

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Kristine Valdez, a.k.a. Kristine Saucedo,
on her own behalf and on behalf of
Dezideria Saucedo and Santiago Saucedo; and
Paula Genthner, on her own behalf and
on behalf of Megan Genthner and Zachary Genthner,
individually; and on behalf of all similarly situated
persons,

Plaintiffs,

vs.

CIV NO. 05 - 451 MV/ACT

New Mexico Human Services Department,

Pamela S. Hyde in her official capacity as
Secretary of the New Mexico Human Services
Department,

Kathryn Falls, in her official capacity as Director of
the Income Support Division of the New Mexico Human
Services Department,

Carolyn Ingram, in her official capacity as Director of the
Medical Assistance Division of the New Mexico Human
Services Department,

Defendants.

**AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs are children and their mothers who are eligible for health coverage under the Medicaid program, whose health coverage has been terminated or threatened with termination by the defendant state officials in spite of the fact they remain eligible for health coverage. Plaintiffs bring this case on behalf of themselves and a plaintiff class of all similarly situated persons in New Mexico (unless otherwise noted, the named

plaintiffs and the class are referred to herein collectively as “plaintiffs”). Plaintiffs challenge the system of the defendant state officials of programming their computer to automatically terminate health coverage every six months without proper notification, a timely and adequate opportunity to demonstrate continuing eligibility, or a factual determination of whether they continue to meet the eligibility requirements for the Medicaid health coverage established by Congress and federal and state agencies (generally, “the auto-closure policy”). As a result, plaintiffs have lost or are repeatedly threatened with the loss of their only means of accessing crucial health care. Plaintiffs bring this action under 42 U.S.C. 1983, 42 U.S.C. 1396 *et seq.*, and the state and federal constitutions, claiming that the auto-closure policy violates the federal Medicaid Act, 42 U.S.C. 1396(a) *et seq.*; the due process clause of the United States Constitution, the New Mexico constitution, and New Mexico regulations.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 42 U.S.C. §1983; 28 U.S.C. § 2201, and N.M. Constitution, Article VI, Section 13, N.M. Stat. Ann. § 38-3-1.1(Cum. Supp. 1994); and NMSA §44-6-2(Repl. Pamp. 1978). The actions complained of herein occurred in New Mexico (Bernalillo, Valencia, and Santa Fe counties) and venue is proper in this court.

THE PARTIES

2. Kristine Valdez and her children are citizens of the United States and live in Albuquerque, New Mexico. At all relevant times they have been and are eligible for Medicaid health coverage.

3. Ms. Genthner and her children are citizens of the United States and live in Los Lunas, New Mexico. At all relevant times they have been and are eligible for Medicaid health coverage.

4. The named plaintiffs bring this action on their own behalves and on behalf of the plaintiff class, pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class is defined as:

All persons eligible for Medicaid under Title XIX of the federal Social Security Act and [state statutory cite] in the State of New Mexico under the categories of Medicaid eligibility coded in the New Mexico computer system as of May 2004 as Category 032, 035-F and 072 or any and all successor codes for the same categories of Medicaid eligibility.

5. The class is so numerous that joinder of all members in each class is impracticable (see paragraphs 21 – 33, *infra*, detailing the thousands of class members subject to the auto-closure policy every month); there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; and the representative parties of the class will fairly and adequately protect the interests of the class. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

5. Defendant New Mexico Human Services Department (“Department”) is the agency in New Mexico responsible for developing and implementing the Medicaid program and for providing Medicaid health coverage to eligible individuals like the plaintiffs. The Department was named as a defendant for purposes of the state law claims prior to the removal of this case by defendants from state to federal court.

6. Defendant Pamela S. Hyde is the Secretary of the New Mexico Human Services Department and is responsible for all administrative, policy, budgetary, and personnel matters for the Department, including the six month auto-closure policy and accompanying notices which are the subject of this complaint. Secretary Hyde is also responsible for ensuring that the Department operates in conformance with federal and state law. Secretary Hyde is sued solely in her official capacity.

7. Defendant Kathryn Falls is the Director of the Income Support Division (ISD) of the Department, which is the Division of the Department responsible for the day-to-day administration of the Medicaid program. ISD is responsible for, among other things, investigating a recipient's eligibility for ongoing Medicaid health coverage. Defendant Kathryn Falls is sued solely in her official capacity.

8. Defendant Carolyn Ingram is the Director of the Department's Medical Assistance Division. The Medical Assistance Division is responsible for, among other things, promulgating and implementing Medicaid regulations in compliance with federal law. Defendant Carolyn Ingram is sued solely in her official capacity.

