IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. _____

VALENTIN SOSKIN, BEI DEI HOWE, EVA ROSENTHAL, VATCHAGAN TATEVOSIAN, GINDA K. GELFAND, YAKOV GELFAND, DUBALE SHIBESHI, and SARIN PERLMAN, on their own Behalf and on Behalf of All others Similarly Situated,

Plaintiff,

vs.

KAREN REINERTSON, In her official capacity as Executive Director of the Colorado Department of Health Care Policy And Financing,

Defendant.

CLASS ACTION COMPLAINT FOR DECLARATORY AND EQUITABLE RELIEF

PRELIMINARY STATEMENT

1. Plaintiffs bring this action on behalf of themselves and all others similarly situated to challenge the provisions of Colorado Senate Bill 03-176 ("SB 03-176") that terminate full-scope Medicaid eligibility for lawfully present immigrants solely on the basis of their status as non-citizens and to challenge defendant's implementation of SB 03-176 without (a) determining whether plaintiffs and the class members remain eligible for Medicaid even under the terms of SB 03-176; and (b) providing plaintiffs and plaintiff class members timely and adequate pre-termination notice and pre-termination administrative fair hearings. Under this new law, Colorado plans to terminate Medicaid, effective April 1, 2003, for some 3500 legal immigrants

who are too poor to afford medical care, while continuing to provide Medicaid to other low-income Colorado residents.

2. For the first time in Colorado history, the state has acted to terminate, based on their non-citizen status, the Medicaid eligibility of individuals who are eligible for this assistance under federal law. By excluding lawful immigrants from Medicaid coverage, SB 03-176 establishes an invidious and unlawful classification between identically situated citizens and lawful immigrants, in violation of the Equal Protection Clause of the United States Constitution.

3. In its frantic haste to implement the new law, enacted on March 5, 2003, the State plans to terminate the Medicaid of thousands of individuals without first following legally required procedures to ensure that it does not erroneously terminate those who would still remain eligible and provide timely and adequate notice of the proposed termination and opportunity for a fair hearing. By terminating the Medicaid benefits of thousands of lawfully present immigrants without: (1) determining whether they continue to be eligible for Medicaid even under the terms of SB 03-176; (2) providing timely and adequate notice so that they may know what steps to take to establish or maintain eligibility; and (3) providing the opportunity to request an administrative hearing to demonstrate that the proposed reductions of eligibility ought not apply in their specific cases, defendant violates the Medicaid Act and implementing regulations as well as the Due Process clause of the United States Constitution.

4. Plaintiffs seek a declaratory judgment that the provisions of SB 03-176 that terminate full-scope Medicaid eligibility for lawful immigrants solely on the basis of their status as non-citizens violates the Equal Protection and Due Process Clauses of the United States Constitution; and that the challenged implementation policies and practices violate: (1) 42 U.S.C.

§ 1396a(a)(8) and 42 C.F.R. § 435. 930(b), which prohibit the termination of an individual's Medicaid benefits when that individual becomes ineligible for one category of Medicaid, without first determining whether that individual is eligible for Medicaid even under the terms of SB 03-176.; (2) 42 C.F.R. § 431.200 *et seq*., which requires the state agency or its delegate to provide timely and adequate notice of its intent to discontinue Medicaid benefits; and (3) 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. § 431.200, which require a state agency to grant an opportunity for an administrative hearing to any individual who seeks to contest an agency action that denies Medicaid services or eligibility.

5. Plaintiffs seek, *inter alia*, preliminary and permanent injunctions enjoining defendant from implementing the provisions of SB 03-176 that terminate full-scope Medicaid eligibility for lawfully present immigrants solely on the basis of their status as non-citizens. Plaintiffs further seek a preliminary injunction enjoining defendant from implementing SB 03-176 until such time as defendant (1) determines whether plaintiffs and the plaintiff class members may be eligible for Medicaid even under the terms of SB 03-176; (2) provides timely and adequate notice so that plaintiffs and the plaintiff class members may know what steps to take to establish or maintain Medicaid eligibility; and (3) provides the opportunity to request an administrative hearing so that plaintiffs and the plaintiff class members might demonstrate that the proposed reductions of eligibility ought not apply in their specific facts.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and has authority to hear this action pursuant to 42 U.S.C. § 1983.

