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OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

file CMS lawsuit

March 11, 1991

RECEIVED
MAR 1 1 1991
Ans'd JRS

TO: Board Executives

FROM: David E. Janssen

CMS LAWSUIT

Attached, for your information is a copy of a class action suit, filed this date against the County re proposed termination of health care services to the indigent.

DEJ/dq
Attachment

ROSEMARY BISHOP, CA STATE BAR #112443
ANSON B. LEVITAN, CA STATE BAR #112233
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Attorneys for Plaintiffs

Filed at Mar 3-11-91

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BONNIE BAKONYI, JOZSEF BAKONYI, WILLIAM DeWITT, JOHN DOE, MARY K. FARRELL, THOMAS FINNEGAN, FREIDA GRAY, RICK JONES, ANGIE LUMBARD, NOEL ROGERS, DOLORES SALAZAR, HELEN STARNES, PATRICIA STEPHENSON, FRANCES TAYLOR, WELFARE RIGHTS ORGANIZATION OF SAN DIEGO, LORENA WILLIAMS, individually and on behalf of themselves and others similarly situated, Plaintiffs, v. BOARD OF SUPERVISORS OF SAN DIEGO COUNTY, BRIAN BILBRAY, GEORGE BAILEY, SUSAN GOLDING, JOHN MacDONALD, and LEON WILLIAMS, as members of the Board of Supervisors of San Diego County, WILLIAM COX, Director, Department of Health Services of San Diego County Defendants.	CASE NO. 634931 COMPLAINT FOR INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE; (CCP § 526a, 526, 527, 1085, 1087) TAXPAYER SUIT CLASS ACTION

Board of Dir

INTRODUCTION

1. This is an action to prevent a proposed termination of health care services to more than 20,000 indigent residents of San Diego County. The County's current health care services are llimited to the evaluation and treatment of acute or chromic health conditions which pose an immediate or long term threat to an individual's health. The named plaintiffs suffer from heart disease, diabetes, arthritis, respiratory problems, cancer, lupus, AIDS and other chronic conditions which require regular ongoing care and medication. Under Section 17000 of the Welfare and Institutions Code, defendant Board of Supervisors of the County of San Diego has an unequivocal statutory duty to provide medical care to the poor, and has been providing such care under its County Medical Services (CMS") program. It proposes to eliminate such care effective March 19, 1991.

2. State law mandates that health care be provided by the County. State law also sets the standards for the availability and quality of County medical services to the poor: services must be adequate to meet the needs of the poor and must be equivalent to those available to Medi-Cal recipients in this county. These standards will clearly be violated if the proposed service termination is made.

3. San Diego County is also violating the terms of the Beilenson Act, Health and Safety Code Section 1442.5, by failing to provide proper advance public notice of and failing to afford an opportunity for the public to comment on the proposed reductions prior to their effective date. In addition, the County is failing to provide proper notice of its proposed

termination of services to those county residents who rely on CMS for their care. Such notice is required as due process under the state and federal Constitution because recipients have a statutory entitlement to such services and are entitled to notice and a hearing prior to termination or reduction in benefits.

4. Plaintiffs, indigent County residents who currently receive CMS benefits, seek to enjoin the elimination of medical care services now being provided to the County's poor. Unless this Court acts, thousands of low income persons with serious diseases and injuries will suffer great and irreparable harm. They will abruptly lose their only access to health care which is medically necessary to protect their lives and/or prevent significant disability.

PARTIES

Plaintiffs

5. BONNIE BAKONYI is a 60 year-old woman who, after years of poor vision, spent one year of her life legally blind. She will need laser treatment to follow up cataract surgery or she will become blind again. She supports her disabled husband on her income of $600-$700 a month, and cannot afford laser or asthma treatment for herself, or heart medication and/or knee cap surgery for her husband, without CMS. They are desperately in need of CMS as they face blindness for her and possible stroke and certain pain for him.

