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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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STATE OF NEW JERSEY, : COMPLAINT
 :
 Plaintiff, : Civil Action No.
 :
 v. :
 :
 UNITED STATES DEPARTMENT OF HEALTH :
 AND HUMAN SERVICES, :
 :
 Defendant. :
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The State of New Jersey hereby alleges as follows:

NATURE OF THE ACTION

1. On August 17, 2007, the Centers for Medicare & Medicaid Services (CMS), an agency within the United States Department of Health and Human Services (HHS), issued a letter (CMS Letter) which sets forth mandatory, rigid, and illegal benchmarks for state child health plans under the State Children's Health Insurance Program (SCHIP).

2. This is an action by the State of New Jersey seeking (1) a declaratory judgment that the CMS Letter (a) constitutes illegal rulemaking without notice and comment in violation of the

Administrative Procedure Act (APA), 5 U.S.C. § 553, (b) is an arbitrary and capricious exercise of the Secretary's authority in violation of the APA, 5 U.S.C. § 706(2)(A), (c) is an abuse of the Secretary's discretion under Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., and the regulations promulgated thereunder, in violation of the APA, 5 U.S.C. § 706(2)(A), (d) is contrary to Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., and the regulations promulgated thereunder, in violation of the APA, 5 U.S.C. § 706(2)(A), and therefore is without force and effect; and (2) an injunction barring CMS from reviewing New Jersey's state child health plan or plan amendments or pursuing any "corrective action" against New Jersey based upon a failure to meet the benchmarks set forth in the CMS Letter.

3. With approximately 6.6 million children enrolled in SCHIP programs nationwide, SCHIP has significantly reduced the number of children without access to quality medical care. The State of New Jersey provides health coverage to 124,000 previously uninsured, low-income children through its SCHIP program. The SCHIP program has thus enabled states like New Jersey to protect and improve the lives of the country's most vulnerable children.

4. The imposition of the illegal benchmarks set forth in the CMS letter would be devastating to the thousands of innocent children in New Jersey, and nationwide, who would lose or be denied health insurance coverage. New Jersey's SCHIP program has covered