9. At all material times, defendants acted under color of state law.

ALLEGATIONS COMMON TO ALL CLAIMS

10. In 2004, the Department implemented several changes to the way it administers the Medicaid program and handles the periodic determinations of the continuing eligibility of families previously determined eligible for and receiving health coverage under Medicaid. This periodic eligibility check or update is known as "recertification". The Department implemented an automatic closure system for certain categories of Medicaid,

and began requiring certain Medicaid families to recertify the factual bases of their eligibility every 6 months instead of annually.

11. More specifically, in May 2004, the Department reprogrammed the Income Support Division's computer system to automatically terminate Medicaid health coverage for families that were due for recertification, if their factual information had not been updated in the computer system by set deadline dates. Medicaid categories that are subject to automatic closure include: 1) pregnancy and family planning health coverage; 2) health coverage for children under 19; and 3) health coverage for very low income families in which the adult(s) is working or preparing to work or unable to work.

12. Prior to May 2004, a Medicaid family remained open in the Income Support Division's computer system and the family continued to receive health coverage until a Department worker took proactive action to close the case on the computer system based on facts demonstrating that the family no longer met the eligibility requirements for Medicaid.

13. Under this previous system, families were not penalized if Department workers failed to update their cases on the Income Support Division's computer system in a timely manner.

14. Prior to July 2004, Medicaid families had to show that they remained eligible for health coverage at least once every twelve months.

15. Beginning in July 2004, families who receive certain types or categories of Medicaid health coverage were required to reestablish their eligibility every six months. See 8 N.M.A.C. 202.600.12. (Families who are subjected to the six month recertification include children under 19 and families who receive Family or Jul Medicaid because they

qualify for (but do not necessarily receive) TANF or Temporary Assistance for Needy Families.)

16. Upon information and belief, even when workers only had to review Medicaid recertifications once a year, they were unable to process all of the recertifications in a timely manner.

17. Under the new system, the computer automatically closes Medicaid families' cases after six months if the family has failed to re-certify, or if the family has submitted a recertification but the caseworkers have been unable to process the papers by the autoclosure deadline.

18. Upon information and belief, a computer-generated notice is mailed to families during the month before they need to complete a recertification. The notice advises them that they must apply for Medicaid by the first of the following month if they want to continue to receive health coverage without delay.

19. Upon information and belief, if the caseworker does not update information in the computer to indicate that a recertification has been received in the ISD computer system on or before the 20th of the month, the ISD computer system automatically sends the family a notice advising them that the health coverage will close at the end of the month, whether or not the family has completed and submitted a recertification in a timely manner.

20. Upon information and belief, the Department's computer is actually automatically closing Medicaid cases around the 15th or the 20th of the month, approximately two weeks before the date stated in the Departments' notices, in order to save the capitation fee paid to providers.

21. Upon information and belief, the automatic closure system is resulting in thousands of families losing their health coverage as a result of a wrongful termination of their Medicaid by the defendants' auto-closure policy.

22. Upon information and belief, in April 2004, the month before the Income Support Division's computer was reprogrammed to automatically close cases, Income Support Division caseworkers manually closed 3,138 cases because families failed to complete the recertification process.

23. In May 2004, the month the Income Support Division's computer began automatically closing cases, the computer closed 5,245 cases because families had allegedly failed to recertify. The Department had re-opened seventy-eight percent of these cases by May 2005.

24. In June 2004, the Income Support Division's computer automatically closed 5,710 Medicaid cases because families had allegedly failed to recertify. The Department had re-opened seventy-six percent of these cases by May 2005.

25. In July 2004, the Income Support Division's computer system automatically closed 6,892 Medicaid cases because the families had allegedly failed to recertify. The Department had re-opened seventy-three percent of these cases by May 2005.

26. In August 2004, the Income Support Division's computer automatically closed 6,495 cases because the families had allegedly failed to recertify. The Department had re-opened seventy-four percent of these cases by May 2005.

27. In September 2004, the Income Support Division automatically closed 7,010 cases because the families had allegedly failed to recertify. The Department had re-opened seventy-five percent of these cases by May 2005.

