

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

OSCAR SALAZAR,  
by his parent and next friend,  
OSCAR SALAZAR  
1111 Massachusetts Ave., N.W.  
Apartment 905  
Washington, D.C. 20005

OSCAR SALAZAR  
1111 Massachusetts Ave., N.W.  
Apartment 905  
Washington, D.C. 20005

PAUSI ARGUETA,  
by her parent and next friend,  
MIRNA PAZ,  
2418 17th Street N.W.  
Apartment 106  
Washington, D.C. 20009

JOSE ARGUETA,  
by her parent and next friend,  
MIRNA PAZ,  
2418 17th Street N.W.  
Apartment 106  
Washington, D.C. 20009

TERESA ARGUETA,  
by her parent and next friend,  
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MIRNA PAZ,  
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IRMA ISABEL FLORES,  
by her parent and next friend,  
ABIGAIL FLORES,  
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Washington, D.C. 20011

YANET ABIGAIL FLORES,  
by her parent and next friend,  
ABIGAIL FLORES,  
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Washington, D.C. 20011

**FILED**

**APR 17 1995**

**Clerk, U.S. District Court  
District of Columbia**

Civil Action No. 93-452(GK)  
CLASS ACTION SECOND AMENDED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

LUIS ALFREDO FLORES, ✓  
by his parent and next friend,  
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CARLINA FLORES, ✓  
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✓ JUAN ANTONIO FLORES PEREZ, ✓  
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ANA IRIS FLORES, ✓  
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NELSON ALVAREZ, ✓  
by his parent and next friend,  
SYLVIA CRUZ-DIAZ ALVAREZ,  
3536 Center Street, N.W.  
Apartment 16  
Washington, D.C. 20010

JESSICA CRUZ, ✓  
by her parent and next friend,  
SYLVIA CRUZ-DIAZ ALVAREZ,  
3536 Center Street, N.W.  
Apartment 16  
Washington, D.C. 20010

KATY LISETTE ALVAREZ ✓  
by her parent and next friend,  
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3536 Center Street, N.W.  
Apartment 16  
Washington, D.C. 20010

SYLVIA CRUZ-DIAZ ALVAREZ  
3536 Center Street, N.W.  
Apartment 16  
Washington, D.C. 20010

Plaintiffs,

vs.

THE DISTRICT OF COLUMBIA:  
serve GARLAND PINKSTON, JR.,  
Acting Corporation Counsel  
of the District of Columbia,  
Suite N 1060  
441 Fourth Street, N.W.  
Washington, D. C. 20001

MARION BARRY, in his  
official capacity as Mayor  
of the District of Columbia,  
441 Fourth Street, N.W.  
Suite 1100  
Washington, D.C. 20001

VERNON HAWKINS, in his  
official capacity as Interim  
Director of the Department  
of Human Services,  
District of Columbia  
2700 Martin Luther  
King, Jr. Ave. S.E.  
Washington, D.C. 20032

Defendants.

INTRODUCTION

1. Plaintiffs, on behalf of themselves, and others similarly situated, bring this action for declaratory, injunctive and compensatory relief to enforce Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., and the accompanying regulations, 42 C.F.R. 430, et seq., regarding the District of Columbia's practices and procedures in providing medical

assistance (also known as Medicaid) to eligible persons under the medical assistance program.

2. Plaintiffs are needy children and adults who have applied for, or attempted to apply for, benefits under the District of Columbia's Medicaid program. As a result of defendants' numerous violations of federal law, families, including handicapped children, are unable to obtain the medical care which is essential to their well-being and survival.

3. Plaintiffs seek declaratory and injunctive relief on behalf of themselves and a class of similarly situated persons in the District of Columbia to halt defendants' unlawful practices and procedures in administering the Medicaid program.

#### JURISDICTION

4. This action to redress the deprivation of rights secured to plaintiffs arises under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., which is enforceable under 42 U.S.C. 1983. The Court has jurisdiction under 28 U.S.C. 1331, 1343, 2201 and 2202.

#### PARTIES

##### Plaintiffs

5. Plaintiff Oscar Salazar (D.O.B. 10/13/91) resides with his parents, Adela and Oscar Salazar, in the District of Columbia. He sues by his parent and next friend, Oscar Salazar.

