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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA LEGISLATIVE COUNCIL,

Plaintiff,

vs.

GOVERNOR BILL WALKER, in his
official capacity as Governor for the State
of Alaska, and VALERIE DAVIDSON, in
her official capacity as Commissioner of
the Department of Health & Social
Services,

Defendants.

Case No. 3AN-15_____CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff Alaska Legislative Council and hereby sets forth its complaint for declaratory and injunctive relief against Defendants Governor Bill Walker and Department of Health & Social Services Commissioner Valerie Davidson, in their official capacities, by stating and alleging as follows:

JURISDICTION AND VENUE

1. The Alaska Superior Court has jurisdiction under and by virtue of Alaska Stat. § 22.10.020 and other applicable law. The Third Judicial District at Anchorage is an appropriate venue under Alaska R. Civ. P. 3(c) and 4(d)(8).

PARTIES

2. Plaintiff Alaska Legislative Council is established pursuant to Alaska Stat. § 24.20.010 and is authorized by § 24.20.060(4)(F) to bring this action. It thereby has standing to bring this action.

3. Defendant Bill Walker is the Governor of the State of Alaska. He is vested with the executive power of the State and is responsible for the faithful execution of the State's laws.

4. Valerie Davidson is the Commissioner of the Alaska Department of Health and Human Services, which administers the Alaska Medicaid Program.

FACTS

5. Medicaid is a cooperative federal-state program through which the federal government reimburses States for a share of their costs if they agree to fund medical assistance to certain qualifying low-income individuals.

6. Although Congress offers States the *option* of covering additional individuals and receiving federal funding for doing so, it does not *require* participating states to cover those optional groups in order to remain eligible to participate in Medicaid or receive federal funds.

7. Alaska decided to begin participating in Medicaid in 1972. Consistent with the State Constitution and the separation of powers that it contemplates, that decision was effectuated by the Alaska Legislature, which enacted the State's Medicaid statute that same year. 1972 Alaska Sess. Law ch. 182 § 1.

8. As a matter of both state statutory and state constitutional law, the Legislature alone has the authority to decide who is eligible for coverage under the State's Medicaid program.

9. Mirroring the federal Medicaid statute, the Alaska statute draws a distinction between groups for whom coverage is mandatory and groups for whom it is optional.

10. To ensure that Alaska remains eligible at all times to continue receiving federal Medicaid funding, subsection (a) of the statute declares eligible for coverage under the State's program "[a]ll residents of the state for whom the Social Security Act requires Medicaid coverage." Alaska Stat. § 47.07.020(a). Subsection (b) of the statute also declares eligible an additional 15 "optional groups of persons for whom the state may claim federal financial participation." *Id.* § 47.07.020(b). Subsection (d) of the

statute states that “[a]dditional groups may not be added unless approved by the legislature.” *Id.* § 47.07.020(d).

11. Through the Patient Protection and Affordable Care Act (“ACA”), Pub. L. No. 111-148, 124 Stat. 119 (2010), Congress attempted to expand the conditions a State must satisfy in order to continue participating in Medicaid and receiving federal Medicaid funding.

12. Rather than impose coverage requirements with respect to only certain categories of low-income individuals, the ACA mandated that States expand their programs to provide coverage to *all* individuals under age 65 with incomes up to 133% of the poverty level, with a 5% “income disregard” provision that effectively raised the level to 138%.

13. Although the federal government initially would fund 100% of the costs generated by providing this new coverage, by 2017, States would be responsible for 5% of those costs, with that responsibility increasing to 10% by the end of the decade.

14. Shortly after the ACA’s enactment, Alaska joined 25 other States in challenging the constitutionality of Congress’ effort to compel States to dramatically expand their Medicaid obligations. The States argued that requiring them to cover this new population as a condition of continued participation in and eligibility for federal funding under Medicaid amounted to unconstitutional coercion that violated their sovereign right to decide for themselves whether expanding their Medicaid programs in the manner contemplated by the ACA is the right decision for their residents.