7. Venue is proper in this Court pursuant to 28 U.S.C. §1391(e).

8. Declaratory and anci1lary relief is authorized pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure.

9. Injunctive relief is authorized pursuant to Rule 65 of the Federal Rules of Civil Procedure.

PARTIES

10. Plaintiff Valentin Soskin resides in Denver, Colorado.

11. Plaintiff Vatchagan Tatevosian resides in Denver, Colorado. .

12. Plaintiff Dubale Shibeshi resides in Denver, Colorado.

13. Plaintiff Ginda K. Gelfand resided in Denver, Colorado.

14. Plaintiff Yakov A. Gelfand resides in Denver, Colorado

15. Plaintiff Sarin Perlman resides in La Plata County, Colorado.

16. Plaintiff Eva Rosenthal resides in El Paso County, Colorado 80909.

17. Plaintiff Bie Die Howe resides in Denver, 80206.

18. Defendant Karen Reinertson is Executive Director of the Colorado Department of Health Care Policy and Financing (CHCPF), the single state agency designated to administer the Colorado Medical Assistance Program under Title XIX of the Social Security Act and Colorado statutes. As such she is responsible for general administration and supervision of the Colorado Medicaid Program and for the implementation of all changes to the Medicaid Program mandated by State law.

19. Defendant administers the Medicaid Program through individual county agencies in each, who operate under her direct supervision and control.

CLASS ACTION ALLEGATIONS

20. This is a class action brought by the plaintiffs, on their own behalf and on behalf of all other persons similarly situated, pursuant to Rules 23(a) and (b) (2) of the Federal Rules of Civil Procedure. The class is defined as follows:

> All immigrants living in Colorado whose Medicaid will be terminated or whose application for Medicaid will be denied as a result of the enactment and/or implementation of SB03-176.

21. Defendant's implementation of SB 03-176 presents questions of law and fact common to all plaintiffs and class members, including the constitutionality of SB 03-176 and the legality of defendant's policies and practices in terminating the Medicaid benefits of plaintiffs and proposed plaintiff class members under the Medicaid Act, 42 U.S.C. § 1983, and the United States Constitution.

22. The named plaintiffs are members of the above-defined class. There are no conflicts between the interests of the named plaintiffs and the class.

23. Defendant has terminated or is about to terminate Medicaid benefits for nearly 3,500 lawfully present immigrants residing in Colorado. The proposed class is, therefore, so numerous that joinder of all members would be impractical and impossible. Joinder is also impractical because members of the class lack the knowledge and financial means to maintain individual actions.

24. Common issues of law and fact predominate over any individual questions, and adjudication of the rights of the class is superior to other methods of adjudicating the controversies concerning the defendant's policy and practice of terminating Medicaid benefits to

the class members. Adjudicating the issues through means other than a class action could risk placing inconsistent obligations on the defendant, varying interpretations of the common rights of the class members, and repetitive analysis and redress of a class-wide problem.

25. The claims of the named plaintiffs are typical of the claims of the class in that each is an immigrant whose Medicaid benefits has been or imminently will be terminated by defendant because of the named plaintiffs' alienage, pursuant to SB 03-176, or by operation of the defendant's implementation of SB 03-176.

26. The named plaintiffs will fairly and adequately protect the interests of the class they represent. They are represented by public interest law organizations and law firms experienced in constitutional law, federal practice and procedure, class action litigation, and the law governing immigration and Medicaid.

27. The defendant and her agents, employees, and successors in office have acted and will act on grounds generally applicable to the class that the plaintiffs represent, thereby making appropriate injunctive or declaratory relief with respect to the class as a whole.

28. The plaintiffs and the proposed plaintiff class are directly and beneficially interested in the defendant's performance of their mandatory duty to comply with the applicable provisions of the United States Constitution and the Medicaid Act and its regulations. The plaintiffs and the class members are directly and beneficially interested in and adversely affected by the defendant's termination of Medicaid benefits, and the terminations imminently threaten substantial and irreparable injury.

STATUTORY AND REGULATORY FRAMEWORK

The Medicaid Act

General Applicability and Coverage

29. Medicaid is a jointly funded state and federal program that provides medical services to low-income persons pursuant to Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq*. See *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 502 (1990). States are not required to participate in Medicaid. When a state chooses to participate, it thereby receives federal matching funds for its Medicaid program from the federal government. A state that chooses to participate must comply with the requirements of the federal Medicaid Act and the regulations governing state Medicaid programs promulgated by the U.S. Department of Health and Human Services (HHS). See *Schweiker v. Gray Panthers*, 453 U.S. 34, 37 (1982).

30. The federal Medicaid program requires a state to establish or designate a single state agency that is responsible for administering or supervising the administration of the state's Medicaid program. 42 U.S.C. § 1396a (a)(5).

31. Colorado has chosen to participate in the Medicaid program, and it accepts federal matching funds for its program expenditures. C.R.S. 26-4-105. Colorado has designated CHCPF as the single state agency that is responsible for administering and supervising the administration of Colorado's Medicaid program. Rulemaking authority for Medicaid is vested in the Colorado Medical Services Board (MSB), a bi-partisan body created by statute and appointed by the Governor with the consent of the Senate. C.R.S. 25.5-1-303.

32. As a condition of participating in the federal Medicaid program, a state must submit to the federal Department of Health and Human Service (HHS), a state Medicaid plan that fulfills the requirements of the Act. 42 U.S.C. § 1396a(a).

