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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 CALIFORNIA ASSOCIATION FOR
15 HEALTH SERVICES AT HOME,
16 a California nonprofit corporation,

Civil No.
3. CV 08-07045

PA (AGRx)

17 -vs.-

18 SANDRA SHEWRY, Director of
19 Department of Health Care Services
20 of the State of California, and DOES 1
21 through 50,

COMPLAINT FOR INJUNCTION
AND DECLARATORY RELIEF

22 _____ Defendants. /
23
24

1 The plaintiff CALIFORNIA ASSOCIATION FOR HEALTH SERVICES AT HOME
2 complains of defendants SANDRA SHEWRY, Director of Department of Health Care Services
3 of the State of California, and DOES 1 through 50, and for claims for relief alleges:

4 **INTRODUCTION**

5 1. Plaintiff challenges:

6 - (1) the validity of an across-the-board ten percent reduction, ("Ten Percent Rate
7 Reduction") under Assembly Bill X3 5 ("AB 5"), in reimbursement rates to home health
8 services providers in the Medicaid ("Medi-Cal") fee-for-service ("FFS") program, for
9 dates of service on and after July 1, 2008, and,

10 - (2) the validity of an across-the-board one percent reduction, under Assembly
11 Bill ("AB") 1183, in reimbursement rates to providers of home health services to
12 beneficiaries of the Medi-Cal FFS program, for dates of service on and after March 1,
13 2009,

14 which Defendant Sandra Shewry, Director of the California Department of Health Care
15 Services is responsible for implementing under AB 5, AB 1183, and Cal. Welf. & Inst. Code
16 § 14105.

17 **Jurisdiction and venue**

18 2. The Court has jurisdiction under 28 U.S.C. § 1331. *Shaw v. Delta Air Lines,*
19 *Inc.*, 463 U.S. 85, 96 n.4 (1983).

20 3. The actions of the Defendant complained were and will be done in all parts of
21 the state of California, including the County of Los Angeles. The injuries which are inflicted
22 and threatened which are complained of, to the Plaintiff CAHSAH, its members who are home
23 health services providers, and their patients in the Medi-Cal FFS program, have occurred and
24 are threatened to occur in all parts of the state of California, including the County of Los
25 Angeles. The Defendant has an office in the County of Los Angeles.

1 **Parties**

2 4. The plaintiff CALIFORNIA ASSOCIATION FOR HEALTH SERVICES AT
3 HOME ("Plaintiff CAHSAH"), is a California nonprofit corporation, whose principal place of
4 business is Sacramento, California, and does business throughout California, including the
5 County of Los Angeles, California.

6 5. (a) The purposes of the Plaintiff CAHSAH are to promote quality home health
7 services and promote and protect the interests of all home health services providers in the State
8 of California. Plaintiff CAHSAH represents more than 500 members that are direct providers
9 of home health services. Plaintiff CAHSAH's members include Medicare-certified home
10 health agencies, licensed home health agencies, home care aide organizations, home medical
11 equipment providers, home infusion pharmacy providers, and interdisciplinary professional
12 service organizations.

13 (b) "Home health services," as used in this complaint, means and includes,
14 without limitation thereby, the following services covered by the Medi-Cal fee-for-service
15 ("FFS") program:

- 16 - Medicare-care certified home health agency services
- 17 - licensed home health agency services
- 18 - hospice
- 19 - home care aides
- 20 - home medical equipment providers
- 21 - home infusion pharmacy providers
- 22 - occupational therapy
- 23 - speech therapies
- 24 - medical social worker services
- home health care services, as defined by 42 C.F.R. §§ 441.15, 440.70,
 including:
 - nursing services
 - home health aide services
 - medical supplies
 - medical equipment
 - appliances suitable for use in a home
 - physical therapy
 - occupational therapy
 - speech pathology services

- 1 - audiology services
- 2 - early periodic screening, diagnosis and treatment (“EPSDT”) services
provided in the home, including but not limited to:
 - 3 - periodic screening and vision, dental, and hearing services
- 4 - services under Home and Community Based Services (“HCBS) waivers,
including HCBS services under:
 - 5 - Multi-Purpose Senior Services Program Waiver
 - 6 - the AIDS Waiver
 - 7 - Developmentally Disabled Waiver
 - 8 - Nursing Facility A/B Waiver
 - 9 - Nursing Facility Subacute Waiver
 - 10 - In-Home Medical Care Waiver,

11 which are performed or furnished in the home, (collectively, “home health services”).

12 6. The defendant SANDRA SHEWRY (“Director”) is the director of the California
13 Department of Health Care Services, (“the Department”). The Director is exclusively
14 empowered by §§ 14100.1 and 14105 California Welfare & Institutions (“Welf. & Inst.”) Code
15 to set all policies, rules, and regulations in the Medi-Cal program, including setting all rates
16 payable to Medi-Cal providers, including home health services providers. The Director is sued
17 in her official capacity only.

18 7. The defendants Does 1 through 50 are persons whose identity and capacities are
19 unknown to the Plaintiff CAHSAH, who for that reason sues them by such fictitious names.
20 Plaintiff CAHSAH prays leave to amend this complaint when the identify of any of these Does
21 1 through 50 become known to counsel.