6. JOZSEF BAKONYI is a 61 year-old man who had a stroke two years ago and still suffers from a severe heart condition, osteo-arthritis, high blood pressure. He is in constant pain. He

hopes to work again but he needs a knee replacement which his wife who supports him on $600-$700 a month cannot afford. They also cannot afford the drugs he needs for his pain and heart condition, or the surgery follow-up that will keep her from going blind, (and thus losing her job).

7. LORENA WILLIAMS of Oceanside, suffers from high blood pressure, diabetes, and breathing problems. At present she can't work and has no income so she lives with her daughter. She is totally dependant on CMS for costly medications, syringes, blood testing equipment and glucose strips, as well as for bi-weekly check-ups.

8. WILLIAM DeWITT is a 48 year-old diabetic who has had heart bypass surgery, two heart attacks, and a tumor removed. His only income is General Relief so he cannot afford the medical drugs and syringes he needs to survive, and he also needs psychiatric treatment and drugs.

9. JOHN DOE is a 30 year-old full-time student who is HIV positive from a blood transfusion and does not want prospective employers to know of his condition. He lives on $600 per month and cannot afford to pay for the AZT he takes daily. He also requires two medications for an unrelated esophageal problem: he cannot keep food down without the medications. He needs to see specialists, have lab work and to monitor the HIV virus. It would be frightening for him to be without CMS.

10. MARY K. FARRELL, a 49 year-old woman on General Relief, has been diagnosed with degenerative disc disease, as well as hypertension and high cholesterol. She needs the CMS system for all medication and medical care. She does not know how she will

1 get treatment.

2 11. THOMAS FINNEGAN, is a 54 year-old Vista man who cannot
3 work because of cancer surgery, a broken back, and hyper-
4 tension. He lives on $800 a month and he could not afford
5 necessary treatment or drugs without having CMS. He feels that
6 without CMS care he would be dead.

7 12. FREIDA GRAY is a 61 year-old Clairemont woman who is able
8 to work only part time because of a heart condition, degenerative
9 disc disease, hypertension, and bronchitus. She needs CMS to get
10 heart medication, physical therapy, and an inhaler for the
11 bronchitis. She cannot afford to pay for medical care and
12 doesn't know how she would do without CMS.

13 13. RICK JONES is a 44 year-old man totally dependent on CMS
14 for treatment of hypertension and for medication for pain. He is
15 easily disoriented, has painful joints causing trouble walking,
16 occasionally faints under stress. Without medication he is
17 likely to have a stroke. He can barely manage to get to the
18 Vista Community Clinic for treatment, is frightened and confused
19 at the possibility of it no longer being available to him.

20 14. ANGIE LUMBARD is a 24 year-old woman who earns about $200
21 a month working part-time while she goes to school. She has
22 chronic cysts, and P.I.D., which could be fatal if not treated.
23 She is considered a potential cancer patient because of her
24 family history, so she also needs frequent cancer screening. She
25 cannot afford doctor's visits, tests, or medication.

26 15. NOEL ROGERS is a 60 year-old native San Diego woman who's
27 been an active community leader and who now suffers from
28 congestive heart failure, high blood pressure, and frequent

1 asthma attacks, all of which require frequent clinic visits and
2 daily medication. Further, she needs surgery for pre-cancerous
3 growths. She believes that without treatment she'll surely
4 die. While she's tying to find work, against doctor's advice,
5 she's now living on $300 a month unemployment checks.
6 16. DOLORES SALAZAR is a 63 year-old woman who suffers from
7 severe arthritis and whose income of only $206.00 from Social
8 Security means that she is dependent on CMS for medication and
9 care. The possibility of termination of her CMS worries her
10 terribly as she would suffer unbearable pain.
11 17. HELEN STARNES, almost 54, lives in El Cajon on $291
12 general relief. She can't work because of lupus, high blood
13 pressure, and problems because her leg was smashed between two
14 cars. She suffers terrible pain. She desperately needs the
15 medications as well as treatment by specialists that she gets
16 through CMS.
17 18. PATRICIA STEPHENSON is a 44 year-old disabled woman with
18 severe arthritis, who relies on CMS for medication, which must be
19 monitored continuously to avoid serious side effects. Without
20 her medication, she will suffer severe pain and be barely able to
21 move. Her doctor has already abandoned her because of the
22 proposed CMS cuts. She cannot afford to pay for medical
23 treatment because her only income is $288 in General Relief
24 benefits.
25 19. FRANCES TAYLOR is a 44 year-old woman who supports herself
26 doing housekeeping at $5.50 per hour. She relies on CMS for
27 medications and monthly clinic visits to treat hypertension and
28 diabetes. She would end up in a hospital if care through CMS

