IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CHIANNE D., *et al.*,

Plaintiffs,

Case No. 3:23-cv-00985-MMH-LLL

v.

JASON WEIDA, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.
_____/

DEFENDANTS' RESPONSE TO PLAINTIFFS' PROPOSED INJUNCTION

Pursuant to this Court's Order (ECF No. 74), Defendants respectfully respond to Plaintiffs' Amended Proposed Order on Plaintiffs' Motion for a Classwide Preliminary Injunction (ECF No. 69) (the "Proposed Injunction"). Defendants maintain, but do not repeat, the arguments previously presented in opposition to Plaintiffs' Motion for Class-wide Preliminary Injunction (ECF No. 2) (the "Motion").

I. UNLIKE THE PROPOSED INJUNCTION, THE COURT DID NOT INDICATE IT WOULD FIND A VIOLATION OF 42 C.F.R. § 431.210(A).

At the hearing on December 13, this Court indicated that, as to Subclass A, it is likely to find a violation of 42 C.F.R. § 431.210(b), which requires a "clear statement of the specific reasons supporting the intended action." ECF No. 75 at 161:16–165:21. The Court did *not*, however, suggest that it would find a violation of 42 C.F.R. § 431.210(a), which requires a "statement of what action the agency . . . intends to take and the effective date of such action." The Proposed Injunction attempts to expand the Court's ruling and to find a violation of that regulation as well. ECF No. 69 at 1–2. But the challenged notices clearly state the intended action and its effective date. *See*, *e.g.*, ECF No. 2-6 at 25 ("Your Medicaid benefits for the person(s) listed below will end on May 31, 2023."). Because it did not indicate that it would likely find a violation 42 C.F.R. § 431.210(a), this Court should not include that newly added violation in any injunction it might issue.

II. THE PROPOSED INJUNCTION IS NOT APPROPRIATE PRELIMINARY RELIEF BECAUSE IT AWARDS THE FULL RELIEF THAT PLAINTIFFS SEEK AT TRIAL.

Plaintiffs' Proposed Injunction is not suitable preliminary relief because it awards the relief that Plaintiffs seek at a trial on the merits. It orders the changes that Plaintiffs seek to DCF's notices, suspends eligibility redeterminations for class members until the

revised notices are implemented, and reinstates Medicaid coverage or requires corrective notices for class members whose coverage has been terminated. Because the Proposed Injunction effectively gives Plaintiffs a final remedy and final judgment, it is not a proper preliminary injunction. Rather than enter the Proposed Injunction, the Court should reserve ruling and consolidate a preliminary-injunction hearing with the trial scheduled for May.

Courts have long held that "a preliminary injunction should not work to give a party essentially the full relief he seeks on the merits." *Dorfmann v. Boozer*, 414 F.2d 1168, 1173 n.3 (D.C. Cir. 1969); *accord Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th Cir. 1963) (explaining that "it is not usually proper to grant the moving party the full relief to which he might be entitled if successful at the conclusion of a trial"); *Miami Beach Fed. Sav. & Loan Ass'n v. Callander*, 256 F.2d 410, 415 (5th Cir. 1958) (reversing a judgment entered at the preliminary-injunction stage that awarded plaintiffs "practically all of the relief, if not more, than they sought on the merits"); *Selchow & Righter Co. v. W. Printing & Lithographing Co.*, 112 F.2d 430, 431 (7th Cir. 1940) (explaining that a preliminary injunction should not provide "all the actual advantage that could be obtained by the plaintiff as a result of a final adjudication of the controversy"). Rather, the "purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

Plaintiffs' Proposed Injunction does not preserve the relative positions of the parties, but leaps ahead to the merits stage and secures for all class members the entire relief that Plaintiffs seek at trial. In practical effect, it is a summary judgment—or at least a

partial summary judgment as to the issues that it addresses. That is improper. *See Corpus v. Le Yen*, No. 2:23-cv-00502, 2023 WL 8699436, at *5 (M.D. Fla. Dec. 15, 2023) (explaining that plaintiff requested, at the preliminary-injunction stage, "the ultimate relief sought in his complaint" and that a "motion for a preliminary injunction is not appropriately used as a vehicle for final relief on the merits"); *Hennessy-Waller v. Snyder*, 529 F. Supp. 3d 1031, 1046 (D. Ariz. 2021) (denying motion for preliminary injunction against enforcement of a rule that denied Medicaid coverage for gender-reassignment surgeries, since the relief was "identical to the ultimate relief sought in the underlying complaint").

