

3. On August 23, 2007, Governor Blagojevich signed into law Illinois 2008 Fiscal Year Budget (HB3866, 95th General Assembly), and exercised his veto power to cut approximately \$463 million in spending and proposed that the \$463 million be spent in alternative ways. (Governor Item/Reduction Veto PA 95-0348.) The Governor's Press Release of August 14, 2007, set forth a summary of these proposed alternative expenditures. One of the proposed new expenditures was to expand the All Kids Healthcare Plan to include 19 and 20 year olds. The Governor repeated his plans in a Press Release on August 23, 2007, explaining his reasons for the line item vetoes. On or about August 30, 2007, the Governor

“announced an expansion of healthcare coverage to assist seriously ill or injured teens or those with pre-existing conditions transition from All Kids to Illinois Comprehensive Health Insurance Program (ICHIP).

* * * *

“*** [T]his new program for 19-21 year olds (ending on their 21st birthday) will provide continuous coverage at a cost no more than what they had paid while on All Kids.***”

(August 30, 2007 Statement from the Governor's Press Office.) The Governor has referred to this expansion of health insurance coverage as the “All Kids Bridge Program.” (August 30, 2007 Statement from the Governor's Press Office.) The enabling legislation defines a “child” eligible for coverage under the All Kids Program as “a person under the age of 19.” 215 ILCS170/10. The Governor's announced expansion is thus tantamount to either an amendment to the statutory definition of “child,” expanding, as a result, coverage of the All Kids Healthcare program to a new group of persons, or, alternatively, constitutes the creating a new state funded health insurance program which the Governor has denominated the “All Kids Bridge Program.” The Illinois legislature did not over-ride the line items vetoed nor has it approved the alternative programs and expenditures of the \$463 million the Governor has proposed.

4. On August 28, 2007, at the direction of Governor Blagojevich the Defendant Board approved his “objectives” for the expansion of health insurance coverage to include persons between 19 and 20 years of age, and agreed to proceed “with the Departments of Healthcare and Family Services Public Health and Human Services *** [to] develop and implement the program ***.” (August 30, 2007 Statement from the Governor’s Press Office.) It is not known at the present time if either of these Departments have approved or taken any action as the Board has taken. Notwithstanding, any person 19 or 20 years old otherwise eligible for coverage under the All Kids Healthcare Plan may apply for coverage, and in the case of a child who was covered under the All Kids Healthcare Plan whose 19th birthday occurred on or after the day the Governor put into effect his All Kids Bridge program has had or is entitled to have All Kids Healthcare coverage continued rather than terminated, thereby increasing the State’s liability with the passage of each day. Prior to the Board’s action on August 28, 2007, the expansion of health insurance coverage to persons aged 19 and 20 was not listed as a matter that would be considered in the published Agenda for the Board’s August 28, 2007 Meeting. Neither the Minutes of, nor the Board’s Resolutions made at, the August 28, 2007 Meeting have yet been published. In accordance with the Governor’s August 14 and 23, 2007 Press Releases respecting the Budget and his line item vetoes, the \$15 million cost of the expanded program during this fiscal year is to come from moneys that had been allocated to items in Illinois 2008 FY Budget which he had vetoed. The Legislature has not approved expanding All Kids Healthcare coverage to persons 19 and 20 years old either as an amendment to the current statute nor as the new All Kids Bridge program. Nor has the Legislature appropriated any money for this Executive measure or otherwise approved any of the other expenditures the Governor proposed as alternatives to the expenditures for items he vetoed, including for the Governor’s expansion of coverage under the All Kids Healthcare Plan

pursuant to his All Kids Bridge proposal.