22 8. The Plaintiff CAHSAH is a corporate citizen and resident of the State of
23 California, and sues herein on its own behalf, in its own interest, and the interest of its
24 members, and also, as well, on behalf of the public of the State of California, and of the Medi-
Cal beneficiary patients of the members of the Plaintiff CAHSAH to procure the performance
of public duty by the defendant public officials: namely the performance of the mandatory
public duty of the Director, under and pursuant to the Supremacy Clause, not to injure Medi-

1 Cal beneficiaries and their providers, including home health services providers, in the Medi-Cal
2 FFS program, by (1) implementing the federally preempted Ten Percent Rate Reduction of AB
3 5, and by (2) implementing the federally preempted One Percent Rate Reduction of AB 1183, --
4 which aforesaid actions of the Director are preempted, under the Supremacy Clause, in that the
5 aforesaid actions violate and are hence contrary to 42 U.S.C. § 1396a(a)(30)(A), -- "Sec. 30A,"
6 -- including the quality and equal access clauses of Sec. 30A.

7 9. The Plaintiff CAHSAH also sues in a prudential *jus tertii* capacity to assert
8 (1) the interests of its members as well as (2) the interests of the Medi-Cal patients of the
9 members of the Plaintiff CAHSAH, in the claims for relief, and Supremacy Clause preemption,
10 which is sued upon and sought in this within complaint.

11 10. The Plaintiff CAHSAH, -- as well as the home health services provider members
12 of the Plaintiff CAHSAH, and the Medi-Cal beneficiary patients of the home health services
13 provider members of the Plaintiff CAHSAH on behalf of whom the Plaintiff CAHSAH sues
14 herein, -- also have standing and a claim for relief against the Director inasmuch as each has
15 suffered, will suffer, and is threatened to suffer, concrete and irreparable injury, unless the
16 defendant Director is restrained by an appropriate injunction from implementing the Ten
17 Percent Rate Reduction of AB 5 and the One Percent Rate Reduction of AB 1183, which
18 actions are preempted under the Supremacy Clause by Sec. 30A.

19 INTRODUCTION

20 11. Medi-Cal is a major component of the "safety net" that ensures the State's poor
21 have access to health care services.

22 LEGISLATIVE HISTORY OF AB 5

23 12. On January 10, 2008, the California Governor proclaimed a State fiscal
24 emergency, sent a proposed 2008-2009 budget bill to the Legislature, and called the Legislature
into special session.

1 13. (a) On February 16, 2008 the Governor signed into law AB 5, the Special
2 Session health care trailer bill.

3 (b) AB 5, eff. February 16, 2008, was chaptered as Chapter 3, Statutes 2007-
4 2008 Third Extraordinary Session.

5 AB 5

6 14. Section 14 of AB 5 added §14105.19 Welf. & Inst. Code, which, in subds. (a),
7 (b)(1), (b)(2), and (c) - (e) provides that reimbursement shall be cut 10% across-the-board in
8 Medi-Cal fee-for-service to providers, including home health services providers, in the
9 Medi-Cal fee-for-service program, for dates of service on and after July 1, 2008.

10 15. § 14105.245 Welf. & Inst. Code, (added by Section 15 of Assembly Bill
11 X3 5 as set forth above), provides:

12 “(a) The Legislature finds and declares that the state faces a fiscal crisis that requires
13 unprecedented measures to be taken to reduce General Fund expenditures to avoid
14 reducing vital government services necessary for the protection of the health, safety, and
15 welfare of the citizens of the State of California.” (Emphasis supplied.)

16 16. Finally, Secs. 16 and 17 of AB 5 provide:

17 “SEC. 16. This act addresses the fiscal emergency declared by the Governor
18 by proclamation on January 10, 2008, pursuant to subdivision (f) of Section 10
19 of Article IV of the California Constitution.

20 SEC. 17. . . . In order to make statutory changes needed to implement cost
21 containment measures affecting health services, at the earliest possible time, it is
22 necessary that this act take effect immediately.” (Emphasis supplied.)

23 Concrete injury from implementing Secs. 14 and 15 of AB 5.

24 17. The Plaintiff CAHSAH, as well as its home health services provider members
and their patients in the Medi-Cal FFS program for whom the Plaintiff CAHSAH is a virtual
representative and a *jus tertii* representative, have been and will, respectively, and foreseeably
and inevitably, suffer concrete injury, and are threatened with concrete injury, and are put at
risk of concrete injury, by the Ten Percent Rate Reduction, which was put into effect on July 1,

1 2008 and continuously since then, by the defendant Director, pursuant to and by her policy,
2 practice, and provider bulletin to implement the aforesaid Ten Percent Rate Reduction to
3 providers in the Medi-Cal FFS program, including the home health services providers who are
4 members of the Plaintiff CAHSAH; -- which concrete injury from the Ten Percent Rate
5 Reduction is great, immediate, and irreparable; and which irreparable injury is also both
6 presumed and inferred from the fact that the Legislature and the Director failed to consider
7 quality of services or equal access of beneficiaries in the course of the Legislature enacting and
8 the Director implementing the Ten Percent Rate Reduction of AB 5.

