

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

DEC 06 2001

IN THE UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: *[Signature]*
DEPT. CLERK

PEDIATRIC SPECIALTY CARE, INC.,
CHILD & YOUTH PEDIATRIC DAY
CLINICS, INC., FAMILY COUNSELING
& DIAGNOSTIC CLINIC, INC.,
TOMORROW'S CHILD LEARNING
CENTER, LLC, D & D FAMILY
ENTERPRISES, INC., JAMES AND
STACEY SWINDLE, AS PARENTS AND
NEXT BEST FRIENDS OF JACOB AND
NOAH SWINDLE, MINORS, AND
SUSANN CRESPINO, AS PARENT AND
NEXT BEST FRIEND OF MICHAEL
CRESPINO, A MINOR

PLAINTIFFS
4-01-CV-00830
CASE NO. _____

VS.

ARKANSAS DEPARTMENT OF HUMAN
SERVICES; KURT KNICKREHM, IN HIS
INDIVIDUAL CAPACITY AND IN HIS
OFFICIAL CAPACITY AS DIRECTOR OF
THE ARKANSAS DEPARTMENT OF
HUMAN SERVICES; AND RAY HANLEY,
IN HIS INDIVIDUAL CAPACITY AND IN
HIS OFFICIAL CAPACITY AS DIRECTOR
OF THE DIVISION OF MEDICAL SERVICES
OF THE ARKANSAS DEPARTMENT OF
HUMAN SERVICES

This case assigned to District Judge *[Signature]*
and to Magistrate Judge *[Signature]*

DEFENDANTS

COMPLAINT

The plaintiffs, Pediatric Specialty Care, Inc., Child & Youth Pediatric Day Clinics, Inc., Family Counseling & Diagnostic Clinic, Inc., Tomorrow's Child Learning Center, LLC, D & D Family Enterprises, Inc., James and Stacey Swindle, as Parents and Next Best Friends of Jacob and Noah Swindle, Minors, and Susann Crespino, as Parent and Next Best Friend of Michael Crespino, a Minor, respectfully come before this Court, by and through their attorneys, Kaplan, Brewer, Maxey & Haralson, P.A., and Armstrong Allen, PLLC, and for their Complaint against



the defendants, Arkansas Department of Human Services, Kurt Knickrehm, in his individual capacity and in his official capacity as Director of the Arkansas Department of Human Services, and Ray Hanley, in his individual capacity and in his official capacity as Director of the Division of Medical Services of the Arkansas Department of Human Services, state:

JURISDICTIONAL STATEMENT

1. Plaintiff Pediatric Specialty Care, Inc. is an Arkansas corporation and has its principal place of business in Pulaski County, Arkansas. Pediatric Specialty Care, Inc. is a qualified provider of services under the Child Health Management Services (“CHMS”) program which is part of the Arkansas Medicaid plan.
2. Plaintiff Child & Youth Pediatric Day Clinics, Inc. is an Arkansas corporation and has its principal place of business in Craighead County, Arkansas. Child & Youth Pediatric Day Clinics, Inc. is a qualified provider of CHMS services under the Arkansas Medicaid plan.
3. Plaintiff Family Counseling & Diagnostic Clinic, Inc. is an Arkansas corporation and has its principal place of business in St. Francis County, Arkansas. Family Counseling & Diagnostic Clinic, Inc. is a qualified provider of CHMS services under the Arkansas Medicaid plan.
4. Plaintiff Tomorrow’s Children, Inc. is an Arkansas corporation and has its principal place of business in Mississippi County, Arkansas. Tomorrow’s Children, Inc. is a qualified provider of CHMS services under the Arkansas Medicaid plan.
5. Plaintiff D & D Family Enterprises, Inc. is an Arkansas corporation and has its principal place of business in Sharp County, Arkansas. D & D Family Enterprises, Inc. is a qualified provider of CHMS services under the Arkansas Medicaid plan.
6. Plaintiff James and Stacey Swindle are the parents of Jacob and Noah Swindle,

minors and qualified recipients of therapy services under the CHMS program. The Swindle family resides in Pulaski County, Arkansas.

7. Plaintiff Susann Crespino is the mother of Michael Crespino, a minor and qualified recipient under the CHMS program. The Crespino family resides in Marion County, Arkansas.

8. Defendant Arkansas Department of Human Services (“DHS”) is an agency of the State of Arkansas.

9. Defendant Kurt Knickrehm is Director of the Arkansas Department of Human Services and, based on information and reasonable belief, is a resident of Pulaski County, Arkansas.

10. Defendant Ray Hanley is Director of the Division of Medical Services of the Arkansas Department of Human Services and, based on information and reasonable belief, is a resident of Pulaski County, Arkansas.

11. The plaintiffs seek declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, and contend that the defendants have violated their federal constitutional and statutory rights with regard to their planned termination of funding of the CHMS program which currently exists under the Arkansas Medicaid plan.

12. The Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331, civil rights jurisdiction pursuant to 28 U.S.C. § 1343, and venue pursuant to 28 U.S.C. § 1391.

FACTS PRESENTED

13. Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* (1992 & Supp. 2000), commonly referred to as the Medicaid Act, is a federal-state cooperative program designed to provide “medical assistance” to persons whose income and resources are insufficient

to meet the costs of medical care. The program is financed by both the federal and state governments.

14. The federal Department of Health and Human Services is charged with administration of the Medicaid program, and has delegated much of its responsibility to the Health Care Financing Administration.

