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California's protection and advocacy system

A BRIEF ON ADULT DAY HEALTH CARE LITIGATION January 2011

ADHC is a Medi-Cal benefit that serves to avoid or delay institutionalization for seniors and people with disabilities. About 37,000 Californians currently receive ADHC services, which help them remain in their own or family homes. The vast majority of these individuals rely on Medi-Cal funding for this critical service.

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*,ⁱ successfully challenging cutbacks to ADHC explain:

1. ADHC participants are seniors and people with disabilities who are qualified individuals with disabilities under the ADA. Approximately 58% of ADHC users are over the age of 75, and of that group, 14% are over the age of 85. The average ADHC participant is 75 years of age and takes 6 or more medications per day. More than two-thirds of those users face cardiovascular disease (39%), dementia (13%) and diabetes (10%).ⁱⁱ
2. 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."ⁱⁱⁱ
3. ADHC is one of the means that the State has chosen to comply with the ADA.^{iv} 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."^v

4. 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."^{vi}
5. 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.
6. 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."^{vii}
7. The State cannot use budget concerns to justify violating 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."^{viii} Moreover, the Court found that maintaining ADHC is in the public interest.^{ix}
8. 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.

9. The Legislative Analyst's Office (LAO) found that "[t]he Administration's [2010-2011] 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]."^x
10. In fact, the Lewin Group found that should the ADHC program be eliminated, the State would lose \$51 million in 2010-11 over and above the estimated savings that would come from eliminating the program (excluding the loss of federal matching funds). The report projected annual losses to the State to increase to \$72 million in 2020-21, \$198 million in 2030-31 and over \$412 million in 2040-41.^{xi}

ⁱ The Federal District Court for the Northern District of California has issued two preliminary injunctions, the first, issued in September 2009, and entitled *Brantley v. Maxwell-Jolly*, 656 F.Supp.2d 1161 (N.D. 2009) was not appealed by the state. The second preliminary injunction, issued in February 2010, and entitled *Cota v. Maxwell-Jolly*, is on appeal by the state to the Ninth Circuit Court of Appeals in Case No. 10-15635.

ⁱⁱ *Cota v. Maxwell-Jolly*, 688 F.Supp.2d 980, 986 (N.D.Cal. 2010).

ⁱⁱⁱ *Brantley v. Maxwell-Jolly* at 1174.

^{iv} *Brantley* at 1174-1175; *Cota v. Maxwell-Jolly*, at 994.

^v *Brantley* at 1175.

^{vi} *Cota* at 997-998; *Brantley* at 1176.

^{vii} *Brantley* at 1174.

^{viii} *Cota* at 994.

^{ix} *Cota* at 23.

^x LAO, *The 2010-2011 Budget: How the Special Session Actions Would Affect Health Programs*, January 22, 2010, p. 4.

^{xi} The Lewin Group: *Projected Economic Impact of Eliminating California's Medi-Cal Adult Day Health Care Program*, Prepared for the Congress of California Seniors, May 18, 2010, at page 1.

<http://www.lewin.com/content/publications/EconImpactofEliminatingCAMedi-Cal Adult DayHC.pdf>