Redeterminations

33. Pursuant to 42 U.S.C. § 1396a(a)(8) and 42 C.F.R. § 435.930(b), States are required to continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible.

Notice and Administrative Review

34. Applicants for and recipients of Medicaid have the right to an administrative hearing whenever the state agency "takes action to suspend, terminate, or reduce" services or eligibility. See 42 U.S.C. § 1396a (a)(3); 42 C.F.R. § 431.200 *et seq.*; see also 42 C.F.R. § 431.201.

35. The state Medicaid agency's fair hearing system "must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970), and any additional standards specified in this subpart." 42 C.F.R. § 431.205.

36. The state Medicaid agency must "issue and publicize its hearing procedures" which "inform every applicant or recipient in writing – (1) Of his right to a hearing; (2) of the method by which he may obtain a hearing; (3) That he may represent herself or use legal counsel, a relative, a friend or other spokesman." 42 C.F.R. § 431.206. The notice to recipients must be provided ten days prior to the date of the adverse action. 42 C.F.R. § 431.211.

The Prohibitions of SB 03-176

37. For decades, Colorado like all other states provided federal Medicaid to lawful permanent residents and most other lawfully present immigrants on the same basis as U.S. citizens

38. On August 22, 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 ("PRWORA") into law. Under PRWORA, federally supported Medicaid is available to "qualified" immigrants who entered the U.S. before August 22, 1996. There is a "five-year bar" on these services for "qualified" immigrants who entered the U.S. on or after August 22, 1996, with some exceptions. Federal Medicaid is available for these immigrants once they have completed the five-year bar.

39. After the passage of PRWORA, Colorado continued to provide Medicaid benefits to all immigrants who remained eligible for federal Medicaid participation.

40. Colorado's non-discriminatory approach ended abruptly on March 5, 2003 when SB 03-176 was passed by the legislature and signed into law by Governor Bill Owens. The state legislation terminated Medicaid eligibility for most qualified immigrants even though they remain eligible under federal Medicaid law

41. In particular, SB 03-176 terminates Medicaid coverage for most qualified immigrants who entered the United States *before* August 22, 1996 who are currently receiving Medicaid benefits, as well as most qualified immigrants who entered the U.S on or after that date and have completed the federal five-year bar.

42. On March 14, 2003, the Colorado Medical Services Board adopted Emergency Rules #MSB-03-02-11-A. The Emergency Rule implements SB03-176 by amending Colorado's Code of Regulations to delete Medicaid coverage for immigrants living in Colorado, based solely on their status as non-citizens, subject to a few exceptions.

43. PRWORA mandates eligibility for some "qualified" immigrants. 8 U.S.C. § 1612(b)(2). The federal statute requires states to provide full-scope Medicaid to: refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, during the first seven years after the individual was granted the status, and to Amerasians during the first five years after being admitted with this status. The federal statute also requires states to provide full-scope Medicaid to lawful permanent residents who have worked for 40 quarters, or who can be credited with 40 quarters of work; honorably discharged veterans; persons on active duty in the Armed Forces of the United States; the spouse or unmarried dependent child of a veteran or serviceperson; certain American Indians, and those individuals who are receiving Supplemental Security Income benefits (in states, such as Colorado, that link Medicaid eligibility to SSI). 8 U.S.C.§ 1612 (b)(2).[1]

44. Nothing in PRWORA compels or requires a state to deny full-scope Medicaid benefits, as Colorado has done, to qualified immigrants who were in the U.S. on August 22, 1996, or who entered the U.S. on or after August 22, 1996 and have resided in the United States in a qualified status for five or more years.

[1]In 2002, Congress established a new category of non-citizens, "victims of trafficking" who, while not listed among the "qualified" immigrants, are eligible for federal benefits at least to the same extent as refugees. The Victims of Trafficking and Violence Protection Act of 2000, Publ L. No. 106-386 § 107 (Oct. 28, 2000).

FACTUAL ALLEGATIONS COMMON TO THE CLASS

45. Before April 1, 2003, qualified immigrants who entered the U.S. before August 22, 1996 and those who entered the U.S. on or after that date and who have been in qualified immigrant status for five or more years, along with other categories, were eligible for Medicaid on the same terms and conditions as U.S. citizens residing in Colorado. According to the fiscal note for SB 03-176, nearly 3,500 immigrants living in Colorado who meet this description currently receive Medicaid benefits.

46. On February 24, 2003, before SB 03-176 had even been approved by the legislature, CHFCP issued Agency Letter HCPF 03-001. This letter provides information and instructions to the county departments of human/social services regarding the agency's plans for implementing SB 03-176.

