



*California's protection & advocacy system*

## Medi-Cal In-Home Nursing Lawsuit: What Should I Know?

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### **What is this lawsuit about?**

On May 24, 2018, Disability Rights California filed a lawsuit called *I.N. et.al v. Jennifer Kent and California Department of Health Care Services*. The case was filed in federal court in the northern district of California. This class action lawsuit is about children and youth with disabilities in California under the age of 21 who receive Early, Periodic, Screening, Diagnostic and Treatment (EPSDT) services through Medi-Cal. Their doctors prescribed them in-home nursing services so that they can remain safe at home with their families, instead of having to live in a facility. The Department of Health Care Services (DHCS) authorized those hours and agreed that they were medically necessary.

However, many children and their families are unable to staff all of their authorized hours, causing the families to cover the shortfall themselves. Children who need nursing may go without needed skilled care, causing a risk of health crises and/or placing them at risk of institutionalization. This also means that many families are exhausted or unable to provide all of the care that their child/children need because they have to work or take care of other children.

Plaintiffs allege that DHCS' failure to arrange for needed nursing hours violates federal Medicaid law, which requires states to affirmatively arrange in-home nursing services to be provided to the children who need them. DHCS' systemic deficiencies also violate state and federal anti-discrimination laws because it places children at risk of unnecessary institutionalization.

## **Who is part of the lawsuit?**

In a lawsuit, the person suing the other party is called a “plaintiff,” and the person being sued is the “defendant.” The named plaintiffs in this case are I.N. and James B. They are real children, but their names have been changed to protect their identity and privacy. They are medically fragile children who are Medi-Cal recipients and require in-home nursing to keep them healthy and safe. They represent a proposed class of children who are faced with the same problem. The defendants in this case are DHCS and its Director, Jennifer Kent. DHCS is responsible for overseeing California’s Medi-Cal program.

## **Why did DRC file this lawsuit?**

DRC worked with co-counsel Western Center on Law and Poverty (WCLP), National Health Law Program (NHeLP), and pro bono private attorneys. Together, they filed this lawsuit on behalf of I.N., James B, and all other children who are similarly situated, to challenge DHCS and Jennifer Kent’s failure to arrange and provide for the in-home nursing services that DHCS has determined are medically necessary. The lawsuit alleges that although DHCS authorizes in-home nursing hours for these children, they are not helping families fill all of these hours, which violates the law. DRC hopes to help the thousands of children who are authorized for Medi-Cal in-home nursing hours get the nursing services that they need to stay safe at home with their families.

## **What is the lawsuit trying to achieve?**

We have heard from dozens of families who have problems getting all of their children’s nursing hours staffed. Their common story is that their case managers do not help them find or keep nurses, and in some cases, they are not even sure who their case manager is. When they ask for help, they are given lists of home health agencies which include agencies that do not accept Medi-Cal, are far from their homes, or are not accepting new patients. We are asking the court to tell the state that it must do a better job of arranging for needed nursing care for these children, by actively helping them recruit and keep nurses. We also think the state should do more to identify and monitor children who are not getting all of the nursing services they need to live safely at home, including children who remain in hospitals and facilities.

## **How long with the lawsuit take?**

Lawsuits can take a long time to resolve, especially if it is a complex class action lawsuit. The lawsuit may last years, or it could settle very quickly. Therefore, we cannot estimate how long the lawsuit will last.

## **My child is authorized for Medi-Cal in-home nursing services. Is my child part of this lawsuit?**

Not yet. If your child is authorized for Medi-Cal in-home nursing services, and you are unable to staff all of their nursing hours, then your child may be considered a “class member” of the lawsuit. This means that whatever relief we get as a result of litigating this issue, your child will also get that relief. However, before your child can be considered a “class member”, a judge would first have to allow the case to proceed as a class action by “certifying” the class. This has not happened yet. If it happens, you may receive a formal notice about this lawsuit that explains your rights as a class member. DRC will also keep its website updated with information about the case at: <https://www.disabilityrightsca.org/cases/in-v-kent>.

## **Is this lawsuit connected to the state’s decision to increase the rates for Medi-Cal nursing services?**

The 2018-2019 Governor’s Budget Proposal for California, which is separate from this lawsuit, increased the rates for Medi-Cal nursing services. However, the rate increase has not gone into effect yet. In addition, the rate increase alone does not fix the state’s failure to meet its affirmative obligation to arrange services for children who need them.

## **Who can I contact to get more information about this lawsuit, or about Medi-Cal in-home nursing in general?**

If you would like more information about the lawsuit, or if your child is authorized for Medi-Cal in-home nursing hours but is not receiving all of those hours, please call our EPSDT Hotline at 1-888-852-9241. For up-to-date information about this lawsuit, you may also visit our case page at <https://www.disabilityrightsca.org/cases/in-v-kent>

## **Can DRC help me with other legal issues?**

For other legal assistance call 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).