This Court recently advanced the trial from October to May, ECF Nos. 45, 72—an unnecessary step if, through a preliminary injunction, Plaintiffs can secure all relief sought in their complaint. *See* ECF No. 1 at 38–39. Moreover, to require Defendants to implement the extensive, labor-intensive measures required by the Proposed Injunction at this stage of the litigation—with trial scheduled to begin in four months—would absorb Defendants' resources and severely impair their ability to prepare a defense under the highly ambitious, compressed litigation schedule that the parties proposed and the Court approved. Because Plaintiffs seek a preliminary injunction that does not preserve the relative positions of the parties, but instead grants the identical relief sought in their complaint and at trial, the Court should either deny Plaintiffs' Motion or reserve ruling and consolidate the trial with a preliminary-injunction hearing. *See* Fed. R. Civ. P. 65(a).

III. THE REINSTATEMENT OF CLASS MEMBERS TO MEDICAID COVERAGE WOULD COST THE PUBLIC $87.1 MILLION EACH MONTH.

Under the Proposed Injunction's modified class definitions, the reinstatement of

all class members to Medicaid coverage would cost the public an estimated $87.1 million per month—a tremendous expense unjustified by demonstrated need. Plaintiffs have not clearly established the third and fourth elements of the preliminary-injunction standard: the Proposed Injunction's staggering price tag is squarely adverse to the public interest.

The subclasses defined in the Proposed Injunction include 386,859 members who are not currently enrolled in Medicaid. Ex. A ¶¶ 3–4. The estimated cost of Medicaid benefits for 386,859 people is **$87.1 million per month**. Ex. B ¶¶ 2–3. If their reinstatement lasts one year, the Proposed Injunction's cost to the State would exceed $1 billion. And their reinstatement might indeed be lengthy, given the time it would take to make the system and application changes necessary to generate notices that contain the individualized information that the Proposed Injunction requires. *See* ECF No. 39 at 27–30.

The Proposed Injunction imposes these enormous costs on the public to provide Medicaid coverage to individuals who have *already been determined to be ineligible*. It does so in the absence of any evidence of DCF's error rate—*i.e.*, the percentage of recipients who were *erroneously* found to be ineligible for Medicaid. This massive commitment of public resources to ineligible recipients diverts scarce resources away from worthy public purposes.

This Court should refuse to enter the proposed $1-billion-a-year injunction. The public has a weighty interest in "minimizing unnecessary cost," *Baker Elec. Co-op., Inc. v. Chaske*, 28 F.3d 1466, 1474 (8th Cir. 1994), and in the "efficient allocation of the government's fiscal resources," *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *see also Swain v. Junior*, 958 F.3d 1081, 1090 (11th Cir. 2020) (finding irreparable harm in the

stay context where district court's injunction dictated county defendants' allocation of "scarce resources"). The sparse record before this Court does not support an injunction that requires nearly 400,000 individuals who have been found ineligible for Medicaid to be reinstated to Medicaid coverage at an estimated monthly cost to the public of $87.1 million.

IV. THE PROPOSED INJUNCTION IS NOT NARROWLY TAILORED TO THE SPECIFIC LEGAL VIOLATIONS THE COURT INDICATED IT MIGHT FIND.

At the hearing on December 13, 2023, this Court indicated that it is likely to find a violation of the "specific reasons" regulation. It explained that the reason codes used in Exhibits 5, 8, 10, 11, and 13 to Plaintiffs' Motion likely violate the requirement that a termination notice provide a "clear statement of the specific reasons supporting the intended action." ECF No. 75 at 161:16–165:21; 42 C.F.R. § 431.210(b). Plaintiffs' Proposed Injunction, however, includes provisions that go well beyond that scope and have nothing to do with a violation of the "specific reasons" regulation. Because an injunction must be narrowly tailored to fit the specific legal violation found by the Court, any injunction this Court issues should exclude any provisions not tailored to that violation.