47. According to HCPF 03-001, CHFCP distributed a computer-generated report to all county Social Services Directors identifying those individuals with an alien registration number recorded in the state agency's computer system. Starting with the immigrants listed on the computer-generated report, county agencies are directed to pull all associated case files and check for verification of recipients' status. If the case file includes current immigration verification that verifies Medicaid ineligibility, the Agency Letter directs county technicians to complete an *ex parte* determination and terminate the individual's Medicaid coverage. It directs the county officials to carry out this termination without first providing the client any opportunity to provide additional information.

48. In order to determine if an immigrant has forty quarters of work history, Agency Letter HCPF 03-001 directs counties to request a work history for the individual immigrant from the State Verification and Exchange System.

49. On information and belief, the State Verification and Exchange System does not contain up-to-date work history data through March 2003. For purposes of determining whether an individual has credit for 40 quarters of work under PRWORA, an individual may be credited with quarters of work performed by his or her spouse or by his parents while the individual was a minor. 8 U.S.C. § 1645 . Defendant's Agency Letter does not require counties to inquire about the work histories of the parents or spouses of those immigrants whose Medicaid eligibility is being redetermined.

50. HCPF 03-001 does not require counties to consult the work histories of the parents or spouses of those immigrants appearing on the state's computer-generated report, nor does it provide an opportunity for recipients to provide information showing that they should be credited for quarters of work not reflected in the system.

51. According to HCPF 03-001, agencies are supposed to send "redetermination packets" to all those immigrants "with an unknown immigration status." The redetermination form included in the packet fails to ask whether the immigrant has worked or can be credited with forty quarters of work history. See HCPF 03-001, Appendix B.

52. The redetermination form also asks recipients to verify their immigration status by sending the Agency a copy of their "INS card." As reflected on the list of acceptable immigration documents distributed to HCPF to its eligibility offices, the documentation of an individual's immigration status may take the form of a stamp in a passport, a code on a form , a

court order, or a variety of other documents not properly described as a 'card.' This instruction does not adequately communicate that the recipient should send a copy of the range of documents that might serve as proof of his or her immigration status.

53. Attachments to the Agency letter advise county offices regarding the documents that may be presented as proof of immigration status. These instructions omit documents showing membership in certain mandatory coverage categories, and fail to instruct county offices to accept an INS lost document receipt.

54. According to HCPF 03-001, if the redetermination packet is not returned to the county agency within 10 business days, a state developed Notice of Medicaid Closure must be sent to the immigrant along with a second redetermination form. *See* HCPF 03-001, Appendix E. The notice does not provide the legally required detailed explanation of the reason for termination. The form notice fails to provide information about the right to a fair hearing and the circumstances under which Medicaid benefits will be continued pending the result of that hearing.

55. Pursuant to HCPF 03-001, Denver County sent several variations of notice to members of the plaintiffs class to implement SB 03-176. The notices include some generic text and one of several formulations of a reason for the termination, apparently based on whether the agency concluded that a person was ineligible because she was (1) a legal permanent resident without the 40 qualifying quarters of work history ("40 quarters notice");(2) within the group of immigrants limited to seven years of Medicaid ("7 year notice"); or (3) did not provide verification of immigration status on the Redetermination form ("failure to verify").

56. These notices do not contain an adequate explanation of proposed action and the basis for the action. The notices fail to provide the immigration status information for the individual that the agency relied on for its decision to terminate. Nor do the notices provide sufficient and accurate information about eligibility categories to enable plaintiffs to determine whether the agency's decision is correct. For example, the "40 quarters notice" partially describes one eligibility category - that of Lawful Permanent Resident (LPR) with 40 qualifying quarters of work history. It refers to the 40 quarters test but does not say that CHCPF has concluded that the recipient is a lawful permanent resident. The agency may have incorrectly applied this category to someone with another status altogether, to an individual who qualifies by virtue of being on active duty with U.S. Armed Forces, or to person who has become a naturalized citizen.

57. The notice does not inform an individual about other potential bases for eligibility. It fails to clearly explain that Medicaid will be terminated. The title only explains that some unspecified action will be taken, and the first sentence states that the action may first sentence indicates that the action affects "cash assistance and/or medical benefits." The "reason" indicates that the person "no longer qualif[ies] for Medicaid" but this does not clearly explain to a lay person that Medicaid will stop. The only reference to termination is buried further down in the notice explaining, "Further Appeal of this Notice of Medicaid Closure may be directed to an appropriate state or federal court."

58. The notices provide misleading and confusing information about fair hearing rights. For example, the second sentence and the statement of the reverse side ("Your Right to Appeal") states that the individual can appeal if she disagrees with the decision. However, other

text in the "40 quarters notice" provides that the individual can request an administrative appeal only if she or her parents or spouse have 40 quarters of work history. Similarly, the "7 year notice" provides that the individual can request an administrative appeal "only if you believe that you have been in the United States for less than 7 years.") (emphasis in original).