5. Other than the reference to the Governor's direction, no enabling statute authorizing the expansion of the All Kids Healthcare benefits to persons of 19 and 20 years of age, or the creation of the All Kids Bridge Program has been cited or referred by the Board or the Governor as the authority pursuant to which the Board approved and adopted the Governor's proposal. The Board has agreed to cooperate with and is proceeding, with the Departments of Healthcare and Family Services and Public Health and Human Services, to develop and implement the program expanding healthcare coverage to 19 and 20 year olds. Nor, other than the Governor's statements that monies from the items he vetoed in the 2008 Budget would be used for this and the other programs he proposed, is there any reference to any appropriation or act of the Legislature authorizing the Board to expend public monies for the creation of the new All Kids Bridge program or expansion of coverage to persons of the ages of 19 and 20 under the All Kids Healthcare Plan. The Board's and the other two Departments' actions and expenditures being incurred, or that will be incurred, to develop the expanded coverage or new plan constitute the implementation of a new state funded program without the requisite enabling legislation and without any appropriation of money in any amount to establish and implement the new coverage.

6. The aforesaid actions of the Defendants have been represented as the first implementation of the numerous programs the Governor said he will effect by means of his Executive Authority. These new programs, according to the Governor, are to be funded by the money that had been designated for use for the items in the 2008 Budget he vetoed. Prior to the Governor's and the Board's actions, the Legislature considered and has currently pending before it the Governor's alternative expenditure proposals but it did not enact and has not passed any legislation to do so nor has it appropriated any money for any of the Governor's other alternative

proposed programs. Enabling legislation and a corresponding appropriation of money for the Governor's All Kids Bridge program expanding All Kids Healthcare coverage to 19 and 20 year olds is constitutionally require before the Executive Branch of the Government implements the new expansion of coverage to 19 and 20 year old young adults.

7. This action does **not** seek to have the Court determine whether the expanded All Kids Healthcare benefits to 19 to 20 year olds, or whether the programs and expenditures that were the subject of the Governor's line item vetoes, or the other alternative expenditures the Governor has proposed, are in the public interest. These are matters for the State Legislature to determine. Rather, the sole purpose of this action is to have the Court determine whether the Governor's exercise of "Executive Authority" to create, extend or expand public programs without prior enabling legislation and to order the expenditure of monies the Legislature had authorized for vetoed items, is constitutional, and, if not, to declare it unconstitutional, enjoin its implementation, including the expenditure of even currently appropriated monies to implement the expansion of healthcare coverage to 19 and 20 year old persons, or any of the other of the Governor's alternative programs, since any such expenditure would be in furtherance of acts which are unconstitutional, or in violation of law, and thereby cancel or terminate any new liabilities and debts that the State is purportedly occurring as a result of the Governor's contested action, and to order the Governor to cease infringing on the Legislature's constitutionally exclusive authority to enact legislation, and appropriate monies. The declaratory and injunctive relief sought would also limit the damages and losses that 19 and 20 year olds who rely on having All Kids Healthcare coverage, and their providers of medical services, will suffer when payment of claims under the unauthorized, expanded coverage are refused by the State Comptroller on the ground that the required enabling legislation does not exist and there has been no appropriation by the Legislature for the expanded

coverage.

FIRST CAUSE OF ACTION

DECLARING AND ENJOINING THE GOVERNOR'S ACTION UNCONSTITUTIONAL

8. Repeat and reallege the allegations set forth above in Paragraphs 1 through 7 of this Complaint.

9. Article II of the Constitution of the State of Illinois provides in Section 1:

SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

Article IV of the Constitution of the State of Illinois provides in Section 1 in pertinent part:

LEGISLATURE - POWER AND STRUCTURE

The legislative power is vested in the General Assembly consisting of a Senate and a House of Representatives *.**

Article IV of the Constitution of the State of Illinois provides in Section 8, provides for the exclusive process for the enactment of laws by the General Assembly:

PASSAGE OF BILLS

(a) The enacting clause of the laws of this State shall be: "Be it enacted by the People of the State of Illinois, represented in the General Assembly."

(b) The General Assembly shall enact laws only by bill. Bills may originate in either house, but may be amended or rejected by the other.

