DEPARTMENT OF HEALTH CARE SERVICES

STATE OF CALIFORNIA

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| Public Comments<br><br>In Re: The Department of Health Care Services intends to release the Medi-Cal Home Health Rate Review with consideration of efficiency, economy, quality of care, and access for years 2001 through 2005. | CERTIFIED COPY |

PUBLIC COMMENT MEETING

MONDAY, AUGUST 11, 2008

10:00 A.M.

Held At: 1500 Capitol Avenue
Hearing Room 1A
Sacramento, California

Reported by: Desiree C. Tawney, CSR No. 12414

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PUBLIC COMMENT MEETING

(The following proceedings were held on the record.)

BARBARA BAILEY: Good morning, ladies and gentlemen. I'm Barbara Bailey of the Department of Health Services.

And under the provisions under the Administrative Procedure Act, this is the time and place set forth for the presentation of statements, arguments and contentions orally or in writing for or against the Department of Health Care Services Medi-Cal Home Health Rate Review Notice, which was previously published in the Office of Administrative Law Public Notices, the Z Register.

Witnesses presenting testimony at this hearing are not required to be sworn in. We will not engage in cross-examination of witnesses, nor otherwise debate or discuss the issues which may be presented at today's hearing.

We shall, however, take under submission all written and oral statements submitted or made during this hearing.

The entire proceeding will be recorded by a certified shorthand reporter. Persons wishing to obtain a copy of the transcript may contact the Rate Development Branch. The address and phone number are shown in the Notice Of Medi-Cal Home Health Rate Review.

Persons wishing to speak should have completed a green

card. And persons in the audience will be given the opportunity to testify following these opening remarks. Everyone wishing to make a statement will be given the opportunity to do so.

To enable all to hear you and to ensure your comments are entered into the record, we request that you come to the front, which you've already done. When you are called to speak at the beginning of your remarks please state your name and the organization you represent, if any. It would also be helpful to give the reporter a business card with your name on it if you have one with you and if you have not already done so.

First this morning is Mr. Robert Leventhal, L-e-v-e-n-t-h-a-l.

ROBERT LEVENTHAL: Good morning. Robert Leventhal with Foley & Lardner, appearing on behalf of the California Association for Health Services at Home.

For the record, I would like to state we've already submitted some written materials including the written comments of the California Association for Health Services at Home along with Exhibit A through G to those comments.

We've also submitted a report prepared by a health care economist, Henry Zaretsky, and some exhibits thereto, as well as a letter from the Always Home Health Care Agency and a letter from the Antelope Valley Home Care Agency and

a December 2005 letter from Blue Cross.

My understanding is these materials have been accepted into the record by the Department.

The California Association For Health Care At Home strongly opposes and objects to the Department's purported rate setting.

We believe the rate setting violates the Court order and violates applicable principles of California and federal law. Rather than look at relevant data and materials relating to the years 2000 through 2005 as ordered by the Court, the Department has simply put together a bunch of basically irrelevant material that it appears to have already had in its possession and pretends those materials are somehow relevant to the rate issue for the years 2000 through 2005.

For example, among the material that the Department relied strongly on was a report that was prepared relating to the years 1988 through 1998. Data from those years has absolutely no even potential relevance to any of the issues before the Department.

The Department has failed to look at the cost of providing home health services and has pretended the federal regulations only set a maximum amount that can be paid and don't also require that the amounts be reasonable and set a minimum amount as well.

The cost of providing home health services are a key component to analyzing whether the rates are consistent with quality of care and with whether access exists for home health services. A lot of home health agencies are relatively small businesses that cannot afford to provide services and lose money; and, therefore, they can't have the sorts of cost shifting and other devices that may exist in other types of institutions.

These agencies have really been pushed to the breaking point by the inadequate Medi-Cal rates that have not changed at all over the past seven years.

Had the Department taken meaningful steps and, for example, contacted discharge planners at hospitals -- those are a large group of disinterested parties -- the discharge planners would have told the Department there is terrible difficulty placing Medi-Cal patients with home health agencies and that it is much easier to place members of the general population, such as privately insured individuals or Medicare recipients. And oftentimes discharges are delayed because of the inability to find a home health agency willing to take on additional Medi-Cal patients.

This difficulty, of course, would have been alleviated had the Department set adequate rates so the agencies could have been competitive in hiring nurses which are scarce and vary in demand and could have afforded to take more

Medi-Cal patients.

It is our belief that the Department would have actually saved money by raising the rates for home health services so that it could avoid unnecessary expenses in higher care institutions, such as acute care hospitals, where patients have to go if they're unable to obtain the appropriate home health services.

