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

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

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

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.

The court has considered the representations and arguments of counsel made on the record in open court, most recently on June 28, 2017, and reviewed the affidavits and

declarations since submitted by the parties concerning an appropriate path to reaching substantial compliance with the consent decrees entered in the respective cases before the court. In light of the urgency of plaintiff class members' needs on one hand and, on the other hand, the continuing financial distress of the State of Illinois arising from the failure of the executive and legislative branches of its constitutional government to enact a budget and appropriation that matches revenue with expenditures and, in order to enforce substantial compliance with the consent decrees, the court finds and concludes as follows:

1. According to the Governor's Budget Book for Fiscal Year 2018, the State's liability for Medicaid expenditures is approximately $586 million per month.[1] *See* https://www.illinois.gov/gov/budget/Documents/Budget%20Book/FY2018%20Budget%20Book/FY2018OperatingBudgetBook.pdf. The federal government matches approximately 50% of this amount if actually paid by the State, leaving an estimated net monetary outlay from State funds of $253 million.

2. As of June 20, 2017, the Comptroller's Office estimated a backlog of medical bills in the amount of $4.14 billion. (*See* Supplemental Declaration of Kevin Schoeben, dated June 26, 2017, ¶ 6, dkt. 530-1.) Of the $4.14 billion, more than $3 billion is owed to the Managed Care Organizations ("MCOs") assigned to provide healthcare to the State's Medicaid beneficiaries. (*Id*.)

3. Over 60% of Illinois's three million Medicaid recipients receive their health care through an MCO. *See Care Coordination*, Ill. Dep't of Healthcare and Family

[1] Defendants claim that the Budget Book "includes references to Medicaid payments that clearly fall outside of the consent decrees in these cases." (Dkt. 530 at 3.) Defendants have not identified any of these allegedly extraneous payments. Additionally, the *Beeks* class is defined as "[a]ll persons in Illinois who are or will be certified . . . as eligible . . . for . . . the Medicaid program."

Services, https://www.illinois.gov/hfs/MedicalProviders/cc/Pages/default.aspx (last visited June 30, 2017).

4. The backlog of unpaid claims which the State owes to the MCOs directly, and indirectly to the doctors, hospitals, clinics and other organizations which are part of MCO networks and which provide healthcare to Medicaid beneficiaries, is crippling these providers and thereby dramatically reducing the Medicaid recipients' access to healthcare. Plaintiffs have provided substantial and compelling evidence of how the backlog of payments has affected Medicaid recipients' access to healthcare.

5. For example, Family Health Network, Inc. ("FHN"), the MCO which enrolls more than 227,000 Medicaid beneficiaries (the second largest MCO in the greater Chicago area by patient census) is owed more than $260 million by the State for the healthcare it provides to Medicaid beneficiaries. (*See* Declaration of John C. Allen, IV, dated June 29, 2017, ¶ 3, dkt. 532-1). *See also Enrollment for Family and Health Plans/ACA Adults*, Ill. Dep't Healthcare and Family Services, https://www.illinois.gov/hfs/MedicalProviders/cc/Pages/FHPEnrollment.aspx (last visited June 30, 2017)).

   (a) As a result of the backlogged receivables, FHN has paid virtually none of its providers since February, 2017. (*Id.* ¶ 5.) Consequently, providers have defected from FHN's provider network, three large hospital systems and another four hospitals. This loss includes all of the medical practice groups affiliated with these hospitals and two hundred-plus additional primary care physicians not affiliated with these hospitals. (*Id.* ¶ 6.)

(b) This loss of these providers means that the more than 227,000 Medicaid beneficiaries in the FHN plan suffer from substantially reduced access to the healthcare services they need.

6. The Meridian MCO faces similar challenges. It has the largest enrollment of all Medicaid MCOs in Illinois, serving almost 390,000 members. (*See* Declaration of Matthew L. Agnone, dated June 29, 2017, ¶ 3, dkt. 532-1.) Meridian is owed more than $540 million, including for invoices dating back to October, 2016. (*Id*. ¶¶ 5, 9.) If the Court fails to take meaningful action such that Meridian receives timely and complete payments, it will almost certainly be left with no option but to terminate its contract with the State. (*Id*. ¶ 11.)

