



Capitol Desk

Wednesday, January 25, 2012

Judge Calls ADHC Settlement a Win-Win

by David Gorn

A federal judge yesterday gave her official stamp of approval to last month's settlement of a lawsuit challenging the state's transition plan for adult day health care services.

"It's a good result in a challenging time," according to attorney Elissa Gerson of Disability Rights California, which brought the lawsuit.

During yesterday's hearing, U.S. District Judge Sandra Brown Armstrong said the settlement outcome was actually better than it would have been if the case went to trial and DRC eventually won it.

"The settlement is a positive result, especially considering the expense involved of continuing to litigate this," Armstrong said. "I believe the outcome is superior to what the plaintiffs would have received even if a decision went in their favor."

That made sense to Gershon -- rather than just forcing the state to come up with a new transition plan, a settlement means that plan becomes a joint effort, she said.

"Here we got to participate in it," Gershon said. "So it's always better to have a settlement, no matter how strong your case is."

The state's chief counsel, Douglas Press, said the state's goal all along has been to provide adequate care for this population, while still allowing the state to eliminate the optional Medi-Cal benefit.

"What the state gets is certainty in the process going forward," Press said. "Appeals can last months or years, so this allows the state to plan its budget, one that meets everyone's needs."

The state Legislature voted to eliminate ADHC as a Medi-Cal benefit last year. That elimination, originally set for July 2011, was delayed several times and is now due for elimination on Feb. 29, 2012.

The Department of Health Care Services agreed in early December to institute a new plan to take care of the most frail and vulnerable of the 35,000 Medi-Cal ADHC beneficiaries in California. Under the settlement agreement, DHCS is launching a new program, Community Based Adult Services, which will provide services similar to those in the ADHC program to those Californians who are deemed to be at high risk for institutionalization.

DHCS officials estimated that about half of the current ADHC recipients will be eligible for the new CBAS program. That estimate was the subject of complaint for Rita Gunasekaran of the Los Angeles law firm Haight Brown & Bonesteel, which represented 11 beneficiaries who objected to and challenged the settlement.

"The DHCS statement says that 50% [of ADHC beneficiaries] will be included in the CBAS program. That means 50% will be left out of the CBAS program," Gunasekaran said. "We don't know who's going to be eligible for CBAS services, and who will not, so I think we should see who doesn't get this benefit and then see who objects to this."

State attorney Susan Carson was quick to point out that the statement from DHCS officials was not binding.

"The 50% number is an estimate," Carson said. "It's not accurate to say it will actually be 50%, but we do think that will be the number. It's just an estimate."

In many ways, Gershon said, the CBAS program will be strikingly similar to the current ADHC program: "It's not a capped program. So it depends on who's eligible. If that's 80% or 40%, that's who will be getting the benefit," Gershon said.

Press said the state's new policy of dealing with not-for-profit CBAS centers -- which includes exceptions while some for-profit centers make the conversion to not-for-profits -- is a big plus for the state.

"We feel it's a better expenditure of Medi-Cal dollars," Press said. "From a policy standpoint, having nonprofit centers is a wise expenditure of public funds."