

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 LINDA SEEMEYER, in her
official capacity as Secretary of The Wisconsin
Department of Health Services,

Defendants.

STATEMENT OF DAVIS CIOTOLA

I, Davis Ciotola, hereby depose and state under oath and upon personal knowledge as follows:

1. I am over the age of eighteen, and am fully competent to make this Statement.
2. Since April 15, 2018, I have served as the Administrative Rules Attorney for the Wisconsin Department of Health Services (hereinafter "Department") Office of Legal Counsel, leading the Administrative Rules Unit. I also served as the Department's Administrative Rules Manager from January 11, 2016 until April 14, 2018. My current job duties include:
 - a. Advising Department staff and leadership on the purposes and processes of rule-making, including for emergency rules.
 - b. Reviewing rule-related documents at various stages before they are submitted to external participants in the rule-making process.

3. As the Administrative Rules Attorney, I am familiar with the Medicaid program's reliance on administrative rules to implement federal and state requirements regarding Medicaid eligibility and benefits.

4. I am also familiar with the litigation in the Western District of Wisconsin regarding DHS's enforcement of Wis. Admin. Code § DHS 107.03(23)–(24) (the “Challenged Exclusion”), as well as Wis. Admin. Code § DHS 107.10(4)(p), which repeats the exclusion. DHS is a defendant in that case.

5. In response to the order of the Court, issued April 23, 2019, the Department's Division of Medicaid Services elected to pursue a change to the relevant administrative rules.

6. I have been directed to assist the Department in promulgating an emergency and permanent rule to codify the Department's discontinuance of its enforcement of the policy described by the challenged exclusion and related code provisions.

7. The Administrative Rules Unit has begun preparing the Statement of Scope to authorize repeal and/or modification of the above-referenced code provisions.

8. The Department anticipates that the Statement of Scope will be drafted and submitted to the Department of Administration, pursuant to Wis. Stats. § 227.135 (2), no later than May 13, 2019.

9. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct.

Dated this 9th day of May, 2019:



DAVIS CIOTOLA

SBN: 1074162