

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID OSTER, et al.,
Plaintiffs,
v.

No. C 09-4668 CW
PRELIMINARY
INJUNCTION

WILL LIGHTBOURNE, Director of the
California Department of Social
Services; TOBY DOUGLAS, Director
of the California Department of
Health Care Services; CALIFORNIA
DEPARTMENT OF HEALTH CARE
SERVICES; and CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES,
Defendants.

_____ /

IT IS HEREBY ORDERED that, except in accordance with the
order below, Defendants and their successors, agents, officers,
servants, employees, attorneys and representatives and all persons
acting in concert or participating with them are enjoined from
implementing the provisions of SB 73 that enacted section 12301.07
of the California Welfare and Institutions Code, which imposes a
twenty percent reduction in authorized hours of In-Home Support
Services for IHSS recipients not exempt or pre-approved for
exceptions to the reductions, and establishes a Supplemental Care
application process available to IHSS recipients to seek the
restoration of reduced hours.

1 Defendants may reduce IHSS recipients' service hours by
2 twenty percent, or any other number, only after conducting a needs
3 reassessment to determine the number of IHSS service hours that
4 are necessary to enable the recipient to remain safely at home. A
5 reduction of IHSS hours shall not be based on functional ranks
6 alone, or on Functional Index Scores. The State shall bear the
7 cost of counties' reassessment efforts to the extent those
8 activities go beyond existing legal requirements for
9 reassessments.
10

11 IHSS recipients who qualify, and are on waiting lists, for
12 State Home and Community Based Services Waiver programs shall be
13 exempt from the reductions, like those recipients who are
14 currently enrolled in the programs.
15

16 Based on the CDSS's representation that all IHSS recipients
17 who receive Early Periodic Screening Diagnosis and Treatment
18 (EPSDT) services will be pre-approved for an exception to the
19 reduction in services, the reduction shall not be applied to these
20 recipients.
21

22 Twenty-one days prior to instructing the counties to conduct
23 any reassessments, or making changes to the Case Management,
24 Information and Payrolling System (CMIPS) to implement such
25 reassessments, Defendants shall serve and file a copy of their
26 plan for conducting reassessments. The plan shall include the
27 notice or notices Defendants intend to send to IHSS recipients.
28

1 All notices to IHSS recipients regarding SB 73, including any
2 notice of the right to request a state hearing, shall be written
3 in a manner comprehensible to an individual who reads at a fifth
4 grade level. Defendants shall verify that the notices are
5 comprehensible to fifth grade level readers by considering
6 guidance from official resources, such as those cited by
7 Plaintiffs' expert, regarding readability and by consulting with a
8 qualified expert to review the notices.
9

10 Notice to IHSS recipients shall not include misleading or
11 confusing statements, such as those addressed in this Court's
12 order granting the preliminary injunction.

13 If an IHSS recipient's service hours are to be reduced,
14 notice to the recipient shall explain the grounds for the hours
15 reduction. If functional ranks were used, the notice must
16 identify the recipient's functional ranks and describe how the
17 ranks affected the reduction of hours.
18

19 Defendants shall provide the notices in English, Spanish,
20 Chinese, Hmong, Armenian, Russian and Vietnamese, and shall send
21 each notice in the language appropriate to the IHSS recipient.
22 Defendants shall identify a telephone number through which an IHSS
23 recipient who is not literate in one of the above languages, or
24 who has cognitive or visual impairments, can seek a reading and/or
25 translation of the content of the notice. The notices shall
26 inform IHSS recipients that they may call that number for that
27 purpose.
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To ensure that all relevant parties are aware of the Court's injunction, Defendants shall, to the extent that they have not already done so in accordance with the December 1, 2011 Temporary Restraining Order, rescind any directions or notices issued to any person or entity for the reduction of IHSS benefits in accordance with SB 73, and shall notify all persons and entities that have received such directions or notices that IHSS benefits will not be reduced in the manner provided for in SB 73 and the ACL.

Defendants must mail this notice within four days of the date of this order.

Defendants shall post a copy of this preliminary injunction, with an explanation of its effects on IHSS services, conspicuously on the California Department of Social Services website within four days of the date of this order.

IT IS SO ORDERED.

Dated: 3/2/12



CLAUDIA WILKEN
United States District Judge