8 Denial of access to home health services

9 18. Since July 1, 2008 due to the Ten Percent Rate Reduction, many home health
10 services providers have and will reduce services by not accepting new Medi-Cal patients, or by
11 not accepting Medi-Cal patients at all, or by reducing kinds, amounts, locations, and levels of
12 services, or by going out of business, to the great injury and irreparable injury of tens of
13 thousands of Medi-Cal beneficiaries who are unable thereby to obtain life-vital home health
14 services and treatment in the Medi-Cal FFS program; so as to cause and threaten to cause great
15 physical suffering and injury to Medi-Cal beneficiaries, including patients of the members of
16 the Plaintiff CAHSAH.

16 FIRST CLAIM FOR RELIEF

17 Against each of the defendants, for injunctive relief to enjoin the defendants to
18 refrain from implementing a 10% reduction of payments to Medi-Cal fee-for-
19 service providers of home health services, under subds. (a), (b)(1), (b)(2), and (c) -
20 (e) of § 14105.19 Welf. & Inst. Code, -- which statutes, and the State action of
21 defendants to implement the state statutes, violate, and are hence preempted under
22 the Supremacy Clause by, the quality and equal access clauses of 42 U.S.C.
23 § 1396a(a)(30)(A).

21 * * * * *

22 19. The Plaintiff CAHSAH refers to and each of the allegations in each of the
23 preceding Paragraphs of this complaint, as if fully set forth herein.

1 20. The Medicaid Act, in 42 U.S.C. § 1396a, subd. (a)(30)(A), provides:

2 “(a) A State plan for medical assistance must - (30)(A) provide for such methods and
3 procedures relating to the utilization of, and the payment for, care and services available
4 under the plan (including but not limited to utilization review plans as provided for in
5 section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary
6 utilization of such care and services and to assure that payments are consistent with
7 efficiency, economy, and quality of care and are sufficient to enlist enough providers so
8 that care and services are available under the plan at least to the extent that such care and
9 services are available to the general population in the geographic area; . . . ”

10 21. 42 U.S.C. § 1396a, subd. (a)(30)(A), shall hereinafter be referred to as “Sec.
11 30A.”

12 22. However, under the facts, including but not limited to the fact that on January
13 10, 2008, the Governor proclaimed a fiscal emergency and called the Legislature into Special
14 Session; and that on February 16, 2008 the Legislature enacted and the Governor signed into
15 law AB 5, which proclaims in Sec. 15 that “the state faces a fiscal crisis that requires
16 unprecedented measures to be taken to reduce General Fund expenditures,” and which
17 proclaims in Sections 16 and 17 that:

18 “SEC. 16. This act addresses the fiscal emergency declared by the Governor
19 by proclamation on January 10, 2008, pursuant to subdivision (f) of Section 10 of
20 Article IV of the California Constitution.

21 SEC. 17. . . . In order to make statutory changes needed to implement cost
22 containment measures affecting health services, at the earliest possible time, it is
23 necessary that this act take effect immediately.” (Emphasis supplied.)

24 The sole function and purpose, and the conclusive consideration in the Legislature’s
25 decision to enact subds. (a), (b)(1), (b)(2), and (c) - (e) of § 14105.19 Welf. & Inst. Code, --
26 which provide that the defendants shall cut Medi-Cal payments to providers in the Medi-Cal
27 fee-for-service program, including home health services, -- was budgetary considerations, to
28 “address the fiscal emergency” declared by the Governor, and to effect “cost containment
29 measures affecting health services,” by making statutory changes needed to reduce
30 expenditures, (to fit the State’s reduced budget), commencing July 1, 2008.

1 23. However, therein, by each and all of the above allegations, the enactment of the
2 Ten Percent Rate Reduction in respect to home health services in the Medi-Cal FFS program,
3 by subds. (a), (b)(1), (b)(2), and (c) - (e) of § 14105.19 Welf. & Inst. Code, by the Legislature
4 was without any consideration of quality and access to home health services as required by Sec.
5 30A,¹ and was without any consideration of what it costs home health services providers to
6 perform the various services and procedures of home health services, as required by Sec. 30A;²
7 such that the State's sole purpose, and the conclusive factor, in enacting the across-the-board
8 10% reduction in reimbursement to providers in the Medi-Cal fee-for-service program,
9 including home health services providers, was to reduce the budget deficit. Accordingly,
10 under the standard of *Orthopaedic Hosp.*, 103 F.3d 1491, at 1500 (1997); and *Arkansas*
11 *Medical Society, Inc. v. Reynolds*, 6 F.3d 519 (8th Cir.1983), the action of the Legislature to
12 enact the aforesaid subds. (a), (b)(1), (b)(2), and (c) - (e) of §14105.19 Welf. & Inst. Code; and
13 the policy and action of the defendants to implement these statutes by reducing payments to
14 home health services providers, by ten percent (10%), for dates of service on and after July 1,
15 2008, was and is arbitrary and capricious, and contrary to and in violation of the quality and
16 access provisions of Sec. 30A; so that hence, under the Supremacy Clause, the aforesaid subds.
17 (a), (b)(1), (b)(2), and (c) - (e) of §14105.19 Welf. & Inst. Code are preempted by Sec. 30A.