28. In October 2004, the Income Support Division closed 6,765 cases because the families had allegedly failed to recertify. The Department had reopened seventy-four percent of these cases by May 2005.
29. In November 2004, the Income Support Division closed 5,873 cases because the families allegedly failed to recertify. The Department had re-opened sixty eight percent of these cases by May 2005.
30. In December 2004, the Income Support Division closed 10,745 cases because the families had allegedly failed to recertify. By May 2005, the Department had re-opened seventy percent of these cases.
31. In January 2005, the Income Support Division closed 12,170 cases because the families had failed to recertify. By May 2005, the Department had reopened seventy percent of these cases.
32. In February 2005, the Income Support Division closed 11,726 cases because the families had allegedly failed to recertify. By May 2005, the Department had reopened sixty-five percent of these cases.
33. According to information that Secretary Hyde gave to the Legislative Finance Committee in October of 2005, the number of New Mexicans on Medicaid had decreased by more than 21,000 during the first year that the auto-closure policy has been in place, and the number of Medicaid recipients is expected to continue to decline.
34. Caseworkers in the Human Services Department have extremely high caseloads -- much higher than many of our neighboring states.
35. Upon information and belief, due to their high caseloads, caseworkers cannot process all of the recertifications, especially since many Medicaid families are now required to

recertify every six months instead of annually, adding to the caseworkers' already unmanageable workload. Thus, families who have fully complied with the recertification rules and who qualify for Medicaid health coverage are being automatically dropped from Medicaid by the Department's auto-closure policy.

36. Upon information and belief, even when families are immediately reenrolled, they often suffer harm because their continuity of care is disrupted. Once a family is reenrolled, the Managed Care Organization automatically assigns the patient a doctor. Frequently, this doctor is different from the former doctor and is not familiar with the patients' healthcare needs.

37. Families also have their continuity of care interrupted because once their cases are re-opened, they are placed in exempt status and are not enrolled in any of the SALUD programs. This status makes it difficult for them to access needed services like physical therapy.

38. Plaintiffs have been harmed by the Department's inadequate notices, and six-month automatic closure policies and procedures.

FACTS OF PLAINTIFF KRISTINE VALDEZ

39. Plaintiff Kristine Valdez was previously married to Santiago Saucedo and had adopted his last name. Mr. Saucedo passed away in August of 1999, and at that time plaintiff officially changed her name to Kristine Valdez. Although Ms. Valdez advised the Department of this change, she continues to receive Medicaid health coverage for her children under the name of Kristine Saucedo.

40. Ms. Kristine Valdez (a.k.a. Kristine Saucedo) is a single parent and primary caretaker for two children ages eight and twelve.

41. Ms. Valdez qualifies for and has received category 32 Medicaid health coverage for her children for the last five years. Ms. Valdez has sporadically received some sort of Medicaid for herself and/or her children for the last decade.

42. Ms. Valdez's children have no private health insurance. Ms. Valdez continues to need Medicaid to assure that her children have access to affordable Medical care.

43. On or around January 8, 2005, Ms. Valdez received a computer-generated notice from the Department's Income Support Division advising her that her children's Medicaid would end on February 28, 2005. The computer-generated notice further advised her that she would need to complete a recertification by February 1, 2005 if she wanted to continue to receive Medicaid "without delay." Finally, the computer-generated notice advised Ms Valdez that if she did not submit a recertification, and income and health insurance verification, by the first of the month there "may be a delay" in your health coverage.

44. The above referenced computer-generated notice did not advise Ms. Valdez that the Department actually has forty-four days to make a decision on her recertification in order to assure that she continued to receive health coverage by the forty-fifth day. Ms. Valdez would have needed to complete and turn in her recertification by January 14, 2005, in order to be guaranteed that she would continue to receive health coverage on behalf of her children without delay.

45. In response to the letter, Ms. Valdez completed and faxed over a recertification, a copy of her expiration notice, and five pages of income documentation. Ms. Valdez did this on January 25, 2005, prior to the February 1, 2005 deadline listed in the letter.

46. After Ms. Valdez faxed the document, the fax machine generated a confirmation printout showing that the Income Support Division received her facsimile.

47. The recertification and supporting documentation conclusively establish that Ms. Valdez's children qualify for category 032 Medicaid under the SCHIP program.

48. Plaintiff Valdez never received any notification from the Department advising her that her recertification documents were considered incomplete.

49. On or around February 19, 2005, Ms. Valdez received a computer-generated notice from the Income Support Division advising her that her case had closed because she "[f]ailed to reapply for benefits."

50. Plaintiff Valdez attempted to contact the Income Support Division for the next three days. She was continually transferred to a worker named "Maria." Maria was never in her office, so Ms. Valdez left messages on her voice mail.

