



**CERTIFICATE OF SERVICE**

I, Karen Konieczny, an attorney of record for Defendant, hereby certify that, on August 14, 2012, true and correct copies of the foregoing **NOTICE OF MOTION, DEFENDANT'S MOTION TO DISMISS THE PLAINTIFFS' COMPLAINT**, and a **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS THE PLAINTIFFS' COMPLAINT** were electronically filed through the Court's CM/ECF, which served all parties who are currently on the Court's Electronic Mail Notice List.

/s/ Karen Konieczny  
Assistant Attorney General

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

**T.B.** by and through his parents THOMAS  
BOYCE and MARGARET BOYCE, **Q.G.**  
by and through his parents MICHAEL  
GOLDBERG and MAYUMI GOLDBERG,  
**M.K.** by and through her parents BRADLEY  
KISH and MARY KISH, **X.N.** by and through  
his parents FRANCISCO NEVAREZ and  
LISETTE NEVAREZ, **S.P.** by and through her  
parents FRANK PETERSON and CORELYN  
PETERSON, **O.W.** by and through his parents,  
JEFFREY WELLMAN and AMY WELLMAN,  
individually and on behalf of a class.

Plaintiffs,

vs.

**JULIE HAMOS**, in her official capacity as  
Director of the Illinois Department of  
Healthcare and Family Services,

Defendant.

No. 12 C 5356

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

**DEFENDANT'S MOTION TO DISMISS THE PLAINTIFFS' COMPLAINT**

NOW COMES Defendant, JULIE HAMOS, Director of the Illinois Department of Healthcare and Family Services, in her official capacity only, by her attorney, LISA MADIGAN, Attorney General for the State of Illinois, and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), moves to dismiss the Plaintiff's Complaint for want of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. In support of this motion, Defendant states as follows:

1. Plaintiffs' Complaint must be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) because Plaintiffs' lack of standing deprives this Court of subject matter jurisdiction.

2. Plaintiffs' Complaint must be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(1) because, assuming *arguendo* that Plaintiffs had standing when their Complaint was filed, intervening events have rendered the Complaint moot.

3. Plaintiffs' Complaint must be dismissed against Defendant pursuant to Fed. R. Civ. P. 12(b)(6) because it does not state a claim upon which relief can be granted.

4. Defendants have contemporaneously filed a Memorandum of Law in Support of this Motion to Dismiss.

WHEREFORE, for the foregoing reasons and the reasons set forth in accompanying Memorandum of Law, the Defendant respectfully requests this honorable Court to DISMISS the Plaintiffs' Complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: Karen Konieczny  
KAREN KONIECZNY #1506277  
JOHN E. HUSTON #3128039  
Assistant Attorneys General  
160 North LaSalle St., Ste. N-1000  
Chicago, Illinois 60601  
(312) 793-2380

Dated: August 14, 2012

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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**T.B.** by and through his parents THOMAS  
BOYCE and MARGARET BOYCE, **Q.G.**  
by and through his parents MICHAEL  
GOLDBERG and MAYUMI GOLDBERG,  
**M.K.** by and through her parents BRADLEY  
KISH and MARY KISH, **X.N.** by and through  
his parents FRANCISCO NEVAREZ and  
LISETTE NEVAREZ, **S.P.** by and through her  
parents FRANK PETERSON and CORELYN  
PETERSON, **O.W.** by and through his parents,  
JEFFREY WELLMAN and AMY WELLMAN,  
individually and on behalf of a class..

Plaintiffs,

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**JULIE HAMOS**, in her official capacity as  
Director of the Illinois Department of  
Healthcare and Family Services,

Defendant.

No. 12 C 5356

Judge Robert W. Gettleman

Magistrate Judge Sidney I. Schenkier

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION TO DISMISS**

NOW COMES Defendant, JULIE HAMOS, Director of the Illinois Department of Healthcare and Family Services, in her official capacity, by her attorney, LISA MADIGAN, Attorney General of Illinois, and in Support of her Motion to Dismiss, states as follows:

**INTRODUCTION**

The Plaintiffs lack standing under Article III to pursue declaratory and injunctive relief in this case. Plaintiffs seek to enjoin alleged cuts to Medicaid services to Plaintiffs and a putative class, effective September 1, 2012. However, Plaintiffs have failed to allege that the condition precedent to the effective date of the alleged "cuts" has been met. Since the condition precedent

has not been met, and the current Medicaid services will continue to at least November 29, 2012, and likely longer, this matter should be dismissed. Plaintiffs lack standing because there is no imminent injury to Plaintiffs. There is no case or controversy for the Court to decide. At the present time, Plaintiffs claims are hypothetical and conjectural. Intervening events have rendered this case moot. In addition, because the Plaintiffs have not pleaded the condition precedent, the Complaint fails to state a claim upon which relief can be granted because the possibility of relief is speculative.