6. Ms. Salazar speaks Spanish and does not speak or read English. Ms. Salazar applied for Medicaid for Oscar on or about June 17, 1992. She submitted all required documentation within the following few weeks. The Salazars did not receive any notice

from DHS regarding whether the application for Medicaid was approved until January 1993, after their legal representative intervened. DHS informed the Salazars that Oscar does not qualify for Medicaid because the family has too much income. The Salazars are challenging this determination.

7. Since birth, Oscar has suffered from spastic quadriplegia, a neurological condition similar to cerebral palsy. He therefore requires extensive medical treatment and in-home therapeutic services. The Salazars have paid over \$395 in medical expenses for Oscar during the period from August 1992 to the present. The Salazars have not been reimbursed for the funds they expended on Oscar's hospital and physician care. They have not paid the in-home therapist who comes to their home once per week. The in-home therapist has told the Salazars that if they do not begin paying for the therapeutic services, these services will be terminated. Since Oscar has been eligible for Medicaid for the time period from March 1992 to the present, these costs should have been paid by Medicaid.

8. Ms. Salazar was never informed by DHS of the availability of early and periodic screening, diagnostic, and treatment services for children.

9. Plaintiff Pausi Argueta was born on July 2, 1992, and resides with her parents, Orfolio Argueta and Mirna Paz, in the District of Columbia. She sues by her parent and next friend, Mirna Paz.

10. Plaintiff Jose Argueta (D.O.B. 5/18/89) resides with his parents, Orfolio Argueta and Mirna Paz, in the District of Columbia. He sues by his parent and next friend, Mirna Paz.

11. Plaintiff Teresa Argueta (D.O.B. 6/30/87) resides with her parents, Orfolio Argueta and Mirna Paz, in the District of Columbia. She sues by her parent and next friend, Mirna Paz.

12. In July 1992, the Arguetas were receiving Medicaid benefits when Ms. Paz went to DHS to recertify the family's Medicaid benefits and to apply for Medicaid benefits for Pausi. The family received no response to the applications to recertify or to Pausi's initial application until on or about December 22, 1992. However, the Medicaid numbers that were received from DHS were not active in the DHS computer until February 8, 1993, after the intervention of the Arguetas' legal representative. Pausi had no coverage from birth to February 1993. Mr. Argueta, Ms. Paz, Jose and Teresa were without Medicaid coverage for the period of approximately October 1, 1992, through February 8, 1993. The Arguetas received no advance notice that their benefits would be suspended during this period.

13. Mr. Argueta and Ms. Paz were never informed by DHS of the availability of early and periodic screening, diagnostic, and treatment services for children. Pausi, Jose and Teresa have not received full screening, diagnostic, and treatment services under the EPSDT program.

14. Plaintiff Irma Isabel Flores (D.O.B. 12/10/91) resides with her mother, plaintiff Abigail Flores, in the District of

Columbia. Irma sues by her parent and next friend, Abigail Flores.

15. Plaintiff Yanet Abigail Flores (D.O.B. 8/13/89) resides with her mother, plaintiff Abigail Flores, in the District of Columbia. Yanet sues by her parent and next friend, Abigail Flores.

16. Plaintiff Luis Alfredo Flores (D.O.B. 9/11/88) resides with his mother, plaintiff Abigail Flores, in the District of Columbia. Luis sues by his parent and next friend, Abigail Flores.

17. Plaintiff Carlina Flores (D.O.B. 10/6/86) resides with her mother, plaintiff Abigail Flores, in the District of Columbia. Carlina sues by her parent and next friend, Abigail Flores.

18. Plaintiff Juan Antonio Flores Perez (D.O.B. 2/19/84) resides with his mother, plaintiff Abigail Flores, in the District of Columbia. Juan sues by his parent and next friend, Abigail Flores.

19. Plaintiff Ana Iris Flores (D.O.B. 8/11/80) resides with her mother, plaintiff Abigail Flores, in the District of Columbia. Ana sues by her parent and next friend, Abigail Flores.

