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February 7, 2008

Joint Committee on Administrative Rules
700 Stratton Building
Springfield, IL 62706

Re: The Department of Health Care & Family Services'
Emergency Rule Amending 89 Ill. Adm. Code 120.33

Dear Members of JCAR,

This is a follow-up to my letter emailed January 28, 2009, concerning HFS's new Family Care program for the middle class. Attached is a copy of HFS's Opposition to issuance of a preliminary injunction filed in *Caro v. Blagojevich, Case no. 07 CH 034353 (Cook Cty., Cir. Ct.)*, the Plaintiff and Plaintiff-Intervenors' Reply. Also attached is my separate Reply on what DPH did and the Attorney General's Defense of the Constitutionality of JCAR.

HFS' Opposition was filed by the Governor, HFS's Director Barry S. Maram and HFS. In that document they explain that they had discontinued the State CHIP and Family Care programs and instead have submitted on December 26, 2007, a new State Plan to CMS whereby those programs would be operated under the State's Medicaid Program with the financial eligibility cap being raised to 400% of the federal poverty level. This means that the Emergency Regulation which was promulgated for the State's CHIP/FamilyCare program is no longer viable.

They explain that this was done even though the rate of federal cost sharing would drop from 65% to 50% in order to have subsidized health insurance made available to families with incomes not in excess of 400% of the Federal Poverty Level. To achieve this end they did not apply to extend or renew the Waiver, pursuant to which the Family Care Program was made available to eligible persons and families whose income did not exceed 185% of the federal poverty level, before it expired. They let the Waiver expire at the end of September 2007.¹

¹ Since Congress had passed three continuing resolutions, signed by the President, so as to prevent SCHIP from expiring, HFS' failure to apply to extend or renew the Waiver

These disclosures are both startling and disturbing. First, the Executive took it upon itself to abandon a program which the Legislature had enacted into law for HFS to administer, pursuant to which the State would participate in the federal SCHIP Program and gain the benefits of that program for low income children and their families. The Executive did not seek or obtain Legislative authorization to withdraw the State from participating in the SCHIP program or to amend the State's Medicaid provisions so as to provide and extend the benefits of the former CHIP/Family Care program to low and middle class income persons and families who are otherwise not entitled to assistance under the State's Medicaid plan. These are acts which are clearly reserved under the Constitution for the Legislature to do. I know of no other instance in which any Executive agency discontinued and abandoned a program that the Legislature had directed it to undertake.

As for its expansion of Medicaid, the Legislature has not amended the State's Medicaid eligibility criteria and restrictions so as to now make it available to persons and families whose incomes do not exceed 400% of the federal poverty level. HFS's action constitutes the creation of a new benefits program for a new class of beneficiaries whom the Legislature has not previously made eligible for Medicaid benefits. This constitutes legislation, and that is constitutionally impermissible for the Executive Branch to do. JCAR should, accordingly, reject the Emergency Regulation as an unconstitutional exercise of legislative power in violation of the State's Constitution's Separation of Powers Provision.

Second, the Executive has placed the children and families that had and were entitled to the benefits of the State's CHIP/Family Care program of losing those benefits. The new Medicaid CHIP/Family Care regulatory program, is not only unauthorized by the Legislature, but it does not comply with either the State or Federal Government's financial Medicaid restrictions. It is thus unlikely to be approved by the federal Government, in which case, the State would have to pay for the entire costs of the new regulatory program if HFS's action is allowed to stand. Furthermore, if the new program is ruled invalid and unconstitutional, or if the Court enjoins the new Medicaid CHIP/Family Care program HFS instituted, HFS states that all the beneficiaries will lose their coverage and benefits, including those who were eligible under the prior federal program. (The State is not precluded from reinstating its original CHIP/FamilyCare program subject to the pre-existing financial eligibility limitations.) If such a tragedy occurs, even for a temporary period, it will have resulted from their arrogant, improper action and be to their great shame.

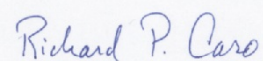
While I fully support health care insurance reform, any such reform has to be done by the Legislature, with the input of health care professionals and members of the public, and not by HFS' arbitrary, dictatorial action. Both HFS and DPH have acted with the greatest of

undermines their claim that the President's veto created an emergency.

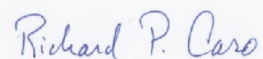
arrogance, and, in my opinion, not in the best interests of the public, as well as in violation of the Constitution and our sacred democratic principles and system. At year's end, the Comptroller's Office reported a deficit of approximately \$1.5 billion and with the economic downturn we are experiencing, it would not surprise me that Illinois deficit will be in excess of \$3 billion at the end of this fiscal year. Both of these agencies seem to have forgotten that available public monies are to be treated as the res of a public trust. Money is not to be spent recklessly, without clear Legislative authorization, and in strict accord with Legislatively adopted criteria, restrictions and conditions. Instead, these agencies have made themselves the final arbiter of what and how to proceed in the public interest rather than as entities charged with the obligation of faithfully executing the laws as enacted by the Legislature.

For these reasons, I urge the Committee to disapprove HFS' actions and Emergency Regulation and to take whatever other remedial measures are available to you.

Yours truly,

A handwritten signature in blue ink that reads "Richard P. Caro". The signature is written in a cursive style and is contained within a light blue rectangular box.

Richard P. Caro

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