

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

<b>KERIM and ADVIJE MEMISOVSKI,</b>	)	
<b>by their mother THERESA MEMISOVSKI,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>-vs-</b>	)	<b>No. 92 C 1982</b>
	)	
<b>BARRY MARAM, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	<b>Hon. Joan Humphrey Lefkow</b>

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<b>MONEIA BEEKS, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>-vs-</b>	)	<b>No. 92 C 4204</b>
	)	
<b>PHILIP BRADLEY, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	<b>Hon. Joan Humphrey Lefkow</b>

**PLAINTIFFS' MOTION TO REQUIRE  
PAYMENTS IN SUBSTANTIAL COMPLIANCE WITH  
CONSENT DECREES AND SUBSEQUENT COURT ORDERS**

This Motion simply seeks entry of the payment order contemplated by the Court's June 7, 2017 decision. That decision noted that "minimally funding the obligations of the decrees while fully funding other obligations fails to comply not only with the consent decrees, but also with this court's previous orders." (Docket No. 525). The Court then directed the parties to negotiate to achieve "substantial compliance" with the consent decrees in this case and to file an appropriate motion if negotiations failed. *Id.* Unfortunately, the negotiations have not resulted in meaningful progress. Thus, in support of the proposed order, Plaintiffs state as follows:

**A. The Illinois Medicaid Program Stands at the Brink Due to Nonpayment**

1. As Plaintiffs demonstrated in their Motion for Further Relief to Enforce Orders Requiring Continued Payment of Medicaid (Docket Nos. 513, 522), the Illinois Medicaid program stands at the brink of a crisis regarding the access to health care owed to class members. As the State of Illinois faces a third year without an enacted budget, many Medicaid providers, including individual doctors, primary care practices, and specialists, will decide to reduce or eliminate their care for Medicaid recipients and face that difficult choice based on lack of payment by the State.

2. If the current Medicaid funding practices, as outlined by the Comptroller's previously submitted declaration (Docket No. 517, Ex. 2), continue into a third year with no enacted State budget, medical providers will, in effect, vote with their feet and leave the Medicaid system, stranding Medicaid recipients without adequate access to medically necessary care. Moreover, when medical providers exit the Medicaid system due to payment issues, they are extremely reluctant to agree to see Medicaid patients even when the funding crisis has passed. These effects were proven in this very case. *See, e.g.*, Memorandum Opinion and Order dated August 23, 2004 (Docket No. 390, p. 80) ("For example, each physician testified that Medicaid has a very long payment cycle, which was identified as an important factor in determining whether to participate in the Medicaid program.")

3. We are at this brink because the State has failed to comply substantially with this Court's orders to pay Medicaid payments during the budget impasse.

**B. Negotiations Have Failed**

4. After this Court entered an order to negotiate on June 7, 2017, Plaintiffs requested additional information from Defendants regarding the amount and nature of the payments that

the Illinois Comptroller is currently making in its efforts to comply with the Court's orders in these two cases, and Defendants provided most of the information.

5. Defendants asked Plaintiffs for a proposed amount of increased monthly payments that Plaintiffs would accept as substantial compliance with the Court's orders, and Plaintiffs provided Defendants with a proposal (now reflected in the Proposed Order attached hereto as Exhibit A.)

6. In light of Defendants' response to Plaintiffs' proposal, the parties are at an impasse.

**C. The Proposed Order Accomplishes Substantial Compliance**

7. This Court has already determined that it has the authority to order Defendants to pay Medicaid sufficient to achieve substantial compliance with orders entered in these matters.<sup>1</sup> See June 7, 2017 Order (Docket No. 525).

8. The Proposed Order (Exhibit A) provides that, until such time as the State enacts a State budget in Illinois, the Defendants shall pay \$586 million dollars each month to providers of services in the Medicaid-funded programs involved in these cases, including Managed Care Organizations. The amounts shall be sequenced and apportioned among the various provider types to prevent the aging of the backlogged bills from increasing. This figure reflects the State's liability for the portion of the Medicaid budget allocated to payments for medical services

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<sup>1</sup> This Court has already entered numerous orders requiring the State to act in these matters: July 24, 2015 (Order entered only on behalf of *Memisovski* class members); a) August 31, 2015 (Order entered on behalf of *Memisovski* and *Beeks* class members); b) September 16, 2015 (Order entered on behalf of *Beeks* class members receiving Community Care Program services); c) February 9, 2016 (Order entered on behalf of *Beeks* and *Memisovski* class members receiving Family Case Management services); d) July 6, 2016 (Order entered on behalf of *Beeks* and *Memisovski* class members to ensure payment in State Fiscal Year 2017 which began July 1, 2016); and c) June 7, 2017 (Order entered to require substantial compliance with this Court's orders).

only, and was obtained from the Fiscal Year 2017 Estimated Expenditures for this budget line in the Fiscal Year 2018 Governor's Budget Book. *See*

<https://www.illinois.gov/gov/budget/Documents/Budget%20Book/FY2018%20Budget%20Book/FY2018OperatingBudgetBook.pdf> (last visited on June 22, 2017).<sup>2</sup> Paying this amount each month, and apportioning the payments across all provider types, will assure timely payment of current, approved claims and thereby prevent any further increase in the aging of bills in the Medicaid-funded programs. Plaintiffs assume that the State Defendants will claim and receive a federal Medicaid match of at least 50% of the \$586 million so that the net cost to State revenue will be no more than \$293 million monthly.

