UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Chianne D., et al.,

Plaintiffs,

v. Case No. 3:23-cv-985

Jason Weida, in his official capacity as Secretary for the Florida Agency for Health Care Administration, et al.,

Defendants.
_____/

PLAINTIFFS' REPLY IN SUPPORT OF AMENDED PROPOSED ORDER

Defendants' narrow objections to the Amended Proposed Order underscore that the proposed preliminary relief is appropriate and feasible. While Defendants reiterate their cost-based objections to reinstatement, they make no mention of pausing terminations. Nor do they challenge the alternative to reinstatement included in the Amended Proposed Order: to issue corrective notice and grant a new opportunity for a hearing to individuals who remain without coverage. Defendants' remaining objections about the content of the notices are based on artificially limited readings of the Medicaid regulations and this Court's prior statements. The Amended Proposed Order is tailored to specific violations of the Medicaid Act and its implementing regulations and provides appropriate and temporary preliminary relief.

I. The Amended Proposed Order is tailored to the violations of the Medicaid Act identified by the Court.

Defendants contend that the Amended Proposed Order may only address

violations of 42 C.F.R. § 431.210(b), which requires a "clear statement of the specific reasons supporting the intended action." Defs.' Resp. to Pls.' Proposed Inj. ("Defs.' Resp.") 1, Dkt. 76. However, at the hearing, the Court stated that the notices do not provide "clear notice of the specific action being taken." Tr. of Dec. 13, 2023 Hr'g ("Tr.") 4:20-23, Dkt. 75; *id.* at 90:10-12 (noting "you at a minimum have to be told what action is being taken and the reason for the action."). Thus, the proposed order appropriately addresses the requirement that notices include "a statement of what action the agency" intends to take. 42 C.F.R. § 431.210(a).

Defendants' objections to the paragraphs concerning the fair hearing language are similarly unavailing. Defs.' Resp. 7. The Medicaid Act, through its implementing regulations, requires notices to include specific information regarding fair hearings. 42 C.F.R. §§ 431.206(b), 431.210(d)-(e). The Court expressly left open "whether any potential remedy in this case would include fixing the fair hearing [language] or not." Tr. at 171:5-7.

II. Including a description of the eligibility standards is necessary to state the "specific reasons" for the intended action and is feasible.

Defendants object to two paragraphs—1.a.v and parts of 1.a.ii—because, in their view, the "specific reasons" requirement set forth in 42 C.F.R. § 431.210(b), does not require a recitation of eligibility standards. Defs.' Resp. 7-8. But where the "intended action" is a finding of ineligibility, an explanation of the applicable eligibility standard is an essential component of the "reason" for the action. *See Thompson v. Roob*, No. 1:05-cv-0636, 2006 WL 2990426, at *7 (S.D. Ind. Oct. 19, 2006) ("Clearly, one of these

'reasons' for denial would be an accurate statement of the eligibility standard."). Furthermore, before finding an individual ineligible for Medicaid, the agency must evaluate "all bases of eligibility." 42 C.F.R. § 435.916(f)(1). Thus, when communicating ineligibility, the agency is necessarily finding the individual ineligible in *all* categories. To clearly state the reason for that finding, the notices must articulate each of the eligibility standards used.

Other courts have reached this conclusion. In *Crawley v. Ahmed*, the court granted a class-wide preliminary injunction preventing Michigan from terminating Medicaid benefits until it provided class members written notice that

> details the factual reasons why their eligibility ended under the category for which they previously had been eligible and the policy items under which the eligibility criteria they did not meet are spelled out . . . [and] the factual reasons why they are not eligible under other relevant eligibility categories, including disability-based categories, and the policy items under which the eligibility criteria they failed to meet are spelled out.