were no longer available.

20. WELFARE RIGHTS ORGANIZATION OF SAN DIEGO COUNTY represents recipients of public health and welfare benefits, including County Medical Services (CMS).

21. LORENA WILLIAMS of Oceanside, suffers from high blood pressure, diabetes, and breathing problems. At present she can't work and has no income so she lives with her daughter. She is totally dependent on CMS for costly medications, syringes, blood testing equipment and glucose strips, as well as for bi-weekly check ups.

Defendants

22. Defendant Board of Supervisors of the County of San Diego is the governing body of the County of San Diego and has the duty of ensuring compliance of the County with the laws of the State of California and of the United States.

23. Defendant William Cox, M.D. is the Director of the Department of Health Services of the County of San Diego and is charged with administration of over San Diego County's "CMS" program. He is sued in his official capacity. For purposes of this complaint, the Board of Supervisors and Dr. Cox will be referred to as "Defendants" or "County."

CLASS ACTION

24. Plaintiffs bring this action on their own behalf and on behalf of all others similarly situated in San Diego County.

25. Plaintiffs seek to represent a class consisting of all indigent residents of San Diego County who currently receive, or in the future will be eligible for, health care services provided

under the County's CMS program. Class Action

26. This is a proper class action under Code of Civil Procedure § 382. The class is definite and ascertainable, and it is so numerous that the joinder of all its members is not practical. There are substantial questions of law and fact common to plaintiffs and members of the class. The claims of plaintiffs are typical and substantially identical to the claims of the class as a whole, and they will fairly and adequately represent the interest of the class.

27. Defendants have acted on grounds generally applicable to the class by announcing the termination of CMS services in San Diego County. Only by adjudication of this controversy as a class action can relief be granted so as to make the members of the class whole and to avoid a multiplicity of lawsuits.

STATEMENT OF THE CASE

Statutory Framework

28. Welfare and Institutions Code § 17000 provides in part that:

> every county ... shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions.
>
> . . .

It is well established by case law and subsequent legislation that this section mandates that counties provide adequate medical care to indigent residents.

29. Welfare and Institutions Code § 10000 sets forth the

purpose of California's public assistance statutes, including § 17000. It provides in part that:

> Services shall be provided promptly and humanely, ...{so} as to encourage self-respect, self-reliance and the desire to be a good citizen, useful to society.

30. Health and Safety Code § 1442.5(c) (part of the "Beilenson Act") provides:

> Whether [the duty to provide health services] is provided directly by the county or through alternative means, the availability of services, and the quality of the treatment received by people who cannot afford to pay for their health care shall be the same as that available to non-indigent people receiving health care services in private facilities in that county.

31. In July 1990, the Legislature enacted Senate Bill 2097, purportedly amending Health and Safety Code § 1442.5 with language purportedly affecting subdivision (c):

> (b) For the 1990-91 fiscal year, nothing in subdivision (c) of Section 1442.5 of the Health and Safety Code shall require any county to exceed the standard of care provided by the state Medi-Cal program. Notwithstanding any other provision of law, counties shall not be required to increase eligibility or expand the scope of services in the 1990-91 fiscal year for their programs.