59. Plaintiff Vatchagan Tatevosian received a "Notice of Proposed Action" from Denver County Department of Social Services with a March 19, 2003 mail date. In addition to the boilerplate language which states, *inter alia*, that "[t]his action affects your cash assistance and/or medical benefits", the notice provides that the effective date of the proposed action is March 31, 2003 and gives the following reason. "The household member(s) listed above lost their Medicaid because a new state law changed the citizenship requirements for the program. The person (s) listed above do not meet the new citizenship requirements. 8.100.53 10 CCR-250510." Among other defects, this notice fails to identify the immigration status for Mr. Tatevosian that the agency used to find him ineligible, fails to provide any information about the "new citizenship requirements" that would enable Mr. Tatevosian to test the accuracy of the agency's decision as applied to his situation.

60. Plaintiff Sarin Perlman received an undated notice on March 21, 2003 from the La Plata County Department of Social Services informing her that her Medicaid case would be closed effective March 30, 2003. The reason given was: "The household member(s) listed above lost their Medicaid because a new state law changed the citizenship requirements for the program. The person(s) above did not provide the required verification of their immigration status to complete the redetermination of eligibility. 8.100.7 and 8.10053A (10 CCR-2502-10)." Among other defects, this notice fails to identify the immigration status used by the agency to

find Ms. Perlman ineligible, fails to provide information about the new eligibility categories so that Ms. Perlman can test the accuracy of the agency's decision, fails to inform her that she can avoid termination by providing the requested verification or show good cause by the effective date of the action (as provided by 8.100.7), and fails to provide any information whatsoever about fair hearing rights.

61. Defendant has denied or imminently will deny Medicaid benefits to plaintiffs and members of the proposed plaintiff class pursuant to SB 03-176, on the basis of their status as non-citizens or by operation of the Defendant's unlawful practices and procedures.

FACTS OF INDIVIDUAL NAMED PLAINTIFFS

PLAINTIFF VALENTIN SOSKIN

62. Plaintiff Valentin Soskin is a 71-year-old refuge from Belarus. He is a Lawful Permanent Resident of the United States and has been on Medicaid since approximately 1994.

63. Mr. Soskin has heart problems, including angina and arrhythmia. Two thirds of his stomach has been removed for severe ulceration, and one of his kidneys has been removed because of cancer believed to be the result of radiation exposure to he and his family from the Chernobyl accident in the former Soviet Union.

64. Mr. Soskin suffers from severe depression resulting from the early death of his daughter from cancer. He has suicidal thoughts and takes antidepressant medication. Without the medication he fears he will be suicidal again and need to be admitted to a mental institution. He sees a psychotherapist.

65. Mr. Soskin continues to suffer from arrhythmia, a condition that causes his heart to stop beating at times. He needs heart bypass surgery but his health is too fragile for the procedure.

66. Mr. Soskin has hypertension and as a result suffered a stroke in December 2002, that left him partially paralyzed on the left side. It also caused some speech loss and affected his swallowing. Mr. Soskin was in a nursing home from December 5, 2002 until February 13, 2003 to recover from the stroke.

67. Since his release from the nursing home, Mr. Soskin receives Home and Community Based Services (HCBS) through Medicaid. An HCBS aide comes two hours a day to clean the house, do laundry and shopping, and take Mr. Soskin out in a wheelchair. A skilled aide comes three days a week and helps him bathe. A nurse visits to monitor his medication. He has a pull cord for emergencies.

68. Mr. Soskin's income is $589 per month through the OAP program, and his wife receives $589 a month through SSI and OAP. They have no other income. Their rent is $327 per month, and they pay $308 for a meal service. After paying these expenses, Mr. Soskin has $271.50 a month left over. This amount is inadequate to pay for medications and HCBS services. Mr. Soskin receives Medicare, but that does not pay for prescription drugs or long term care services.

69. Mr. Soskin's wife cannot care for him. She has had five surgeries for breast cancer during the past year, is on chemotherapy, is often weak, cannot eat, and feels terrible. Mr. Soskin has no other family members who can help him.Without Medicaid, Mr. Soskin would lose HCBS and would be at risk of losing his apartment, which he is able to maintain only

because he receives HCBS. He fears that without the medications covered by Medicaid, he will suffer a heart attack, have another stroke and/or suffer from severe and potentially life-threatening depression.

PLAINTIFF VATCHAGAN TATEVOSIAN

70. In 1991 Mr. Tatevosian immigrated to the United States from Uzbekistan and was admitted as a parolee. He became a Lawful Permanent Resident in 1992.

71. Mr. Tatevosian has received Medicaid since 1992. He received a "Notice of Proposed Action" with a mail date of March 19, 2003, telling him that he will lose his Medicaid benefits because a new state law changed the citizenship requirements for the program, and he does not meet them.