### **STATEMENT OF FACTS**

On or about July 9, 2012, Plaintiffs, on behalf of themselves and a putative class, filed their Complaint for Declaratory and Injunctive Relief. (Civil Docket, 12 C 5356 at Doc. No. 1). Plaintiffs allege that they, and a putative class, currently receive funding from the Illinois Department of Healthcare and Family Services (“HFS”) for skilled nursing services at their homes from the State of Illinois “Medicaid Home and Community-Based Services (“HCBS”) Waiver for Children that are Medically Fragile, Technology Dependent” program (“MF/TD”) and receiving Medicaid without participating in MF/TD. (Complaint at Paragraph 1). Plaintiffs allege that the current MF/TD waiver expires on August 31, 2012. (Complaint, Paragraphs 10, 106).

Plaintiffs allege that on September 1, 2012, the State of Illinois will make “draconian cuts” to Medicaid services to the Plaintiffs and putative class. (Complaint at Paragraph 4, 6, 107). These “draconian cuts” are alleged to have been due to the passage of the Save Medicaid Access and Resources Together (“SMART”) Act and the “State’s efforts to amend the State Medicaid Plan and renew the MF/TD Waiver . . .” (Complaint at Paragraphs 43, 50, 61, 66, 77,

88). Plaintiffs allege that the SMART Act is effective September 1, 2012. (Complaint at Paragraphs 55, 66, 77, 88).

The Plaintiffs' Complaint seeks declaratory and injunctive relief on four main theories: 1) violation of the Americans with Disabilities Act, 42 U.S.C. §12132; 2) violation of the Rehabilitation Act, 29 U.S.C. §794; violations of the EPSDT provisions of the federal Medicaid statute at 42 U.S.C. §1396a(a)(43), 1396d(a)(4)(B) and 1396d(r), and violation of the Medicaid Act, 42 U.S.C. §1396a(a)(8). Plaintiffs seek a declaration that "Defendant's planned reduction or reduction or denying the Plaintiffs . . . from their existing benefits of the MF/TD waiver and Medicaid violates" the above cited federal laws. (Complaint at Prayer for Relief, ¶ (b)). Plaintiffs also seek injunctive relief "to restore the level of Medicaid funding to maintain existing medical services" and "enjoining Defendant from reducing or denying Plaintiffs . . . their existing benefits of the MF/TD waiver and Medicaid." (Complaint, Prayer for Relief, ¶ (c)).

Prior to the filing of this Complaint, HFS submitted a renewal of the MF/TD waiver to the federal Center for Medicare and Medicaid Services ("CMS") for approval. On or about July 11, 2012, staff from CMS invited HFS to request a 90 day temporary extension for the current waiver to allow CMS time to review the state plan amendment that HFS is developing to implement changes described in the MF/TD waiver renewal. On or about July 16, 2012, HFS formally requested CMS to extend the extension of the current MF/TD waiver for 90 days. (Letter to CMS, 7-11-12, attached hereto as Exhibit A).

By letter dated July 27, 2012, CMS granted the temporary extension of the MF/TD waiver to continue through November 29, 2012. (Letter to HFS, 7/27/12, attached as Exhibit B). According to CMS, the extension was granted "in order to provide adequate time for the State to

address concerns related to transitioning to a restructured program and to resolve issues resulting from our review.” (*Id.*).

By letter dated August 7, 2012, CMS informed HFS that it had reviewed HFS’ proposed renewal of the MF/TD waiver and requested additional information from HFS. (Letter to HFS, 8/7/12, attached as Exhibit C). CMS also informed HFS that the 90-day clock has been stopped while HFS responds to the CMS request for additional information. Upon receipt of the additional information, a new 90-day period will begin. (*Id.*).