20. In approximately January 1991, Ms. Flores applied for Medicaid for herself, her husband, Justiniano Flores, and her children Yanet, Luis, Carlina, Juan and Ana. Ms. Flores later received notice that her family was eligible for Medicaid. However, she never received working Medicaid numbers for them or

Medicaid cards. None of the Flores children have received Medicaid benefits.

21. Ms. Flores was eligible for Medicaid when her daughter Irma was born on December 10, 1991. On August 13, 1992, Abigail Flores reapplied for Medicaid for herself, her husband, Justiniano Flores, and her children Irma, Yanet, Luis, Carlina, Juan and Ana. Her DHS caseworker gave Ms. Flores a checklist which states that Ms. Flores had provided all necessary verification for the application by August 24, 1992. Ms. Flores has received no response from DHS concerning her application for Medicaid coverage for her family.

22. Ms. Flores was never informed by DHS of the availability of early and periodic screening, diagnostic, and treatment services for children. Irma, Yanet, Luis, Carlina, Juan and Ana have not received full screening, diagnostic, and treatment services under the EPSDT program.

23. Ms. Flores has received numerous bills for hospital services for her children during 1991 and 1992. Ms. Flores has not paid these bills because she has no funds to do so. Since her children were eligible for Medicaid during this time period, these costs should have been paid by Medicaid.

24. Plaintiff Nelson Alvarez was born on June 30, 1992, and resides with his mother, plaintiff Sylvia Cruz-Diaz Alvarez, in the District of Columbia. Nelson sues by his parent and next friend, Sylvia Cruz-Diaz Alvarez.

25. Plaintiff Jessica Cruz (D.O.B. 6/29/89) resides with her mother, plaintiff Sylvia Cruz-Diaz Alvarez, in the District



of Columbia. Jessica sues by her parent and next friend, Sylvia Cruz-Diaz Alvarez.

26. On August 30, 1992, Sylvia Cruz-Diaz Alvarez attempted to apply for Medicaid for Nelson and Jessica after being told by a doctor at Children's Hospital that Nelson would need a hernia operation. Ms. Alvarez was not told that she could apply for Medicaid at Children's Hospital.

27. When Ms. Alvarez arrived at the DHS office at 645 H Street, N.E., on August 30, 1992, with the required documentation, she was told that her application could not be accepted that day because the copier was broken and her documents could not be copied.

28. Ms. Alvarez returned to the DHS office on August 31, 1992, and submitted her application. She was told that she needed to bring additional documents to complete the application. Ms. Alvarez submitted all additional documents on September 2, 1992.

29. Ms. Alvarez has not received any notification concerning Jessica's application for Medicaid.

30. On November 30, 1992, Ms. Alvarez received an undated notice which stated that Nelson was eligible for Medicaid. The notice does not specify any time period during which Nelson was eligible. The Medicaid number given in the notice is not active in the Medicaid computer system and Nelson has been unable to obtain medical services covered by Medicaid. Ms. Alvarez received no notice of the need to recertify benefits or that Nelson's benefits would be terminated. Ms. Alvarez has spent

over \$200 for medical services for Nelson. Since Nelson was eligible for Medicaid, these costs should have been paid by Medicaid.

31. Ms. Alvarez was never informed by DHS of the availability of early and periodic screening, diagnostic, and treatment services for children. Nelson and Jessica have not received full screening, diagnostic, and treatment services under the EPSDT program.

32. Plaintiff Katy Lisette Alvarez (D.O.B. 12/23/94) resides with her mother, plaintiff Sylvia Cruz-Diaz Alvarez, in the District of Columbia. Katy sues by her parent and next friend, Sylvia Cruz-Diaz Alvarez.

33. Ms. Alvarez gave birth to Katy on December 23, 1994, at Washington Hospital Center in Washington, D.C. while Ms. Alvarez was receiving Medicaid. Katy did not receive immediate Medicaid coverage.

#### Defendants

34. Defendant District of Columbia (hereinafter the "District") is a "State" within the meaning of Title XIX of the Social Security Act, 42 U.S.C. 1301, and through its designated agency, DHS, is charged with preparing and implementing a plan for the Medicaid program, 42 U.S.C. 1396, et seq.