51. Maria never responded to any of Ms. Valdez's messages. However, on or around February 22, 2005, Ms. Valdez was able to reach Maria in her office. Maria advised Ms. Valdez that she was not her worker and that plaintiff Valdez needed to contact Yvonne Zamora.

52. Plaintiff Valdez tried to contact Ms. Zamora several times a day for the next three days and was never able to reach her. She did leave messages on Ms. Zamora's answering machine. To date, Ms. Zamora has not responded to any of her phone calls.

53. On or around February 28, 2005, Ms. Valdez received two letters (one for each child) from SALUD advising her that her children no longer qualified for SALUD. The letters suggest several reasons why this might be happening, including the possibility that the person is no longer receiving Medicaid.

54. Upon information and belief, the above referenced letters are generated each and every time the Income Support Division's computer closes a family's Medicaid case because s/he allegedly failed to recertify.

55. Ms. Zamora never conducted an *ex-parte* or documentary review of Ms. Valdez's circumstances to determine if her children qualified for any other category or form of Medicaid assistance.

56. The Income Support Division's computer system automatically closed plaintiff Valdez's children's Medicaid case because critical information had not been updated on the system.

57. Plaintiff Valdez's Medicaid case was processed on April 1, 2005, the day after this lawsuit was originally filed in state court. She received an approval notice on or around April 3, 2005. She was harmed because she did not receive Medicaid health coverage without delay even though she fully complied with all departmental regulations.

58. Ms. Valdez faces losing her children's health coverage every six months by the Department's auto-closure policy, whether or not she submits a timely and complete recertification.

FACTS OF PLAINTIFF PAULA GENTHNER

59. Plaintiff Paula Genthner is a single parent and primary caretaker of her daughter, Megan Genthner, who is seventeen years old and her son, Zachary Genthner, who is seven years old.

60. Plaintiff Genthner has been receiving category 032 Medicaid for her children since they were born. Ms. Genthner has also been receiving Family Planning Medicaid for herself for approximately the past eight years.

61. Plaintiff Genthner currently lives at 120 Ladera Road in Los Lunas. She previously resided at 1111 Cordova Court in Los Lunas.

62. Over the last year, Ms. Genthner has repeatedly reported her change of address and has left numerous messages asking that the Department change her address information. In January of 2005, Ms. Genthner submitted a recertification, showing her new address.

63. The Department has never updated Ms. Genthner's address information in its computer system.

64. Since the address change has not been made, computer-generated notices are still being mailed to plaintiff Genthner's former address at 1111 Cordova Court, Los Lunas, NM 87031.

65. Plaintiff Genthner's son was in a trampoline accident on February 23, 2005. He sustained a compound corkscrew fracture of the femur. He was in a wheel chair for two months, and then on crutches for several months. Due to extensive physical therapy, he is currently able to walk but is scheduled for additional surgery in the middle of August. Plaintiff Genthner has been advised that her son will probably need additional physical therapy and traction after the surgery.

66. On or around May 15, 2005, Ms. Genthner received a computer-generated letter from the Department's Income Support Division advising her that unless she recertified for her children's Medicaid, their health coverage was going to end on May 31, 2005.

67. Although this notice was mailed in mid-April, Ms. Genthner did not receive it in a timely fashion because the Income Support Division computer mailed the letter to her former address.

68. Ms. Genthner eventually retrieved the letter from the individuals who had moved into her former residence.

69. In response to the letter, Ms. Genthner immediately completed and turned in a recertifications for her children's Medicaid in early May. She attached her most recent check stubs to the recertification.

70. The attached information conclusively established that Ms. Genthner and her children continue to qualify for Medicaid.

71. On or around May 15, 2005, Ms. Genthner received an interview notice from her caseworker informing her that she needed to come in to an interview on June 9, 2005. The notice is not dated and the space where the worker is to indicate the recertification date is not filled out.

72. The interview was not scheduled to take place until after Ms. Genthner's Medicaid case was scheduled to expire on May 31, 2005.

73. A face-to-face interview is not necessary to complete a recertification for category 032 Medicaid.

74. Ms. Genthner never received any letter from her caseworker advising her that her recertification for her and her children's Medicaid was incomplete or that she needed to supply additional information.

75. On or around May 22, 2005, Ms. Genthner received a notice in the mail advising her that her children's Medicaid was closing because she had "failed to reapply for benefits."

76. The notice does not advise plaintiff Genthner of the specific manual section upon which the Department relied in making this decision.

77. Upon information and belief, the computer automatically closed plaintiff Genthner's children's Medicaid case because the caseworker failed to update critical information in the system.

78. Upon information and belief, Ms. Genthner's caseworker never conducted an *ex-parte* review of plaintiff's circumstances before allowing the computer to close her children's Medicaid case. Such a review would have established that plaintiff Genthner and her children continued to qualify for Medicaid.

79. On or around May 25, 2005, and May 31, 2005, Ms. Genthner attempted to reach her caseworker Leroy Marquez to find out why her case had closed for a failure to recertify.. Ms. Genthner left messages of Mr. Marquez's voice mail explaining that she desperately needed the Medicaid because her son had been in an accident. At that time, he needed physical therapy twice a week and would regress if he did not receive these needed services.

80. Mr. Marquez never returned Ms. Genthner's phone calls

81. Ms. Genthner called again on June 1, 2005, the next day and was able to speak with Mr. Marquez. Mr. Marquez said that he never received Ms. Genthner's recertification and advised her that she would need to submit a new recertification. Mr. Marquez told Ms.

Genthner that he would process her recertification as soon as he received it.

Mr. Marquez indicated that Ms. Genthner did not need to come to the interview scheduled on June 9, 2005.

82. Ms. Genthner submitted a new recertification on June 1, 2005 and obtained a receipt.

83. On June 2, 2005, Ms. Genthner's physical therapist advised her that, according to his records, Ms. Genthner's children's Medicaid case was still not open. Both the physical therapist and Ms. Genthner called and left messages for Mr. Marquez.

84. On June 3, 2005, Ms. Genthner left phone messages for Mr. Marquez and his supervisor, "Liz," to complain that the case still had not been reopened.

85. On June 3, 2005, Ms. Genthner also called the Fair Hearings Division and left a message on its voice mail indicating that she wanted a fair hearing.

86. In addition to receiving Medicaid for her children, as noted above, Ms. Genthner also receives Family Planning Medicaid for herself.

87. On or around June 3, 2005, Ms. Genthner received a notice advising her that her Family Planning Medicaid had closed because she "failed to reapply for benefits."

88. Ms. Genthner never received any notice indicating that her eligibility for Family Planning Medicaid was ending and that she would need to reapply and reestablish her eligibility.

89. Upon information and belief, Mr. Marquez never conducted an *ex-parte* review of plaintiff Genthner's case to determine if she qualified for any other type of Medicaid before allowing the computer to automatically close Family Planning Medicaid case.

90. Also on June 3, 2005, Ms. Genthner left several additional phone messages for Mr. Marquez.

91. Mr. Marquez finally called back Ms. Genthner and advised her that her Family Planning Medicaid case and her children's Medicaid case had been reopened.

92. When Ms. Genthner attempted to take her son to physical therapy, late in the afternoon on June 3, 2005, she was advised that she would be responsible for the bill.

Although her son still qualified for Medicaid, the case had been placed in “exempt” status when it was reopened.

93. “Exempt” status means that the family has not chosen and has not been assigned to a Managed Care Organization.

94. Office staff at Los Lunas Physical Therapy advised Ms. Genthner that Medicaid would not pay for physical therapy until she had been assigned to a Managed Care Organization and an evaluation had been completed. Ms. Genthner was advised that this process usually takes four to six weeks.

95. Los Lunas Physical Therapy did attempt to bill Medicaid for services rendered on June 3, 2005, June 6, 2005, and June 10, 2005. Medicaid refused to pay for the charges incurred on June 6 and June 10, 2005.

96. Upon information and belief, Medicaid paid for the services rendered on June 3, 2005, because this was billed as an evaluation.

97. On or around June 6, 2005, Ms. Genthner received a phone call from Janet Hollis at the Fair Hearing Division. Ms. Hollis obtained information on why Ms. Genthner wanted a fair hearing.

98. Ms. Genthner explained that she felt that her caseworker erroneously closed her children’s Medicaid case.

99. Plaintiff Genthner further explained that, although her caseworker had reopened the case, she still wanted a fair hearing because Medicaid was not covering her son’s physical therapy.

100. On or around June 9, 2005, Ms. Genthner received a notice from the Fair Hearing Division acknowledging that it had received her request for a hearing. A copy of this notice was also sent to Mr. Marquez.

101. The above form indicated that Mr. Marquez was to submit a Summary of Evidence explaining the reason for his action by June 13, 2005.

102. The “acknowledgment of hearing request” form asks the caseworker to submit a timely summary of evidence so that the Hearing Division can “schedule the hearing and proceed to disposition in a timely manner.”

103. On or around July 16, 2005, Ms. Genthner received a letter from the Fair Hearing Division. The letter advises Ms. Genthner that the Department has scheduled a fair hearing in her case for August 3, 2005 at 1:30pm.

104. The above-referenced letter also indicates that the Fair Hearing Division had included any information it had received from Ms. Genthner’s caseworker explaining his decision to close the case. No documents were attached to the letter.

105. On July 28, 2005, when attorney Jama Fisk was reviewing Ms. Genthner’s file, she received the summary of evidence from Mr. Marquez. Although the summary of evidence is dated June 20, 2005, Ms. Genthner did not receive it until her attorney received it on July 28, 2005.

106. Pursuant to the Department’s notice, Ms. Genthner received the Summary of Evidence 46 days late.

107. Department regulations actually require that the worker submit the Summary of Evidence within seven days of the request for hearing. See 8 N.M.A.C. 100.970.10(F).

108. Pursuant to this regulation, the Summary of Evidence was late.

109. Ms. Genthner desperately needs to assure that she continues to receive Medicaid without a lapse so that her son can receive needed physical therapy.

110. Although her case has been reinstated, Ms. Genthner faces having her family's health coverage wrongfully terminated every six months by the defendants' auto-closure policy. Ms. Genthner also faces being unable to access critical health care services for family every six months since even if she is eventually reinstated, she will be placed in "exempt" status, and will not qualify for all of her families' needed health care services.

OTHER CLAIMANTS

111. Members of the plaintiff class have been injured in substantially the same way as the named plaintiffs, due to the Department's automatic closure system and illegal notices, as described in paragraphs 10 – 38.

IRREPARABLE INJURY

112. The members of the plaintiff class have suffered, are suffering, and will continue to suffer irreparable injury as a result of the customs and practices described in paragraphs 10 – 38.

113. There is no adequate remedy at law.

STATUTORY AND REGULATORY FRAMEWORK

114. Medicaid is a jointly funded state and federal program that provides necessary medical services to low-income persons pursuant to Title XIX of the Social Security Act, 42 U.S.C. §1396 et. seq.

115. State participation in the Medicaid program is optional. However, a state choosing to participate, and to receive federal funds for participating, must comply with all the

requirements of the Federal Medicaid Act, implementing regulations, and related federal interpretations and instructions.

116. New Mexico has chosen to participate in the Medicaid program and accepts federal matching funds for its program expenditures.

117. Under the Medicaid Act, a state participating in the Medicaid program must “provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not enacted upon with reasonable promptness.” 42 U.S.C. § 1396a(a)(3).

118. Further, the state must ensure that medical “assistance [is] furnished with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8).

119. The federal agency charged with administering Medicaid, the Centers for Medicaid and Medicare Services (“CMS”), has implemented these provisions with formal rulemaking, and the N.M. Department of Human Services has implemented additional rules.

120. Federal regulation 42 C.F.R. §435.916 requires the state to recertify Medicaid recipients at least once every twelve months.

121. New Mexico regulations require that families receiving children’s Medicaid or Family Medicaid complete a recertification every six months. See 8 N.M.A.C. 232.600.12 and 8 N.M.A.C. 202.600.11.

122. New Mexico requires individuals receiving family planning services to complete a recertification every twelve months. See 8 N.M.A.C. 235.600.12(B).

123. In order to implement statutory provision, 42 U.S.C. 1396a(a)(8), the CMS implemented regulations which provide that New Mexico and other states must

“[f]urnish Medicaid promptly to recipients without any delay caused by the agency’s administrative procedures,” 42 C.F.R. § 435.930(a), and that New Mexico and other states must “[c]ontinue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.” 42 C.F.R. § 435.930(b).

124. CMS has interpreted 42 C.F.R. §435.930(b) and 42 U.S.C. §1396a(a)(8), upon which it is premised, to require that states independently determine each recipient’s eligibility on ex-parte basis prior to the termination of Medicaid.

125. Upon information and belief, the defendants have never promulgated state regulations requiring caseworkers to conduct ex-parte reviews of eligibility prior to termination of health coverage, but instead have reprogrammed the Department’s computer to automatically close children’s Medicaid and Family Planning Medicaid cases after six months. Family Planning Medicaid cases automatically close after twelve months.

126. Pursuant to 42 C.F.R. §§ 431.206 and 431.210, defendants must provide a client with an adequate notice before closing his/her Medicaid case.

127. In order to be adequate the notice must contain: a) a statement of the action the Department plans to take; b) the reason for the action; c) the specific regulations that support the action; d) an explanation of the individual’s right to request a fair hearing; and e) an explanation that the individual might be entitled to continued benefits if he/she requests a hearing within thirteen days of the date of the notice.

128. Additional protections are embedded in the state regulations, which the Department has promulgated and which delineate the process and standards that the defendants must

follow whenever a caseworker determines that he/she should close a family's Medicaid case.

129. Before the Department takes any action to close a family's Medicaid case, it must send the family an adequate adverse action notice. The notice must be in writing and must include: a) a statement of the action that the Department plans to take; b) the reasons for the intended action; c) the specific regulations supporting the action; d) an explanation of the individual's right to request a fair hearing; and e) the circumstances under which an individual may request continued benefits pending the hearing. See 8 N.M.A.C. 100.180.10(B) and(C).

130. When all documentation has been turned in, the Department has forty-four days to process Medicaid recertification determinations in order to assure that the family continues to receive health coverage by the forty-fifth day. If the forty-fourth day falls on a weekend, the Department must process the case by the Friday before the weekend. See 8 N.M.A.C. 100.130.11(B).

131. If the Department receives recertification documentation that it considers to be incomplete or questionable, the caseworker must promptly write the family a letter advising why the information is questionable or incomplete and what information is still needed. See 8 NMAC 100.130.8(A) (2)(b).

132. If a Medicaid family requests a fair hearing, the family's caseworker, the caseworker's supervisor or other ISD staff member must complete and turn in a Summary of Evidence within seven days of the date that the family requests the fair hearing. See 8 N.M.A.C. 100.970.10(F).

CLAIMS FOR RELIEF

FIRST CLAIM - VIOLATION OF PROVISIONS OF THE FEDERAL MEDICAID
ACT

133. Plaintiffs incorporate by reference all the preceding allegations as if set forth herein.

134. Plaintiffs bring their first claim pursuant to 42 U.S.C. §1983.

135. Defendants have violated plaintiffs' rights under 42 U.S.C. § 1396a(a)(3) and § 1396a(a)(8), and their implementing regulations, particularly 42 C.F.R. § 435.930, and related interpretations, by failing to provide plaintiffs with adequate notice of adverse actions, failing to take prompt action on their Medicaid cases, failing to provide health coverage when plaintiffs remained eligible for it, and terminating health coverage without a factual determination, *ex parte* or otherwise, of continuing eligibility.

SECOND CLAIM- VIOLATION OF FEDERAL CONSTITUTIONAL DUE PROCESS

136. Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

137. Plaintiffs bring their second claim pursuant to 42 U.S.C. § 1983.

138. Plaintiffs, who have all been determined eligible for Medicaid health coverage, have a property interest protected by the due process clause of the United States Constitution, in the continued receipt of that health coverage.

139. Defendants have threatened, impaired, and terminated plaintiffs' property interest without the process that is due, in that they have not provided plaintiffs with a fair opportunity to establish the factual bases of their continuing eligibility prior to terminating coverage, have not provided adequate notices with respect to the recertification process, have not taken prompt action on their Medicaid cases, and have not based the continuing eligibility determinations as to the plaintiffs on a factual

determination of whether plaintiffs continue to meet the eligibility elements of the Medicaid program as established by the legislative branch of the federal and state governments, in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM-VIOLATION OF STATE DUE PROCESS CLAUSE

140. Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

141. Article 2 §18 of the New Mexico State Constitution guarantees the plaintiffs due process of law.

142. Plaintiffs, who have all been determined eligible for Medicaid health coverage, have a property interest protected by the due process clause of the New Mexico Constitution, in the continued receipt of that health coverage.

143. Defendants have threatened, impaired, and terminated plaintiffs' property interest without the process that is due, in that they have not provided plaintiffs with a fair opportunity to establish the factual bases of their continuing eligibility prior to terminating coverage, have not provided adequate notices with respect to the recertification process, have not taken prompt action on their Medicaid cases, and have not based the continuing eligibility determinations as to the plaintiffs on a factual determination of whether plaintiffs continue to meet the eligibility elements of the Medicaid program as established by the legislative branch of the federal and state governments, in violation of the due process clause of the New Mexico Constitution.

FOURTH CLAIM- VIOLATION OF THE STATE
INHERENT RIGHTS CLAUSE

144. Plaintiffs incorporate by reference all of the preceding allegations as if fully set forth herein.

145. Article 2 § 4 of the New Mexico State Constitution guarantees “[a]ll persons are born equally free and with certain natural, inherent, and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining happiness.”

