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A BRIEF ON ADULT DAY HEALTH CARE LITIGATION

Why Elimination of ADHC as a Medi-Cal Benefit Would Be Successfully
Challenged in Federal Court
March 9, 2010

The Administration asserts that the courts have prevented reductions in Medi-Cal benefits, leading to only one option for cost savings: total elimination of the benefit. However, ADHC is a Medi-Cal benefit that serves to avoid or delay institutionalization for seniors and people with disabilities. While the State may legally eliminate "optional" Medi-Cal services, it may not run afoul of the Americans with Disabilities Act (ADA) in doing so. Elimination of ADHC, without ensuring that the 37,000 people affected have uninterrupted access to alternative Medi-Cal services to prevent unnecessary institutionalization, violates the ADA.

ELIMINATION OF ADHC VIOLATES THE ADA: Recent Court orders in the lawsuit *Cota (Brantley) v. Maxwell-Jolly*, successfully challenging cutbacks to ADHC explain:

1. The State has an obligation to comply with the ADA. "Defendants concede that they bear the ultimate responsibility for ensuring compliance with federal disability laws."ⁱ
2. ADHC is one of the means that the State has chosen to comply with the ADA.ⁱⁱ The Court found that "the continuing availability of five days of ADHC services per week is critical to [participants'] physical and mental health and their continuing ability to remain integrated in their community, as opposed to being isolated in a nursing home or other institution."ⁱⁱⁱ
3. Loss of ADHC could result in "serious and irreparable harm" to seniors and people with disabilities. ADHC "services are necessary and critical to Plaintiffs' physical and mental well-being. Given the tenuousness and complexities of their conditions, an interruption in their care, even if temporary, will have serious consequences for Plaintiffs."^{iv}

4. ADHC is a “bundled” program. That means that within the ADHC program, participants receive a number of underlying Medi-Cal services—including: nursing care; personal care; physical, occupational, and speech therapy. If ADHC is eliminated, current participants are still entitled to receive the underlying Medi-Cal services, even if they are not provided as part of ADHC.
5. ADHC is an “optional” Medicaid service; however, the State may not eliminate it without ensuring that people are actually provided with the Medi-Cal services they have been determined to need to prevent their unnecessary institutionalization. “...[T]o the extent that [the State is] claiming that alternative services satisfy their obligations under the integration mandate [of the ADA], [the State] certainly bear[s] the burden of ensuring more than a ‘theoretical’ availability of such services.”^v
6. The State cannot use budget concerns as a justification to violate the ADA. The Court rejected the State’s argument that it is “entitled to cut services at will to accommodate the State’s budgetary constraints.”^{vi} Moreover, the Court found that maintaining ADHC is in the public interest.^{vii}
7. The State has made no effort to provide alternative community-based Medi-Cal services, such as nursing and personal care or therapies, but doing so would cost way more than the cost-effective ADHC program, which provides nursing care, medical monitoring, therapies, and mental health care for \$76 per person per day. The cost of institutionalizing people who lose ADHC in nursing facilities would be significantly higher.
8. The Legislative Analyst’s Office (LAO) found that “[t]he Administration’s budget does not adequately account for General Fund cost shifts that could result from the proposed elimination of [ADHC]...[including] some possible cost shifts to other services such as institutional care or [IHSS].”^{viii}

i *Brantley v. Maxwell-Jolly*, 656 F.Supp.2d 1161, 1174 (N.D. Cal. 2009)
ii *Brantley* at 1174-1175 ; *Cota v. Maxwell-Jolly*, No. C09-3798 SBA N.D. Cal. Feb. 24, 2010 at 16.
iii *Brantley* at 1175.
iv *Cota* at 21; *Brantley* at 1176.
v *Brantley* at 1174.
vi *Cota* at 16.
vii *Cota* at 23.
LAO, *The 2010-2011 Budget: How the Special Session Actions Would Affect Health Programs*, January 22, 2010, p. 4.