35. Defendant Marion Barry is Mayor of the District of Columbia, which through DHS has ultimate responsibility for administering the medical assistance program in the District of Columbia.

36. Defendant Vernon Hawkins is the Interim Director of  
DHS.

CLASS ACTION ALLEGATIONS

37. Named plaintiffs bring this action on behalf of  
themselves and all others similarly situated. Plaintiffs' class  
consists of:

All persons who, now or in the future will, reside in the District of Columbia who have applied for or who have attempted to apply for Medicaid and who have experienced one or more of the following conditions: (a) a delay in excess of 45 days in processing their initial Medicaid application or application to recertify Medicaid coverage; (b) as newborns of mothers eligible for Medicaid at the time of their birth, the lack of immediate Medicaid coverage using their mothers' Medicaid number; (c) the inability to apply for Medicaid at disproportionate share hospitals and federally-qualified health centers; (d) the inability to submit their completed Medicaid applications to the District of Columbia Department of Human Services; (e) after being found eligible, the lack of advance notice of the discontinuance, suspension or obligation to recertify their Medicaid benefits; (f) after being found eligible, the lack of effective notice of the availability of early and periodic screening, diagnostic and treatment services for children under 21 years of age; (g) after being found eligible, the lack of EPSDT services for children under 21 years of age.

38. The requirements of Rules 23(a)(1)-(4) and (b)(2) of  
the Federal Rules of Civil Procedure are met as to the class:

- a. Over 100,000 persons receive Medicaid in the District of Columbia. The class consists of several thousand persons and thus is so numerous as to make joinder impracticable;
- b. There are questions of law and fact common to the class, namely, whether defendants' treatment of persons in need

of medical assistance violates the Medicaid statute and implementing regulations;

- c. The claims of the named plaintiffs are typical of the claims of the class in that each of the named plaintiffs has not received the benefits, services and/or processes to which he or she is entitled;
- d. Named plaintiffs will fairly and adequately protect the interests of the class and are represented by counsel with experience in this type of litigation; and
- e. Defendants have acted and refused to act on grounds generally applicable to the class thereby making appropriate final injunctive relief and declaratory relief with respect to the class as a whole.

#### FACTS

39. In 1965, Congress enacted Title XIX of the Social Security Act, Medical Assistance Program, 42 U.S.C. 1396, et seq., establishing a cooperative federal-state program, known as "Medicaid," which was designed to provide necessary medical services to poor people who previously had been denied access to medical care. The Medical Assistance Program portion of the Social Security Act has been implemented through the regulations found at 42 C.F.R. 430, et seq.

40. The program is jointly financed by the federal and state governments and is administered by the states subject to the mandates contained in federal statutes and regulations. 42 U.S.C. 1396a(a)(4), (5); 42 C.F.R. 430.0.

41. Medicaid is available to poor persons who are in one of several categories or groups specified in the federal statute,

such as children in single-parent families and in families in which the principal wage earner is unemployed, pregnant women, the elderly, blind, and disabled. 42 U.S.C. 1396a(a)(10).

Medicaid operates like private insurance by furnishing coverage to eligible individuals and paying providers of health care for services furnished. 42 U.S.C. 1396d(a).

42. The Health Care Financing Administration (hereinafter "HCFA") of the United States Department of Health and Human Services determines whether to approve federal funding for a state's Medicaid program based on the information contained in the state plan. 42 C.F.R. 430.10 to 430.20. The state plan is defined as "a comprehensive written statement submitted by the agency describing the nature and scope of its Medicaid program and giving assurance that it will be administered in conformity with" federal law. 42 C.F.R. 430.10.

43. The state agencies' responsibilities include the determination of which groups are eligible for Medicaid, the types of services to be provided, payment levels for services, and administrative and operating procedures. 42 U.S.C. 1396a(a)(4), (5); 42 C.F.R. 430.0.

44. The District of Columbia has elected to participate in the Medicaid program. The District has promulgated the Department of Human Services Medicaid Guidelines (hereinafter "the State Plan"). In that plan, the District agreed, among other things, to administer the program in accordance with applicable federal laws and regulations.