## **ARGUMENT**

### **I. THE PLAINTIFFS’ COMPLAINT MUST BE DISMISSED PURSUANT TO FED.R.CIV.PRO. 12(b)(1). THIS COURT LACKS SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS DO NOT HAVE STANDING TO MAINTAIN THIS ACTION.**

#### **A. LEGAL STANDARD.**

Subject-matter jurisdiction is concerned with the kinds of cases the federal courts are empowered to decide. *U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd.*, 110 F.3d 861, 864 (2<sup>nd</sup> Cir. 1997), *citing U.S. v. Morton*, 467 U.S. 822, 828 (1984). Rule 12(b)(1) of the Federal Rules of Civil Procedure provides for dismissal of an action for lack of subject-matter jurisdiction, which includes dismissal for lack of standing. *Apex Digital Inc., v. Sears, Roebuck & Co.*, 572 F.3d 440, 442-43 (7<sup>th</sup> Cir. 2009).

In reviewing a motion to dismiss under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction, the Court should generally accept as true all well pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff. *Long v. Shorebank Development Corp.*, 182 F.3d 548, 554 (7<sup>th</sup> Cir. 1999). However, the court is not necessarily bound to accept the truth of the complaint’s allegations, but may look beyond the complaint and the pleadings to evidence that calls the court’s jurisdiction into doubt. *Hay v. Indiana State Bd. of Tax*



*Commisioners*, 312 F.3d 876, 879 (7<sup>th</sup> Cir. 2002); *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 990 (7<sup>th</sup> Cir. 2000).

The burden of proof on a 12(b)(1) issue is on the party asserting jurisdiction, regardless of who raises the jurisdictional challenge. *See United Phosphorus v. Angus Chemical Co.*, 322 F.3d 942, 946 (7<sup>th</sup> Cir. 2003); *Craig v. Ontario Corp.*, 543 F.3d 872, 876 (7<sup>th</sup> Cir. 2008).

Article III of the United States Constitution limits the judicial power of the United States to “Cases” and “Controversies.” U.S. Const. art. III, § 2. This is a jurisdictional requirement that prevents the federal court from issuing advisory opinions on hypothetical disputes. *Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485, 488 (7<sup>th</sup> Cir. 2004). Standing is an essential component of Article III’s case-or-controversy requirement. *Apex Digital*, 572 F.3d at 443. Analysis of standing under Article III focuses on the party bringing the claim—not on the claim itself. *Foster v. Center Twp. of LaPorte Co.*, 798 F.2d 237, 241 (7<sup>th</sup> Cir. 1986).

**B. THE COMPLAINT MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE PLAINTIFFS LACK STANDING.**

The required elements of Article III standing are: i) an injury in fact, which is an invasion of a legally protected interest that is concrete and particularized and, thus, actual or imminent, not conjectural or hypothetical; ii) a causal relation between the injury and the challenged conduct, such that the injury can be fairly traced to the challenged action of the defendant; and iii) a likelihood that the injury will be redressed by a favorable decision. *Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485, 489 (7<sup>th</sup> Cir. 2004) (internal citations omitted). To satisfy the injury-in-fact requirement, the Plaintiffs must establish that [they] have sustained or [are] immediately in danger of sustaining some direct injury. (*Id.*). The standing doctrine bars a plaintiff from asserting an injury that “depend[s] on so many future events that a

judicial opinion would be advice about remote contingencies.” *Rock Energy Cooperative v. Village of Rockton*, 614 F.3d 745, 748 (7<sup>th</sup> Cir. 2010).

Plaintiffs cannot satisfy the injury-in-fact requirement. First, the relevant provision of the SMART Act provides:

“Notwithstanding any other provision of law, on and after September 1, 2012, **subject to federal approval**, medical assistance . . .”

305 ILCS 5/5-2(b)(emphasis added). (Defendant’s Exhibit D).

While the Plaintiffs allege that the SMART Act provision above will be effective on September 1, 2012, (Complaint at Paragraph 55), they fail to allege whether the federal government has given its approval to the changes in eligibility for the MFTD waiver or family cost-sharing. Consequently, Plaintiffs have failed to allege that the condition precedent (federal approval) occurred. Without federal approval, the §5-2(b) of the SMART Act cannot become effective by its own terms. Plaintiffs cannot demonstrate that they have suffered an injury in fact or that an alleged injury is imminent under the SMART Act because federal CMS has not approved the MF/TD waiver renewal nor any state plan amendment. As of the filing of this Motion to Dismiss, CMS is in the process of reviewing HFS’ submissions and has requested additional information from HFS. (Defendant’s Exhibits B, C).

