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Federal Appeals Court Rules in TennCare Children's Health Case *Case Affects Health Care for One in Three Tennessee Children*

Nashville, TN -- A federal appeals court issued a ruling on Thursday, June 26, 2008, in a closely watched case involving TennCare's treatment of 650,000 children across Tennessee. Thursday's ruling means that senior state officials must produce electronic records and other files containing evidence about the operations of the TennCare program. The Sixth Circuit Court of Appeals, Cincinnati, also authorized a computer expert to inspect officials' computers to determine whether officials had altered computer records to evade court orders. The case will now return to the Nashville court, where a monitor will oversee state officials' production of the TennCare records.

The court granted the state limited relief, ruling that state officials need not turn over personal computers to U.S. Marshals for forensic copying.

A federal court in Nashville found in 2001 that the state and its managed care contractors were systematically violating quality of care standards governing the treatment of low-income TennCare children, including those in the state's troubled foster care system. There was extensive evidence that children suffered serious harm as a result of those violations. In 2006, state officials claimed to have fixed the problems. But a panel of court-appointed monitors issued a lengthy report last year finding that the state had not proven that claim, and there remained evidence of widespread problems.

The case was originally filed in 1998. Today's ruling in the decade-old suit dealt with the state's failure to preserve and produce evidence in the case. Last year, U.S. District Judge William J. Haynes found evidence of the negligent, systematic destruction of large amounts of evidence by state officials and TennCare contractors. He ordered that computers used by 50 senior state officials, including Governor Bredesen and Finance Commissioner Dave Goetz, be forensically imaged in order to protect their contents from further destruction.

During the proceedings, the Governor and other officials disclosed that they had used Bredesen's personal email system and their personal computers for state business. They claimed that by putting the public records on personal computers, officials could shield them from inspection.

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The appeals court ruled today that officials must preserve and produce evidence as ordered by Judge Haynes. The ruling left standing his finding that the state had violated court orders requiring it to produce evidence. The Sixth Circuit held that the order to copy the computers went too far because other means were available, including the imposition of sanctions, to compel the state's compliance.

In a concurring opinion, Judge Guy Cole, Jr., noted that the state had made Judge Haynes' job more difficult by "repeated delays and the institutional inefficiencies that plague the TennCare system." He observed that officials' "continual noncompliance and acrimonious litigation practice has unfortunately steered this case away" from the goal of ensuring that "Tennessee's children receive the benefits owed to them under the Consent Decree and federal law". The costs of officials' noncompliance have been "borne by the judicial system and the citizens of Tennessee."

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