45. Recipients of Aid to Families with Dependent Children and Supplemental Security Income (hereinafter "SSI") are entitled to receive Medicaid without any separate determination of Medicaid eligibility. All other applicants for Medicaid are entitled to obtain a determination of whether they are eligible for Medicaid irrespective of their entitlement to AFDC or SSI.

46. Individuals or families apply for medical assistance and, if found eligible, are entitled to receive a Medicaid identification card containing a Medicaid identification number. 42 U.S.C. 1396a(a)(8); 42 C.F.R. 435.906, 435.911.

47. Eligible persons are unable to obtain health care services under the program until they have a working Medicaid identification number and card. Therefore, it is essential that the determination of eligibility and the assignment of an active Medicaid identification number be completed in a timely and expeditious manner.

48. Defendants are required to deem newborn children of Medicaid eligible mothers as having applied and been found eligible for Medicaid on their date of birth.

49. It is critical to recipients that their Medicaid coverage not be interrupted. Medicaid coverage is customarily provided in the District of Columbia for six-month intervals. DHS is required to notify recipients of the need to recertify and to recertify benefits every six months after ascertaining whether the recipient continues to be eligible for Medicaid.

50. Defendants are failing to comply with numerous aspects of their obligations as set forth in federal law concerning the Medicaid program.

51. Defendants do not deem newborn children of Medicaid eligible mothers as having applied and been found eligible for Medicaid on the date of birth as is required by federal law. Instead, defendants first require mothers to provide verification for the newborn child and do not permit the child to obtain Medicaid under the mother's identification number. This delays the provision of Medicaid to newborn children and thus deprives newborn children of vital neo-natal medical care.

52. Defendants refuse to accept and process applications at disproportionate share hospitals and federally-qualified health centers as is required by federal law. "Disproportionate share hospitals," as defined in 42 U.S.C. 1396r-4(a)(1)(A), are hospitals that treat a disproportionately high volume of Medicaid and low-income patients. "Federally-qualified health centers," as defined in 42 U.S.C. 1396d(1)(2)(B), are federally funded community and migrant health centers and health care programs for homeless persons and other nonfederally funded community clinics which meet qualifying criteria. Defendants' refusal to accept and process applications at these sites leads to eligible families not receiving Medicaid and delays their receipt of Medicaid.

53. Defendants refuse to accept completed application forms when they are submitted by applicants, when a caseworker is not available to interview the applicant. This leads to eligible

families not receiving Medicaid and delays their receipt of Medicaid.

54. Defendants fail to process applications within required time deadlines. Frequently, applicants do not receive notice that they have been approved for six months of Medicaid until after their coverage has expired. In such cases, by the time applicants receive notice of their eligibility, their Medicaid identification number is no longer valid and cannot be used to obtain future medical care. These individuals are then instructed by DHS to reapply for current coverage. They may once again not receive a decision on the pending application until the eligibility period has ended.

55. In circumstances when defendants do not send notice of approval for Medicaid benefits to applicants until after the coverage has expired, defendants also fail to send advance notice of the expiration of benefits and the need to recertify eligibility by filling out a recertification form and providing documentation. Applicants who do not receive notice of approval until their benefits have expired are therefore unable to make use of or, to prevent the expiration of, their benefits.

56. Defendants similarly fail to notify individuals currently receiving Medicaid of the need to recertify eligibility. These recipients do have an active, working Medicaid identification number. However, they receive no advance notice that they must recertify in order to keep their benefits and will otherwise lose coverage. Without notice to recipients, recipients do not have an opportunity to prevent the cessation of



their benefits. Their benefits are discontinued or suspended with no advance warning when the six months of eligibility is over.

57. Even when defendants notify recipients of the need to recertify, defendants frequently fail to process the recertification documents prior to the lapse of coverage. Defendants fail to provide advance notice to Medicaid recipients that their benefits will be discontinued or suspended while defendants process the recertification documents.

58. Defendants' failure properly to process both new Medicaid applications and continuing eligibility for existing Medicaid recipients results in plaintiffs not obtaining or losing Medicaid coverage. As a result, recipients are unable to use benefits to which they are entitled or to prevent the improper loss of benefits.