After this lawsuit was filed, federal CMS requested that the State seek a 90-day temporary extension of the current waiver to allow CMS time to review the State plan amendment that HFS is developing to implement changes described in the waiver renewal. (Defendant’s Ex. A). On July 16, 2012, HFS sought that extension. (*Id.*). CMS granted the extension request on July 27, 2012. (Defendant’s Exhibit B). The current waiver remains in effect through at least November 29, 2012. (Defendant’s Exhibits B, C). This is because CMS has stopped the 90-day clock while HFS responds to CMS’ request for additional information.

(Defendant's Exhibit C). A new 90-day period will begin upon receipt by CMS of HFS' written response. (*Id.*).

Plaintiffs' claims are speculative and hypothetical. The Plaintiffs are not currently suffering any concrete harm because the current waiver remains in effect while federal CMS considers the waiver renewal and state plan amendments. To the extent that Plaintiffs seek declaratory relief (Complaint at Prayer for Relief, ¶ (b)), this Court lacks subject matter jurisdiction because it must look at "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Rock Energy Cooperative v. Village of Rockton*, 614 F.3d 745, 748 (7<sup>th</sup> Cir. 2010) citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007). Without the requisite federal approval of the waiver renewal and state plan amendments, there is no case or controversy presented by Plaintiffs' Complaint because the State law provision at issue cannot become effective by its own terms. The current MF/TD waiver has been extended and Plaintiffs will continue to receive services under that waiver. (Defendant's Exhibits B, C). No Plaintiff here can allege a direct concrete or imminent injury. Plaintiffs' complaint is merely abstract and speculative, and Plaintiffs lack standing to seek declaratory relief.

To the extent Plaintiffs seek injunctive relief (Complaint at Prayer for Relief ¶ (c)), this Court lacks jurisdiction. Plaintiffs seeking preliminary relief are required to demonstrate that irreparable injury is likely in the absence of an injunction. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) (internal citations omitted). Issuing a preliminary injunction based only on the possibility of irreparable harm is inconsistent with the Supreme Court's characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a

clear showing that the plaintiff is entitled to such relief. (*Id.*). Since Plaintiffs lack standing to secure declaratory relief, they also lack standing to obtain injunctive relief in aid of a declaration.

Here, there is no injury because the condition precedent to implementation of the SMART Act, federal approval, has not occurred. Furthermore, federal approval is not likely before November 29, 2012. (Defendant's Exhibits B, C). Federal approval, if it is granted at all, will probably occur later than November 29, 2012. (*Id.*). At present, it is speculative as to whether that CMS' will approve or deny the MF/TD waiver renewal and state plan amendments. Under Supreme Court precedent, the mere possibility, in the future, of irreparable harm is insufficient to show entitlement to relief. Without CMS' decisions, Plaintiffs' claims merely assert a potential injury that depends on future events. Any judicial decision would be advisory on a hypothetical dispute. Plaintiffs' Complaint must be dismissed for lack of standing. *Rock Energy Cooperative v. Village of Rockton*, 614 F.3d 745, 748 (7<sup>th</sup> Cir. 2010); *Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485, 489 (7<sup>th</sup> Cir. 2004).

**C. ASSUMING ARGUENDO THAT PLAINTIFFS HAD STANDING WHEN THEIR COMPLAINT WAS FILED, INTERVENING EVENTS HAVE RENDERED THE COMPLAINT MOOT.**

Article III of the Constitution limits the federal courts to adjudicating actual "cases or controversies." U.S. Const. art. III, §2; *Damasco v. Clearwire Corp.*, 662 F.3d 891, 894 (7<sup>th</sup> Cir. 2011). Thus, cases that do not involve actual, ongoing controversies are moot and must be dismissed for lack of jurisdiction. *Wisconsin Right to Life, Inc. v. Schober*, 366 F.3d 485, 490-91 (7<sup>th</sup> Cir. 2004). Mootness is the doctrine of standing set in a time-frame: the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness). *Laskowski v. Spellings*, 546 F.3d 822, 824 (7<sup>th</sup> Cir. 2008), citing *Friends of the Earth, Inc., v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, 189

(2000). When a party loses standing during the litigation due to intervening events, the inquiry is one of mootness. *Parvati Corp. v. City of Oak Forest, IL.*, 630 F.3d 512, 516 (7<sup>th</sup> Cir. 2010).

