

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

BENJAMIN H., by his next friend, Georgann H.,
DAVID F., by his guardian, Carolyn B.,
LORI BETH S., by her next friend, Janie J.,
THOMAS V., by is next friend, Patricia V., and
JUSTIN E., by his next friend, Sherry E.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

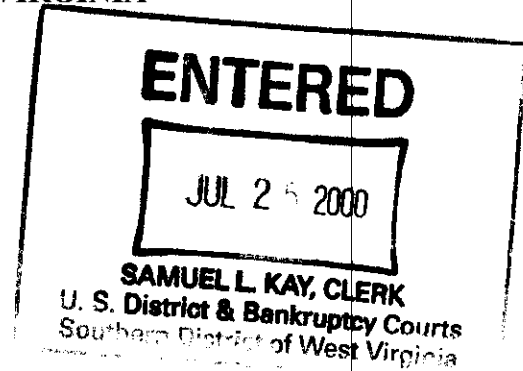
CIVIL ACTION NO. 3:99-0338

JOAN OHL, Secretary of the Department
of Health and Human Resources,

Defendant.

ORDER

On July 27, 2000, a hearing was held for supplemental arguments on to the bench trial held in relation to the claim stated in paragraph 90 of Count VIII and the Defendant's motion to dismiss the remaining claim stated in paragraph 71 of Count VIII. At the hearing, the Court **DENIED** the defendant's motion to dismiss. The Court found that the new legislation to which the defendant refers in her motion does not dispose of the new issue raised in the amended complaint which relates to the State's compliance with 42 U.S.C. § 1396a(a)(23) in its implementation of the certificate of need ("CON"). Although the new legislation addresses the CON issue, it does not dispose of the factual disputes raised by the amended complaint.



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Additionally, the Court **ORDERED** the parties to set up a conference call with the Court on Monday, July 31, 2000. The defendant shall set up a time with lead counsel for the plaintiff and contact the Court to schedule the call.

The Clerk is **DIRECTED** to forward a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 24, 2000



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE