

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

CODY FLACK,
SARA ANN MAKENZIE,
MARIE KELLY, and
COURTNEY SHERWIN,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
HEALTH SERVICES and
LINDA SEEMEYER, in her official capacity
as Secretary of the Wisconsin Department of
Health Services,

Defendants.

Case No. 3:18-cv-00309-wmc
Judge William Conley

PLAINTIFFS' MOTION TO MODIFY PRELIMINARY INJUNCTION

Plaintiffs Cody Flack, Sara Ann Makenzie, Marie Kelly, and Courtney Sherwin (the “Named Plaintiffs”), on behalf of themselves and the proposed class they seek to represent, *see* Pls.’ Mot. for Class Cert. at 1 [Dkt. No. 89] (collectively, “Plaintiffs”), respectfully move this Court to modify the preliminary injunction entered by this Court on July 25, 2018, Op. & Order 39 (the “Preliminary Injunction”), to fully enjoin Defendants Wisconsin Department of Health Services (“DHS”) and DHS Secretary Linda Seemeyer (“Defendants”) from enforcing Wis. Admin. Code § DHS 107.03(23)-(24) (the “Challenged Exclusion”) against any Wisconsin Medicaid beneficiary during the pendency of this lawsuit.

Specifically, Plaintiffs request that the Court enter an order that:

(1) fully enjoins Defendants’ enforcement of the Challenged Exclusion during the pendency of this litigation;

(2) directs Defendants to notify all appropriate DHS staff and all managed care organizations that administer Wisconsin Medicaid of the injunction within 10 days of the Court's order;

(3) directs Defendants, within 10 days of the order, to update DHS's web page, "LGBT Health-Transgender Persons," www.dhs.wisconsin.gov/lgbthealth/transgender.htm, which now states, "Currently, Wisconsin BadgerCare, BadgerCare Plus, Medicaid, and State of Wisconsin employee health insurance (ETF) do not cover gender reassignment surgery or drugs related to gender reassignment or hormone replacement," to indicate that, pursuant to the preliminary injunction entered in this case, Wisconsin BadgerCare, BadgerCare Plus, and Medicaid (collectively, "Wisconsin Medicaid") cover such services when medically necessary;

(4) directs Defendants to take prompt, reasonable steps to identify all Wisconsin Medicaid beneficiaries denied coverage for gender-confirming care pursuant to the Challenged Exclusion by Defendants and/or one of the participating managed care organizations since January 1, 2018, and to notify those affected individuals within 30 days of the order of the injunction and their right to request reconsideration of their denied requests by DHS and/or their managed care organization.

Considering the irreparable harm that the Proposed Class is suffering as a result of Defendants' ongoing enforcement of the Challenged Exclusion—and because many of the issues pertinent to this Motion have previously and extensively been briefed by the parties and considered by this Court in connection with the initial Motion for Preliminary Injunction—Plaintiffs request that the Court set an expedited briefing schedule on this motion.

In support of this motion, the Named Plaintiffs submit the accompanying Memorandum of Law in Support of Plaintiffs' Motion to Modify Preliminary Injunction.

Dated: October 25, 2018

Respectfully submitted,

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