18 24. Accordingly, by each and all of the foregoing facts alleged, subds. (a), (b)(1),
19 (b)(2), and (c) - (e) of § 14105.19 Welf. & Inst. Code were and are unlawful, in violation of the
20 quality and access provisions of Sec. 30A, so as to be preempted, under the Supremacy Clause,
21 by the quality and access provisions of Sec. 30A, such that the defendant Director has and is

22 ¹ *Othopaedic Hospital v. Belshe*, 103 F.3d 1491, 1500 (9th Cir.1997).

23 ² *Id.*, 103 F.3d at 1500; *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519
24 (8th Cir. 1993).

1 acting in excess of and without jurisdiction to implement subds. (a), (b)(1), (b)(2), and (c) - (e)
2 of § 14105.19 Welf. & Inst. Code, by reducing payments to home health services providers in
3 the Medi-Cal fee-for-service program, commencing July 1, 2008.

4 25. Further, unless restrained by the Court by an appropriate injunction, the
5 defendant Director has and will implement the aforesaid subds. (a), (b)(1), (b)(2), and (c) - (e)
6 of § 14105.19 Welf. & Inst. Code, and thereby has caused and will foreseeably result in injury
7 to the Plaintiff CAHSAH; its members who are home health services providers, and the
8 patients of the home health services provider-members of the Plaintiff CAHSAH; -- which
9 injury has been caused by and will foreseeably result from home health providers (including
10 members of CAHSAH) not accepting new Medi-Cal patients, or stopping serving Medi-Cal
11 patients at all, or by reducing kinds, amounts, locations, and levels of services to Medi-Cal
12 beneficiaries, or by going out of business, so that thereby beneficiaries have been and will
13 foreseeably be caused, and threatened to be caused, denial and reduction of access to life-vital
14 home health services and treatment in the Medi-Cal FFS program, resulting in great physical
15 suffering and injury to beneficiaries, including beneficiaries served by the members of
16 CAHSAH; many of whom will thereby be forced into institutions such as nursing homes to
17 obtain their necessary medical treatment and medicines; and some will die; all to the
18 irreparable injury, and threat of irreparable injury, to thousands of Medi-Cal beneficiaries
19 including the beneficiaries served by the members of CAHSAH.

20 26. The Plaintiff CAHSAH, its Members, and the patients of the Members of the
21 Plaintiff CAHSAH, have no administrative remedy, nor any plain, speedy, or adequate remedy
22 whatsoever or at all, except by this complaint for injunctive relief.

23 WHEREFORE, the Plaintiff CAHSAH prays for judgment and orders as shall
24 hereinafter be specified:

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SECOND CLAIM FOR RELIEF

Against the Director, for declaratory judgment under 42 U.S.C. § 2201

27. Plaintiff CAHSAH refers to and incorporates each of the allegations in the preceding Paragraphs of this Complaint as if fully set forth herein.

28. Welf. & Inst. Code § 14105.19(b)(1), enacted by AB 5, provided:

“(b) (1) Except as otherwise provided by subdivision (c), payments shall be reduced by 10 percent for Medi-Cal fee-for-service benefits for dates of service on and after July 1, 2008.”;

(herein, “Subd. (b)(1)”); and subdivision (c) of Welf. & Inst. Code § 14105.19, mentioned in the above Subd. (b)(1), did not exclude home health services or home health services providers. Hence the Ten Percent Rate Reduction of AB 5 expressly applied to home health services and home health services providers.

29. However, the above-entitled Court did, on August 18, 2008, in the case of *Independent Living Center of Southern California, Inc., et al. v. SHEWRY*, No. 2:08-cv-03315 CAS (MANx), -- herein, “*ILC*,” -- file an order entitled:

“Order Granting in Part and Denying in Part Petitioners’ Motion for Preliminary Injunction,”

(Clerk’s Document 121 in Case No. 2:08-cv-03315 in the above-entitled Court (“*ILC*”)), which provided in relevant part:

“The Court hereby orders defendant Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. & Inst. Code § 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, pharmacies, adult day care health centers, clinics, health systems, and other providers for services provided on or after July 1, 2008.” (Emphasis supplied.)

30. Subsequent to August 18, 2008, three minute orders were filed in the Clerk’s Docket of this Case No. 2:08-cv-03315, namely:

- A written order dated August 27, 2008, -- being Clerk’s Document 135 in *ILC*;

- 1 - A written order dated August 27, 2008, -- being Clerk's Document 134 in *ILC*;
- 2 - A written order dated September 5, 2008, -- being Clerk's Document 162 in *ILC* ; and,
- 3 - A written order dated September 15, 2008, -- being Clerk's Document 175 in *ILC*..

4 31. Plaintiff CAHSAH hereinafter refers to the five orders mentioned in Paragraphs
5 29 and 30, collectively, as a single order, (herein, "the Order in Question").