15. The U.S. Supreme Court agreed. *See Nat'l Fed'n of Indep. Bus. v. Sebelius* (“*NFIB*”), 132 S. Ct. 2566, 2601 (2012). As Chief Justice Roberts explained in his controlling opinion, the ACA was no “mere alteration of existing Medicaid,” but rather was an attempt to “enlist[] the States in a new health care program.” *Id.* at 2606. That attempt to deprive States of “a genuine choice whether to participate in the new Medicaid expansion” program, the Court concluded, was unconstitutional. *Id.* at 2607.

16. To remedy that constitutional violation, the *NFIB* Court held that 42 U.S.C. § 1396c, the statutory provision that gives the Department of Health & Human Services (“HHS”) authority to withhold funds from a State that fails “to comply substantially with any” requirement under the Medicaid Act, could not be applied to withhold funds based on a State’s “failure to comply with the requirements set out in the expansion.” *NFIB*, 132 S. Ct. at 2607. “That fully remedie[d] the constitutional violation” because it ensured “that States would have a genuine choice whether to participate in the new Medicaid expansion.” *Id.*

17. Consistent with that understanding, in a March 6, 2015 letter to Governor Walker, HHS Secretary Sylvia Burwell described Medicaid expansion as a “coverage category elected at state option” and reiterated that “Alaska *may* take up the Medicaid coverage expansion, and then later drop it *at state option*.”

18. On March 17, 2015, Governor Walker proposed legislation that would have added the Medicaid expansion population as another “optional group” under Alaska Stat. § 47.70.020(b).

19. The Legislature, however, did not adopt the legislation proposed by Governor Walker and did not add this optional group to the State's Medicaid program. Instead, the Legislature passed an appropriations bill that states explicitly that no funds appropriated for Medicaid may be expended on Medicaid expansion. *See* 2015 Alaska 2d Special Sess. Laws Ch. 1, § 1.

20. On July 16, 2015, the Governor notified the Legislative Budget and Audit Committee (LB&A Committee) that he intended to begin enrolling Alaska residents who fall within the Medicaid expansion population in the State's Medicaid program notwithstanding the lack of legislative approval to do so.

21. The Governor also announced that he would appropriate money from the Alaska Mental Health Trust Account to help cover implementation costs and that the Department of Health and Social Services (DHSS) would assist in implementing the new program.

22. By statute, the Governor must give the LB&A Committee 45 days to review any new expenditure before it may be put into effect. This 45-day stay on the Governor's planned Medicaid expansion expenditure will lapse on August 30, 2015, and the Governor has announced that if, as anticipated, the LB&A Committee takes no action to prevent him from doing so before then, he will begin enrolling the expansion population in Medicaid on September 1, 2015.

23. The Governor's attempt to unilaterally opt Alaska into Medicaid expansion would violate § 47.07.020(d), the 2016 appropriations bill, and the separation

of powers that the Alaska Constitution mandates, as the Medicaid expansion population is an optional group that cannot be added to the State's Medicaid program without approval that the Legislature has not given.

24. If the Governor's plan goes into effect on September 1, then the State will immediately begin enrolling residents in a Medicaid program for which they are not eligible. Doing so not only would violate Alaska statutory and constitutional law, but also threatens to engender massive confusion and foster unfounded reliance interests on the part of the Alaskans who will be given the erroneous impression that they are covered by Medicaid when that is not, in fact, so. And should coverage actually begin to flow only to later be determined unlawful, the Governor's actions could result in an administrative nightmare in which providers are billing Alaska's Medicaid program for patients and care that it does not cover. Patients and providers alike thus stand to suffer irreparable injury if the Governor is allowed to move forward with his plan to begin implementing coverage for the expansion population without the necessary legislative approval on September 1.

