

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

v.

Case No. 18-CV-0309

WISCONSIN DEPARTMENT OF
HEALTH SERVICES and
ANDREA PALM, in her official capacity
as Secretary-Designee of the Wisconsin
Department of Health Services,

Defendants.

**DEFENDANTS' PROPOSAL IN RESPONSE TO
THIS COURT'S AUGUST 16, 2019 ORDER
AS TO SCOPE OF PERMANENT EQUITABLE RELIEF**

Defendants Wisconsin Department of Health Services (DHS) and Andrea Palm, in her official capacity as DHS Secretary-Designee (collectively "Defendants"), respond to this Court's Order dated August 16, 2019 to submit a proposal (in the event the parties could not agree on a joint proposal) on the scope of permanent equitable relief.

In light of this Court's summary judgment decision, Defendants propose that the following declaratory judgment is appropriate:

For the reasons stated in the Court's August 16, 2019 Opinion and Order (Dkt. 217), it is ORDERED that the Challenged Exclusion (Wis. Admin. Code §§ DHS 107.03(23)–(24), 107.10(4)(p)), is hereby declared unconstitutional, null and void under Section 1577 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; the Medicaid Act's availability requirement, 42 U.S.C. § 1396a(a)(10)(A); the Medicaid Act's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B); and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

For the reasons set forth in Defendants' Brief in Support of Proposal for Permanent Equitable Relief (filed herewith), it is Defendants' position that declaratory relief is the only proper permanent equitable remedy.

Notwithstanding that position, if a permanent injunction is issued, Defendants propose the following, in addition to the proposed declaratory judgment:

It is FURTHER ORDERED that Defendants are enjoined from enforcing the Challenged Exclusion (Wis. Admin. Code §§ DHS 107.03(23)–(24), 107.10(4)(p)).

Dated this 6th day of September, 2019.

Respectfully submitted,

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