6 32. A controversy in respect to the Order in Question has arisen between the
7 Plaintiff CAHSAH and the defendant Director, in that the Plaintiff CAHSAH claims that the
8 Order In Question, in substance and its totality, ordered the Director **to refrain from enforcing**
9 **Cal. Welf. & Inst. Code § 14105.19(b)(1)**; but, the Director has failed at all times to so obey
10 the aforesaid provision of the Order in Question, by deducting 10% from payments to home
11 health services providers for home health services in the Medi-Cal FFS program, for dates of
12 service on or after August 18, 2008.

13 33. Further, the Plaintiff CAHSAH claims that by virtue of the duty of the Director
14 not to deduct anything from payments to home health services providers for home health
15 services and products furnished in the Medi-Cal FFS program on or after August 18, 2008, --
16 which duty is set forth in the Order in Question, -- that the Director has a present, existing, and
17 continuing mandatory duty to pay over all the 10% deductions to all home health services
18 providers which the Director has made and will make in the future, to the respective home
19 health services providers from whose payments the aforesaid deductions were and are being
20 made, -- all, without any demand being required by any home health services provider to be
21 entitled to receive such pay over.

22 34. In contrast, the Director claims that the Order in Question does not so provide,
23 and that she has a defense to, and a justification, for (1) not ceasing to make these deductions
24 and (2) not paying over the deducted amounts.

35. In turn, a further controversy exists between the Plaintiff CAHSAH and the
Director in respect to her claims set forth in the preceding Paragraph, in that the Plaintiff
CAHSAH claims that under established U.S. Supreme Court decisions, that if a person subject

1 to an injunction has good and legal cause not to obey or to be excused from complying with the
2 injunction, that it is incumbent on the person to apply to the court and obtain an order which
3 amends or terminates the injunction, or excuses the noncompliance with the injunction; **and**
4 **for failure to so apply** and obtain any exculpatory order, that the injunction continues in full
5 force and effect **as written**, so as to cause the person subject to the injunction to continue to
6 subject thereto; **but**, the Director disputes this claim of the Plaintiff CAHSAH.

6 36. By the foregoing set forth in this Second Claim for Relief, an actual controversy
7 exists between the Plaintiff CAHSAH, suing on behalf of its constituent member home health
8 services providers, and the defendant Director, such that a judgment and order should issue
9 pursuant to 28 U.S.C. § 2201 and Rule 65, Fed. Rules Civ. Proc., which **first**, declares the
10 rights and duties of the Director in respect to the aforesaid Order in Question, to be, namely,
11 that:

11 - the Director has had since August 18, 2008 the present and continuing duty to obey
12 the first ordering clause of the Order in Question, namely, to pay all providers in the
13 Medi-Cal FFS program without any deduction whatsoever; in that the said ordering
14 clause of the Order in Question specifically orders the Director “to refrain from
15 enforcing Cal. Welf. & Inst. Code § 14105.19(b)(1),”

16 and **second**, orders the Director to perform her mandatory duty under the Order in
17 Question, -- namely, (1) the mandatory duty to refrain from implementing the Ten Percent
18 Reduced of AB 5 prospectively, and (2) the mandatory duty to pay over to the providers
19 entitled thereto, **without any demand**, all the 10% deductions from payments to home health
20 service providers which the Director has made and will make in the future, to all home health
21 services providers, -- in respect to whom said deductions of 10% have been continuously made
22 by the Director since July 1, 1008, (except insofar as the Director has ceased, since September
23 5, 2008, making any deductions in respect to physicians, dentists, optometrists, adult day care
24 health centers, and prescription drugs).

1 41. Sec. 45 of AB 1183 enacted subd. (f) of Welf. & Inst. Code § 14105.191 to
2 provide:

3 “(f) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code, the department may implement and
5 administer this section by means of provider bulletins, or similar instructions, without
6 taking regulatory action.”

7 42. Cal. Constitution article 3.5 requires the Director to comply with Sec. 45 of AB
8 1183.

9 43. Further, the policy and practice of the Director whenever Medi-Cal rate
10 reductions are enacted by the Legislature, which contain a provision as in subd. (f) of Welf. &
11 Inst. Code § 14105.191 which permits the Director to pass through a rate cut enacted by the
12 Legislature without taking any regulatory action herself, by use of provider bulletins to the
13 providers affected, is to always so pass through the legislative Medi-Cal rate cut, without
14 taking any regulatory action herself, by announcing the rate cut to providers in bulletins, (just
15 as the Director did in respect to legislative rate cuts in the Medi-Cal program in the 2003-2004,
16 2004-2005, and 2007-2008 fiscal years, which contained the same above “pass through”
17 authorization set forth in subd. (f) of Welf. & Inst. Code § 14105.191.

18 44. Accordingly, based on the above facts alleged in Paragraphs 39 through 43 next
19 above, the Plaintiff CAHSAH alleges that the Director, under her aforesaid policy and practice
20 mentioned in Paragraph 43, will pass through and implement the One Percent Rate Reduction
21 in respect to all payments to home health services providers, (including the Members of the
22 Plaintiff CAHSAH) for home health services furnished on or after March 1, 2009, in the Medi-
23 Cal FFS program.

