

November 17, 2011

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Adult Day Health Care Settlement: New Program for People at Risk of Institutionalization, December 1 Elimination Date Postponed

Oakland, CA: Today, seven plaintiffs who represent a class of 35,000 low-income people with disabilities, including older adults, and the California Department of Health Care Services (DHCS) reached a settlement in a federal lawsuit that challenged the State's planned elimination of Adult Day Health Care (ADHC) as a Medi-Cal benefit on December 1, 2011 (*Darling et al. v Douglas* C:09-03798 SBA). The settlement ensures that even in these challenging economic times, critical community based services will be preserved and low income seniors and people with disabilities will avoid unnecessary hospitalization or institutionalization.

After extensive negotiations, the Parties reached a compromise which preserves ADHC-like services for people who are at risk of institutionalization, in a new program called Community-Based Adult Services (CBAS). Similar to ADHC, CBAS will offer center-based skilled health and nursing care, therapies, transportation and other services, to eligible low income seniors and people with disabilities. Under the settlement, the planned December 1, 2011 ADHC elimination date will be moved to February 29, 2012 to ensure a seamless transition for eligible ADHC participants to the CBAS program, and provide time for the Court to review the settlement and give final approval of the Agreement.

"There are a lot of people who really need this program; I have fought to stay out of a nursing home and have been able to with ADHC," said Esther Darling, lead plaintiff in the case, age 74, who lives alone with the help of ADHC, and will transition to the CBAS program. Under the terms of the settlement, CBAS will be offered through Medi-Cal managed care plans in most parts of the State. CBAS will be part of the State's 1115 Medicaid

waiver, and will not cap enrollment, ensuring that all eligible beneficiaries are able to receive these vital services. Current ADHC recipients who are not eligible for CBAS will receive enhanced case management to assist them to transition smoothly to other long-term care services in the community. Many of the current ADHC providers will be able to provide CBAS services, thus ensuring continuity of care.

Elissa Gershon, Senior Attorney for Disability Rights California, commented, "this settlement preserves the rights of plaintiffs and class members under the Americans with Disabilities Act (ADA) to continue to live in their own homes and communities, and receive the healthcare services and supports needed to remain independent. We are pleased that we were able to work with the state to maintain critical benefits for some of California's most vulnerable citizens. Morrison & Foerster partner Ken Kuwayti noted, ""This is a victory for recipients of the ADHC program and taxpayers. Through this settlement, California remains in step with nearly every other state in the country, which offer this type of program because it is uniquely beneficial and cost-effective, providing a bundle of healthcare services in a supportive, community environment."

The settlement resolves the entire *Darling v. Douglas* lawsuit, which was filed over two years ago. Plaintiffs have argued that elimination of ADHC, without adequate and appropriate replacement services, would violate the ADA and other laws, by placing tens of thousands of ADHC participants at risk of institutionalization, hospitalization, injury or death. The Court issued two preliminary injunctions, stopping cutbacks in the ADHC program, and was set to hold a hearing on the third preliminary injunction later today. The State's appeal of the second preliminary injunction is pending in the Ninth U.S. Circuit Court of Appeal and will be withdrawn pursuant to the settlement. The United States Department of Justice participated in the lawsuit, by filing an amicus (friend of the court) brief in the appeal, and filing two Statements of Interest.

Plaintiffs are represented by Disability Rights California, the National Senior Citizens Law Center, the National Health Law Program, AARP Foundation Litigation, and the firm of Morrison & Foerster LLP (pro bono counsel).

Go to <http://www.disabilityrightsca.org/advocacy/Darling-v-Douglas/index.html> for more information on the lawsuit.