Plaintiffs did not have standing when they filed their Complaint because their challenge to the SMART Act provision, 305 ILCAS 5/5-2(b), did not allege that the condition precedent of federal approval had been met and implementation of the SMART Act was imminent. Assuming that Plaintiffs had standing when the Complaint was filed (which Defendant does not concede), the Complaint is now moot because federal CMS has granted an extension of the current waiver and requested additional information from HFS. (Defendant's Exhibits B, C). The time frame has been extended and the current MF/TD waiver will remain in place. The alleged injury to Plaintiffs is even more remote. For all the reasons in Argument I-B (*supra*, pp. 5-8), the injury claimed is abstract and speculative. There is no basis for this Court to award declaratory and injunctive relief because there is no present injury to be redressed. This Complaint should be dismissed as moot.

**II. THE COMPLAINT MUST BE DISMISSED PURSUANT TO FED. R. CIV. P. 12(B)(6) BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

**A. LEGAL STANDARD.**

A Rule 12(b)(6) motion tests the sufficiency of the complaint. *Gibson v. City of Chicago*, 910 F.2d 1510, 1520 (7<sup>th</sup> Cir. 1990). To survive a Rule 12(b)(6) motion to dismiss, the claims must first comply with Fed. R. Civ. P. 8(a) by providing a short and plain statement of the claim showing that the pleader is entitled to relief, (Fed. R. Civ. P. 8(a)(2)), such that the defendant is given "fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Second, the factual allegations in the claim must be sufficient to raise the possibility of relief above the "speculative level," assuming that all of the allegations in the complaint are true. *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d

773, 776 (7<sup>th</sup> Cir. 2007). Detailed factual allegations are not required, but the plaintiff must allege facts that “state a claim that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009). A claim has facial plausibility when plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. (*Id.*).

**B. The Complaint Fails To Raise The Possibility Of Relief Above A Speculative Level And Fails To State A Claim Upon Which Relief Can Be Granted.**

Plaintiffs’ Complaint fails to allege that the condition precedent for the alleged “draconian cuts” to the Medicaid services they seek to declare invalid and enjoin is federal approval of a waiver renewal and state Medicaid plan amendment. *See* 305 ILCS 5/5-2(b), attached as Defendant’s Exhibit D. To date, federal CMS has not granted its approval of those applications, but has extended the current MF/TD waiver to at least November 29, 2012 and likely longer. (Defendant’s Exhibits B, C). Since federal CMS has not issued its approval, Plaintiffs’ challenge to the provision of the SMART Act and the relief sought are speculative. The Complaint fails to state a claim upon which relief can be granted. *E.E.O.C. v. Concentra Health Services, Inc.*, 496 F.3d 773, 776 (7<sup>th</sup> Cir. 2007).

WHEREFORE, for the reasons stated above, and pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant respectfully requests that this Court dismiss Plaintiffs’ Complaint for lack of subject-matter jurisdiction because Plaintiffs lack standing and/or the case is moot.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

By: Karen Konieczny  
KAREN KONIECZNY #1506277  
JOHN E. HUSTON #3128039  
Assistant Attorneys General  
160 North LaSalle St., Ste. N-1000  
Chicago, Illinois 60601  
(312) 793-2380

Dated: August 14, 2012

INDEX OF EXHIBITS TO DEFENDANT'S MEMORANDUM  
OF LAW IN SUPPORT OF HER MOTION TO DISMISS

T.B., *et al., etc.*, v. Hamos, 12 C 5356

- Exhibit A: Certified Copy of a Letter Dated July 16, 2012 from Theresa Eagleson, Medicaid Director, HFS to Barbara Edwards, CMS.
- Exhibit B: Certified Copy of a Letter Dated July 27, 2012 from Barbara Edwards, CMS to Theresa Eagleson, HFS.
- Exhibit C: Certified Copy of a Letter Dated August 7, 2012 from Verlon Johnson, CMS to Theresa Eagleson, HFS, without attachment.
- Exhibit D: Copy of 305 ILCS 5/5-2b. Medically Fragile and Technology Dependent Children Eligibility and Program.