24 45. However, -- **due to the fact that the existing injunction of the Order in
Question** still facially currently enjoins the Director:

- in the first ordering clause of the Order in Question, to refrain from enforcing Subd.
(b)(1) of Welf. & Inst. Code § 14105.19 (of AB 5),

it follows that the Director has been enjoined to **refrain from deducting anything** from

1 payments to providers of home health services in the Medi-Cal FFS program, without first
2 applying to the Court and obtaining an order which terminates or modifies the Order in
3 Question to so allow to reduce payments, by 5%, to home health services providers.

4 46. Therein by each and all of the facts alleged in this Third Claim for Relief,
5 unless:

6 - (1) a declaratory judgment and order is issued pursuant to 28 U.S.C. § 2201,
7 adjudicating and declaring that the Director must first apply to the Court in the
8 case of *Independent Living Center of Southern California, Inc., et al. v. Shewry*
9 (*"ILC"*), No. 2:08-cv-03315 in the above-entitled Court, and show by a
10 preponderance of the evidence that the State has complied with the
11 requirements of the federal Medicaid rate-setting statute, Sec. 30A, in enacting
12 and implementing the One Percent Rate Reduction of Welf. & Inst. Code
13 § 14105.191, and,

14 - (2) an appropriate preliminary and permanent injunction is issued,

15 the Director will violate the existing Order in Question by implementing the One Percent
16 Reduction in respect to **home health services providers** (including members of the Plaintiff
17 CAHSAH), **without first applying to the Court** in the *ILC* case, (No. 2:08-cv-03315 in the
18 above-entitled Court), and obtaining an order in the *ILC* case which terminates or modifies the
19 August 18, 2008 preliminary injunction in the *ILC* case, so as to permit the Director to so
20 implement AB 1183 in respect to dates of home health services on and after March 1, 2009.

21 47. The Plaintiff CAHSAH, its Members, and the patients of the Members of the
22 Plaintiff CAHSAH, have no administrative remedy, nor any plain, speedy, or adequate remedy
23 whatsoever or at all, except by this complaint for injunctive relief.

24 WHEREFORE, the Plaintiff CAHSAH prays for judgment and orders as shall
hereinafter be specified:

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FOURTH CLAIM FOR RELIEF

Against each of the defendants, for injunctive relief to enjoin the defendants to refrain from implementing a One Percent Rate Reduction under Sec. 45 of AB 1183 in respect to home health services providers, -- which statute, and the State action of defendants to implement the state statute, violate, and are hence preempted under the Supremacy Clause by, the quality and equal access clauses of 42 U.S.C. § 1396a(a)(30)(A).

48. Plaintiff CAHSAH refers to and incorporates each of the allegations in the preceding Paragraphs of this Complaint as if fully set forth herein.

LEGISLATIVE HISTORY OF ASSEMBLY BILL 1183

49. Assembly Bill ("AB") 1183, -- a health trailer bill to implement the budget cutting decisions of the 2008-2009 Budget Bill, -- was enacted September 30, 2008 and was chaptered as Chapter 758, Statutes 2008-2009.

AB 1183

50. AB 1183 was introduced Feb. 2, 2008 as a hazardous material bill. However, during the record budget stalemate which preceded enactment of the 2008-2009 budget bill in late September 2008, the budget bills which had passed by each house without 2/3 majority needed for enactment, were sent to the Big Four, namely, the majority and minority leader of each house. When they finally made their budget deal in late September 2008, the AB 1183 hazardous material bill was amended **Sept. 15, 2008** by the Assembly Committee on Budget, was passed by both houses on September 16, 2008, and was signed by the Governor and filed with the Secretary of State on September 30, 2008, as part of the process of the Governor signing the Budget Bill for 2008-2009.

51. By such legislative history, there were no committee hearings on AB 1183. The reasons why its provisions are what they are, are a secret known only to the Big Four leaders of the Legislature who drafted the provisions of AB 1183 in secret.

52. Further, there are hundreds of different health care subjects in AB 1183, each of which required separate consideration by the Legislature if any reasoned decision was to be

1 made by any legislator in the Senate or the Assembly in deciding to vote for or against any
2 particular provision or provisions in the hundreds of different subjects contained in the bill. AB
3 1183 was hence the pure product of pure logrolling, where, if any member wished his or her
4 health care provision in the multi-provisioned AB 1183 to be enacted, that the legislator had to
5 accept blindly, and vote for, all the other provisions relating to the hundreds of other subjects in
6 the same bill.

6 53. It is a fact, and it is manifest from all the facts alleged in this Fourth Claim for
7 Relief, that individual legislators who voted on AB 1183, and the Legislature as a whole, could
8 not and did not appropriately consider whether or not the reduced rates of the One Percent Rate
9 Reduction for home health services, were consistent with quality of services, or consistent with
10 equal access of beneficiaries to quality home health services, in the Medi-Cal FFS program.
11 Hence, facially, the action of the Legislature in enacting, and the action of the Director to
12 implement, the One Percent Rate Reduction provisions of AB 1183 in respect to home health
13 services were and are arbitrary, capricious, and contrary to law, (namely, contrary to the quality
14 and equal clauses of Sec. 30A); so that the provisions of (new) Welf. & Inst. Code § 14105.191,
15 subds. (a) and (b)(1) which enacted the One Percent Rate Reduction in respect to home health
16 services, effective March 1, 2009, violate and hence are preempted, under the Supremacy
17 Clause, by Sec. 30A.

