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DEPARTMENT OF JUSTICE

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July 15, 2009

The Honorable Claudia Wilken
U.S. District Court, Northern District of California
1301 Clay Street
Courtroom 2
Oakland, California 94612-5212

RE: *Martinez v. Schwarzenegger*
United States District Court, Northern District of California, Case No. CV 09-2306 CW

Dear Judge Wilken:

This serves to further update the court on the actions that the State defendants have undertaken to comply with the Amended Preliminary Injunction, issued July 13, 2009.

Notification to the Counties

Yesterday, by the close of business July 14, 2009, the Department of Social Services wrote individually to each of the 14 counties impacted by the Amended Preliminary Injunction. (The notice to Napa County is attached as an example.) This notice explains that the Rate Change Request that the county submitted after the enactment of Welfare and Institutions Code section 12306.1(d)(6) and prior to July 1st has been rescinded and that IHSS providers in that county will be paid the wages and benefits at pre-July 1st levels.

However, there are three exceptions. In its latest Rate Change Request filed after July 1st, Contra Costa County sought to pay wage and benefits at a *higher* level than it paid prior to July 1st. State defendants therefore will permit that county to pay this new level of wages and benefits. In addition, it has been determined that Fresno County did submit a second Rate Change Request on June 24th based on different basis than section 12306.1(d)(6), and the State defendants approved that request on June 25th. Therefore, State defendants did not change the level of wages and benefits for Fresno County to pre-July 1st levels.

The final exception is Santa Barbara County. That county refused to consent to pay the pre-July 1st level of wages and benefits because it has an "out" clause which serves as an alternative basis to change its rate. The court may recall from the hearing on the original motion for preliminary argument that Fresno County made the same point. State defendants have no

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authority to force a county to pay any level higher than minimum wage and Santa Barbara is not a party to this lawsuit.

Changes Being Made to Assure Payment of Pre-July 1st Wages

IHSS providers' time sheets are submitted to county offices for input into the Case Management, Information and Payrolling System (CMIPS). Once counties have completed the payrolling entries to CMIPS, CMIPS issues an electronic file to the Department of Social Services which in turn reviews, approves and submits to the State Controller. The State Controller issues pay warrants to the IHSS providers. DSS has requested that Electronic Data Systems (EDS) change the levels of wages and benefits to be paid to providers in CMIPS. These changes will take effect on July 23rd.

In order to pay the new level of wages and benefits retroactively to July 1st, however, a supplemental pay warrant will have to be issued by the counties. Under DSS regulations, counties are required to process all supplemental payments. In the notice to the counties (see above), they have been instructed on how to accomplish this. It is up to the counties as to when exactly these supplemental payments will be made.

Therefore, State defendants are in full compliance with this court's Amended Preliminary Injunction.

Sincerely,

/S/ Susan M. Carson

SUSAN M. CARSON
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General



JOHN A. WAGNER
DIRECTOR

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DEPARTMENT OF SOCIAL SERVICES
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ARNOLD SCHWARZENEGGER
GOVERNOR

July 14, 2009

AII-COUNTY WELFARE DIRECTORS LETTER

TO: COUNTY WELFARE DIRECTORS

SUBJECT: WAGE REDUCTION LAWSUIT

Reason For This Transmittal

- State Law Change
 Federal Law or Regulation Change
 Court Order or Settlement Agreement
 Clarification Requested by one or More Counties
 Initiated by CDSS

The purpose of this letter is to provide counties with an update regarding the lawsuit, Martinez v. Schwarzenegger, filed by the Service Employees International Union (SEIU) to prevent the implementation of a reduction in State funding toward the In-Home Supportive Services (IHSS) workers wages under Welfare and Institutions Code section 12306.1(d)(6). The original preliminary injunction issued by U.S. District Judge Claudia Wilken on June 26, 2009 (which was the subject of ACINs, dated June 30 and July 3, 2009) was amended yesterday, July 13, 2009, requiring immediate action and specific steps to be taken by the State. These actions and their affect will be discussed in this letter.

Background

The reduction in the amount of the State's participation in provider wages was part of the 2009-2010 State Budget passed in February and was set to take effect on July 1, 2009. The lawsuit filed by SEIU sought to block this reduction. Judge Wilken heard the case on June 25th and issued a preliminary injunction on June 26th enjoining the State from reducing its contributions to IHSS providers' wages and benefits from \$12.10/hour to \$10.10/hour.

In response to a motion by plaintiffs, Judge Wilken amended the preliminary injunction, ordering that the State take specific actions by the close of business today, July 4, 2009. A copy of the Amended Preliminary Injunction is attached.)