72. Mr. Tatevosian suffers from asthma, for which he must use oxygen at night. He has diabetes, suffers some diabetes-related vision loss, and he has an "on fire" sensation in his hands and feet. He has been hospitalized for diabetes at least eight times, the last time in 2002. As a result of an accident six years ago, he lost the use of his right hand and has had five operations to try to repair it. Mr. Tatevosian has a continuing need for surgery. He also takes medication for high blood pressure and has some memory loss.

73. Mr. Tatevosian receives $589 a month from the Old Age Pension program, and his rent is $500 a month. He did receive $270 a month through the Home Care Allowance, but just received a notice with a mailing date of March 17, 2003 informing him that the amount will be reduced by 33%. He uses his Home Care Allowance to pay someone to help him bathe, shop, clean the house, and perform other necessary tasks.

74. As a recipient of an Old Age Pension Program benefit, Mr. Tatevosian might in the future be eligible for a limited state-funded medical program with significantly reduced benefits. However, neither the State nor the County have provided him with any information about whether or when he would be eligible for this coverage. The benefits in this state-funded program are limited and not equivalent to Medicaid, and the benefits in this program may be reduced further. Mr. Tatevosian understands that it is very difficult to find a doctor who participates in this limited state program. Since the state-funded program does not pay for long-term care services, he will not be able to receive the long-term care that he needs.

75. Mr. Tatevosian cannot afford to pay for doctors or other medical care. He has no other income or family members who can help him. Mr. Tatevosian fears that if he loses Medicaid and cannot get medications or visit his doctor, he will need to be hospitalized and will die.

PLAINTIFF DUBALE SHIBESHI

76. Dubale Shibeshi is 60 years old and resides in a long term care facility. He immigrated to the United States from Ethiopia and is currently a lawful permanent resident.

77. Mr. Shibeshi receives Medicaid. He obtained a job working security at DIA. In July 2002 Mr. Shibeshi had a stroke at work. Following rehabilitation he moved to a nursing home where he has since remained.

78. As a result of the stroke, Mr. Shibeshi is paralyzed on his left side. He cannot walk, operate his wheelchair, cook or care for himself. He also has speech problems as a result of the stroke. Since arriving at Briarwood Health Care Facility, Mr. Shibeshi has had surgery to

remove pre-cancerous stomach tumors, and was on a feeding tube until recently. He still has the opening in his stomach in case the feeding tube needs to be replaced. Mr. Shibeshi takes about eight to ten medications a day. He has high blood pressure and suffers from depression.

79. On March 12, 2003, Mr. Shibeshi received a notice of eviction from his nursing home him that he will have to leave because of SB 03-176, unless he can pay $8,420 a month.

80. Medicaid has paid for Mr. Shibeshi's care and he has no money or resources to pay for his care.

81. Mr. Shibeshi has no place to go if he is evicted from his nursing facility.

PLAINTIFF GINDA K. GELFAND

82. Plaintiff Ginda K. Gelfand, immigrated to the United States as a refugee from Belarus in 1994 and became a Lawful Permanent Resident in 1995. She and her husband left Belarus because they are Jews and there was much anti-Semitism there. They also lived very near Chernobyl, close enough to be evacuated after the accident, and the environmental conditions were unbearable.

83. Mrs. Gelfand has received Medicaid since her arrival in the United States. She suffers from the following health problems. She had kidney cancer and her right kidney was removed three years ago. A month later she had a heart attack and heart surgery. Then during the summer of 2002, she became paralyzed from the waist down. She was hospitalized and then sent to a nursing home to recover. She stayed in the nursing home for two months and then returned home. She still has problems with numbness sometimes and when she is numb she cannot use the lower part of her body.

84. Mrs.Gelfand also has diabetes and hypertension. The muscles in her legs are deteriorating as a result of a muscle disease, and she is not able to walk much at all. In addition, her legs are swollen and she cannot put any weight on them. She also suffers from depression for which she takes medication. She visits her doctor every month and her cardiologist every two months.

85. When Mrs. Gelfand returned home from the nursing home she began receiving help at home. About two months ago, she became eligible for long term care and she now is on the Home and Community Based Services (HCBS) program. Through that program someone comes to help her four times a week for three hours at a time. The person helps with cooking, bathes her, shops for groceries, cleans the house, and takes her for a walk.

86. Mrs. Gelfand receives $589 a month from the Old Age Pension (OAP) Program. Her husband is also on the OAP program and receives the same. They own a small one-bedroom apartment for which they pay a total of $525 a month for mortgage and maintenance fees.

87. Mrs. Gelfand understands that because she receives Old Age Pension program benefits, she might at some time in the future be eligible for a limited state-funded medical program with significantly reduced health benefits. However, neither the State nor the County have provided any information to her concerning whether and when she would be eligible for the limited state funded coverage. The benefits in the state funded program are equivalent to Medicaid benefits and Mrs. Gelfand understands that they may be reduced further. She also understands that it can be difficult to find a doctor who participates in this program**.**

88. Mrs. Gelfand is very concerned that the stated funded program does not pay for long-term care services. She needs the long term care services that she receives through HCBS.