16 54. Further, unless restrained by the Court by an appropriate injunction, the
17 defendant Director will implement the aforesaid One Percent Rate Reduction in respect to
18 home health services providers (including members of the Plaintiff CAHSAH); which in turn
19 will thereby result in injury to the Plaintiff CAHSAH; to its members who are home health
20 services providers, and to patients of home health services providers (including patients of
21 members of the Plaintiff CAHSAH); -- which injury will foreseeably result by home health
22 providers (including members of CAHSAH) not accepting new Medi-Cal patients, or stopping
23 serving Medi-Cal patients at all, or by reducing kinds, amounts, locations, and levels of services
24 to Medi-Cal beneficiaries, or by going out of business, so that thereby beneficiaries are and will

1 be caused, and threatened to be caused, denial and reduction of access to life-vital home health
2 services and treatment in the Medi-Cal FFS program, resulting in great physical suffering and
3 injury to beneficiaries, including beneficiaries served by the members of CAHSAH; many of
4 whom will thereby be forced into institutions such as nursing homes to obtain their necessary
5 medical treatment and medicines; and some will die; all to the irreparable injury, and threat of
6 irreparable injury, to thousands of Medi-Cal beneficiaries including the beneficiaries served by
7 the members of CAHSAH.

8 55. The Plaintiff CAHSAH, its Members, and the patients of the Members of the
9 Plaintiff CAHSAH, have no administrative remedy, nor any plain, speedy, or adequate remedy
10 whatsoever or at all, except by this complaint for injunctive relief.

11 WHEREFORE, the Plaintiff CAHSAH prays for judgment and orders as shall
12 hereinafter be specified:

13 **FIFTH CLAIM FOR RELIEF**

14 Against each of the defendants, for injunctive relief to enjoin the defendants to
15 refrain from implementing a One Percent Rate Reduction under Sec. 45 of AB
16 1183, -- including a 1% reduction in payments to home health services providers,
17 -- which statute, and the State action of defendants to implement the state statutes,
18 violate, and are hence preempted under the Supremacy Clause by, the quality and
19 equal access clauses of 42 U.S.C. § 1396a(a)(30)(A).

20 56. Plaintiff CAHSAH refers to and incorporates each of the allegations in the
21 preceding Paragraphs of this Petition as if fully set forth herein.

22 57. However, the enactment of the One Percent Rate Reduction in respect to home
23 health services and providers in the Medi-Cal FFS program, by subds. (a) - (b)(1) and (e) - (h) of
24 new Welf. & Inst. Code § 14105.191, by Sec. 45 of AB 1183, by the Legislature was without
any consideration of quality and access as required by Sec. 30A,³ and was without any
consideration of what it costs providers to perform the various services and procedures, as

³ *Othopaedic Hospital v. Belshe*, 103 F.3d 1491, 1500 (9th Cir.1997).

1 required by Sec. 30A;⁴ such that the State's sole purpose, and the conclusive factor, in enacting
2 the one percent (1%) payment reduction for providers in subds. (a) - (b)(1) and (e) - (h) of Welf.
3 & Inst. Code § 14105.191, (including home health services providers) in the Medi-Cal FFS
4 program, was to reduce the budget deficit.

5 58. Accordingly, under the standard of *Orthopaedic Hosp.*, 103 F.3d 1491, at 1500
6 (1997); and *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519 (8th Cir.1983), the action of
7 the Legislature to enact the aforesaid subds. (a) - (b)(1) and (e) - (h) of §14105.191 Welf. & Inst.
8 Code, including the One Percent Rate Reduction in respect to home health services providers
9 (including home health services providers who are members of the Plaintiff CAHSAH); for
10 services on or after March 1, 2009; for services on or after March 1, 2009, and (2) the policy
11 and action of the Director to implement these statutes by reducing payments to providers in the
12 Medi-Cal fee-for-service program, including payments to home health services providers, by
13 one percent (1%), was and is arbitrary and capricious, and contrary to and in violation of the
14 quality and access provisions of Sec. 30A.

15 59. Accordingly, by each and all of the foregoing facts alleged, subds. (a) - (b)(1) and
16 (e) - (h) of § 14105.191 Welf. & Inst. Code, and the One Percent Rate Reduction in respect to
17 home health services providers, were and are contrary to and in violation of the quality and
18 access provisions of Sec. 30A, so as to be preempted, under the Supremacy Clause, by the
19 quality and access provisions of Sec. 30A, such that the defendant Director is and will be acting
20 in excess of and without jurisdiction to implement subds. (a) - (b)(1) and (e) - (h) of
21 § 14105.191 Welf. & Inst. Code, including the One Percent Rate Reduction to home health
22 services providers, commencing March 1, 2009.

22 ⁴ *Id.*, 103 F.3d at 1500; *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519
23 (8th Cir. 1993).