# **EXHIBIT A**



Pat Quinn, Governor  
Julie Hamos, Director

201 South Grand Avenue East  
Springfield, Illinois 62763-0002

Telephone: (217) 782-1200  
TTY: (800) 526-5812

To All To Whom These Present Shall Come,  
Greeting:

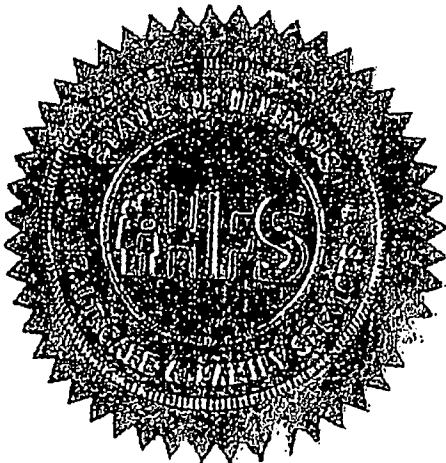
I, Julie Hamos, Director of the Illinois Department of Healthcare and Family Services do hereby certify that the following and hereto attached are true and correct copies of public records now on file in the office of the Illinois Department of Healthcare and Family Services, to wit:

Letter dated July 16, 2012 to Ms. Barbara Edwards, Director, Disabled and Elderly Health Programs Group, Center for Medicare & Medicaid Services (CMS) from Theresa Eagleson, Medicaid Director, Illinois Department of Healthcare and Family Services.

Said records, authorized by law to be recorded and filed, are under my keeping as Director of the Illinois Department of Healthcare and Family Services.

In Testimony Whereof, I hereto set my signature done at the City of Springfield  
this 9 day of AUGUST A.D. 2012

  
\_\_\_\_\_  
DIRECTOR





**Pat Quinn, Governor**  
**Julie Hamos, Director**

201 South Grand Avenue East  
Springfield, Illinois 62763-0002

**Telephone: (217) 782-1200**  
**TTY: (800) 526-5812**

July 16, 2012

Ms. Barbara Edwards, Director  
Disabled and Elderly Health Programs Group  
Center for Medicare & Medicaid Services (CMS)  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, MD 21244

Dear Ms. Edwards,

On July 11, 2012, staff from CMS Region V requested that the State ask for a 90-day temporary extension for the current waiver. The stated reason for the extension was to allow CMS time to review the state plan amendment that the Department is developing to implement changes described in the waiver renewal.

In response to your request and to the concerns expressed by families over the tight timeframe for transitioning to a restructured program, I am writing to request a 90-day extension for the renewal application for the Illinois Home and Community-Based Services (HCBS) Waiver for children who are medically fragile, technology dependent (CMS Control Number 0278). In accordance with 42 CFR 441.304(c), the State may request an extension to assist with meeting the statutory and regulatory waiver requirements. We appreciate your consideration of our request.

Sincerely,



Theresa Eagleson, Medicaid Director

cc: Verlon Johnson, Region V, CMS  
Twana Brown, Region V, CMS  
Julie Hamos, Director, HFS

# **EXHIBIT B**



Pat Quinn, Governor  
Julie Hamos, Director

201 South Grand Avenue East  
Springfield, Illinois 62763-0002

Telephone: (217) 782-1200  
TTY: (800) 526-5812

To All To Whom These Present Shall Come,  
Greeting:

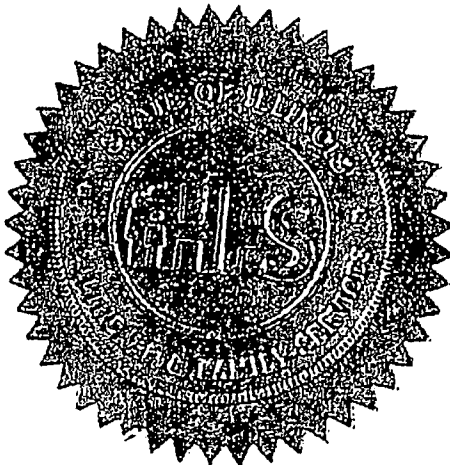
I, Julie Hamos, Director of the Illinois Department of Healthcare and Family Services do hereby certify that the following and hereto attached are true and correct copies of public records now on file in the office of the Illinois Department of Healthcare and Family Services, to wit:

Letter dated July 27, 2012 to Ms. Theresa Eagleson, Medicaid Director, Illinois Department of Healthcare and Family Services from Barbara Coulter Edwards, Director, Center for Medicaid and CHIP Services, Disabled and Elderly Health Programs Group.