25. That injury is compounded by the irreparable fiscal injury posed to the State. Each dollar that the Governor diverts to implementing Medicaid coverage that is not authorized by state law is a dollar that could instead go to a State program that the Legislature actually has authorized. The Alaskans who stand to benefit from the expenditure of funds on those *authorized* programs thus will inevitably be injured by the Governor's attempt to implement an unauthorized expansion of Medicaid.

26. The Governor's plan to divert \$1.6 million from the Mental Health Trust Authority Account to pay for administering that new coverage is particularly problematic. That money, which must be used to promote mental health programs for vulnerable Alaskans or, if not needed for that purpose, sent to the general fund for legislative appropriation, *see* Alaska Stat. § 37.14.035(a), (b), would instead be lost to implementing and administering an unlawful unilateral executive initiative, causing irreparable harm to the beneficiaries of the Trust. Moreover, most of this money would be spent providing benefits to individuals who are not beneficiaries of the Trust.

27. The State's budget is already constrained enough as it is. The Governor should not be diverting scarce resources to implementing and administering unilateral executive action that ultimately will need to be unwound.

COUNT I – DECLARATORY AND INJUNCTIVE RELIEF TO PREVENT VIOLATION OF ALASKA STATUTE § 47.07.020

28. Plaintiff realleges and incorporates by reference the allegations set forth above.

29. Because the federal Medicaid statute no longer requires States to cover the Medicaid expansion population as a condition of continued participation in Medicaid, that population can no longer be treated as a group "for whom the Social Security Act requires Medicaid coverage." Alaska Stat. § 47.07.020(a). Instead, it is an "optional group" that cannot be covered "unless approved by the legislature." *Id.* § 47.07.020(d).

30. The Legislature has not approved Medicaid coverage for the expansion population. The Governor's plan to unilaterally opt Alaska into Medicaid expansion

therefore would violate the prohibition that “[a]dditional groups may not be added [to Alaska’s Medicaid program] unless approved by the legislature.” *Id.* § 47.07.020(d).

31. Plaintiff Alaska Legislative Council is entitled to injunctive and declaratory relief to prevent the Defendants from violating Alaska law by unilaterally extending Medicaid coverage to a group that the Legislature has not approved.

COUNT II – DECLARATORY AND INJUNCTIVE RELIEF TO PREVENT VIOLATION OF 2015 SECOND SPECIAL SESSION LAWS OF ALASKA

32. Plaintiff realleges and incorporates by reference the allegations set forth above.

33. The Legislature’s appropriations act for the current fiscal year provides that “[n]o money appropriated in this appropriation may be expended for services to persons who are eligible pursuant to 42 U.S.C. § 1396a(a)(10)A(i)(VIII) and whose household modified adjusted gross income is less than or equal to one hundred thirty-three percent of the federal poverty guidelines.” 2015 Alaska 2d Special Sess. Laws Ch. 1, § 1.

34. The Governor’s plan to unilaterally opt Alaska into Medicaid expansion would violate this express provision of Alaska law.

35. Plaintiff Alaska Legislative Council is entitled to injunctive and declaratory relief to prevent the Defendants from violating Alaska law by unilaterally extending Medicaid coverage to the Medicaid expansion population.

COUNT III – DECLARATORY AND INJUNCTIVE RELIEF TO PREVENT VIOLATION OF ALASKA STATUTE § 37.14.041

36. Plaintiff realleges and incorporates by reference the allegations set forth above.

37. Money in the Mental Health Trust Authority Account must be used “to ensure an integrated comprehensive mental health program for the state.” Alaska Stat. § 37.14.041(a)(1). If money is not needed to meet this purpose, it must be transferred “to the unrestricted general fund for expenditure through legislative appropriation for other public purposes.” *Id.* § 37.14.041(b).

38. The Governor’s plan to spend Mental Health Trust Authority Account funds to pay administrative expenses related to Medicaid expansion would violate section 37.14.041 because the money would not be used “in fulfillment of the authority’s purpose to ensure an integrated comprehensive mental health program for the state.” *Id.* § 37.14.041(a).