The Amended Preliminary Injunction requires the State to:

- Immediately rescind by the close of business today (July 14th) the approvals by the Department of Health Care Services of counties' Rate Change Requests submitted after February 20,2009, to be effective July 1, 2009.

All-County Welfare Director's Letter
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- Notify each county by close of business today (July 14th) that all approvals of the Rate Change Request counties submitted between February 20 and July 1, 2009, are rescinded. This means that counties are required to pay the pre-July 1st level of wages and benefits despite the fact that counties' Rate Change Request to decrease wages and benefits submitted prior to July 1st were approved.
- Notify these counties that the State will pay 65% of the non-federal share if the pre-July 1, 2009 rate up to \$12.10/hour for hours worked on July 1, and thereafter "until such time as the Court's preliminary injunction is rescinded".

The preliminary injunction is in place until the State has completed the analysis required under the original preliminary injunction. Once that analysis has been accepted by the court, according to the injunction, the State will be permitted to reduce its contribution to wages and benefits to \$10.10/hour pursuant to Welfare and Institutions code section 12306.1(d)96).

In order to comply with the Amended Preliminary Injunction, the Department will be requesting that Electronic Data Systems, and HP Company, (EDS) make the required changes to the Case Management, Information and Payrolling system (CMIPS) immediately. This will impact counties in the following manner:

- Advance pay cases, which have already been paid for July, were paid at the prior requested rate subject to counties' Rate Change Requests.
- All July timesheets that have already been keyed will be paid at the prior requested rate.
- All July timesheets keyed prior to the required changes will be paid at the required requested rate.
- Rate change exception processes will occur as normal but will most likely be higher due to timing of rate reversals.
- This process has not been used for multiple counties at the same time. EDS will need to test this process to ensure the changes work correctly.
- All changes must be done by EDS during non-business hours and after batch cycles requiring staff to work evenings and weekend hours to accomplish.

Detailed County Process To Issue Supplemental Checks:

Given the requirements of the Amended Preliminary Injunction, payment of re-July 1st wages, counties will need to do the following in order to pay the previous level of wages and benefits:

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1. The following process will need to be followed in order to ensure providers receive the full wage payment in place prior to July 1, 2009. CDSS estimates this will take 20-25 minutes per case to complete a "spec transaction" which will provide a supplemental paycheck to each provider. This process will only be necessary during the month of July prior to the wage change being completed by EDS on July 23, 2009.
2. In order to issue payment to providers or advance pay recipients the county must manually rebuild eligibility segments and complete an SOC 312 Special Pre-Authorized Transaction form to initiate a Supplemental payment to each payee.

The following steps must be completed by the county:

1. A new eligibility segment must be built for each recipient in the county to reflect the increased wage rate.
2. Calculate the difference between the reduced wage rate and the reinstated wage rate, e.g., reduced amount \$8.00, reinstated amount \$9.50 = difference of \$1.50 per hour.
3. Identify on WARR or PSUM for each provider or advance pay recipient any payments made for the Part A pay period for July 2009 and any payments made prior to the wage reinstatement in CMIPS.
4. For each payment made, multiply the number of hours paid by the hourly difference to obtain the underpayment amount, e.g., 100 hours paid times \$1.50 = \$150.00.
5. Complete and have approved an SOC 312 for each payment using the following codes:
 - a. Type – Identifies the tax status of the payee and can be found on the PELG screen in field D2.
 - i. W – Use this code when the provider DED code is O.
 - ii. X – Use this code when the provider DED code is P, S or C or the payment is being made to an Advance Pay Recipient.
 - b. Reason – Enter 02 (Prior Underpayment).
 - c. From Date – Enter the beginning date of the pay period.
 - d. To Date – Enter the ending date of the pay period.
 - e. Gross – Enter the gross amount of the warrant to be issued.
 - f. Hours – Enter the number of hours that were underpaid.
6. Enter the information from the SOC 312 into the CMIPS SPEC screen including the authorization number.

Counties must evaluate and provide supplemental payment for any payment (timesheet or SPEC transaction) made at the reduced wage rate prior to completion of wage updates in CMIPS.

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Attached for your information is a copy of the court-ordered injunction. If you have any questions regarding this letter please contact Eileen Carroll, Branch Chief, at (916) 229-4000, or me at (916) 653-5403.

Sincerely,

Original Signed By:

EVA L LOPEZ, Deputy Director
Adult Programs Division

bc:	APD File	MS 8-17-12
	APB File	MS 19-96
	APB Chron	MS 19-96
	FASB File	MS 19-92
	FASB Chron	MS 19-92
	APSU File	MS 19-92
	Originator: Terrie Marks, Analyst	MS 19-92
	Manager: Ardora McCalley/APSU	MS 19-92

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