

# Disability Rights California

## LEGISLATION & PUBLIC INFORMATION UNIT

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*California's protection and advocacy system*

June 24, 2010

Honorable Darrell Steinberg, President pro Tempore  
California State Senate  
Capitol Building #205  
Sacramento, CA 95814

Honorable John Pérez, Speaker  
California State Assembly  
Capitol Building  
P.O. Box 942849  
Sacramento, CA 95814

### **RE: SB 208 and AB 342 – Oppose Unless Amended**

Dear President pro Tem Steinberg and Speaker Pérez,

**Disability Rights California**, a non-profit advocacy organization mandated to advance the human and legal rights of people with disabilities, and the **California Association of Public Authorities (CAPA)**, a non-profit association comprised of the IHSS Public Authorities in California, oppose SB 208 and AB 342 unless they are amended to address substantial concerns about potential harm to Californians with disabilities. This bill is scheduled to be heard in the Assembly Health Committee on June 28<sup>th</sup>, 2010 and in the Senate Health Committee on June 29<sup>th</sup>.

Although we have concerns, we want to thank your staff members – especially David Panush and Sumi Sousa – for the considerable time and expertise devoted to meeting with us and other advocates for people affected by this bill. In many important respects, this bill is more acceptable than the administration's proposal for the 1115 waiver, which reflects well

on you and your staff members.

In particular, we are pleased to see the requirement for the Department of Health Care Services (DHCS) to enforce state and federal disability laws as they apply to providers of health care services. People with disabilities trying to get health care still confront major, life-threatening obstacles when they can't get in the door of a facility, can't use the examining table or diagnostic or treatment equipment, can't read the pre-op directions because they are not available in large type, or cannot get services appropriate to people with a cognitive or psychiatric disability. These barriers have been illegal for more than twenty years.

We also appreciate your inclusion of and description of written notices and outreach to new members who are being mandated into managed care, and other consumer protections.

We do not oppose managed care *per se*; some people with disabilities will receive much better health care and outcomes through managed care and may have better experience enforcing their rights to Medi-Cal services. However, the Board of Directors of Disability Rights California many years ago adopted a policy opposing forcing people with disabilities into managed care and we have been consistent with our opposition to mandatory managed care for many years.

Our opposition to the mandate does not imply satisfaction with the fee for service system, but we do believe that "better than fee for service", as suggested by some, is too low a standard to be striving for. We believe that people with disabilities should have a choice in their health care, and that forcing people into managed care takes away that choice. We know that some people with severe disabilities manage to stay at home in part because they have been able to cobble together a network of health providers who meet their particular needs; if managed care interferes with that hard-won arrangement, the result can be a devastating loss in health and functioning.

We unite with other organizations representing low-income health consumers, including Western Center on Law and Poverty, in their concerns about these bills and the Administration's proposals. If these managed care expansions are going to move forward, we want the

expansion to do the most good and the least harm and it is in that spirit we offer our comments.

Here are our areas of concerns; we are not offering amendment language because of the short turnaround time for comments. However, we have proposed standards and specific recommendations in earlier documents, and would be happy to work with you and your staff on amendment language.

## **CONCERNS:**

### **Timing**

The timeline for moving current seniors and people with disabilities into managed care is left to the discretion of DHCS, who has proposed one year to accomplish this. However, health plans themselves – who want to enroll people with disabilities and seniors – have publicly expressed concerns about their ability to provide good care for this huge expansion population so quickly; we think it makes sense to listen to them. We understand the impetus to achieve savings, but believe that rushing this population into managed care risks those savings and risks peoples' health and lives.

We strongly recommend the legislation provide a phase in over the next three years. In addition, we recommend real time monitoring and an enrollment “pause” button, which should be pushed when problems surface, giving DHCS the authority to take whatever action is necessary to minimize negative impact on enrollees or on provider/enrollee relationship. This “pause” function should accompany an obligation on the providers and the DHCS to fix issues promptly and without the need for enormous penalties.

### **Readiness**

The readiness standards are imprecise as to network adequacy and other threshold indicators. We strongly recommend that the legislation require providers to meet the standards laid out in the California Health Care Foundation study; these standards will protect the wellbeing of enrollees.

### **Choice**

Neither the “duals” or Medi-Cal only populations have any way out of

managed care, except for the very narrow medical exemption and the opt-out possibility for Medicare services only. This means that if someone cannot access the services needed because of disability access issues or paucity of providers, that person is stuck in a plan which does not meet either her/his own needs or the stated goals of the waiver.

We strongly prefer an opt/in system; failing that, we again request that people with disabilities be able to stay with or return to fee for service if managed care cannot deliver the improved services and the outcomes which are the basis for the waiver.

### **Assessments**

Both the timeline for and method of assessment are problematic; we have submitted suggestions on preferred timelines. For high risk enrollees, the provider should make immediate and personal contact to let the enrollee know how and where emergency help or transition help can be obtained.

Relying solely on the telephone for assessment is inappropriate and will not yield useful and reliable information in some situations, for example people who have hearing impairments or dementia.

### **Care coordination**

We support the ability of a willing specialist to act as a primary care provider, or to share that responsibility, as described in the CHCF standards. Any referrals in care coordination must be active, as defined in the APS statute, as opposed to a referral which is made without ascertaining whether the consumer will actually be able to obtain the service or product needed.

The plans should have responsibility for arranging transportation; as is done in other states, there should be some administrative funding to the plans to discharge that responsibility.

We support the involvement of caregivers, including IHSS providers, in care coordination, subject to the Medi-Cal consumer's right to determine whether or how the IHSS or any other caregiver shall participate.

### **Transparency**

All internal manuals and procedures must be available and accessible to enrollees, including the contract (except for proprietary information), so that enrollees have access to all the rules which govern the service and the provider relationships.

### **Rates**

We support rates which reflect risk adjustment and the reality that managed care plans will be asked to address needed but previously unavailable services. If rates are capped at 95% of Fee for Service, we support a medical loss ratio of 90% used in some states.

### **Data collection**

We strongly support careful and timely data collection which will inform the legislature and the public on the human and fiscal impact of mandatory managed care for the newly enrolled.

### **Enforcement**

Any protections built into this law and the waiver will be for naught without adequate oversight and enforcement, so we endorse provisions aimed at strong enforcement.

We uphold the right of people with disabilities to quality, affordable, available and accessible health care as core to our missions, and have devoted substantial resources in individual and policy advocacy for that over many years. We would welcome the opportunity to discuss our concerns with you and your staff, or answer any questions about our position.

Thank you for your interest in and support for Californians with disabilities, including seniors and children.

Sincerely,

A handwritten signature in black ink that reads "Deborah Doctor". The signature is written in a cursive, flowing style with a prominent loop at the end of the last name.

Deborah Doctor  
Legislative Advocate