Said records, authorized by law to be recorded and filed, are under my keeping as Director of the Illinois Department of Healthcare and Family Services.

In Testimony Whereof, I hereto set my signature done at the City of Springfield  
this 9 day of August A.D. 2012

  
\_\_\_\_\_  
DIRECTOR



DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop S2-14-26  
Baltimore, Maryland 21244-1850



**Center for Medicaid and CHIP Services**  
Disabled and Elderly Health Programs Group

---

July 27, 2012

Theresa Eagleson  
Medicaid Director  
Illinois Department of Healthcare and Family Services  
201 South Grand Avenue East  
Springfield, Illinois 62763

Dear Ms. Eagleson:

In response to the July 16, 2012 request from the State of Illinois' Department of Healthcare and Family Services, the Centers for Medicare and Medicaid Services (CMS) is granting a temporary extension of Illinois' Home and Community-Based Services Waiver program for Children who are Medically Fragile, Technology Dependent, which is scheduled to expire on August 31, 2012. The extension allows the HCBS Waiver for Children who are Medically Fragile, Technology Dependent, IL 0278.R03, to continue operating through November 29, 2012 at cost and utilization levels approved for the fifth year of the waiver program with Federal financial participation.

CMS is granting this temporary extension in order to provide adequate time for the State to address concerns related to transitioning to a restructured program and to resolve issues resulting from our review.

If you have any questions about this temporary extension or need any assistance, please contact Twana Brown, Chicago RO analyst at (312) 353-3851 or by email at [Twana.Brown@cms.hhs.gov](mailto:Twana.Brown@cms.hhs.gov), or Ondrea Travis, CMS CO analyst at (410) 786-4606 or by email at [Ondrea.Travis@cms.hhs.gov](mailto:Ondrea.Travis@cms.hhs.gov).

Sincerely,

A handwritten signature in black ink that reads 'Barbara Coulter Edwards' with a stylized flourish at the end.

Barbara Coulter Edwards  
Director

cc: Verlon Johnson, Region V, CMS  
Twana Brown, Region V, CMS  
Julie Hamos, Director, HFS

# **EXHIBIT C**



Pat Quinn, Governor  
Julie Hamos, Director

201 South Grand Avenue East  
Springfield, Illinois 62763-0002

Telephone: (217) 782-1200  
TTY: (800) 526-5812

To All To Whom These Present Shall Come,  
Greeting:

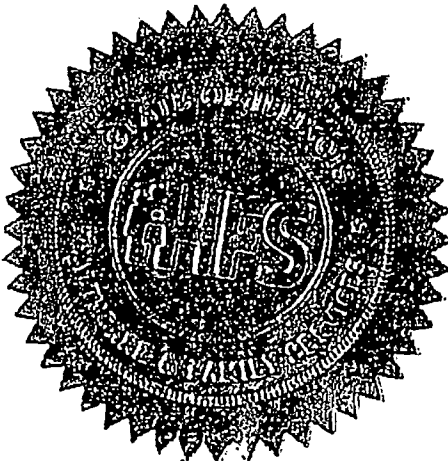
I, Julie Hamos, Director of the Illinois Department of Healthcare and Family Services do hereby certify that the following and hereto attached are true and correct copies of public records now on file in the office of the Illinois Department of Healthcare and Family Services, to wit:

Letter dated August 7, 2012 to Ms. Theresa Eagleson, Medicaid Director, Division of Medical Programs, Illinois Department of Healthcare and Family Services from Verlon Johnson, Associate Regional Administrator, Division of Medicaid and Children's Health Operations, Centers for Medicare and Medicaid Services (without enclosure)

Said records, authorized by law to be recorded and filed, are under my keeping as Director of the Illinois Department of Healthcare and Family Services.

In Testimony Whereof, I hereto set my signature done at the City of Springfield  
this 9 day of AUGUST A.D. 2012

  
\_\_\_\_\_  
DIRECTOR





Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
233 North Michigan Avenue, Suite 600  
Chicago, Illinois 60601-5519



August 7, 2012

Theresa Eagleson, Medicaid Director  
Division of Medical Programs  
Illinois Department of Healthcare and Family Services  
Prescott E. Bloom Building  
201 South Grand Avenue East  
Springfield, Illinois 62763-0001

Dear Ms. Eagleson:

The Centers for Medicare and Medicaid Services (CMS) has reviewed the Illinois Department of Healthcare and Family Services' proposed renewal of the Children's Medically Fragile, Technology Dependent (MFTD) home and community-based services waiver authorized under 1915 (c) of the Social Security Act, control number 0278.R04.00. The MFTD waiver serves individuals up to the age of 21 who are medically fragile, technology dependent who would otherwise be institutionalized in a nursing facility or long term hospital because of a severe mental or developmental impairment.

