



BAY AREA REGIONAL OFFICE
1330 Broadway, Suite 500
Oakland, CA 94612
Tel: (510) 267-1200
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (510) 267-1201
www.disabilityrightsca.org

California's protection and advocacy system

ALERT – There will be a litigation briefing for reporters at 3:30 pm today. Interested media should dial 800-230-1093 and reference "IHSS Litigation"

**FOR IMMEDIATE RELEASE
December 1, 2011 -- OAKLAND:**

Contacts

Melinda Bird, Disability Rights California, 213-427-8747

Melinda.Bird@disabilityrightsca.org

Stacey Leyton, Altshuler Berzon LLP, 415-421-7151

sleyton@altshulerberzon.com

Seniors and People with Disabilities Seek Emergency Order to Halt Illegal Cut to Critical IHSS Services

Today, Disability Rights California, other disability and senior citizen advocacy groups, and caregivers, asked for a Temporary Restraining Order to stop the implementation of a 20% across the board reduction in IHSS hours on January 1, 2012.

The reduction was authorized by the legislature (Senate Bill 73) if specific revenue targets were not reached by mid-December, an outcome that now looks virtually certain. Earlier this year, an across the board reduction of 3.6% in IHSS hours was implemented.

An estimated 372,000 IHSS recipients will receive reduction notices, almost every recipient who is not on a federal waiver. On average, a person using IHSS receives a modest 80 hours a month or fewer than 3 hours a day of help.

Melinda Bird, lead counsel for DRC, stated that: "The decision to make indiscriminate, major cuts in IHSS services will endanger recipients by withdrawing many hours of the very help that county social workers decided were necessary to keep them safely in their homes and to avoid more expensive institutional care. This substantial reduction in hours will force seniors, people with serious disabilities or severe medical conditions to take needless risks--such as bathing without assistance or missing medical appointments because there is no alternative service--and sharply increase the chances that they will have to move out of their homes and communities into nursing homes and other institutions. These actions violate the Americans with Disabilities Act and the Medicaid Act and other laws."

People who use IHSS--60% of whom are elderly-- will get this bad news mailed to them during the holiday period. The complicated to understand "Notice of Action" directs them to apply within 15 days for a "Care Supplement," to reinstate their hours for a period of reassessment. The notice uses ominous sounding terms without explanation, such as "Out of home placement." Many recipients will need help from county case workers to interpret the complicated notice and figure out what to do, just at the time when many workers are on vacation or offices are closed.

For example, an 86 year old senior citizen needs help twice a day-- in the mornings to get dressed and in the evening to help with dinner and undressing. When she gets her "Notice of Action," she will be asked to choose what help to cut out--should she skip a meal or skip getting dressed? Her reaction was: "If I don't get help in both the mornings and evenings, I will have to go into a nursing home."

Unfortunately, the process to evaluate need for restoration of hours relies on numerical scores called "functional ranks," which a federal court has already determined are not reasonable measurements of need for IHSS.

Using the functional ranks leads to an assumption that services for people with low ranks can safely be cut back. But IHSS hours are only awarded if people need them to remain safely at home. And the ranks are weighted against children and people with psychiatric and cognitive disabilities. For example, someone with Alzheimer's might have been awarded very few IHSS hours, just so that his time using the stove or taking medications is monitored-- a 20% cutback in his hours would endanger him.

DRC attorneys stress that these reductions in hours should not be applied to children under 21. This is in direct conflict with the federal Medicaid requirement that children be provided with early and periodic screening, diagnostic and treatment services. They should be exempt.

The Notices of Action have not been reasonably calculated to inform people using IHSS of their right to request a hearing or of their right to challenge these functional rankings that may render them ineligible for restoration of hours.

DRC and other groups have already prepared plain language Fact Sheets explaining to IHSS recipients what the Notices of Action mean and how to respond within the short timeframe allowed. These have been posted on our website, together with a copy of the form to be filled out by a doctor, stating that the IHSS recipient will be in danger of "out of home placement" if IHSS hours are reduced. The form is not required by the state but we recommend that it be filled out as soon as possible to strengthen applications for a "Care Supplement."

The lawsuit was filed by Disability Rights California, Disability Rights Legal Center, National Senior Citizens Law Center, the National Health Law Program and San Diego attorney Charles Wolfinger on behalf of the IHSS recipients. The law firm of Altshuler Berzon LLP is also counsel in the lawsuit, representing unions including five SEIU locals and United Domestic Workers-AFSCME, whose members are IHSS caregivers and attendants.

We are posting the Memorandum in support of the application for the temporary restraining order filed on December 1, 2011 on Disability Rights California's website: www.disabilityrightsca.org.