It is axiomatic that "the scope of injunctive relief is dictated by the extent of the violation established." *Georgia v. President of the U.S.*, 46 F.4th 1283, 1306 (11th Cir. 2002) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). Stated differently, any injunctive remedies "must be narrowly tailored to the proven legal violations and restrain no more conduct than reasonably necessary." *Fin. Info. Techs., LLC v. iControl Sys., USA, LLC*, 21 F4th 1267, 1280 (11th Cir. 2021); *accord Thomas v. Bryant*, 614 F.3d 1288, 1323 (11th Cir.

2010) (explaining that "the scope of an injunction should not exceed the identified violation").

Several provisions of the Proposed Injunction do not address any violation of the "specific reasons" regulation. Part 1.b. modifies the fair-hearing paragraph that appears in all termination notices. That paragraph has nothing to do with the specific reasons that support the intended action. Nor do the proposed changes to that paragraph redress any failure to provide specific reasons. Similarly, Part 3.d. on page 5 addresses the fair-hearing paragraph rather than the specific reasons for DCF's ineligibility determination.

To the extent that Part 1.a.v. requires the notice to describe all Medicaid eligibility categories, it too imposes requirements that are untethered to the specific legal violation identified by the Court. And to the extent Part 1.a.ii. requires the termination notice to recite eligibility standards besides those on which DCF's determination was based, it is not tailored to inform recipients of the specific reasons why DCF found them ineligible.

As the Eleventh Circuit explained, "a preliminary injunction must be 'narrowly tailored to fit specific legal violations, because the district court should not impose unnecessary burdens on lawful activity.'" *Cumulus Media*, *Inc. v. Clear Channel Commc'ns*, *Inc.*, 304 F.3d 1167, 1178 (11th Cir. 2002) (quoting *Starter Corp. v. Converse*, *Inc.*, 170 F.3d 286, 299 (2d Cir. 1999)). The proposed provisions identified above are not designed to inform recipients of the "specific reasons supporting the intended action," 42 C.F.R. § 431.210(b)—or otherwise to remedy any violation of the "specific reasons" regulation. Because those provisions are not narrowly tailored to proven legal violations and are not crafted to remedy those violations, the Court should omit them from any injunction it

issues.

V. FEDERAL REGULATIONS DO NOT REQUIRE TERMINATION NOTICES TO RECITE MEDICAID ELIGIBILITY REQUIREMENTS.

Federal regulations do not require Medicaid termination notices either to describe Medicaid eligibility categories or to list the eligibility standards within each category. To the extent Parts 1.a.ii. and 1.a.v. of the Proposed Injunction require DCF to include that information in its termination notices, they exceed not only the scope of the violation the Court indicated it might find, but also the mandates of the regulations themselves.

A termination notice must disclose the intended action and its effective date and the specific reasons and regulations that support the action. 42 C.F.R. § 431.210(a)–(c). It must also explain the recipient's right to a fair hearing and the circumstances under which coverage will be continued pending the hearing. *Id*. § 431.210(d)–(e). The regulation does not, however, state that notices must recite Medicaid eligibility requirements.

On the contrary, a separate regulation identifies the circumstances in which States must inform individuals of Medicaid eligibility requirements. States must disclose "eligibility requirements" "in electronic and paper formats . . . , and orally as appropriate," to "all applicants and other individuals *who request it*." 42 C.F.R. § 435.905(a) (emphasis added). Clearly, CMS knows how to require States to disclose eligibility requirements: it required States to make such disclosures *upon request*. It did not, however, require States to disclose eligibility requirements in their termination notices. The omission from one regulation of a requirement that appears in another is presumed to be intentional. *Yonek v. Shinseki*, 722 F.3d 1355, 1359 (Fed. Cir. 2013) ("Where an agency includes particular

language in one section of a regulation but omits it in another, it is generally presumed that the agency acts intentionally and purposely in the disparate inclusion or exclusion." (internal marks omitted)); *accord Newman v. FERC*, 27 F.4th 690, 698 (D.C. Cir. 2022).