59. Without Medicaid coverage to which they are entitled, plaintiffs and other similarly situated individuals are irreparably harmed because they are unable to pay for and obtain proper and necessary medical care, which harms their health and well-being, or they are forced to spend money needed for other necessities, such as food and shelter, on medical care.

60. Medicaid is defined as including the provision of early and periodic screening, diagnostic and treatment services (EPSDT) for children under 21 years of age. 42 U.S.C. 1396d(a)(4)(B). EPSDT includes, inter alia, dental, vision and developmental screening, tests for lead paint poisoning, and treatment for

conditions discovered by the screening process. 42 U.S.C. 1396d(r); 42 C.F.R. 441.56(b), (c), 441.60(a), 441.61, 441.62.

61. Defendants have failed to make EPSDT available to all children who are eligible for it. Since children do not receive the medical screening, diagnosis and treatment to which they are entitled, their health and well-being are harmed.

62. Defendants have frequently failed to notify families of the availability of EPSDT. The lack of notice of the availability of this program results in Medicaid recipients who are children failing to obtain these essential medical services.

63. Defendants' failure to provide effective notice of and EPSDT services results in irreparable harm to plaintiffs and other similarly situated individuals because they are unable to pay for and obtain medical care, thereby harming their health and well-being, or they are forced to spend money needed for other necessities, such as food and shelter, on medical care.

#### CLAIMS

##### FIRST CLAIM -- NEWBORN CHILDREN OF MEDICAID ELIGIBLE MOTHERS

64. 42 U.S.C. 1396a(e)(4) states that:

A child born to a woman eligible for and receiving medical assistance under a State Plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless

the State issues a separate identification number for the child before such period expires).

65. 42 C.F.R. 435.117 and 435.301(b)(1)(iii) state that the child of a Medicaid eligible mother is "deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible \* \* \* for one year so long as the woman remains eligible \* \* \* and the child is a member of the woman's household."

66. Defendants have violated 42 U.S.C. 1396a(e)(4) and 42 C.F.R. 435.117 and 435.301(b)(1)(iii), by failing to deem newborn children of Medicaid eligible mothers as having applied and been found eligible on the date of birth and by failing to permit the mother's Medicaid identification number to serve as the identification number of the child.

#### SECOND CLAIM -- OUTSTATION ENROLLMENT

67. 42 U.S.C. 1396a(a)(55)<sup>1/</sup> requires state plans to:

provide for receipt and initial processing of applications of individuals for medical assistance \* \* \* (A) at locations which are other than those used for the receipt and processing of applications for aid under part A of subchapter IV of this chapter and which include facilities defined as disproportionate share hospitals under section 1396r-4(a)(1)(A) of this title and Federally-qualified health centers described in section 1396d(1)(2)(B) of this title.

68. Defendants have violated 42 U.S.C. 1396a(a)(55), by failing to accept and process applications at disproportionate

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<sup>1/</sup>As noted in the annotations to the statute, 42 U.S.C. 1396a(a) contains two subsections 1396a(a)(55), and no subsection 1396a(a)(56). The subsection quoted here is the first 1396a(a)(55).

share hospitals and federally-qualified health centers in the District of Columbia.

THIRD CLAIM -- ACCEPTANCE OF COMPLETED APPLICATIONS

69. 42 U.S.C. 1396a(a)(8) requires state plans to "provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so."

70. 42 C.F.R. 435.906 states that: "[t]he agency must afford an individual wishing to do so the opportunity to apply for Medicaid without delay."

71. Defendants have violated 42 U.S.C. 1396a(a)(8) and 42 C.F.R. 435.906, by failing to accept without delay completed application forms when they are submitted by applicants.

FOURTH CLAIM -- DELAYS IN PROCESSING APPLICATIONS

72. 42 U.S.C. 1396a(a)(8) requires state plans to provide that medical assistance "shall be furnished with reasonable promptness to all eligible individuals."

73. 42 C.F.R. 435.911(a) states that:

(a) The agency must establish time standards for determining eligibility and inform the applicant of what they are. These standards may not exceed -- (1) Ninety days for applicants who apply for Medicaid on the basis of disability; and (2) Forty-five days for all other applicants.