No. 08-14040, 2009 WL 1384147, at *26 (E.D. Mich. May 14, 2009). In *Dozier v. Haveman*, the court entered a class-wide preliminary injunction requiring new notices that described *all* Medicaid eligibility categories. No. 14-12455, 2014 WL 5480815, at *10 (E.D. Mich. Oct. 29, 2014). Notably, the *Dozier* notices already stated that an individual "was not eligible because she was not 'under 21, pregnant, or a caretaker of a minor child in your home' or 'over 65 (aged), blind, or disabled,'" but omitted reference to the Medicaid expansion category. *Id.* Absent that information, the notices did not provide "a determination on all relevant grounds." *Id.* As *Dozier* and *Crawley* demonstrate, a discussion of the eligibility standards—including for all categories of

eligibility—is both necessary and feasible.

The requirement at 42 C.F.R. § 435.905(a) does not change this conclusion, it simply requires Medicaid agencies to supply information regarding eligibility requirements *any* time an individual requests it. This separate requirement does not erase Defendants' more robust obligations under § 431.210(b), which apply at the time an "action" is taken. *See id*. § 431.206. Nor is it surprising that § 431.210(b) does not explicitly mention "eligibility requirements": that regulation broadly applies to *any* "action" (*e.g.*, a reduction in medical services or increase in cost-sharing) and is not uniquely tied to the results of the eligibility determination process. *See id*. § 431.201 (defining "action"). As described above, if the "action" is a finding of ineligibility, a statement of the "reasons" must include the applicable eligibility standards.

Finally, Defendants' complaints about the sample text in Appendix A do not evince practical problems with including a general explanation of the eligibility categories. To begin with, Defendants misrepresent the statements in Appendix A. Defs.' Resp. 8-9. The sample notice does not state that *all* members of any particular group are automatically eligible for Medicaid. Instead, it lists the various Medicaid eligibility categories and directs individuals to where they can find the specific eligibility requirements for those categories. In any event, Defendants' concerns could be addressed by including a short sentence following the list of categories, such as "There are additional eligibility requirements for each category. For more information about the eligibility requirements . . . ." Far from demonstrating infeasibility, this shows the ease with which any revisions can be made.

III. Plaintiffs' reinstatement relief remains feasible and efficacious.

Defendants contest only the cost of reinstatement and raise no concerns about the cost or feasibility of Plaintiffs' alternative proposal to issue corrective notice to class members who have already lost coverage and permit new fair hearing requests. In fact, Mr. Davis's declaration reveals that Defendants can, and already have, identified the class members who would receive such notice. *See* Decl. of Daniel Davis, Dkt. 76-1.

Nonetheless, reinstatement must happen at some point if Plaintiffs prevail at trial: Where the state "did not terminate the recipients in accordance with federal notice requirements, the recipients' entitlement to aid was not affected." *Turner v. Ledbetter*, 906 F.2d 606, 609 (11th Cir. 1990). Thus, the costs of reinstatement—at the preliminary or final stages—are simply the costs of following the law, an obligation the state assumed by participating in Medicaid and one that does not factor into a balance of equities analysis. *See Dunlop v. Davis*, 524 F.2d 1278, 1281 (5th Cir. 1975) (finding no hardship from injunction requiring compliance with the law); *Smith v. Benson*, 703 F. Supp. 2d 1261, 1277-78 (S.D. Fla. 2010).

The Court should also discount Defendants' cost concerns because the ultimate cost of any injunction is in their hands. Defendants determine the pace at which changes to the notices will be made and, thus, control the length and expense of reinstatements. In these circumstances, courts have found that concerns about the cost of providing ongoing benefits can "be speedily remedied by compliance with the [] injunction." *Banks v. Trainor*, 525 F.2d 837, 843 (7th Cir. 1975) (affirming preliminary injunction where state paid $1.6 million each month for benefits that otherwise would

not be provided); *Crawley*, 2009 WL 1384147, at *29 (noting defendants had "power to remedy" burden of costs because they exerted "substantial control over the length of time benefits might be continued"). Further, Defendants' own choices have led to the number of individuals who are now entitled to reinstatement. Defendants chose to restart Medicaid redeterminations—and have refused to pause those redeterminations—while using notices they acknowledged years ago cause confusion. Where Defendants themselves bear responsibility for the costs, those costs do "not justify denying Plaintiffs a right to meaningful notice and the continued receipt of Medicaid benefits to which they are entitled[.]" *Crawley*, 2009 WL 1384147 at *29.