32. Health and Safety Code Section 1442.5 also includes procedural requirements pertaining to reductions or terminations of county health services. The statute provides:

> Prior to closing a county facility, eliminating or reducing the level of services provided, or prior to the leasing, selling, or transfer of management, the Board shall provide public notice, including notice posted at the entrance to all county health care facilities of public hearings to be held

> by the board prior to their decision to proceed. Such notice shall be posted not less than 30 days prior to such public hearings. The notice shall contain a detailed list of the proposed reductions or changes, by facility and service. The notice shall include, but not be limited to, the amount and type of each proposed change, the expected saving, and the number of persons affected.

The County Medical Services Program in San Diego County

33. The County Medical Services ("CMS") system operated by the County of San Diego is the last resort (safety net") health care system for the sick who are so poor that they cannot afford to pay for medical care. CMS recipients, by definition, are lawful county residents between the ages of 21 and 65, are not eligible for any other type of health care benefit, and have such limited income and resources that they can barely meet their food and shelter needs, let alone pay for necessary health care.

34. To meet its statutory obligation to provide for indigent health care, San Diego County contracts with health care providers in the community to care for CMS eligible patients. CMS applicants are screened by the County based on income, resource, and legal residence requirements. If eligible, applicants are "certified" CMS eligible and CMS contract providers are required to provide care. In order to obtain reimbursement, CMS providers must provide only care that is medically necessary to prevent death or significant disability. Many expensive or complex procedures require prior authorization. CMS's scope of services presently includes emergency and non emergency inpatient hospital care, outpatient primary care and specialty services, and prescription medications. Services are presently available throughout the

County at 23 hospitals and 16 primary care clinics geographically distributed throughout the County, and at other sites for specialty care and medication. The importance of outpatient services is the ability to detect, treat, and refer patients with potentially complicated, life threatening, or expensive to treat conditions before they become more difficult and costly to handle. By detecting conditions at an early stage, more expensive treatment and inpatient care can often be avoided. These services therefore result in a net saving of public resources and a protection of the public health.

35. The County's proposed termination of CMS health care, as referred to herein, consists of termination of its CMS provider contracts. The County has proposed no alternative means for providing health care for CMS recipients. Essentially, this action will shut down the CMS system and the only means of obtaining health care for this population will be through hospital emergency rooms once the health problem has deteriorated into an emergency. This system will result in death and disability to many people and to increased pressure on already overburdened hospital emergency rooms.

Shut down

use

36. In addition to other state funding for CMS, San Diego County receives funding from the state under AB 75, (Welf. and Inst. Code § 16995). This law provides for distribution of cigarette tax funds to counties for health related purposes, including the CMS program. San Diego County uses its AB 75 funds for various health programs including CMS and Child Health and Disability Prevention (CHDP), outreach and health education and hospital uncompensated care. As a condition of receiving these

funds, the County is required to maintain its financial level of support for CMS as well as scope of CMS services and eligibility for CMS services. The proposed action to cut CMS services would make the County ineligible to receive AB 79 funds.

San Diego County's Action to Terminate CMS Services

37. On February 26, 1991, the Board of Supervisors of San Diego County voted (4 to 1) to terminate its CMS provider contracts. Notices of termination were sent to providers on or about March 8, 1991. Termination will be effective March 19, 1991. None of the individual plaintiffs have received proper notice of termination. use

38. Even without this proposed action, the San Diego County health care system is strained to the limits in providing care to the indigent who fall sick. Despite the dedicated efforts of the management and staff of the providers, staffing shortages, obsolete equipment, waits of many weeks and sometimes months for an appointment and lack of access to specialty care for CMS patients are all too common.

39. The action proposed by the County as set forth above will immediately reduce the availability and quality of the medical treatment received by indigent patients below minimal standards of adequacy, below the standard of service available to non-indigents in private facilities in San Diego County, and below the standard of care provided to Medi-Cal recipients in the County. There will be no system of medical care available to the CMS population who cannot afford to pay for care.

ADDITIONAL FACTUAL ALLEGATIONS

40. The parties beneficially interested in the action are defendants, plaintiffs and all those persons who are members of the plaintiffs' class.