7. Aetna Better Health Inc. ("Aetna"), an MCO responsible for coordinating the healthcare of more than 235,000 Illinois Medicaid recipients, is owed approximately $700 million. (*See* Declaration of Laurie A. Brubaker, dated June 29, 2017, ¶¶ 4, 9, dkt. 532-1.) Aetna has indicated that if the State does not enact a budget by July 1, 2017, or if this Court does not adopt a remedy similar to the one sought by Plaintiffs in their June 26, 2017 motion, termination of Aetna's contracts with the State will become inevitable. (*Id*. ¶19.) Given the tenuous conditions of the other MCOs (*see, e.g.*, ¶ 4 above), Aetna believes that the State expects a significant number of the members of other MCOs to switch into Aetna's plan. (*Id*. ¶¶ 14–15.) That will, of course, be impossible if Aetna terminates its contract.

8. The perspective of doctors who have not been paid for their treatment of Medicaid recipients provides an even more tangible picture of the access crisis that the State has created. Dr. Stacie Laff is a pediatrician in Southern Illinois who cares for

almost 2,000 Medicaid patients. (*See* Declaration of Stacie Laff, dated June 28, 2017, dkt. 532-1.) Of those 2,000 patients, 700 are enrolled in the Meridian MCO. *Id*. The Meridian MCO has not paid Dr. Laff for three months. (*Id*.) Dr. Laff cannot pay her bills, and her practice is about to become defunct. (*Id*.) As a result, she has stopped accepting new Medicaid patients. (*Id*.) Dr. Laff also plans to counsel her current Medicaid patients to transfer to another practice. (*Id*.)

9. Similarly, Drs. Tahir Niazi and Giulia Mobarhan operate a pediatric practice in Chicago. (*See* Declaration of Tahir Niazi and Giulia Mobarhan, dated June 28, 2017, dkt. 532-1.) They handle 12,000 patient visits a year, 90% of which are from Medicaid recipients. (*Id*.) Because these Medicaid patients are enrolled in MCOs which have not paid these doctors in months, these doctors have reached their debt limit on their credit cards and lines of credit just to operate their practice. (*Id*.) In order to meet the medical needs of their patients, they need to hire two to three new ancillary staff but cannot do so because of how much money they are owed. (*Id*.) They also face problems in obtaining supplies for necessary services, such as vaccinations and blood tests. (*Id*.)

10. Dr. Timothy Wall has one of the largest pediatric practices in the collar counties of the State and serves an estimated 18,000 Medicaid patients, 90% of whom belong to one of the MCOs. (*See* Declaration of Timothy Wall, dated June 29, 2017, dkt. 532-1.) His practice has not been paid for three months by the FHN and Meridian MCOs, and he has received only partial payments from the Blue Cross MCO. (*Id*.) As a result, his practice cannot afford to purchase the immunizations needed by his patients because those immunizations must be purchased in advance from the

commercial market. (*Id.*) Dr. Wall's practice has taken out loans to purchase the immunization shots, but can no longer afford to do so. As a result, the community is facing a crisis of under-vaccinated children. (*Id.*) The practice has stopped accepting new patients affiliated with the FHN MCO, and expects to stop accepting patients affiliated with the Meridian MCO in the near future. (*Id.*)

11. The backlog of bills also affects hospitals and mental health service providers. For example, Sinai Health System includes a host of Safety Net Hospitals critical to serving the Medicaid population in Chicago, including 2 acute care hospitals—Mount Sinai Hospital and Holy Cross Hospital—a state designated children's hospital—rehabilitative care centers, physician specialty practice groups, and other services. (*See* Declaration of Charles Weis, dated June 29, 2017, ¶ 1, dkt. 532-1.) Approximately 68% of Sinai patients are covered by Medicaid. (*Id.* ¶ 2.) In the last 45-60 days, Sinai's receivables from MCOs have deteriorated in a material and dangerous way. (*Id.* ¶ 4.) One MCO has stopped paying altogether, and others have slowed and reduced payments. The State Medicaid program owes Sinai more than $30 million. (*Id.* ¶ 4.) Sinai is therefore at the mercy of its vendors' willingness to supply Sinai without payment, and at any moment, its vendors could severely compromise Sinai's ability to deliver care. (*Id.* ¶¶ 5–6.)

12. All of the testimony referenced above is further supported by the 26 testimonials which Plaintiffs provided to the court on April 28, 2017 (dkts. 513-1–10), from doctors, MCOs, Federally Qualified Health Clinics, and other Medicaid providers. Those testimonials laid out the dire situation, explained how access to healthcare

has been and would be further impeded, and predicted the conditions referenced in current testimony detailed above.