9. In addition, the Proposed Order (Exhibit A) provides that for four months, starting in July 2017, the Defendants shall pay an additional \$500 million per month towards reducing the backlogs of unpaid bills to providers of Medicaid-funded services involved in these cases, including Managed Care Organizations. These payments shall be sequenced and apportioned so that, by the end of the four months in which the payments are made, all provider types, including Managed Care Organizations, will have backlogs of bills as close as possible to the backlogs that were in place during State Fiscal Year 2015—the last fiscal year for which the State had an approved budget. Generally, as an example, in Fiscal Year 2015, Managed Care Organizations had backlogs of bills with aging of no greater than three months. Currently, the aging of the State's payables to Medicaid providers are two or three times longer than that. Plaintiffs assume that the State Defendants will claim and receive a federal Medicaid match of at least 50% for the \$500 million so that the total cost to State revenue will be no more than \$250 million monthly.

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<sup>2</sup> Upon information and belief, the Fiscal Year 2017 Estimated Expenditure figure in the Governor's Budget Book is calculated based on input by the Illinois Department of Healthcare and Family Services about actual liability for this line year-to-date.

10. With both sets of payments, the order proposes that the State give all appropriate preference to Safety Net Hospitals and other providers most crucial to affording the Plaintiff classes access to federally mandated health care services. The Proposed Order (Exhibit A) accomplishes substantial compliance with this Court's prior orders. It does not demand full and immediate payment of all back bills. Instead, by providing for payments equivalent to each month's Medicaid liabilities, it stops the backward slide of the Medicaid program. By providing for additional lump sum payments spaced out over four months, this order will gradually, and only partially, make up for the many months that the Defendants have allowed Medicaid debt to accelerate while they were paying 100% towards other State priorities in violation of this Court's orders. Both types of payments are necessary in order to ensure ongoing access to healthcare for the members of the Plaintiff classes in the two cases during the budget impasse as described in ¶ 1.

WHEREFORE, Plaintiffs move that the Court enter the proposed Order Requiring Substantial Compliance, as set forth in Exhibit A.

Dated: June 26, 2017

Respectfully Submitted,

/s/ David J. Chizewer  
One of Plaintiffs' Attorneys

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# **EXHIBIT A**

**[DRAFT]**

**IN THE UNITED STATES DISTRICT COURT  
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EASTERN DIVISION**

<b>KERIM and ADVIJE MEMISOVSKI,</b>	)	
<b>by their mother THERESA MEMISOVSKI,</b>	)	
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<b>Defendants.</b>	)	<b>Hon. Joan Humphrey Lefkow</b>

**[PROPOSED] ORDER**

On June 7, 2017, this Court granted plaintiffs' Motion for Further Relief to Enforce Orders Requiring Continued Payment of Medicaid, finding that "minimally funding the obligations of the decrees while fully funding other obligations fails to comply not only with the consent decrees, but also with this Court's previous orders." The Court therefore directed the parties to negotiate to achieve substantial compliance with the consent decrees and previous orders in this case.



All parties having received notice and the Court being duly advised of the consent decrees and other orders previously entered in this case, the urgency of plaintiff class members' needs, and the continuing State budget impasse, and in order to enforce substantial compliance with the consent decrees and this Court's prior orders, the Court finds that:

- A. The Defendants have not submitted a proposal that sufficiently complies with the Consent Decrees and previous orders in these cases; and
- B. The Court therefore accepts Plaintiffs' proposed funding plan.

IT IS HEREBY ORDERED THAT:

1. Until such time as there is a State budget enacted in Illinois, the Defendants shall cause payments in the amount of \$586 million dollars each month for vouchers first submitted after June 30, 2017 on behalf of providers of services in the Medicaid-funded programs involved in these cases, including Managed Care Organizations.
2. For four months, starting in July 2017, the Defendants shall cause payments in the amount of an additional \$500 million per month for vouchers previously submitted on behalf of providers of Medicaid-funded services involved in these cases, including Managed Care Organizations. These payments shall be sequenced and apportioned so that, by the end of the four months in which the payments are made, the aging of Medicaid payables to all provider types, including Managed Care Organizations, will be as close as possible to the aging in place during State fiscal year 2015.
3. It is intended that the total monthly payments of \$1.086 billion will rely on reimbursement from the federal government for at least half of that amount, ultimately reducing the net outlay from State funds to \$543 million per month.

4. In making all such payments, the State shall give all appropriate preference to Safety Net Hospitals and other providers most crucial to affording the Plaintiff classes access to federally mandated health care services.

Dated: June 28, 2017

SO ORDERED

BY: \_\_\_\_\_  
Judge Joan Humphrey Lefkow