The other thing the Department could look at in order to determine whether it is an access problem but failed to is the Department could look at the number of services that are approved for home health patients and compare that to the number of services actually delivered. That data should be within the Department's control. And if the Department would look at it, we believe it would show a significant greater number of services, of shifts, of visits are approved than are actually delivered. The reason for this is that the home health agencies as reflected in the testimony you'll hear today and the letters we have submitted and in the exhibits to the Statement of Position show that the home health agencies are unable to staff all of the shifts that are authorized and are unable to provide all of the visits approved. Patients are being deprived of services they need and don't have the same access they would have if the services were being paid for by Medicare or a private insurance company.

The access simply is not there for the Medi-Cal recipients.

The numbers of services that are approved but not delivered, however, does not show the full access problem. The full access problem is much, much greater than that because only patients who could find a provider ever submit a request for approval. There are many more patients who are unable to find a potential home health provider who never request approval for the services and are forced to stay in a higher level of care in a residential facility, which is not as pleasant for the patient. It is more expensive for the State. If that facility is an acute care hospital, it increases the problem of waiting times in emergency rooms, lack of bed stays in the hospital for people to move to when they leave the emergency room. It is part of the cause of that whole series of problems.

What we have here is really a very unfortunate and ironic economic situation. We have a situation where the State could save money, improve care for patients and pay adequate -- by simply paying adequate rates to home health providers. It's a beneficial way for patients to receive services where they can maintain their dignity living at home and the comfort of living at home and it costs less and is basically better for everyone. And this service has not been utilized to the extent it should have been. The patients have been denied access to the service because of

the inadequate rates.

I think it to be obvious to anyone who knows or has any knowledge of what happened in the economy between the years 2000 and 2005 that no change in the rates during those five years, in fact, amounted to a rate reduction.

And anyone who knows about the nursing crisis, you know, the nurses -- with not enough nurses being available in California, the crisis with the government itself attempting to address and quantify as being significant, and the state that has a nurse crisis like that, obviously inadequate pay to home health agencies is going to result in a problem.

And, obviously, the shortage of the nurses would lead to increased pay for nurses and would necessitate a rate increase for home health providers who employ a lot of nurses and LVN's. Those increases should have been given and it should have been obvious they're necessary because of the nurse shortage.

This is further exacerbated by the fact California now has minimum staffing ratios in hospitals for nurses and LVN's to patients. These nurse staffing ratios by the Department's own admission increases the number of nurses and LVN's that hospitals have had employ. Also, by the Department's own admission, the increased ratios made it more attractive for nurses to work at hospitals. They

would no longer have to care for as many patients as they previously had to care for making their job a little less stressful and a lot more rewarding.

Given the factors, in order for home health agencies to be able to retain qualified nurses they would have to likewise increase pay so they would be competitive with the hospitals and would be able to attract nurses willing to work for them.

The rates are supposed to be consistent with economy, efficiency and quality of care. All of those things are things that take money to achieve. You have to have money to be table to run an efficient operation. And even if you're economical, you still have to pay salaries, competitive salaries in order to hire qualified experienced nurses and LVN's. You still have to be able to have workers' compensation insurance. You have to be able to have liability insurance. You have to have professional liability insurance. All of these things are expensive particularly for home health agencies. They have employees in the field driving cars from patient's to patient's houses every day. This increases the workers' compensation costs. It increases liability insurance costs. It is expensive.

Furthermore, the gas crisis recently that has come to bear where gas prices have skyrocketed has also

significantly increased costs that home health agencies have to incur. And the Department should look at the current rates in light of those increased gas prices and other economic things we've just talked about and should increase the current rates as well as increasing retroactively the rates from 2001 through 2005.

It really is a tremendous shame that utilization and access have been compromised. The Department, instead of taking proactive steps to try to solve the problem and actually save itself money by spending more on cost effective home health services and less on less efficient institutional services by simply failing to raise the rates and pay the appropriate rates that need to be paid in order to have equal access.

This is an issue that matters to people. It should matter to the Department. The people who need home health services and are being denied it simply because the rates have not be set correctly. It should matter.

The Department should look at actual data that shows what access is like that compares the access that a Medi-Cal recipient receives with the access that a Medicare recipient receives.

The data the Department cited in its own report reflects the number of agencies that accept Medicare but not Medi-Cal has more than doubled between 2000 and 2005.

Yet the Department ignores those numbers, staring it in the face and instead concludes there is no access problem. That just defies logic.

You have people's lives at stake, people's home care. These people are extremely sick. They need the proper care and want to maintain the dignity of the life and habits at home. To deny it to them by failing to look at the data and set rates at inappropriate levels is a very inappropriate thing. And it becomes even more inappropriate when you realize you could actually save money by providing the better care.

