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disability civil rights  
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June 28, 2010

**VIA FACSIMILE**

Honorable Darrel Steinberg, President pro Tempore  
California State Senate  
Capitol Building, Room 205  
Sacramento, CA 95814

Honorable John Pérez, Speaker  
California State Assembly  
Capitol Building, Room 219  
Sacramento, CA 95814

**Re: SB 208 and AB 342 (1115 Waiver) – OPPOSE UNLESS AMENDED**

Dear President pro Tem Steinberg and Speaker Pérez:

Disability Rights Education and Defense Fund (DREDF) and the members of the California Foundation for Independent Living Centers (CFILC) have closely followed the state's 1115 waiver proposal process because the mandatory enrollment into managed care of Medi-Cal eligible seniors and people with disabilities will have profound and lasting impacts on our entire community. We have carefully reviewed the June 22, 2010 amendments to AB 342 proposed in SB 208 (Pérez), and appreciate that improvements have been made to the original waiver proposal language, but have come to the conclusion that we cannot support the waiver proposal without further critical amendments.

DREDF and CFILC remain deeply concerned about the fact that the Department of Health Care Services (DHCS) has discretion to establish the timeline for waiver implementation, and continues to propose completing enrollment for seniors and people with disabilities in one year. Our past experiences working with plans and advocating on behalf of people with disabilities has left us very confident that most managed care plans will not have sufficient time in a year to even initiate, much less train themselves on and fully implement, an enhanced facility site review tool that will provide information to the plan and its members on the physical and programmatic accessibility of its provider network. Other longstanding problems in managed care for people with disabilities such as the lack of clarity over American Sign Language (ASL) policies and procedures, and the failure to give plans direct responsibility for arranging transportation, are not addressed and will remain problems throughout enrollment and beyond.

Even if we make the currently unwarranted assumption that plans will be *required* to gather feedback data on how mandatory enrollment has affected the health outcomes of those caught in the 1115 waiver expansion, and plans attempt to respond appropriately and swiftly to that feedback throughout the enrollment process, seniors and people with

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**DISABILITY RIGHTS EDUCATION AND DEFENSE FUND**

2212 Sixth Street, Berkeley, CA 94710 • tel: 510.644.2555 [V/TTY] fax: 510.841.8645

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disabilities will still be enrolled for many months in plans that cannot give them basic information about the accessibility of their providers, that have insufficient time and incentive to help enrollees maintain key out-of-network provider relationships, and are unprepared to plumb the depths of community resources that will be needed by such a rapid and large influx of people with complex health needs. The one year timeline risks the health and lives of the disability community, as well as projected budget savings from the expansion, when the health of enrollees worsen because they are placed into plans that will not enable continuity of care, assigned to providers that are physically and/or programmatically inaccessible, and have extremely limited opt-out provisions. The risk should instead fall the other way, and the timeline and pace of enrollment should be directly tied to plans clearly demonstrating and maintaining the timely gathering of provider information on physical and programmatic accessibility, and testing and putting important consumer protections into place.

Our other major inter-related concern continues to be plan readiness. SB 208 and AB 342 simply maintain the network readiness evaluation criteria of § 14087.48(b) of the Welfare and Institutions Code. These readiness standards were not developed with the needs of seniors and people with disabilities in mind, and will not hold up well when 380,000 people from this segment of the population are added to the rolls of managed care. SB 208 does indicate that DHCS shall be required to “ensure the managed care health plans or county alternative models of care comply with applicable state and federal laws, including but not limited to, physical accessibility and the provision of health plan information in alternative formats.” Also DHCS will develop and provide plans with “an enhanced facility site review tool” for accessing the physical accessibility of providers, including specialists and ancillary service providers.

We appreciate these first steps, but strongly recommend that the provision concerning compliance with state and federal disability laws be included as a network readiness evaluation requirement in § 14087.48(b), and that the facility site review tool (FSR) not be restricted to information about physical accessibility. Section 504 of the Rehabilitation Act of 1973 is a federal law prohibiting disability discrimination that applies to programs and activities that receive federal funds, and clearly applies to all the plans, local initiatives and providers that will be participating in the 1115 waiver. Plans and their provider networks should not require or be given additional years *post-enrollment* to come into compliance with a 40 year old law. Moreover, the Americans with Disabilities Act, on the eve of its 20<sup>th</sup> anniversary, clearly requires “reasonable modifications in policies, practices, or procedures” to enable people with disabilities to fully and equally enjoy goods, services and facilities available to the public.<sup>1</sup> While we

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<sup>1</sup> Specifically, the act states that discrimination includes “a failure to make reasonable modifications in policies, practices, or procedures, when such modification are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.” 42 U.S.C. § 12182(b)(2)(A)(ii). Title II of the ADA applies to state and local governments such as

obviously agree that people with disabilities must be able to enter the door of a provider's office, it is equally critical for members to have access to such programmatic modification as height-adjustable exam tables, lift assistance, alternative formats and ASL translation, and modified appointment times from providers and plan administrations where applicable. A clear legislative mandate for these modifications in policy and procedure, along with DHCS's commitment to ongoing monitoring and enforcement, will lay the necessary foundation for plans and providers to engage in staff training and acquire awareness of disability culture.

While we have not included specific amendment language in this letter due to the short turnaround time for comments, we have been working for some months with low-income health consumer organizations such as Western Center on Law and Poverty, as well as other disability rights groups such Disability Rights California (DRC), on recommended language that has been provided to you. As well we will be writing an additional letter with particular recommendations that are meant to strengthen and further the positive steps initiated in SB 208, and will be happy to meet and work with you at any time on modifying the 115 waiver proposal to maximize health outcomes for people with disabilities and ensure compliance with disability rights

Sincerely,



Susan Henderson  
Executive Director  
DREDF



Teresa Favuzzi  
Executive Director  
CFILC

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counties and gives the Attorney General the authority to enact regulations to implement Title's nondiscrimination mandate. 42 U.S.C. § 12132. Those regulations state that state and local governments "shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7).