13. All of this evidence further establishes that the State has failed to fund the State Medicaid programs in a manner sufficient to meet the federal mandates embodied in this court's consent decree and previous orders. (*See, e.g.*, dkts. 422, 462, 476, 495 and 502.)

14. This testimony provides current confirmation of the findings that gave rise to the original declaratory judgment in these cases and resulting consent decrees: specifically that the failure to adequately fund the Medicaid program and timely pay its healthcare providers resulted in deprivation of access to healthcare for the Medicaid beneficiaries, in violation of the consent decree and federal law.

15. In order to rectify the funding failures and the problems they have created as detailed above, and to restore sufficient, federally-mandated access to health care, the State must fully to fund the Medicaid program and timely pay claims submitted in the ordinary course of business. In addition, the State must pay a significant portion of the backlog of bills over a reasonable period of time.

16. The Comptroller has represented that the State does not have sufficient revenue to meet plaintiffs' funding demands while also continuing to pay other core obligations related to K–12 education funding, state debt obligations, other Medicaid obligations, state payroll, state pension obligations, and mandated payments to local governments. Because the total amount of payments required by court orders and statutes continues to exceed available revenues, some payments

have been delayed for short periods of time and some for longer periods of time. (Dkt. 517-2.)

17. Despite the lack of revenue, the Comptroller has continued to pay in the ordinary course (without unusual delays) vouchers for a range of Medicaid services, including payments to safety net hospitals, ambulance services, and MCOs. Those payments totaled an estimated aggregate amount of $13.36 billion paid thus far from all funds for Fiscal Year 2017, or about $1.113 billion per month, with an estimated $4.5 billion from general revenue funds for Fiscal Year 2017. (Dkt. 530-1 ¶ 7.) Of that $4.5 billion, over $937 million has been paid to MCOs in Fiscal Year 2017. (*Id.*) Despite these payments, as of June 20, 2017, the Comptroller's Office estimated a $15.24 billion backlog of bills (approximately triple the estimated backlog of $5.03 billion that existed at the end of Fiscal Year 2015). Included in this backlog of bills is $4.14 billion in medical bills, of which $3.1 billion is owed to MCOs. (*Id.* ¶ 6.)

18. The Comptroller represents that the State does not have sufficient monthly revenues to pay all identified "core priority" obligations as they come due, including all of the Medicaid payments plaintiffs have requested. (*Id.* ¶¶ 9–10.) The Comptroller submits that, should the court enter an order requiring her to make payments at the levels requested by plaintiffs over the next four months, she will be forced to use more than two-thirds of the funds that otherwise are used to pay the other non-Medicaid core priority obligations identified in defendants' submissions to the Court. (*Id.*) If the Comptroller is required to pay the lesser amount of $150 million additional per month, as the defendants propose (an almost16% increase over

current state funds going toward Medicaid payments), the Comptroller would have to reduce by $75 million each month the payments of other non-Medicaid core priority obligations.

19. Defendants have not submitted a payment proposal that would accomplish what is necessary for substantial compliance with the consent decrees. Defendants have favored what they have determined to be core priority over their obligations under this court's orders and decrees. Other than the State's debt service obligations which must be met in order to avoid default, a consequence that all parties and the court agree should be avoided, defendants have not demonstrated a basis in law or fact for the choices they have made, which have resulted in sacrificing compliance with the laws of the United States as embodied in the consent decrees.

20. The court therefore accepts plaintiffs' proposal with modifications as set out below.

IT IS HEREBY ORDERED THAT:

1. Defendants shall forthwith 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 MCOs.

2. In addition, in Fiscal Year 2018 (beginning July 1, 2017), defendants shall cause to be paid an additional $2 billion towards reducing the backlog of unpaid vouchers that have been submitted for Medicaid services in these cases. The Comptroller may sequence the payments based on available monthly revenue, with the goal to end Fiscal Year 2018 with a backlog that is as close as possible to the backlog that was in place during State Fiscal Year 2015.

3. It is intended that the total monthly payments made by the State will be reimbursed at approximately fifty percent by federal Medicaid match from the federal government, thus reducing thus reducing the net outlay from State funds by approximately fifty percent per month.

4. In making all such payments, the State shall, in consultation with class counsel, prioritize appropriate preference to "Safety Net Hospitals" and other providers most crucial to affording the plaintiff class members' access to federally mandated healthcare services.

5. The defendants shall file a monthly report with the court reflecting payments made in compliance with this order. It is so ordered.

Dated: June 30, 2017

BY: _____
Judge Joan Humphrey Lefkow