



CDCAN REPORT

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CALIFORNIA DISABILITY COMMUNITY ACTION NETWORK

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California Disability Community Action Network Disability Rights News goes out to over 50,000 people with disabilities, mental health needs, seniors, traumatic brain & other injuries, veterans with disabilities and mental health needs, people with sickle cell and other diseases, their families, workers, community organizations, including those in Asian/Pacific Islander, Latino, African American communities, policy makers and others across California.

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California Budget Crisis:

US 9th Circuit Court of Appeals Rules Against State on 2009 Medi-Cal 5% Provider Rate Cut to Pharmacies

Upholds Lower Federal Court Injunction that Stopped Medi-Cal 5% Provider Cuts in 2008 – Three Straight Legal Setbacks for Schwarzenegger Administration by Federal Court – Rulings Send Strong Signal to Legislature About Medicaid Funded Cuts

SACRAMENTO, CALIF (CDCAN) [Updated 03/03/2010 05:50 PM (Pacific Time)] - A 3 judge panel of the US 9th Circuit Court of Appeals handed the Schwarzenegger Administration two more legal setbacks this afternoon, by upholding lower federal court orders that blocked 5% provider cuts to pharmacies and reportedly, in a separate federal lawsuit, also to adult day health centers. Those cuts were originally passed as part of the 2008-2009 State Budget in September 2008 and were scheduled to go into effect March 1, 2009. [a copy of the 6 page opinion contained in a memorandum in the Medi-Cal pharmacy case can be downloaded from the CDCAN website at www.cdcan.us]

Today's federal appeals court ruling means that the injunction, issued by federal district court Judge Christina Synder on February 27, 2009, for fee for service Medi-Cal pharmacies that stopped the 5% cuts from being implemented will continue (and reportedly for adult day health centers, which in a separate federal law suit, had an injunction that blocked that 5% cut from taking place as of April 2009).

Advocates say the three rulings from the appeals court represent a significant legal victory for people with disabilities, mental health needs, the blind and low income seniors.

The decisions in the three cases also sent a strong signal to the Legislature – controlled by Democrats in both houses – that federal laws must be followed in making cuts to federal Medicaid funded programs (called Medi-Cal in California) - a standard that the federal appeals court said today was not met.

The 3 judge panel – the same panel that ruled on the earlier lawsuit today on In-Home Supportive Services (IHSS), are part of the 29 active judges who make up the US 9th Circuit Court of Appeals, which handles appeals from federal district courts in 9 western states (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington) and two US territories (Guam and the Mariana Islands)

More details later tonight or tomorrow.

What 9th Circuit Court Decided



The 5% Medi-Cal pharmacy provider lawsuit, *Independent Living Center of Southern California, et al v. David Maxwell-Jolly* (Director of the Department of Health Care Services) was filed by the Medicaid Defense Fund, as Novato, California legal advocacy group headed by 82 year old attorney Lynn Carman [*pictured in photo left in November 2009 by Marty Omoto*]

The 3 judge panel of the 9th Circuit Court wrote in its 6 page memorandum that:

- Irreparable Harm: “*Nor did the district court abuse its discretion in finding that Plaintiffs demonstrated irreparable harm. After considering both parties’ evidence, the district court concluded that the Director [of the Department of Health Care Services] failed to refute Plaintiffs’ showing of irreparable harm. The district court concluded that even if, on average, pharmacies would be compensated above their acquisition costs, the Director had not refuted Plaintiffs’ showing that many brand and generic drugs would be reimbursed at a level below cost, limiting Medi-Cal patients’ access to those drugs. The district court noted that because many single-source drugs are protected from competition by patents, there are no available generic alternatives. The court also concluded that if pharmacies are forced to curtail services or go out of business, existing customers would not have access to other pharmacies, especially since home delivery services would end. It further noted that independent pharmacies represent thirty-three percent of the licensed community pharmacies in California and that they would be severely impacted by the reductions.*”
- Legislature Failed To Study Impact of Cut - “*We reject the Director’s [Department of Health Care Services] contention that the State legislature was not required to study the impact of the five percent rate reduction on the statutory factors of efficiency, economy, quality, and access to care, prior to enacting AB 1183... We affirm the district court’s holding concerning Plaintiffs’ likelihood of success on the merits because the State did not study the impact of the five percent rate reduction on the statutory factors prior to enacting AB 1183, or in a manner that allowed those studies to have a meaningful impact on rates before they were finalized.*”

Appeals Court Earlier Today Also Ruled Against Schwarzenegger Administration on Reduction of State Funding for IHSS Worker Wages

As reported earlier today, the same federal appeals court ruled against the Schwarzenegger Administration issued a decision that ruled against the Schwarzenegger

Administration and upheld Federal District Court Judge Claudia Wilken's injunction that has blocked – since June 2009 – the reduction in the State's participation toward In-Home Supportive Services worker wages.