Her husband is unable to provide the care she needs. Without HCBS she will not be able to take care of herself. She does not have the money to pay for my medical care, medications, or HCBS services. If she loses Medicaid, Mrs. Gelfand will be completely helpless.

PLAINTIFF YAKOV A. GELFAND

89. Yakov A. Gelfand is the husband of Plaintiff Ginda K. Gelfand and immigrated to the United States with her. He too is a Lawful Permanent Resident. Mr. Gelfand has been on Medicaid since he arrived here. He needs medical treatment for a number of medical conditions. He has chronic high blood pressure (for which he was hospitalized hospital four times in Belarus). He had two heart bypass surgeries in 1997, and still takes heart medication. He also has a condition that makes his face crooked, and his right eye is affected. He suffers from depression and takes medication for that as well. He sees his primary care doctor once a month and his cardiologist every six months.

90. Mr. Gelfand receives $589 a month from the Old Age Pension (OAP) program. They own a small one-bedroom apartment for which they pay a total of $525 a month for mortgage and maintenance fees.

91. Mr. Gelfand understands that because he receives Old Age Pension program benefits, he might at some time in the future be eligible for a limited state-funded medical program with significantly reduced health benefits. However, neither the State nor the County have provided any information to him concerning whether and when he would be eligible for the limited state funded coverage. The benefits in the state funded program are limited and not equivalent to Medicaid, and Mr. Gelfand understands that the benefits in this program may be reduced further. He also understands that it is very difficult to find a doctor who participates in

this limited state program**.** Because the stated funded program does not pay for long-term care services, he will not be able to receive long-term care services if he needs them.

92. Mr. Gelfand does not have the money to pay for his medical care or his medications. If Mr. Gelfand loses Medicaid he will be completely helpless and probably will die. He believes he would be in the same position as a person left without any food or water.

PLAINTIFF SARIN PERLMAN

93. Plaintiff Sarin Perlman immigrated to the United States as a student from South Africa in 1986. She became a Lawful Permanent Resident in 1993. She received an M.S. degree in Special Education and worked here as an educational therapist as well as the director of a non-profit clinic serving people with learning disabilities. She is disabled as a result of a closed head brain injury she sustained in a motor vehicle accident on February 23, 1996. She is on SSDI; has been on Medicaid since 1997. She receives Home and Community Based Services (" HCBS") through Medicaid.

94. Ms. Perlman received an undated notice of termination of Medicaid benefits from La Plata County in the mail on Friday, March 21, 2003. The notice states that she is no longer eligible for Medicaid under a new state law because of her immigration status and that her benefits will terminate March 30, 2003. Immediately upon receiving the notice, Ms. Perlman participated in a discussion with her La Plata County case worker asking if there was any recourse.. The caseworker indicated that there was nothing that could be done because Ms. Perlman had fewer than 40 work quarters prior to her disabling event. It Ms. Perlman's understanding that there was no appeal from this decision.

95. Among the services that Medicaid currently provides for Ms. Perlman's are HCBS services, her Medicare Part A and B services, and her Telephone LifeLine.

96. Ms. Perlman's medical condition is such that she requires someone to be available to her on a 24 hour basis. HCBS services are a critical component of her care plan. Ms. Perlman has what is called symptomatic decompensation. She experiences very frequent seizure like spasms which cause temporary full to partial paralysis and can cause her to stop breathing. Initially after the accident she was having these episodes on a constant basis. She continues to have these episodes as often as on a daily basis. This in addition to problems with balance disorder and problems with cognitive function make it impossible for her to perform the basic activities of daily living independently.

97. HCBS provides Ms. Perlman with the following services. The caretakers intervene when she has a spasm and help her when she needs oxygen. The spasms vary in duration, intensity and frequency and without intervention can go on for many hours with numerous cessations in breathing. HCBS also assists her with feeding, bathing, hygiene and other activities of daily living.

98. Ms. Perlman has no income beyond SSDI ($657 a month) and food stamps ($139 a month). She is unable to pay for the services HCBS currently provides.

99. Ms. Perlman does not know what she will do if she loses her HCBS. She believes she is facing her own mortality and for her the loss of benefits will be life threatening.

PLAINTIFF EVA ROSENTHAL

100. Plaintiff Eva Rosenthal is 81 years old and lives in a nursing facility.

101. Mrs. Rosenthal immigrated to the United States from Germany and became a Lawful Permanent Resident in 1995. She began receiving Medicaid in June 2002 when she entered a nursing home.