39. Plaintiff Alaska Legislative Council is entitled to injunctive and declaratory relief to prevent the Defendants from violating Alaska law by using funds from the Alaska Mental Health Trust Authority Account to extend Medicaid coverage to the Medicaid expansion population.

COUNT IV – DECLARATORY AND INJUNCTIVE RELIEF UNDER THE ALASKA CONSTITUTION’S SEPARATION-OF-POWERS DOCTRINE

40. Plaintiff realleges and incorporates by reference the allegations set forth above.

41. “[T]he separation of powers and its complementary doctrine of checks and balances are part of the constitutional framework of this state.” *Alaska Pub. Interest Research Grp. v. State*, 167 P.3d 27, 34-35 (Alaska 2007).

42. As part of that framework, the Alaska Constitution gives “the legislature, and *only* the legislature, ... control over the allocation of state assets among competing needs.” *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991); *see also* Alaska Const. art. II, § 1.

43. The Governor usurps that “legislative appropriation power” not only when he attempts to appropriate funds unilaterally, but also when he “[a]lter[s] the purpose of [an] appropriation.” *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 372 (Alaska 2001).

44. Here, the purpose of the appropriation of funding to cover groups “for whom the Social Security Act requires Medicaid coverage” is clear: The Legislature wanted to appropriate the funds necessary to ensure that Alaska remains in compliance with all mandatory conditions on continued participation in and receipt of federal funding under Medicaid. It did not want to divest itself of its constitutional power to make decisions about whether to appropriate funding for groups for whom coverage is *not* required under federal law.

45. That is confirmed by the Legislature’s 2016 appropriations bill, which expressly precludes the use of funds appropriated for Alaska’s Medicaid program on Medicaid expansion. *See* 2015 Alaska 2d Special Sess. Laws Ch. 1, § 1.

46. The Governor's proposed actions thus would usurp not just the Legislature's statutory power, but its constitutional power as well, as it would amount to the exercise of "a quasi-legislative appropriation power permitting appropriations the legislature never enacted." *Knowles*, 21 P.3d at 372.

47. The Governor's actions would also violate Article IX, Section 13 of the Alaska Constitution, which expressly provides that "[n]o obligation for the payment of money shall be incurred except as authorized by law."

48. Plaintiff Alaska Legislative Council is entitled to injunctive and declaratory relief to prevent the Defendants from violating the Alaska Constitution by unilaterally extending Medicaid coverage to the Medicaid expansion population without legislative approval.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Alaska Legislative Council prays the following relief:

1. Declaratory relief stating that under Alaska Statute § 47.07.020(a) and the Social Security Act, 42 U.S.C. § 1396 *et seq.*, Alaska is not "required" to provide Medicaid coverage for individuals designated to be covered by the ACA's Medicaid expansion, *id.* § 1396a(a)(10)(A)(i)(VIII), (e)(14)(I), and that the Governor has no authority to extend Medicaid coverage for Alaska residents falling within the expansion population "unless approved by the legislature" as an additional "optional group" pursuant to Alaska Statute § 47.07.020(b), (d);

2. Declaratory relief stating that the 2016 appropriations act, 2015 Alaska 2d Special Sess. Laws Ch. 1, § 1, prohibits the Governor from expending any funding appropriated for Alaska's Medicaid program on Medicaid expansion;

3. A permanent injunction barring the Governor and the Department of Health & Social Services Commissioner from enrolling Alaska residents within the expansion population in Alaska's Medicaid program, accepting federal funding for Medicaid coverage for that expansion population, expending state resources on implementing coverage for that population, or otherwise implementing or administering Medicaid expansion, unless the Alaska Legislature expressly approves the expansion population as an "additional group" pursuant to Alaska Statute § 47.07.020(b), (d);

4. Costs and attorneys' fees pursuant to any applicable statute or authority;
and

5. Any other relief this Court deems just and appropriate.

Dated this 24th day of August, 2015, at Anchorage, Alaska.

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*Motions to appear *pro hac vice*
forthcoming