74. D.C. Code 3-205.26 requires that action shall be taken "on applications for medical assistance to the disabled not in excess of 60 days from the date the application is received to the date the applicant receives his \* \* \* Medicaid card or a notice of ineligibility" and for other applicants this period shall not exceed 45 days.

75. Defendants have violated 42 U.S.C. 1396a(a)(8), 42 C.F.R. 435.911(a), and D.C. Code 3-205.26, by failing to process applications in accordance with the time deadlines prescribed.

FIFTH CLAIM -- DISCONTINUATION OR SUSPENSION NOTICES

76. The Due Process Clause of the Fifth Amendment of the United States Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law."

77. 42 C.F.R. 435.930(b) requires the state agency to "[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible."

78. 42 C.F.R. 435.919, which is contained in a subsection entitled, "REDETERMINATIONS OF MEDICAID ELIGIBILITY" (capitals in original), states that: "[t]he agency must give recipients timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility or to reduce or discontinue services they may receive under Medicaid."

79. 42 C.F.R. 431.211 requires the state agency to "mail a notice at least 10 days before the date of action."

80. D.C. Code 3-205.55(a), requires notice of "intended action to discontinue, withhold, terminate, suspend, [or] reduce assistance" to be "postmarked at least 15 days before the date upon which the action would become effective."

81. Defendants have violated the Due Process Clause of the Fifth Amendment of the United States Constitution, 42 C.F.R. 435.930, 435.919, and 431.211 and D.C. Code 3-205.55(a), by

failing to send recipients advance notice of the discontinuance or suspension of their Medicaid benefits.

SIXTH CLAIM -- PROVISION OF EPSDT

82. 42 U.S.C. 1396a(a)(10)(A) requires state plans to provide for making medical assistance available, as defined in 42 U.S.C. 1396d(a)(4)(B).

83. 42 U.S.C. 1396d(a)(4)(B) defines "medical assistance" as payment of part or all of the cost of "early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21."

84. 42 U.S.C. 1396d(r) and 42 C.F.R. 441.56(b), (c), 441.60(a), 441.61, and 441.62 set forth the medical screening, diagnostic and treatment services required to be included in EPSDT.

85. 42 U.S.C. 1396a(a)(43)(B) requires state plans to "provide for -- providing or arranging for the provision of such screening services in all cases where they are requested."

86. Defendants have violated 42 U.S.C. 1396a(a)(10), 1396a(a)(43)(B), 1396d(a)(4)(B), and 1396d(r) and 42 C.F.R. 441.56(b), (c), 441.60(a), 441.61, and 441.62, by failing to provide EPSDT for eligible children.

SEVENTH CLAIM -- NOTICE OF EPSDT

87. 42 U.S.C. 1396a(a)(43)(A) requires state plans to provide for:

informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in

section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) of this title.

88. 42 C.F.R. 441.56(a), entitled "Required activities," states that:

[The] agency must (1) Provide for a combination of written and oral methods designed to inform effectively all EPSDT eligible individuals (or their families about the EPSDT program. \* \* \* (3) Effectively inform those individuals \* \* \* who cannot read or understand the English language. (4) Provide assurance to HCFA that processes are in place to effectively inform individuals as required under this paragraph, generally, within 60 days of the individual's initial Medicaid eligibility determination and in the case of families which have not utilized EPSDT services, annually thereafter.

89. Defendants have violated 42 U.S.C. 1396a(a)(43)(A) and 42 C.F.R. 441.56, by failing to notify families effectively of the availability of EPSDT, including by failing to notify individuals who cannot read or understand the English language.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves, and all other persons similarly situated, respectfully request that this Court grant the following relief:

(1) Certification of this action, as a class action, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, consisting of:

All persons who, now or in the future will, reside in the District of Columbia who have applied for or who have attempted to apply for Medicaid and who have experienced one or more of the following conditions: (a) a delay in excess of 45 days in processing their initial Medicaid application or application to recertify Medicaid coverage; (b) as newborns of mothers eligible for Medicaid at

the time of their birth, the lack of immediate Medicaid coverage using their mothers' Medicaid number; (c) the inability to apply for Medicaid at disproportionate share hospitals and federally-qualified health centers; (d) the inability to submit their completed Medicaid applications to the District of Columbia Department of Human Services; (e) after being found eligible, the lack of advance notice of the discontinuance, suspension or obligation to recertify their Medicaid benefits; (f) after being found eligible, the lack of effective notice of the availability of early and periodic screening, diagnostic and treatment services for children under 21 years of age; (g) after being found eligible, the lack of EPSDT services for children under 21 years of age.