* * * *

Bills, except bills for appropriations and for codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.

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The Speaker of the House of Representatives and the President

of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

10. Article IV of the Constitution of the State of Illinois provides in Section 9 (d) and (e):

VETO POWER

“(d) The Governor may reduce or veto any item of the appropriation in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. ***

“(e) The Governor may return a bill together with specific recommendations for change to the house in which it originated. The bill shall be considered in the same manner as a vetoed bill but the specific recommendations may be accepted by a record vote of a majority of the members elected to each house. Such bill shall be presented again to the Governor and if he certifies that such acceptance conforms to his specific recommendations, the bill shall become law. If he does not so certify, he shall return it as a vetoed bill to the house in which it originated.”

11. Article V of the Constitution of the State of Illinois provides in Section 8 provides:

GOVERNOR — SUPREME EXECUTIVE POWER

The Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws.

No provision of the Constitution of the State of Illinois grants the Governor the power to enact legislation or to create, amend, extend or expand state funded medical benefit programs.

12. The Governor’s admitted exercise of his Executive Authority and the Board’s approval of the Governor’s expansion of coverage of the All Kids Healthcare or All Kids Bridge program to persons 19 and 20 years of age is unconstitutional, in violation of law, and in violation the exclusive right of the Legislature of Illinois to enact laws creating public institutions or public grant programs, including extending or expanding, or otherwise amending, the coverage of lawfully

existing programs to beneficiaries outside of the categories or classes authorized by existing legislation. The Governor's and the Board's actions are, as such, an unconstitutional usurpation of legislative authority and to the extent the Board acted pursuant to the order, direction or instruction of the Governor, the Governor's order, direction or instruction constitutes an improper delegation of legislative authority to Board to establish, extend and expand existing benefits to persons not otherwise eligible for such benefits under existing, duly enacted legislation.

WHEREFORE, Plaintiff prays that Judgment be entered against Defendants

A. Declaring the Governor's aforesaid exercises of Executive Authority, the Board's adoption and implementation of the Governor's proposal for the expansion of the persons eligible for coverage under the Illinois All Kids Healthcare program or the creation of the All Kids Bridge Program, unconstitutional and invalid; and

B. Temporarily and permanently enjoining Defendants from implementing in any manner the expanded coverage or expending any moneys not appropriated for that purpose by the Legislature; and

C. For the costs and expenses incurred in this action, including reasonable attorney fees, and such other relief as may be necessary, just, and equitable.

SECOND CAUSE OF ACTION

DECLARING AND ENJOINING THE EXPENDITURES

13. Repeat and reallege the allegations set forth above in Paragraphs 1 through 12 of this Complaint.

14. Neither the Governor nor the other Defendants have been authorized by any enabling legislation to use any money that had been appropriated for items that the Governor vetoed in the 2008 Budget, to create, establish, expand or extend health insurance benefits to persons 19 and 20

years of age, or for any other purposes, and, as a result of the line item vetoes, the appropriations for those items have been vetoed and are unavailable for use for any expenditure and the use of funds appropriated for other purposes to take actions which are constitutionally reserved exclusively for the Legislature to do, is unlawful and unconstitutional. Accordingly, the expenditure of any monies to develop and implement the Governor's expansion of All Kids Healthcare coverage, or the new All Kids Bridge Plan, to 19 and 20 year old persons, or the expenditure or attempted expenditure of monies that had been previously appropriated for items that have been vetoed, is unconstitutional, unlawful and unauthorized by the Legislature.

WHEREFORE, Plaintiff prays that Judgment be entered against Defendants

A. Declaring the Governor's exercise of Executive Authority to authorize the use of public monies to pay for the expand coverage under the All Kids Healthcare to 19 and 20 year old persons or new All Kids Bridge program, including for its administrative implementation, unconstitutional, illegal and invalid, and

B. Temporarily and permanently enjoining Defendants from expending any money to develop and implement the aforesaid new insurance coverage unless and until it is approved by the Legislature, and

C. For the costs and expenses incurred in this action, including reasonable attorney fees, and such other relief as may be necessary, just, and equitable.