And so the California Association for Health Services at Home strongly requests that the Department reconsider its position and that it basically start from square one. Look at the data from 2000 through 2005 or even more preferable through 2007. See if that data shows an access problem. See what that data shows about the adequacy of the rates to cover costs and take appropriate action to increase the rates so the rates are adequate to cover costs; so the rates are adequate to allow home health agencies to compete with big hospitals for hiring qualified nurses so that people can receive the home health services that they're entitled to under the program and not be needlessly denied access to these efficient cost saving services.

BARBARA BAILEY: Thank you for your comments. Next commentor is Nancy Giachino.

NANCY GIACHINO: Pretty good.

BARBARA BAILEY: G-i-a-c-h-i-n-o.

NANCY GIACHINO: My name is Nancy Giachino. I am a registered nurse in the State of California. I have about 23 years experience in home care and four years as a discharge planner. I have acute care experience as well. Last 15 years I've run my own home health agency. The name is Always Home Nursing Services located in Fair Oaks.

Over the past years, as everyone is aware, there has become a grave nursing shortage. We used to be able to staff our Medi-Cal shifts as well as our insurance shifts pretty much all of the time. That changed about eight to ten years ago. It is -- we were -- it was getting harder and harder to staff our Medi-Cal cases simply because Medi-Cal rates were so low and insurance company rates are significantly higher.

I submitted a letter today. It is dated July 28, 2005. I wrote to Joe Hafkenschiel, who is the head of the California Association for Health Services at Home. The reason I submitted it to him was to educate him as to what is happening within our agency or what was happening at that time. It has only been exacerbated since then. The situation has gotten worse.

Basically, I gave a sample of three typical Medi-Cal patients during the month of June 2005, their staffing ratios. All three of them, as outlined in the letter, fall well below 50 percent of the hours they're authorized for. What that means is if the patient is authorized for 20 hours of staffing a day, the most they would be getting is around 50 percent or less, Medi-Cal.

I also cited a particular insurance case that we were staffing 24 hours a day, seven days a week. Their rates were $46 per hour for LVN versus Medi-Cal rates at 29.41. And they were paying $59 per hour for RN's at that time, which is significantly higher than what Medi-Cal paid. His case -- we never -- actually we never missed a whole shift. We've had the case for a number of years. And it's because we can pay the nurses more, we can compete with skilled nursing facilities. We're still not able to quite compete with acute care because it pays the most -- reimbursed the most.

Since that time in July of 2005 those rates have gone up through -- this is through Blue Shield of California. And you have a copy of the letter for a particular patient. But the current rates are LVN's, 49.80 an hour; and RN's, $63 an hour. So the insurance company -- then there is the visit rate of a $126 dollars. I believe Medi-Cal pays somewhere around $74 per visit.

You can see a huge disparity between the access of care for the patient and what the nurses are able to be paid.

I contend if the rates were higher and we could pay our nurses higher rates we would, I believe, be able to staff our Medi-Cal cases as well as staff our insurance cases or at least get close to it. There is an issue here of access of care.

And then it is just a matter of getting -- we get calls, I'd say, approximately two to four calls a month from discharge planners.

We are pediatric specialists. What happens is we can't staff the cases. They're Medi-Cal cases. The rates are low. We recruit. We have a lead recruit. But we can't help get the kids out of the hospitals. These children are either in the pediatric intensive care unit or in the neonatal intensive care unit. We're talking pretty high reimbursement rates in the state to the acute care center in comparison to what they would be paid in home care even if they raised the rates. This would be a tremendous cost savings to the State to get the children out of the hospitals into the homes with their families where growth and development is always better than in the hospital, as far as they're around their family.

So we would like to see the rates reviewed again. We

disagree with the rate review this Department presented to us. And we would like to see that looked at again.

Thank you.

BARBARA BAILEY: Thank you for your comments. At this point I have no other comments on record; is that correct?

JASON GRINSTEAD: Can I submit one?

BARBARA BAILEY: Ah, G-r-i-n-s-t-a-d?

JASON GRINSTEAD: -- e-a-d.

BARBARA BAILEY: Why don't you say your name.

JASON GRINSTEAD: My name is Jason Grinstead. I'm from Care At Home, also a pediatric home health agency based in Santa Clara, California. We provide primarily long term care to very sick children who often otherwise would be in hospitals.

So I think there are many parallels between Nancy's organization and mine. As she stated, there are a couple of big issues. One is access to quality nurses to enable us to staff ours. And the second is, obviously, ability to free up beds and decrease overall costs to the State of providing care for these sick children.