15. Arkansas participates in the Medicaid program, and DHS is the state agency charged with administration of the Medicaid program in Arkansas.

16. Under the Medicaid program, if a State agrees to establish a Medicaid plan that satisfies the requirements of Title XIX, the federal government will pay a specified percentage of the total amount expended as “medical assistance” under the plan.

17. Federal law requires that in setting reimbursement rates for medical providers enrolled in the Medicaid program, the rates must be sufficient to assure efficiency, economy, and quality of care, and sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population. There is a binding obligation on each state to utilize methods and procedures which consider these factors in setting reimbursement rates.

18. Participation in the Medicaid program is voluntary, but once a State chooses to participate, it must comply with federal statutory and regulatory requirements.

19. The Medicaid Act defines “medical assistance” as “payment of part or all of the cost of [enumerated] care and services”. As a general matter, a State may choose which enumerated services to provide, but some services are mandated for most categories of needy persons who receive services under the plan.

20. Essentially, there are three categories of potential recipients under the Medicaid Act: the “categorically needy”, the “medically needy”, and those whose needs are determined in

reference to the poverty level.

21. A State plan must provide “medical assistance” to the “categorically needy”, but may choose whether to provide services to the “medically needy”.

22. Among those services for the “categorically needy” is early and periodic screening, diagnostic, and treatment services (“EPSDT”) for qualified recipients under the age of 21.

23. The CHMS program is set forth under that part of the State plan designated for the “categorically needy” and under that part of the State plan which relates specifically to EPSDT.

24. EPSDT services include those provided under the CHMS program.

25. On November 30, 2001, the defendants announced a decision they have made to redefine the CHMS program and no longer pay for day treatment and therapy services (referred to herein as “the decision”). According to a press release issued by the defendants, the decision will change how services are delivered to children who do not have serious medical problems but who nonetheless are considered at risk.

26. The decision was made by defendants Knickrehm and Hanley while acting under color of state law.

27. The plaintiffs, and all other providers, children, and families involved in the CHMS program, will suffer extreme injury, loss, and hardship if the decision is not enjoined.

COUNT ONE: SUBSTANTIVE DUE PROCESS

28. Services currently provided under the CHMS program are mandatory and cannot be limited by the defendants.

29. If implemented, the decision will eliminate mandatory services currently provided under the CHMS program.

30. The decision is arbitrary, capricious, and truly irrational, and shocks traditional notions of justice under the law.

31. By making the decision, the defendants have violated the plaintiffs' rights to substantive due process under the 14th Amendment to the Constitution of the United States.

COUNT TWO: PROCEDURAL DUE PROCESS

32. If implemented, the decision will result in a zero-dollar reimbursement for day treatment and therapy services provided under the CHMS program.

33. If implemented, the decision will severely limit the quality of care offered by CHMS providers and have a devastating impact on the level of efficiency and economy which currently exists in the CHMS program.

34. The defendants have failed to utilize methods and procedures which consider the factors of efficiency, economy, quality of care, and equal access prior to making the decision.

35. By failing to utilize methods and procedures which consider the factors of efficiency, economy, quality of care, and equal access prior to making the decision, the defendants have violated the plaintiffs' rights to procedural due process under the 14th Amendment to the Constitution of the United States.

COUNT THREE: SUBSTANTIVE DUE PROCESS AND 42 U.S.C. § 1396a(a)(19)

36. In the alternative, if services currently provided under the CHMS program are not mandatory, the defendants have no rational basis for the decision.

37. By making the decision, the defendants have violated the plaintiffs' rights to substantive due process under the 14th Amendment to the Constitution of the United States.

38. By making the decision, the defendants have violated the best interests of all

medicaid recipients as protected by 42 U.S.C. § 1396a(a)(19).

JURY DEMAND

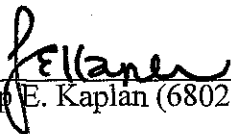
39. The plaintiffs demand a jury trial with respect to all issues of fact that may arise herein.

WHEREFORE, the plaintiffs, Pediatric Specialty Care, Inc., Child & Youth Pediatric Day Clinics, Inc., Family Counseling & Diagnostic Clinic, Inc., Tomorrow's Child Learning Center, LLC, D & D Family Enterprises, Inc., James and Stacey Swindle, as Parents and Next Best Friends of Jacob and Noah Swindle, Minors, and Susann Crespino, as Parent and Next Best Friend of Michael Crespino, a Minor, pray that the Court issue a declaratory ruling that services currently provided under the CHMS program are mandatory, that the Court issue an injunction which strikes down the decision and preserves the CHMS program as it currently exists, that they be awarded their costs herein expended, including reasonable attorney fees pursuant to 42 U.S.C. § 1988, and that they be awarded all other relief to which they may be entitled.

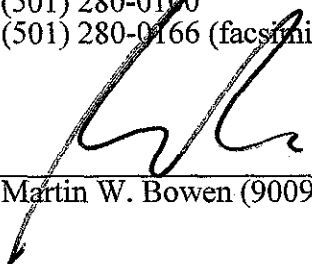
Respectfully submitted,

PEDIATRIC SPECIALTY CARE, INC.,
CHILD & YOUTH PEDIATRIC DAY
CLINICS, INC., FAMILY COUNSELING &
DIAGNOSTIC CLINIC, INC., TOMORROW'S
CHILD LEARNING CENTER, LLC, AND
JAMES AND STACY SWINDLE, AS
PARENTS AND NEXT BEST FRIENDS OF
JACOB AND NOAH SWINDLE, Plaintiffs

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