102. Mrs. Rosenthal has Alzheimer's disease and has lost her mental capacity and experiences dementia. Mrs. Rosenthal's condition is now so poor that she has been placed in the locked, secured Alzheimer's Unit of the nursing facility, a unit reserved for patients who, like her, require additional care and confinement in order to prevent them from causing injury to themselves. Mrs. Rosenthal lacks all safety awareness and will roam on her own unless she is kept in a locked and secure environment. She is unable to cook, take medications, dress and bathe without the assistance of the staff at the nursing home.

103. Mrs. Rosenthal has been advised by her nursing facility that she will lose her Medicaid benefits as a result of SB 03-176 and she will have to leave the Care Center.

104. Mrs. Rosenthal has an income of $950 per month from a German pension. She has no other sources of income. The cost to keep her in the Care Center is approximately $4,500 per month which is much more than she can afford.

105. Forced relocation would be devastating to Mrs. Rosenthal. Her condition is now such that even a brief change in scenery is incredibly disorienting and upsetting. If Mrs. Rosenthal were forced to leave the nursing facility she has no other place to go where she can receive the professional and secure care that she requires.

PLAINTIFF BIE DIE HOWE

106. Plaintiff Bie Die Howe, 72 years old, resides in a nursing home. She is a Lawful Permanent Resident who immigrated to the United States with her husband, Tse-Cheng Chang,

from Hong Kong, China in the early 1990's. Mr. Tse-Cheng Chang . He is presently unemployed. He cannot speak English. .

107. Mrs. Howe has been in a comatose state since about June of 2001 as a result of a series of strokes, which were left unattended. She has been supported by Medicaid benefits at a nursing facility since June of 2001. Mrs. Howe's family has applied for Supplemental Social Security Benefits for her, but she has not yet been approved for them. As an LPR who has been here for more than five years and has credits for fewer than 40 work quarters, she will lose her Medicaid benefits because of SB 03-176.

108. The nursing facility served Mrs. Howe with a notice of eviction from the facility in she is unable to pay $8,420.00 a month. She is without family resources to pay for her nursing home needs. She has no other place to go and cannot care for herself. Her husband is unable to care for her. She is unable to live without public support.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

109. By denying or terminating Medicaid to plaintiffs solely on the basis of their alienage, defendant deprives plaintiffs and members of the class they represent of the equal protection of the law, in violation of 42 U.S.C. § 1983 and the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM FOR RELIEF

110. Defendant's failure to review the eligibility of plaintiffs and members of the class for other categories of Medicaid, prior to terminating their Medicaid benefits, pursuant to SB 03-

176, violates 42 U.S.C. § 1396a(a)(8) and implementing regulations, 42 C. F. R. § 435.930, as well as the due process clause of the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM FOR RELIEF

111. Defendant's failure to provide timely and adequate notice before terminating the Medicaid benefits of plaintiffs and plaintiff class members violates 42 U.S.C. § 1396a(a)(3) and implementing regulations, 42 C.F.R. § 431.200 *et. seq*. and the due process clause of the Fourteenth Amendment to the United States Constitution.

FOURTH CLAIM FOR RELIEF

112. Defendant's failure to grant plaintiffs and plaintiff class members an opportunity for a pre-termination administrative hearing violates 42 U.S.C. § 1396a(a)(3) and implementing regulations, 42 C.F.R.§ 431.200 and the due process clause of the Fourteenth Amendment to the United States Constitution.

REQUEST FOR RELIEF

WHEREFORE, plaintiffs respectfully request that this Court:

1. Certify the proposed class and order that this action be maintained as a class action pursuant to the Federal Rules of Civil Procedure 23;
2. Declare that the plaintiffs and the class they represent have been denied or are about to be denied or terminated from Medicaid benefits unlawfully, and through illegal practices and procedures in violation of the Equal Protection Clause of Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1396a (a) (3) and (8) and implementing regulations, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. Enjoin preliminarily and then permanently the Defendant from;
    a. denying the Medicaid applications of plaintiffs and class members, terminating their Medicaid benefits, or failing to reinstate the Medicaid benefits of those whose benefits were already terminated, solely on the basis of their alienage;
    b. terminating or failing to reinstate the plaintiffs' and class members' Medicaid benefits, unless or until Defendant reviews and certifies their eligibility for other categories of Medicaid benefits, or as a member of one of the excepted categories;
    c. terminating or failing to reinstate the plaintiffs' and class members' Medicaid benefits, unless or until defendant issues timely and adequate notice of their intent to terminate Medicaid benefits;
    d. terminating or failing to reinstate the plaintiffs' and class members' Medicaid benefits, unless or until defendant notifies them of their right to request an administrative hearing to challenge the adverse action, and provide the opportunity for such hearing.
4. Notify those whose Medicaid benefits have been terminated as to how to obtain reinstatement of their benefits.
5. Award plaintiffs' counsel reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and
6. Grant such other and further relief as may be just and proper.

Dated: March 27, 2003