

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

A.M.C., by her next friend, C.D.C., et al.,

Plaintiffs,

v.

STEPHEN SMITH, in his official capacity as  
Deputy Commissioner of Finance and  
Administration and Director of the Division of  
TennCare,

Defendant.

Civil Action No. 3:20-cv-00240

Class Action

Chief Judge Crenshaw  
Magistrate Newbern

**PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs A.M.C. et. al., move the Court pursuant to Rule 65 of the Federal Rules of Civil Procedure to issue a preliminary injunction:

(1) requiring Defendant to prospectively reinstate TennCare coverage for members of the proposed Plaintiff Class whose TennCare coverage was involuntarily terminated and who are not currently enrolled, and notify them of the reinstatement; and

(2) prohibiting Defendant from involuntarily terminating any such individual's TennCare coverage until the person receives notice and an opportunity for a fair hearing that complies with due process.

In the alternative, Plaintiffs ask the Court to enter a preliminary injunction:

(1) requiring Defendant to prospectively reinstate TennCare coverage for those members of the Disability Subclass (a) who were previously enrolled in a disability-linked TennCare eligibility category, (b) whose coverage was involuntarily terminated, and (c) who are not currently enrolled, and notify them of the reinstatement;

(2) prohibiting Defendant from involuntarily terminating any such individual's TennCare coverage until the person receives notice and an opportunity for a fair hearing that complies with due process; and

(3) requiring Defendant to provide notice and offer an expedited hearing process that complies with due process for the remaining members of the proposed Plaintiff Class whose TennCare coverage was involuntarily terminated and who are not currently enrolled.

The Plaintiff Class and Disability Subclass on whose behalf injunctive relief is sought are the subject of the pending Plaintiffs' Motion for Class for Certification (Docs. 5, 5-1, 5-2 and 5-3).

Under Sixth Circuit precedent, members of the proposed Plaintiff Class have already suffered irreparable harm by going without health insurance to which they are entitled. Without a preliminary injunction, they will suffer even greater harm in the current pandemic environment: without insurance coverage, they cannot adequately manage their health conditions and are more likely to develop severe symptoms requiring intensive care, thus exposing them to a heightened risk of serious illness or death.

Second, Plaintiffs are likely to succeed on the merits of their claims, most importantly because there is no question that Plaintiffs and members of the proposed Plaintiff Class did not receive adequate notices or fair hearings before Defendant terminated their TennCare coverage, and Defendant systematically denied qualified persons with disabilities the ability to receive TennCare services.

Third, the harm to Plaintiffs' health significantly out-weighs the potential administrative and financial burdens that preliminary relief may impose upon Defendant, many of which are mitigated by the State's acceptance of additional Medicaid funding under the FFCRA.

Lastly, by enabling Plaintiffs to better manage their health conditions without requiring scarce hospital intensive care, the preliminary injunction serves the public's overriding interests in facilitating the treatment and containment of the most severe pandemic in more than a century. Plaintiffs seek this motion for a preliminary injunction because they are at risk of irreparable harm by the State of Tennessee's administration of its Medicaid program, known as TennCare. Lack of health coverage normally entails risk to an uninsured person's health and safety; in light of the COVID-19 pandemic, Plaintiffs are at an even greater risk of irreparable harm.

Absent a preliminary injunction, Plaintiffs and their class will continue to be deprived of their rights under the Due Process Clause, Medicaid Act, and the Americans with Disabilities Act, and therefore will be at risk of remaining uninsured, while in fact being eligible, and at risk of being uninsured during the COVID-19 global public health emergency, and other irreparable harm;

Plaintiffs have filed a memorandum of law, declarations and exhibits in support of this motion for preliminary injunction.

Pursuant to Local Rule 7.01(a)(1), Plaintiffs' counsel has conferred with the Defendant's counsel, Ms. Carolyn Reed, who states that her client opposes this motion.

Date: April 10, 2020

Respectfully submitted,

/s/Catherine Millas Kaiman  
*On Behalf of Counsel for Plaintiffs*

Michele Johnson TN BPR 16756  
Gordon Bonnyman, Jr. TN BPR 2419  
Catherine Millas Kaiman, FL Bar 117779  
Vanessa Zapata, TN BPR 37873  
Laura Revolinski, TN BPR 37277  
TENNESSEE JUSTICE CENTER  
211 7th Avenue North, Suite 100  
Nashville, Tennessee 37219  
Phone: (615) 255-0331

FAX: (615) 255-0354  
gbonnyman@tnjustice.org  
ckaiman@tnjustice.org  
vzapata@tnjustice.org  
lrevolinski@tnjustice.org

Jane Perkins (*pro hac vice*)  
Elizabeth Edwards (*pro hac vice*)  
Sarah Grusin (*pro hac vice*)  
National Health Law Program  
200 N. Greensboro St., Ste. D-13  
Carrboro, NC 27510  
(919) 968-6308  
perkins@healthlaw.org  
edwards@healthlaw.org  
grusin@healthlaw.org

Gregory Lee Bass (*pro hac vice pending*)  
NATIONAL CENTER FOR LAW AND  
ECONOMIC JUSTICE  
275 Seventh Avenue, Suite 1506  
New York, NY 10001  
(212) 633-6967  
bass@nclej.org

*Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document is being served via the Court's electronic filing system on this 10th day of April, 2020 on the following counsel for the Defendant:

Ms. Carolyn E. Reed  
Special Counsel  
Office of the Tennessee Attorney General  
Health Care Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
carolyn.reed@ag.tn.gov

Mr. Michael Kirk  
Ms. Nicole Moss  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, NW  
Washington, D.C. 20036  
(202) 220-9600  
mkirk@cooperkirk.com  
nmoss@cooperkirk.com

/s/ Catherine Millas Kaiman Fl Bar 117779  
*On Behalf of Counsel for Plaintiffs*