THIRD CAUSE OF ACTION

DECLARING AND ENJOINING THE BOARD'S ACTION AS UNLAWFUL

15. Repeat and reallege the allegations set forth above in Paragraphs 1 through 14 of this Complaint.

16. When at the August 28, 2007 meeting of the Defendant Board, the Governor's proposal

for the new health insurance coverage for 19 and 20 year old persons was raised, the Board, as a State Agency subject to acting in accordance with the State's Administrative Procedure Act ("APA"), 5 ILCS 100/1-10, should not have proceeded to adopt the proposal without first giving reasonable advanced public notice of not less than 45 days as required, 5 ILCS 100/5-40(b), that the substantive proposal had been put forth and scheduled it for public comment, consideration, debate and vote since its adoption of the proposal "is an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, 5 ICLS 100/1-50, or otherwise constitutes a Rule as defined in 5 ICLS 100/1-70, required to be adopted in accordance with the APA provisions, 5 ICLS 100/5-5, none of which, 5 ICLS 100/1-90, 100/5-35, 100/5-40 were followed. Accordingly, the Board's adoption of the Governor's proposal is invalid as provided in 5 ICLS 100/5-35(b) which states:

"No action by any agency to adopt, amend, or repeal a rule *** shall be valid unless taken in compliance with this Section. ***"

The Board's adoption of the Governor's proposal and its implementation is, therefore, invalid and void *ab initio*, and should be declared and enjoined as such.

WHEREFORE, Plaintiff prays that Judgment be entered against Defendants

A. Declaring that Board's adoption on August 28, 2007, of the Governor's proposal is invalid and void *ab initio*,

B. Temporarily and permanently enjoining the Board, and any person or entity acting in concert with it to develop and implement Governor's proposal as adopted by the Board, from taking any acts or expending any public monies, or incurring any public debt in connection with the development and implementation of the Governor's proposal as adopted by the Board, and

C. For the costs and expenses incurred in this action, including reasonable attorney

fees, and such other relief as may be necessary, just, and equitable.

FOURTH CAUSE OF ACTION

DECLARING AND ENJOINING THE BOARD'S ACTION AS UNCONSTITUTIONAL

17. Repeat and reallege the allegations set forth above in Paragraphs 1 - 16 of this Complaint.

18. The Board's actions on August 28, 2007, approving the Governor's expansion coverage under the All Kids Healthcare Act to or to establish the All Kids Bridge Plan for, persons over the age of 18 and less than 21 years of age is legislative in nature and its agreeing to develop and implement the new coverage with the with the Departments of Healthcare and Family Services and Public Health and Human Services are actions that are in violation of the Separation of Powers Provision of the Constitution and the exclusive authority of the Legislature to enact legislation to expand current programs, add a new class of beneficiaries to existing programs or create a new benefit program and the Board may not engage in such legislative action on its own authority and initiative, nor even at the order, direction, or instruction of the Governor. The Board's actions on August 28, 2007, and which it is and will take to carry out the Governor's proposal and its resolution to do so, are, accordingly, unconstitutional, *ultra vires* of the lawful scope of its authority, and otherwise illegal and invalid.

WHEREFORE, Plaintiff prays that Judgment be entered against Defendants

- A. Declaring the Board's action unconstitutional, *ultra vires*, illegal and invalid, and
- B. Temporarily and permanently enjoining Defendants, and all other persons and entities acting in concert with them, from taking any action to implement the expanded coverage under the All Kids Healthcare program that has not been approved by the Legislature, and
- C. For the costs and expenses incurred int his action, including reasonable attorney

fees, and such other relief as may be necessary, just, and equitable.

Dated: September 10, 2007

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