The 9th Circuit Court decision in the IHSS case means that the injunction issued by the lower federal court in June 2009 that has blocked the cut from being implemented – remains in place.

The 3 rulings from the US 9th Circuit Court of Appeals today represent a major setback to the Schwarzenegger Administration, which on Monday won a ruling from the California State Court of Appeals on the issue of the Governor's line item vetoes, which that court declared was constitutional.

A copy of that 21 page opinion dealing with IHSS worker wages, in the case *Dominguez, et al v. Schwarzenegger, et al* (formerly *Martinez v. Schwarzenegger, et al*), case number 09-16359 (original lawsuit in federal district court case number CV-02306-CW), written by 9th Circuit Court Judge Milan D. Smith, Jr. can be viewed or downloaded from the CDCAN website at www.cdcan.us

5% Medi-Cal Provider Cut Part of 2008-2009 State Budget

- The 5% Medi-Cal provider rate cuts were passed by the Legislature and signed by the Governor on September 30, 2008 (in AB 1183) as part of 2008-2009 State Budget that was passed nearly 3 months late.
- That 2008-2009 State budget changed the previously approved (most of which were blocked by federal court orders in August and later November 2008) 10% provider cuts and instead, effective March 1, 2009, cut Medi-Cal provider rates for doctors and others by 1% and cut by 5% rates for pharmacies, adult day health and other providers.
- The 10% cuts to provider rates went into effect July 1, 2008 that was approved as part of the February 2008 special session budget revisions.
- Nearly all of the 10% cuts however were stopped by a federal district court judge in August 2008 for most Medi-Cal providers, and in November for other Medi-Cal providers including home health agencies and non-medical emergency transportation providers.

NEXT STEPS

- The State could decide to appeal all three of the 9th Circuit Court's rulings and ask that the full 29 active judges of the 9th Circuit Court review the case – a request that is rarely granted, or appeal the cases to the US Supreme Court – the final court that the Schwarzenegger Administration has left to appeal. In either instance, the injunctions blocking the IHSS worker wage reductions and Medi-Cal cuts would remain in effect if and when the US Supreme Court decides the cases.
- Other appeals relating to In-Home Supportive Services and other reductions to health and human services filed in federal court – including narrowing of eligibility using “functional index score” assessment tools, are still pending appeal.

- The latest round of legal setbacks will likely have some impact on what the Legislature and Governor do in the coming months on several proposals that the Governor wants as part of the 2010-2011 State Budget that include nearly identical proposed cuts to In-Home Supportive Services that the federal courts have blocked from implementation.
- The Governor said in January, in resubmitting those proposals, that the State would seek waivers or permission from the federal government, to implement the reductions that should resolve the objections by the federal courts.
- The Legislature passed a package of special session budget related bills late last month and early this week that deals with part of the budget shortfall, and approved only reductions – continuing 3% cuts that were scheduled to end June 30, into the 2010-2011 State Budget year.
- All other proposed cuts – including those to IHSS and Medi-Cal, were held off for final action later this year – probably in late May or June. All of those proposals are still alive and none of those proposals have been rejected or approved by the Legislature .
- Governor is expected to make additional proposed cuts – or revise the proposals already submitted when he releases his revised budget proposal in mid-May.

URGENT!!!!

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To continue the CDCAN website, the CDCAN News Reports. sent out and read by over 50,000 people and organizations, policy makers and media across California and to continue the CDCAN Townhall Telemeetings which since December 2003 have connected thousands of people with disabilities, seniors, mental health needs, people with MS and other disorders, people with traumatic brain and other injuries to public policy makers, legislators, and issues.

Please send your contribution/donation (make payable to "CDCAN" or "California Disability Community Action Network):

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paypal on the CDCAN site is not yet working – will be soon.

MANY, MANY THANKS TO the Easter Seals, California Association of Adult Day Health Centers, Valley Mountain Regional Center, Toward Maximum Independence, Inc (TMI), Friends of Children with Special Needs, UCP of Los Angeles, Ventura and Santa Barbara Counties, Southside Arts Center, San Francisco Bay Area Autism Society of America, Hope Services in San Jose, FEAT of Sacramento (Families for Early Autism Treatment), RESCoalition, Sacramento Gray Panthers, Easter Seals of Southern California, Tri-Counties Regional Center, Westside Regional Center, Regional Center of the East Bay, UCP of Orange County, Alta California Regional Center, Life Steps, Parents Helping Parents, Work Training, Foothill Autism Alliance, Arc Contra Costa, Pause4Kids, Manteca CAPS, Training Toward Self Reliance, UCP, California NAELA, Californians for Disability Rights, Inc (CDR) including CDR chapters, CHANCE Inc, , Strategies To Empower People (STEP), Harbor Regional Center, Asian American parents groups, Resources for Independent Living and many other Independent Living Centers, several regional centers, People First chapters, IHSS workers, other self advocacy and family support

groups, developmental center families, adoption assistance program families and children, and others across California.