The one thing in this report that the State provided, it was very clear that the focus of the study was on short-term intermittent visits and not on long-term care, which is often what happens with the children who fall under Medi-Cal. They may have private insurance. Private

insurance will pay for a couple of visits. These are children who are on ventilators, permanent equipment which allows them to stay alive, where they could stay in a hospital but it is much cheaper, much more beneficial to the child and to the family and to the State for the child to stay at home.

The report didn't cover that aspect at all. And yet it is one of the larger portions of the home health agency commitment that we provide to the children and to the families that we serve.

At this time we are much like Nancy's organization, unable to fully staff the number of hours that a doctor has ordered for a child for the care the child receives to enable them to maintain stable and not return to the ER because the rates are so low and we can't attract nurses to come and provide the care.

The fact that the child may have private insurance does not really help because they may only provide for a few hours of care and then it falls back on to Medi-Cal and the State. And so the rates are so low that, unfortunately, the child goes without the care that the doctor ordered for them and becomes unstable and returns to the ER.

Over the last number of years there has been no cost of living adjustments yet we've tried to keep our nurses

with us -- even though they would be able to get other jobs elsewhere -- to enable to us to keep providing the care.

It has really become a kind of philanthropic activity. We're very mission-oriented people. Our organization is very mission-oriented. As such, we feel it is critical to be able to provide the care. However, over the last number of years it has become more and more difficult. You can push -- we've been kind of pushed closer to the edge of the cliff and, eventually, are going to all fall over. The cost of caring for the children that the State will have to bear will be dramatically higher. They will end up staying in the hospital and ER because they'll be unstable and not receiving the care they need.

Therefore, in line with the other requests, I would request the State review the rates one more time and that they would grant a rate increase in line with the economic reality of caring for the children at home, which ultimately is a much lower cost to the State than caring for the children in the hospital.

Thank you.

BARBARA BAILEY: Thank you for your comments. We are going to remain open for comments for probably until probably at least another hour or more likely until noon just to ensure the people have the opportunity to -- you know, if they were challenged with our parking around or

something just as that.

You're welcome to remain. Be assured we have your comments on record.

And you indicated that you had provided a letter. You gave it to Marie?

You have all of the documents, Marie?

MARIE TAKETA: Yes, I do.

BARBARA BAILEY: Very good. Do you have a business card?

JASON GRINSTEAD: Yes.

BARBARA BAILEY: We'll attach that to your card. Thank you very much.

NANCY GIACHINO: I just have an additional comment. Is that okay to interject?

BARBARA BAILEY: Absolutely. If any of you have additional comments based on comments that were heard, feel free.

NANCY GIACHINO: Jason, you triggered my mind. We've had quite a few pediatric patients where the physician will be able to -- we tell the parents or discharge planners we would be able to take the child home but only have a portion of what the doctor ordered. The doctors have refused in many cases because of the acuity -- severe acuity of the children. It's usually ventilators or something where the child has to be watched maybe 22 hours

a day, 14 hours a day and the physicians are nervous to send that child home and have the parent assume the rest of the care because the parents get exhausted and the child will end up back in the hospital probably more acute than when they went home.

Oftentimes the physicians are setting the number of hours at the very minimum the children can receive in nursing care in order to go home. Again, it is shift nursing, not visit nursing where, you know, they just go in for an hour or whatever. It is usually from 4 to 24 hours a day.

I just wanted to add that. Oftentimes we could take them home with partials but the physicians won't allow the children so they stay in the hospital longer to greater cost to the State.

BARBARA BAILEY: Any other comments? All right. Let's go off the record for a moment.

(Pause in proceedings.)

BARBARA BAILEY: Is there anyone else who wishes to speak to the Home Health Services Rate Review heard today?

Does anyone who has already spoken have anything to add based on the comments made?

Hearing no additional requests I hereby close the oral part of this hearing. And, however, the Department will receive written testimony until 5:00 o'clock today at the

Rate Development Branch, 1501 Capitol Avenue, Mail Station or Mail Stop 4612 in Sacramento. You may also fax your comments to area code (916) 552-9504 to the attention of Marie Taketa, T-a-k-e-t-a, of the Rate Development Branch or email your comments to marie.taketa@dhcs.ca.gov.

Thank you very much.

(End of proceedings.)

CERTIFICATE

OF

CERTIFIED SHORTHAND REPORTER

The undersigned certified shorthand reporter of the state of California does hereby certify:

That the foregoing deposition was taken before me at the time and place therein set forth, at which time the witness was duly sworn by me;

That the testimony of the witness and all objections made at the time of the deposition were recorded stenographically by me and thereafter transcribed, said transcript being a true copy of my shorthand notes thereof.

In witness whereof, I have subscribed my name this date August 28, 2008.

Certificate Number 12414