(2) A declaratory judgment that defendants have violated the following provisions of federal statutes and regulations:

- (a) 42 U.S.C. 1396a(e) (4) and 42 C.F.R. 435.117 and 435.301(b) (1) (iii), by failing to deem newborn children of Medicaid eligible mothers as having applied and been found eligible on the date of birth and by failing to permit such mothers' identification number to serve as the identification number of such children;
- (b) 42 U.S.C. 1396a(a) (55), by failing to accept and process applications at disproportionate share hospitals and federally-qualified health centers located in the District of Columbia;
- (c) 42 U.S.C. 1396a(a) (8) and 42 C.F.R. 435.906, by failing to accept completed Medicaid



application forms when they are submitted by applicants;

- (d) 42 U.S.C. 1396a(a)(8) and 42 C.F.R. 435.911(a), by failing to process Medicaid applications in accordance with the time deadlines prescribed;
- (e) The Due Process Clause of the Fourteenth Amendment of the United States Constitution and 42 C.F.R. 435.930, 435.919, and 431.211, by failing to send recipients advance notice of the discontinuance or suspension of their Medicaid benefits;
- (f) 42 U.S.C. 1396a(a)(10), 1396d(a)(4)(B), and 1396d(r) and 42 C.F.R. 441.56(b), (c), 441.60(a), 441.61, and 441.62, by failing to provide EPSDT for eligible individuals under the age of 21 years;
- (g) 42 U.S.C. 1396a(a)(43)(A) and 42 C.F.R. 441.56, by failing to notify families of the availability of EPSDT;

(3) A preliminary and permanent injunction prohibiting defendants from engaging in the following acts and practices:

- (a) Failing to deem newborn children of Medicaid eligible mothers as having applied, and been found eligible on, the date of birth and by failing to permit such mothers'

identification number to serve as the  
identification number of such children;

- (b) Failing to accept and process applications at disproportionate share hospitals and federally-qualified health centers in the District of Columbia;
- (c) Failing to accept completed application forms when they are submitted by applicants;
- (d) Failing to process applications in accordance with the time deadlines prescribed;
- (e) Failing to send recipients advance notice of the discontinuance or suspension of their Medicaid benefits;
- (f) Failing to provide EPSDT services to children;
- (g) Failing to notify families of the availability of EPSDT;

(4) An order enjoining defendants to provide interim Medicaid benefits to the following subclasses:

- (a) Persons whose applications have not been processed within the time deadlines prescribed;
- (b) Recipients who have not received notice of the discontinuance or suspension of their Medicaid benefits;

(5) An order enjoining defendants to take appropriate affirmative actions to ensure that the violations of federal law

complained of above do not continue to be engaged in by defendants, their agents, successors, employees, subordinates, attorneys and those acting at their direction;

(6) An order requiring defendants to reimburse plaintiff class members for the funds expended by them to obtain health care services and medication as a result of defendants' violations of federal law;

(7) An order appointing a Special Master whose duties shall include, but not be limited to, reporting to the Court regarding:

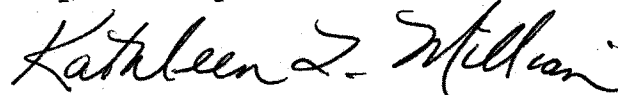
(a) defendants' compliance with the Court's Order;

(b) remedies necessary to bring about full compliance with the Court's Order;

(8) An award of reasonable attorneys' fees and costs; and

(9) Such other relief as may be deemed proper by the Court.

Respectfully submitted,



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April 13, 1995

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Clerk, U.S. District Court  
District of Columbia