

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

O.B., <i>et. al.</i> , individually, and on behalf of a	)	
class,	)	
	)	No. 15-CV-10463
Plaintiffs,	)	
vs.	)	Judge: Charles P. Kocoras
	)	
FELICIA F. NORWOOD, in her official	)	Magistrate: Michael T. Mason
capacity as Director of the Illinois Department	)	
of Healthcare and Family Services,	)	
	)	
Defendant.	)	

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFFS’ PROPOSED  
PRELIMINARY INJUNCTION ORDER**

NOW COMES Defendant, FELICIA F. NORWOOD, in her official capacity as Director of the Illinois Department of Healthcare and Family Services, by and through her attorney, LISA MADIGAN, Attorney General of Illinois, and hereby responds to Plaintiffs’ Proposed Preliminary Injunction Order, as follows:

On or about March 28, 2016, Plaintiffs submitted their Proposed Preliminary Injunction Order to the Court through the Court’s procedure for electronic submission of proposed orders. The Court, in a prior order, set Defendant’s response to the proposed injunction order to be filed on or before April 5, 2016. (Dkt. No. 38).

Defendant objects to the Proposed Preliminary Injunction Order because it is merely a command that Defendant “obey the law.” *E.E.O.C. v. Autozone, Inc.*, 707 F.3d 824, 841 (7<sup>th</sup> Cir. 2013); *Lineback v. Spurlino Materials*, 546 F.3d 491, 504 (7<sup>th</sup> Cir. 2008). Plaintiffs’ Proposed Preliminary Injunction does not cure any of the objections set forth in Defendant’s Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Dkt. No. 25), and attached as Ex. A for the following reasons.

First, the Proposed Preliminary Injunction mandates that Defendant conform her conduct to the requirement of the Medicaid Act without specifying what obligation the Medicaid Act imposes. Second, the proposed mandatory injunction requires Defendant to “take immediate and affirmative steps” to follow the law without any description of what must be undertaken to “follow the law.” The Medicaid Act provision at issue here does not set any standards or requirements to meet its “mandate.” Third, the proposed injunction order, in parroting an Act of Congress, builds in a requirement that each child’s case is staffed at 100% of the approved hours without any corresponding description of what Defendant must do in order to reach that requirement. Fourth, the proposed injunction order imposes class-wide relief on a proposed class that lacks criteria that define membership in the class and no reasonable assurance that the class would consist of individuals whose alleged inability to staff authorized nursing hours was a result of Defendant’s purported violation of federal law. For example, does a parent’s subjective rejection of licensed nurses as “unqualified” trigger HFS’ liability under the Act of Congress? Similarly, does an unfilled shift due to unforeseen illness of the nurse or a shortage of nurses in non-metropolitan areas of the State trigger liability under federal law? The circumstances of an individual’s case preclude common questions regarding a purported class.

The Court’s disagreement with Defendant’s objection that the proposed injunction improperly shifts all responsibility to Defendant as to how to comply with federal law (Dkt. No. 36, p.19) is not borne out by the injunction Plaintiffs’ propose. The plain language of the proposed injunction places all responsibility for fashioning relief on HFS. *See* Proposed Injunction, “The Defendant shall provide . . . to the Plaintiffs within 30 days: 1) a plan that includes . . .” Proposed Injunction, ¶ B. The Proposed Injunction mandates that HFS provide Plaintiffs with a plan in 30 days without more. As such, it places the entire burden on HFS,

which already has a system in place to assist parents in staffing in-home nursing services for their children, to develop a “plan” that would meet whatever the Plaintiffs and the Court would accept as “following the law.”

WHEREFORE, for the reasons stated above, and in Defendant’s Response in Opposition to Plaintiffs’ Motion for Preliminary Injunction (Dkt. No. 25), Defendant respectfully requests that the Court reject Plaintiffs’ Proposed Preliminary Injunction Order.

Respectfully submitted,

LISA MADIGAN  
Attorney General of Illinois

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DATED: April 5, 2016

**CERTIFICATE OF SERVICE**

JOHN E. HUSTON, one of the attorneys of record for Defendant, hereby certifies that on April 5, 2016, I caused a copy of the foregoing **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFFS' PROPOSED PRELIMINARY INJUNCTION ORDER** to be served by the Court's ECF/electronic mailing system upon ECF filing users, and that I shall comply with LR 5.5 as to any party who is not a filing user or represented by a filing user.

*/s/ John E. Huston*