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DRAFT RELEASE

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Civil Legal Aid and Private Bar Partners Win Momentous Court of Appeals
Seventh Circuit Upholds Order Against Illinois Health Officials

CHICAGO—The U.S. Court of Appeals for the Seventh Circuit [upheld](#) a lower district judge’s preliminary injunction ordering the Illinois Department of Healthcare and Family Services (HFS) to “take immediate and affirmative steps” to provide in-home nursing care to children with severe medical needs.

HFS has approved more than 1,200 children for in-home nursing care based on medical necessity, but has failed to arrange the in-home nursing care. As a result, children who could and should be cared for in their homes have remained in hospitals and other similar facilities, some for years.

The children 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](#) (NHeLP) Legal Director Jane Perkins. The legal team has argued that HFS’s refusal to arrange for in-home nursing care violates Medicaid’s Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provision, which requires the state to make medical assistance available for Medicaid eligible individuals.

Lead counsel Farley said, “Under Federal Law, the States have an affirmative obligation to make sure that children and persons entitled to medically necessary services are able to actually receive the services.”

“The Seventh Circuit’s opinion is in line with what federal Medicaid law requires, and what Illinois health officials had approved – medically necessary in-home care for these children,” NHeLP’s Perkins said.

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 state budget impasse.

Writing for the three-judge Seventh Circuit panel, Judge Richard Posner noted the weakness of the arguments advanced by HFS against the preliminary injunction. HFS, for example, claimed nothing in Medicaid law required the state to ensure that children would receive the medically necessary treatment.

“Certainly the defenses thus far advanced by HFS are weak,” Judge Richard Posner wrote in *O.B. v. Norwood*. “The primary defense is that nothing in the Medicaid statute ‘required [HFS] to ensure that Plaintiffs would receive medical care from nurses in their homes.’”

“Remember that although O.B. [the first named child plaintiff in the case] had been approved for home

nursing for which HFS had agreed to pay, he was denied it for almost a year because HFS, so far as it appears, made no attempt to find nurses for him,” Posner added. He noted a further oddity in the state’s position: instead of paying \$19,178 a month for one plaintiff’s in-home care, the state was paying \$78,000 a month to keep the plaintiff in the hospital.

“And the preliminary injunction should be understood simply as a first cut: as insisting that the state do *something* rather than nothing to provide in-home nursing care for these children,” Jude Posner wrote in *O.B. v. Norwood*.

Please contact Jeremy Leaming at leaming@healthlaw.org or 202-552-5176 or Jill Wohl at 312-605-1980 or jill@legalcouncil.org to speak with the attorneys in this case.

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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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