Even if the Court does consider the reinstatement costs, Defendants do not mention the substantial federal funding available for services provided under a court order including to "individuals in the same situation as those directly affected by the decision or order." 42 C.F.R. § 431.250(b)(2), (d); *see also Dozier*, 2014 WL 5480815 at *13. Moreover, Oregon, recently reinstated coverage and is pausing terminations for several months while updating notices for a subset of its Medicaid population, showing these steps are feasible. *See* Or. Health Auth., *Oregon Supplemental Income Program Medical (OSIPM) Restorations* (Nov. 21, 2023) (Ex. A hereto); E-mail from Or. Health Auth. (Nov. 22, 2023) (Ex. B hereto) (noting "restored coverage to 20,000 people found over income"); Or. Dep't of Health & Hum. Servs., *Transmittal* (Oct. 11, 2023) (Ex. C hereto and previously filed as Dkt. 48-3).[1]

[1] In preparing this reply, Plaintiffs observed a technical error in the earlier version of this exhibit uploaded at ECF No. 48-3 and are, accordingly, resubmitting it to the Court.

IV. The Amended Proposed Order is appropriate because it would grant only temporary relief until final judgment is entered.

Defendants belatedly contend Plaintiffs' preliminary relief is inappropriate because it grants Plaintiffs "full relief," an argument that "could have been raised earlier" and therefore should not be considered. Order ¶ 2, Dkt. 74. In any event, Defendants ignore that any preliminary relief entered in this case would not be "full relief" because it would last only until final judgment.[2] Defendants would be free to revert to the current notices should they ultimately prevail at trial. Thus, the preliminary injunction would not give Plaintiffs or class members the benefit of the *permanent* relief they seek. *Cf. Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34-35 (2d Cir. 1995) (noting concern where preliminary relief grants "substantially all the relief sought and that relief *cannot be undone* even if the defendant prevails[.]") (emphasis added). As such, this concern has not been a barrier to preliminary relief in similar cases where individuals lost Medicaid without proper notice and opportunity for a hearing. *See, e.g.*, Pls. Prelim. Inj. Reply 2-3 (citing cases).

Furthermore, Defendants retain discretion in how to implement any preliminary relief. The proposed order would preserve Medicaid coverage during the pendency of the case until final judgment—by restoring coverage and pausing terminations—unless Defendants implement adequate notice prior to that time. Defendants could,

[2] In fact, Defendants' own case confirms there is no "hard and fast rule" against granting the relief plaintiffs request. *Tanner Motor Livery, Limited v. Avis, Inc.*, 316 F.2d 804, 808-09 (9th Cir. 1963). *Miami Beach Federal Savings & Loan Association v. Callander,* is distinguishable because there, the Court vacated preliminary relief that was unsupported by evidence and exceeded the scope of the issues before the court. 256 F.2d 410 (5th Cir. 1958).

therefore, choose to comply with the injunction simply by pausing and reinstating coverage *without* updating the notices until after trial and final judgment is entered.

V. The Amended Proposed Order does not alter the class definition.

The Amended Proposed Order does not amend the class definition set forth in the Complaint or any limitation to that original definition the Court may certify. Rather, for Subclass A, the limitation to notices that include "only" the referenced reason code(s) is imported from the original proposed class definition. The same is true with respect to Subclass B. The Amended Proposed Order identifies two reason codes falling within the subclass definition, and for efficiency of space, refers to other reason codes captured by the definition with the phrase "materially similar as reflected in Dkt. 47-3." Dkt. 69 at 4. Docket entry 47-3 is a list of all reason codes, with Subclass B reason codes highlighted in green, and was included in the class certification briefing. Further, the Amended Proposed Order references "class members" and, therefore, any limitations imposed by the Court will govern. In sum, the Amended Proposed Order references and does not determine the class definition.

Dated: January 19, 2023.

By: /s/ Sarah Grusin

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