The regulation's omission of Medicaid eligibility requirements from the items of information that termination notices must contain makes sense because recipients are charged with knowledge of federal and state law. *See Atkins v. Parker*, 472 U.S. 115, 130–31 (1985) (concluding that personal notice of statutory change to benefits was unnecessary because individuals are charged with knowledge of the law); *Cole v. R.R. Ret. Bd.*, 289 F.2d 65, 68 (8th Cir. 1961) (concluding, for the same reason, that personal notice of statutory expansion of eligibility requirements was unnecessary). This principle applies to Medicaid eligibility requirements, which appear in both federal and state law. *See* 42 U.S.C. § 1396a(a)(10); Fla. Stat. §§ 409.903–.904; Fla. Admin. Code r. 65A-1.701–.716.

Because federal regulations do not require States to enumerate eligibility requirements in termination notices, 42 C.F.R. § 431.210, but only to disclose them to persons "who request it," *id.* § 435.905(a), the Proposed Injunction imposes mandates that the law does not. Those mandates should be omitted from any injunction this Court issues.

VI. MEDICAID ELIGIBILITY REQUIREMENTS CANNOT BE INCLUDED IN TERMINATION NOTICES WITHOUT MISLEADING OVERSIMPLIFICATIONS.

The Proposed Injunction seems to recognize that a full recitation of all eligibility categories and standards within a termination notice would be impossible, and therefore proposes to require only a "general description" or "short text statement" of eligibility categories and standards. ECF No. 69 at 3. But the sample notice that Plaintiffs provide

demonstrates just how misleading these oversimplified, shorthand descriptions can be.

For example, the sample notice states that all "children" are eligible for Medicaid, ECF No. 69 at 7—a massive overgeneralization. In reality, many conditions limit the eligibility of children for Medicaid. *See* Fla. Stat. §§ 409.903(1), (3)–(7), 409.904(6)–(7). The sample notice also states that all "parents" of all "minor children"—and all persons age 65 or above—are eligible for Medicaid. ECF No. 69 at 7. That statement too is so extremely overbroad that it amounts to misinformation. *See* Fla. Stat. § 409.903(1), (8).

Plaintiffs have not proven that it is possible to provide a complete and accurate description of all Medicaid eligibility categories within the reasonable confines of a termination notice. The overbroad statements in the sample notice will mislead recipients and encourage them to request fair hearings under the misimpression that eligibility for Medicaid is much broader than it is. This Court should decline to order DCF to provide misleading information to recipients—or to provide termination notices of the excessive length that would be needed to describe all Medicaid eligibility categories accurately and completely.

VII. ANY SUBCLASS SHOULD BE CLEARLY DEFINED AND AVOID OVERBREADTH.

Last, Defendants offer two points regarding the class definitions on page 4 of the Proposed Injunction.

First, Defendants assume that Plaintiffs intend to limit Subclass A to notices that used "only" one or more of the three objected-to reason codes, *see* ECF No. 2 at 1—and do not intend to expand the subclass to include notices that, in addition to those reason codes, used one or more reason codes Plaintiffs do *not* object to. *But see* ECF No. 69 at

4. That expansion would undermine commonality and typicality and render the subclass definition overly broad. A notice that contains *both* a reason code that Plaintiffs claim is not specific enough *and* a reason code to which Plaintiffs do not object does not harm its recipient or otherwise place its recipient in the same position as other class members.

Second, Plaintiffs' modified definition of Subclass B references "*materially similar* reason codes that omit information regarding the applicable income limit as reflected by the green highlighting in Dkt. 47-3." *Id*. (emphasis added). The subjective words "materially similar" inject uncertainty into the subclass definition. The proponent of a class must establish that the class is "adequately defined." *Little v. T-Mobile USA*, *Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012) (quoting *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970)). But Plaintiffs present no objective standard by which the Court or parties could determine whether one reason code is "similar" to another or whether that similarity is "material." *See A.R. v. Dudek*, No. 12-60460-CIV, 2016 WL 3766139, at *1 & n.2 (S.D. Fla. Feb. 29, 2016) (finding no "objective criteria" to define the "materiality" element in a class definition). The Court should reject a class definition that is vague and subjective.

Plaintiffs appear to include this vague language in their class definition to ensure that immaterial changes to reason codes do not remove them from the class definition. This eventuality is better addressed at the appropriate time by a motion to amend the class definition under Rule 23(c)(1)(C) than by the adoption of a vague class definition.

Respectfully submitted this twelfth day of January 2023.

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