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Federal Judge Orders State of Illinois to Provide Community-based Nursing Care to Children with Severe Disabilities and Medical Conditions

CHICAGO—Today, federal district court Judge Charles P. Kocoras issued a court order requiring HFS [Illinois' Medicaid agency] to “take immediate and affirmative steps to provide the very in-home shift nursing services that HFS approved.”

More than 1200 children have been approved for in-home nursing services based on their high level of medical need. Many of these children are dependent on complex medical regimens for routine bodily functions, such as eating, drinking, breathing, and oxygen regulation. Yet, the State has failed to arrange for in-home nursing, resulting in unnecessary and costly institutionalization, heightened risk of medical complications, and diminished quality of life.

The Plaintiffs are represented by the legal team of Robert H. Farley, Jr., Legal Council for Health Justice (attorneys Thomas D. Yates and Shannon M. Ackenhausen), and National Health Law Program (attorneys Jane Perkins and Sarah Somers). The case, *O.B. v Norwood*, represents a new frontier in Medicaid case law after a series of Supreme Court rulings limiting the ability of advocates to turn to the courts to hold States accountable for legally-required services.

Lead counsel Robert H. Farley, Jr. notes that, “As I often tell parents who have a disabled child, if you are having problems either obtaining funding or approval for services or having problems receiving the services which have been previously approved by the State, do not simply accept the status quo. It may be possible that the State is not living up to its legal responsibility, so please contact me and maybe we can make a difference in your child's life.”

“Federal Medicaid law requires states to ensure that enrolled children receive all covered services that they need to address their disabilities and illnesses,” said Jane Perkins, legal director,

National Health Law Program, “the court’s well-reasoned decision supporting the order stands for the unremarkable proposition that a state Medicaid agency must make sure that child beneficiaries actually receive the services the agency has determined are medically necessary.”

In the opinion granting the injunction (issued on March 21), Judge Kocoras stated that the Illinois Medicaid Director “knows what those services are and for whom they were approved because her agency approved them.” The judicial opinion further emphasized the public’s interest in ensuring that the medically complex plaintiffs receive adequate services. “The public has an interest in seeing care and treatment that HFS [Illinois’s Medicaid agency] has already determined to be medically necessary fully provided to the disabled children who seek it here.”

The ruling also makes good sense for cash-strapped Illinois: “The State is paying more money to institutionalize sick children instead of utilizing more effective and less costly community-based solutions that this order requires,” says Tom Yates, executive director of Legal Council for Health Justice, “It makes fiscal and moral sense.” Tom is also co-counsel on two landmark consent decrees (*Memisovski v. Maram* and *Beeks v. Bradley*) that have been leveraged to maintain Medicaid reimbursements to Illinois’ safety net hospitals and medical providers despite an ongoing FY16 state budget impasse.

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Robert H. Farley, Jr., a graduate of the Northwestern University School of Law, has been providing legal representation to individuals with disabilities and their families for over twenty years in support of the rights, entitlements to adult and children's services, special education, the development of customized estate plans and special needs trusts, guardianship, and public benefits. www.farley1.com

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