41. Plaintiffs seek a Writ of Mandate pursuant to C.C.P. Section 1085 on behalf of their class, compelling defendants to perform acts required by state law as set forth in the above causes of action.

42. At all times herein, defendants have been able to perform their duty regarding the application of relevant law, specifically Welf. & Inst. Codes § 10000, 17000, and Health and Safety Code §§ 450 and 1442.5, and the due process clauses of the state and federal constitutions.

43. Plaintiffs have no plain, speedy, and adequate remedy in the ordinary course of law to make the defendant comply with the law as set forth above.

44. By taking the actions set forth above, which will leave plaintiff without necessary health care, without the opportunity for individual hearings, and without the opportunity for properly noticed public hearings, defendants have caused great immediate and irreparable harm to plaintiffs and will continue to cause such harm unless and until they temporarily, preliminarily and permanently are enjoined from doing so.

45. Plaintiffs have no adequate remedy at law for the irreparable harm which will be caused if defendants are not enjoined.

46. There are no adequate administrative remedies available to plaintiffs, and plaintiffs are not required to exhaust any such

remedies prior to obtaining the relief sought herein.

47. Plaintiffs have paid state and local tax within the past year.

FIRST CAUSE OF ACTION
FOR VIOLATION OF WELFARE AND INSTITUTIONS CODE SECTION 17000.

48. The allegations of paragraphs 1 through 47 are incorporated herein by reference.

49. Welfare and Institutions Code Section 17000 requires defendants to provide necessary health services to indigent County residents. The services provided must be adequate to meet the minimum health care needs of the County's indigent residents, as determined based on an adequate study by the Board of Supervisors.

50. Defendants' proposed actions affecting CMS, as set forth above, will reduce services below the minimum levels of adequacy required by Welf. and Inst. Code § 17000.

51. Defendants are required by Section 17000, as interpreted by controlling case law, to conduct a study of actual needs of indigent residents as a basis for setting level of benefits provided under that section.

52. Defendants have not conducted any study of the health care needs of County indigents to justify the proposed action to reduce CMS as set forth above.

SECOND CAUSE OF ACTION
FOR VIOLATION OF WELFARE AND INSTITUTIONS CODE 10000

53. The allegations of paragraphs 1 through 52 are incorporated herein by reference.

54. Under Welfare and Institutions Code Section 10000 County indigent health programs must provide service in a manner which

encourages self-respect, self-reliance and self-support.

55. Defendants' actions to cut CMS services will result in inhumane treatment of the indigent, who will suffer preventable pain, disability and death from their inability to obtain adequate treatment for serious diseases such as cancer, diabetes, and hypertension. For these reasons, the planned reductions violate Welfare and Institutions Code Section 10000.

THIRD CAUSE OF ACTION
FOR VIOLATION OF HEALTH AND SAFETY CODE SECTION 1442.5(c)

56. The allegations of paragraphs 1 through 55 are incorporated herein by reference.

57. Implementation of the actions announced by Defendant Board of Supervisors of the County of San Diego reduce the capacity of health care delivery in the County to a level of quality and availability below that which is available to non-indigent persons in private facilities in the County. Specifically, many indigent persons who have no other source of medical care will lose access to essential medical services.

58. Implementation of the reductions will also reduce the level of service below the standard of care mandated by the state Medi-Cal and federal Medicaid programs and provided by the state Medi-Cal program.

FOURTH CAUSE OF ACTION
FOR VIOLATION OF HEALTH AND SAFETY CODE § 1442.5

59. The allegations of paragraphs 1 through 58 are incorporated herein by reference.

60. Calif. Health and Safety Code § 1442.5 (Beilenson Act) requires County defendants to post notices specifically detailing

proposed reductions (or terminations) in County Medical Services, to hold hearings to obtain public input regarding the effect of the proposed reductions on indigent persons, and to make specific findings on the effect of such action, prior to making any reductions in services.