146. Plaintiffs, who have all been determined eligible for Medicaid health coverage, have a property and happiness interest protected by the inherent rights clause of the New Mexico Constitution, in the continued receipt of that health coverage.

147. Defendants have threatened, impaired, and terminated plaintiffs’ property and happiness interest in that they have not provided plaintiffs with a fair opportunity to establish the factual bases of their continuing eligibility prior to terminating coverage, have not provided adequate notices with respect to the recertification process, have not taken prompt action on their Medicaid cases, and have not based the continuing eligibility determinations as to the plaintiffs on a factual determination of whether plaintiffs continue to meet the eligibility elements of the Medicaid program as established by the legislative branch of the federal and state governments, in violation of the inherent rights clause of the New Mexico Constitution.

FIFTH CLAIM- VIOLATION OF STATE REGULATIONS

148. Plaintiffs incorporate by reference all of the preceding allegations as if set forth herein.

149. The Human Services Department has an obligation to abide by all federal and state laws that govern the Department. Defendant Secretary Hyde is responsible for assuring that this happens. NMSA §9-8-6 (1978).

150. The Secretary may promulgate regulations necessary to carry out the duties of the Department. *Id*

151. The Department has an obligation to abide by the regulations that the Secretary promulgates.

152. The Department regulations mandate that caseworkers process Medicaid recertifications in forty-four days. See 8 N.M.A.C. 100.130.11(B) (1). Plaintiff Valdez's and plaintiff class members' recertifications were not processed within forty four days.

153. Department regulations mandate that caseworkers "shall inform the client promptly and in accord with state and federal regulations of actions relating to an application or ongoing case." 8 NMAC 100.180.7. The computer-generated notice that defendants mail to the plaintiffs does not promptly or accurately inform them of actions related to their ongoing cases.

154. Regulations require that the Department send a family an adequate adverse action notice prior to taking any action to close a case. 8 N.M.A.C. 100.180.10(B) and (C). In order to be adequate, the notice must contain: a statement of the action that the Department plans to take; the reason for the intended action; the specific regulations supporting the actions; and an explanation of the individual's right to request a fair hearing. Defendants violated plaintiffs' rights under this section because the notices they sent out, advising that the Department was closing the Medicaid cases, do not accurately explain the reason for the Department's action.

155. Anytime a caseworker receives information that s/he considers incomplete or inadequate, s/he must promptly write the client a letter and explain what information is still needed. See 8 NMAC 100.130.8(A)(2)(b). However, because the Department is closing Medicaid cases without any sort of individualized review, caseworkers are not complying with this section.

156. Department regulations mandate that a caseworker complete a summary of evidence within seven days after a individual requests a fair hearing. See 8 N.M.A.C. 100.970.10(F). For plaintiff class members who requested a fair hearing, the Department's caseworkers are not complying with this section.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

157. Plaintiffs are Medicaid recipients and are therefore not required to exhaust administrative remedies.

158. Plaintiffs are asking the court to order injunctive and declaratory relief. Since these remedies are not available at the administrative level, it would be fruitless to require exhaustion of administrative remedies.

159. It would also be fruitless to require plaintiffs to exhaust administrative remedies because the defendants' caseworkers are not following the regulations governing the procedures that they must follow regarding the administrative remedies.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this court:

1. Certify the plaintiff class;
2. Declare that the auto-closure policy, described in paragraphs 10 - 38, violates 42 U.S.C. § 1396a(a)(8) and 42 U.S.C. §1396a(a)(3) and their implementing

- regulations and binding federal interpretations, and the due process clause of the Fourteenth Amendment to the United States Constitution.
3. Declare that the auto-closure policy, described in paragraphs 10 - 38, violates the due process clause and inherent rights clause of the New Mexico Constitution, as well as state regulations.
 4. Preliminarily and permanently enjoin defendants from operating the auto-closure policy and from continuing to violate the federal laws and constitution as specified herein.
 5. Preliminarily and permanently enjoin defendants from operating the auto-closure policy and from continuing to violate the state constitution and regulations as specified herein.
 6. Award plaintiffs reasonable costs and attorneys fees.
 7. Enter such other and further relief as the court deems just.

Respectfully submitted

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Certificate of Service

I certify that a true and correct copy of the foregoing pleading was mailed and emailed to opposing counsel on the 12th day June, 2006.

Gail Evans