The Federal regulations at 42 CFR 431.10 specify that the State Medicaid Agency is responsible for ensuring the waiver is operated in accordance with applicable Federal regulations and the provisions outlined in the waiver application. This letter constitutes a formal Request for Additional Information (RAI) that describes issues that arose in our review of your proposed MFTD waiver renewal. CMS requires this information from the State before this waiver renewal application can be approved. Please incorporate the State responses to this formal RAI within the appropriate section of the waiver application addressing all critical issues outlined within this letter as well as other issues that need further clarification or correction as noted in Attachment A.

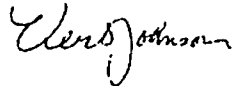
Under 1915(f)(2) of the Social Security Act, a waiver request shall be deemed granted unless within 90 days after the date of its submission, the request is denied or the State is informed in writing of any additional information needed in order to make a final determination. The 90-day period in this case ends on September 3, 2012. This letter officially stops the 90-day clock. A new 90-day period begins upon receipt of your written response.

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Ms. Theresa Eagleson

If you have any additional questions, please contact Twana Brown at (312) 353-3851 or via e-mail at [Twana.Brown@cms.hhs.gov](mailto:Twana.Brown@cms.hhs.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl Johnson". The signature is fluid and cursive, with the first name "Cheryl" written in a larger, more prominent script than the last name "Johnson".

Associate Regional Administrator  
Division of Medicaid and Children's Health Operations

Enclosure: Attachment A

cc: Mary Milburn, HFS  
Ondrea Travis, CMCS

# **EXHIBIT D**

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this Article shall not be affected by the receipt by the person of donations or benefits from fundraisers held for the person in cases of serious illness, as long as neither the person nor members of the person's family have actual control over the donations or benefits or the disbursement of the donations or benefits.

(Source: P.A. 96-20, eff. 6-30-09; 96-181, eff. 8-10-09; 96-328, eff. 8-11-09; 96-567, eff. 1-1-10; 96-1000, eff. 7-2-10; 96-1123, eff. 1-1-11; 96-1270, eff. 7-26-10; 97-48, eff. 6-28-11; 97-74, eff. 6-30-11; 97-333, eff. 8-12-11; revised 10-4-11.)

(305 ILCS 5/5-2b new)

Sec. 5-2b. Medically fragile and technology dependent children eligibility and program. Notwithstanding any other provision of law, on and after September 1, 2012, subject to federal approval, medical assistance under this Article shall be available to children who qualify as persons with a disability, as defined under the federal Supplemental Security Income program and who are medically fragile and technology dependent. The program shall allow eligible children to receive the medical assistance provided under this Article in the community, shall be limited to families with income up to 500% of the federal poverty level, and must maximize, to the fullest extent permissible under federal law, federal reimbursement and family cost-sharing, including co-pays, premiums, or any

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other family contributions, except that the Department shall be permitted to incentivize the utilization of selected services through the use of cost-sharing adjustments. The Department shall establish the policies, procedures, standards, services, and criteria for this program by rule.

(305 ILCS 5/5-2.1d new)

Sec. 5-2.1d. Retroactive eligibility. An applicant for medical assistance may be eligible for up to 3 months prior to the date of application if the person would have been eligible for medical assistance at the time he or she received the services if he or she had applied, regardless of whether the individual is alive when the application for medical assistance is made. In determining financial eligibility for medical assistance for retroactive months, the Department shall consider the amount of income and resources and exemptions available to a person as of the first day of each of the backdated months for which eligibility is sought.

(305 ILCS 5/5-4) (from Ch. 23, par. 5-4)

Sec. 5-4. Amount and nature of medical assistance.

(a) The amount and nature of medical assistance shall be determined ~~by the County Departments~~ in accordance with the standards, rules, and regulations of the Department of Healthcare and Family Services, with due regard to the requirements and conditions in each case, including