61. The CMS reductions approved by the Board on February 26, 1991, were neither posted nor considered at public hearings in which findings were made as required by the Beilenson Act.

FIFTH CAUSE OF ACTION
FOR VIOLATION OF HEALTH AND SAFETY CODE § 450

62. Plaintiffs hereby incorporate paragraphs 1 through 61 by reference.

63. Calif. Health and Safety Code § 450 requires defendant Board to take such measures as necessary to preserve and protect the public health in unincorporated County areas.

64. In terminating CMS services, defendants are in violation of their duty to preserve public health, because without CMS services people in need of health care for treatment and prevention of severe communicable diseases will not be able to receive such treatment. In addition, the County's failure to maintain the existing scope of CMS services jeopardizes the County's AB 75 state health funding, which funds a wide variety of public health services which are essential to the preservation and protection of public health in the unincorporated areas of the County.

SIXTH CAUSE OF ACTION
FOR VIOLATION OF STATE AND FEDERAL DUE PROCESS REQUIREMENTS

65. Plaintiffs hereby incorporate by reference the allegations of paragraphs 1-64.

66. The due process clauses of the state and federal constitutions (U.S. Const. Am. 14; Calif. Const. Art. I § 7) require that when a government entity reduces or terminates an essential public benefit which is a statutory entitlement, the beneficiary of such benefit must be provided prior notice and a hearing to contest such action.

67. Defendant County has failed to provide individual notice with the right to a hearing prior to terminating or reducing benefits to CMS recipients.

68. CMS benefits are a statutory entitlement and an essential public benefit for plaintiffs and other CMS recipients.

69. In acting to terminate or reduce CMS benefits to CMS recipients without prior notice and hearing as set forth herein, defendant County has violated the state and federal due process clauses.

SEVENTH CAUSE OF ACTION

FOR WASTE OF PUBLIC FUNDS (C.C.P. § 526a)

70. Plaintiffs hereby incorporate by reference the allegations of paragraphs 1-69.

71. In acting to terminate CMS benefits, the County has improperly used taxpayer funds in that this action will jeopardize the County's right to receive additional funds due to the County including AB 75 funds for health care, and in that this action will result ultimately in a higher cost to the County, its taxpayers, and the public, in the form of the higher cost of caring for the indigent patients who become severely ill as a direct result of the loss of CMS services.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this court order:

1. Temporary, preliminary, and permanent injunctive relief enjoining any reduction in San Diego County CMS services in the absence of an adequate study and substantial evidence supporting findings that said reductions will not reduce indigent health care services below the level required under Welfare and Institutions Code Section 17000;

2. Temporary, preliminary, and permanent injunctive relief enjoining any reduction in San Diego County CMS care services that reduces the quality and availability of medical treatment below that available to the non-poor in private facilities in San Diego;

3. Temporary, preliminary, and permanent injunctive relief enjoining any reduction in San Diego County CMS services which reduces the level of services below the standard of care provided by state Medi-Cal or federal Medicaid programs;

4. Temporary, preliminary, and permanent injunctive relief enjoining any curtailments of San Diego County health care services unless and until the County complies with the notice and hearing provisions of Health and Safety Code § 1442.5 (Beilenson Act);

5. Temporary, preliminary, and permanent injunctive relief enjoining any reduction or termination of CMS services to individual CMS recipients without providing such individuals and/or their representatives with prior notice and the opportunity for a prior fair hearing to appeal such action;

6. A peremptory writ of mandate, pursuant to Code of Civil

Procedure Sections 1085 and 1087, compelling defendants, and all persons acting in concert with them, to refrain from eliminating, reducing or curtailing health care services in San Diego County;

7. That this case be certified as a class action;

8. For reasonable costs and attorneys' fees; and

9. For such other and further relief as the Court deems just and proper.

DATED: _____ ROSEMARY BISHOP

DATED: _____ ANSON B. LEVITAN

DATED: March 11, 1991 Carol R. Bracy
CAROL R. BRACY