

Lawyer: Kids' Care Promised.

■ *'Medically fragile'*
children denied
Medicaid services,
attorneys say

BY **BRUCE DANIELS**

Journal Staff Writer

A state Human Services Department official's letter promising "appropriate care" and "due process" to Medicaid-eligible children should be enforced, attorneys challenging New Mexico's Medicaid managed-care program told a judge Wednesday.

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Philip Gaddy, one of a team of attorneys representing parents and caregivers of children with chronic health problems, asked **state District Judge William F. Lang to force** the department "to provide appropriate care and due process to **medically fragile** children with special needs."

The procedures outlined in an October 1997 letter to fellow plaintiffs' attorney Peter Cuba by Charles Milligan, director of HSD's medical assistance division, haven't been implemented, Gaddy said at a hearing Wednesday.

But Lang held off making a decision, telling attorneys he wanted to see more arguments and information presented at a hearing June 2 before he'd make a ruling.

On that day, Lang will **also** hear motions to dismiss the class-action lawsuit filed in state District Court in October against Gov. Gary Johnson and then-Human Services Secretary **William Johnson**.

The suit was filed on behalf of nine named children and others claiming the state's Medicaid **managed care** program isn't giving proper care to children with chronic and severe medical problems and mental disabilities.

Gaddy said the state defendants got the suit moved to U.S. District Court, but claims under state law were returned to state court last month.

Gaddy told Lang the suit was filed in the wake of "dramatic changes in medical assistance to the poor," beginning with 1994 amendments to the state's Public Assistance Act, which mandated shifts to managed care.

In July 1997, the state ushered in managed care for Medicaid-eligible children with chronic health problems and mental **illness**, Gaddy said.

"But we believe the program is failing to provide **medically** necessary services" to those children, Gaddy said.

Referring to Milligan's letter outlining HSD's promise to "ensure appropriate care" for Medicaid-eligible children, Gaddy asked, "How does what was promised yesterday become an intolerable burden today?"

Attorney Pat Rogers, representing the state defendants, said Gaddy was asking for "extraordinary relief" based on "a contract that **doesn't exist**."