1 60. Further, unless restrained by the Court by an appropriate injunction, the
2 defendant Director will implement the aforesaid subds. (a) - (b)(1) and (e) - (h) of § 14105.191
3 Welf. & Inst. Code, and the One Percent Rate Reduction in payments to home health services
4 providers (including members of the Plaintiff CAHSAH); which in turn will foreseeably result
5 in injury to the Plaintiff CAHSAH; to the members of CAHSAH; and to the Medi-Cal
6 beneficiary patients of home health services providers (including patients of members of the
7 Plaintiff CAHSAH); -- which injury will foreseeably result by home health providers (including
8 members of CAHSAH) not accepting new Medi-Cal patients, or stopping serving Medi-Cal
9 patients at all, or by reducing kinds, amounts, locations, and levels of services to Medi-Cal
10 beneficiaries, or by going out of business, so that thereby beneficiaries are and will be caused,
11 and threatened to be caused, denial and reduction of access to life-vital home health services and
12 treatment in the Medi-Cal FFS program, resulting in great physical suffering and injury to
13 beneficiaries, including beneficiaries served by the members of CAHSAH; many of whom will
14 thereby be forced into institutions such as nursing homes to obtain their necessary medical
15 treatment and medicines; and some will die; all to the irreparable injury, and threat of
16 irreparable injury, to thousands of Medi-Cal beneficiaries including the beneficiaries served by
17 the members of CAHSAH.

16 61. The Plaintiff CAHSAH, its Members, and the patients of the Members of the
17 Plaintiff CAHSAH, have no administrative remedy, nor any plain, speedy, or adequate remedy
18 whatsoever or at all, except by this complaint for injunctive relief.

19 WHEREFORE, Plaintiff CAHSAH prays for judgment and orders as follows:

20 A. That Plaintiff CAHSAH have judgment against the defendant SANDRA
21 SHEWRY, Director of California Department of Health Services, (herein, "Director"), and that
22 defendants take nothing.

23

24

1 and will make in the future, to the respective home health services providers from whose
2 payments the aforesaid deductions were and are being made, -- all, without any demand being
3 required by any home health services provider to be entitled to receive such pay over.

4 **SECOND:** That if the Director has a good and legal cause not to obey or to be
5 excused from complying with the Order in Question in respect to health service providers, that
6 it is incumbent on the Director to apply to the Court and obtain an order which modifies or
7 terminates the Order in Question in respect to payments to health services providers so as to
8 permit deductions to be made from payments to home health services providers; -- and for
9 failure to so apply and obtain any modification or termination of the Order in Question, that the
10 Order in Question continues in full force and effect as written, so as to cause the Director, who
11 is subject to the Order in Question, to continue to be subject thereto.

12 **THIRD:** That the Court order the Director to perform her mandatory duty under the
13 Order in Question, to pay over, without any demand, all the 10% deductions to all home health
14 services providers which the Director has made and will make in the future, to the respective
15 home health services providers from whose payments the aforesaid deductions were and are
16 being made; unless and until the Director applies to the Court and obtains some order from the
17 Court which relieves her from any such further duty in this respect; all, without any home health
18 services provider having to demand that this be done.

19 D. Third Claim for Relief

20 - (1) That the Court issue find, adjudicate and issue a declaratory judgment and order
21 pursuant to 28 U.S.C. § 2201, which adjudicates and declares that the Director must first apply
22 to and obtain an order from the Court which terminates or modifies the August 18, 2008
23 injunction in respect to payments for home health services for dates of service on or after March
24 1, 2008, so as to permit the Director to implement the new One Percent Rate Reduction rate of
AB 1183 in respect to home health services; all, before the Director may implement the One

1 Percent Rate Reduction of Welf. & Inst. Code § 14105.191 in respect to payments for home
2 health services;

3 (2) That the Court order and enjoin the Director from implementing AB 1183 and its
4 One Percent Rate Reduction, unless and until the Director first complies with the August 18,
5 2008 injunction by (1) refraining from deducting any amounts from any payments to health
6 services providers in the Medi-Cal FFS program, and (2) by paying over to all Medi-Cal FFS
7 home health providers all amounts of deductions theretofore deducted by the Director from
8 payments to Medi-Cal health service providers, since the August 18, 2008 injunction was issued
9 by this Court.

9 E. Fourth and Fifth Claims for Relief

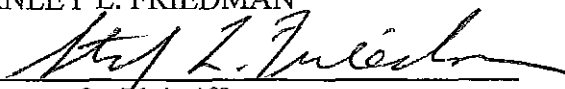
10 That a preliminary and permanent injunction be issued to command the defendant
11 SANDRA SHEWRY, Director of the Department, and the co-defendants Does 1 through 50, to
12 set aside their preempted policy to implement subds. (a) - (b)(1) and (e) - (h) of § 14105.191
13 Welf. & Inst. Code, and to refrain from implementing the same; including but not limited to
14 refraining from reducing payments by one percent (1%) or by any lesser percentage or sum, to
15 Medi-Cal fee-for-service providers, including home health services providers in the Medi-Cal
16 fee-for-service program.

16 All Claims for Relief

17 F. That the Plaintiff CAHSAH have costs of suit incurred, together with such other
18 and further relief as may be just.

19 Dated: October 24, 2008.

20 LYNN S. CARMAN
21 STANLEY L. FRIEDMAN

21 By: 
22 Attorneys for Plaintiff
23 California Association for Health
24 Services at Home