

**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.)	
)	
Defendants)	Hon. Joan Humphrey Lefkow
)	

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

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO ENFORCE CONSENT DECREE**

Plaintiffs long ago established, in overwhelming fashion, that if doctors do not get paid for seeing Medicaid beneficiaries, the State cannot meet its EPSDT and equal access obligations under the federal Medicaid Act. This Court's opinion in the *Memisovski* case determined as much. *See e.g.* Memorandum Opinion and Order, ¶ 58 ("IDPA staff further admit that the length of the IDPA payment cycle effects physicians' willingness to participate in the Medicaid program"). (Docket No. 390). As a result of the Court's findings, the State entered into a Consent Decree which ordered, among other things, that certain payments to Medicaid providers be not only timely, but expedited. *See* Consent Decree, ¶ 23 (Docket No. 422). The decree also

notes that if EPSDT Services and Equal Access are not provided, "there will not be compliance with this Decree." *Id.*, ¶ 5.

The State has recently acknowledged that it owes \$2 billion to Medicaid MCOs, who, in turn, owe similar amounts to the doctors who see Medicaid patients. Declarations submitted by plaintiffs in connection with this motion establish the threats to Medicaid services in a manner which violates the Consent Decree. The State's excuse is that it has other obligations, including State pension obligations that create an unresolvable conflict for the State Comptroller in deciding who to pay. The Court has pondered whether the Comptroller's decision about whom to pay is a "political question" beyond the Court's ability to answer.

But the State has created false Hobson's choice and this Court has the power and duty to enforce the federal consent decree by holding that payments to MCOs, needed to maintain the required services to Medicaid beneficiaries, must take precedence over pure state obligations such as payments into the state pension system.

In controlling precedent, the Seventh Circuit has confirmed that, "[a]gainst a state that violates a valid federal court decree *the court has the power to issue any order necessary to enforce the decree, including an order to pay.*" *Wisconsin Hosp. Ass'n v. Reivitz*, 820 F.2d 863, 864 (7th Cir. 1987) (emphasis added). In *Reivitz*, the district court entered a consent decree against the state of Wisconsin, which ordered the state to follow the state's official Medicaid plan with respect to the manner in which it reimbursed hospitals for services to Medicaid beneficiaries. The state had previously passed a law, however, requiring a change to the Medicaid reimbursement rates that was inconsistent with the state's Medicaid plan. The hospital association sought an order from the district court requiring the state to ignore the state law and follow the reimbursement rate ordered by the consent decree. In response, the state argued that

the Eleventh Amendment prevented the district court from directing the state as to how to spend its money. The district court agreed with the state and refused to enforce consent decree. The Seventh Circuit reversed the district court on the grounds that compliance with a federal consent decree takes precedence over the state's desire to conform its conduct to state law. It remanded the case back to the district court with directions to order a money judgment in favor of the hospitals consistent with the reimbursement method required by the consent decree.

The same result should be applied here. The State has no authority to ignore a federal consent decree in favor of its obligations to satisfy state law or state contracts.

Thus, Plaintiffs request that this Court order the parties to spend the next three days negotiating a resolution to Plaintiffs' motion to enforce consent decree consistent with the principles articulated in this supplemental brief or return to court in seven days for contempt proceedings.

Respectfully Submitted,

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

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