as Stipulated Exhibit 38.

126. 110 Cong. Rec. S13657-76 (daily ed. Nov. 1, 2007), a true and accurate copy of which is attached hereto as Stipulated Exhibit 39.

127. H.R. 3963, a true and accurate copy of which is attached hereto as Stipulated Exhibit 40.

128. White House Press Release, Dec. 12, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 41.

129. 110 Cong. Rec. H16842-45 (daily ed. Nov. 1, 2007); S. 2499, a true and accurate copy of which is attached hereto as Stipulated Exhibit 42.

130. White House Press Release, Dec. 29, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 43.

131. JCAR home page located at <http://www.ilga.gov/commission/jcar/>, a true and accurate copy of which is attached hereto as Stipulated Exhibit 44.

132. Public Act 81-1514, also cited as HB 2351, a true and accurate copy of which is attached hereto as Stipulated Exhibit 45.

133. The first four sections of the IBCCP application for funding to CDC, true and accurate copies of which is attached hereto as Stipulated Exhibit 46.
134. 1975 Op. Atty Gen. Ill. 180, a true and accurate copy of which is attached hereto as Stipulated Exhibit 47.
135. Governor's Press Releases of May 14, 2006 and Sept. 1, 2006, true and accurate copies of which are attached hereto as Stipulated Exhibit 48.
136. Bill Status Report for Bill 1834 showing that Illinois Covered appropriation request was not called or voted upon by either houses of the General Assembly, a true and accurate copy of which is attached hereto as Stipulated Exhibit 49.
137. Federal Register Vol. 70, No. 229, November 30, 2005, a true and accurate copy of which is attached hereto as Stipulated Exhibit 50.
138. Governor's Press Release of August 23, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 51.
139. Public Act 93-1035, a true and accurate copy of which is attached hereto as Stipulated Exhibit 52.
140. Illinois Department of Public Health, Office of Women's Health website located at <http://www.idph.state.il.us/about/womenshealth/owh.htm>, a true and accurate copy of which is attached hereto as Stipulated Exhibit 53.
141. Public Law 106-354, 2000 HR 4386, a true and accurate copy of which is attached hereto as Exhibit 54.
142. Governor's Press Release of September 27, 2007, a true and accurate copy of which is attached hereto as Stipulated Exhibit 55.
143. Portions of the DHFS' Policy Manual, true and accurate copies of which are attached hereto as Stipulated Exhibit 56.

144. SB5 and its amendments, true and accurate copies of which are attached hereto as Stipulated Exhibit 57.

145. Bill Status Report for SB 5, a true and accurate copy of which is attached hereto as Stipulated Exhibit 58.

146. The fiscal year 2008 State Operating Budget submitted by the Governor pursuant to article VIII, section II of the Illinois Constitution and the State Budget Law (15 ILCS 20/50-1 et seq.), the Errata and the addendum, true and accurate copies of which are attached hereto as Exhibit 59.

January 24, 2008

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies and states that three (3) true and correct copies of the foregoing *Separate Appendix to Plaintiff-Respondents' Joint Answer in Opposition to Defendants' Petition for Leave to Appeal* were served on each of the following counsel of record by electronic mail and by placing the same in sealed envelopes, postage pre-paid, and depositing them in the United States mail at the United States Post Office on 433 West Harrison Street, Chicago, Illinois 60604 on December 10, 2008:

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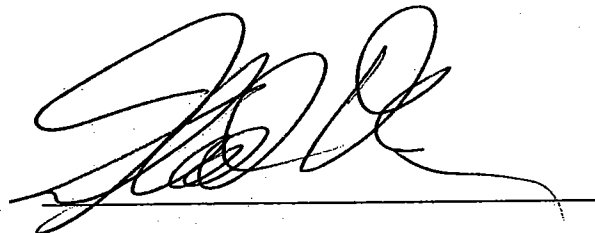
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The undersigned further certifies and states that twenty (20) true and correct copies of the same were sent to the following address by placing them in a sealed container, postage pre-paid, and depositing them in the United States mail at the United States Post Office on 433 West Harrison Street, Chicago, Illinois 60604 on December 10, 2008:

**Supreme Court of Illinois**

Office of the Clerk of the Supreme Court  
Supreme Court Building  
200 East Capitol  
Springfield, IL 62701

Dated: December 10, 2008



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