

May 19, 2020

The Honorable Joaquin Arambula, MD, Chair  
Assembly Budget Subcommittee #1 on Health and Human Services  
California State Capitol Sacramento, CA 95814

The Honorable Richard Pan, MD, Chair  
Senate Budget Subcommittee #3 on Health and Human Services  
California State Capitol Sacramento, CA 95814

**RE: Elimination of Adult Day Health Care/Community Based Adult Services (ADHC/CBAS) and Multi-Purpose Senior Services Program (MSSP)**

Dear Dr. Arambula and Members of Subcommittee #1 and Dr. Pan and Members of Subcommittee #3:

Disability Rights California, Justice in Aging, and the National Health Law Program write to express our strong opposition to the wholesale elimination of ADHC/CBAS and MSSP programs proposed in Governor Newsom's May Revise. We understand these are unprecedented times, however, cutting these essential programs will only add to the hardships low income seniors and people with disabilities already face in the midst of the COVID-19 crisis.

Indeed, Governor Newsom designated the CBAS program an essential service in his March 19, 2020 Executive Order because of the protections it offers seniors and people with disabilities. Moreover, the financial repercussions to the elimination of these essential services will dramatically increase state costs in the form of increased emergency room visits, hospitalizations, and long-term care. Previous litigation, discussed below, sets precedent that elimination of essential Home and Community-Based Services (HCBS) programs without adequate replacement of services violates federal law.

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### Background

The ADHC/CBAS and MSSP programs serve extremely vulnerable seniors and people with disabilities who are at risk of institutional placement in order to participate. These programs are an essential component of California's home and community-based services system and help the state to ensure compliance with the United States Supreme Court's Olmstead decision. They are a lifeline for thousands of seniors and people with disabilities; elimination of these programs will decimate community supports for people who need them most, at a time when institutional placement is a deadly alternative.

Specifically, ADHC/CBAS is a community-based health program funded by Medi-Cal (with some private pay recipients) that provides health and social services to seniors and adults with disabilities who are at risk of institutional placement. ADHC/CBAS serves approximately 36,000 people, 34,679 of whom are Medi-Cal eligible.<sup>1</sup> Participants in the program are individuals with Alzheimer's dementia, serious psychiatric disabilities, other cognitive disabilities and/or significant health issues such as heart disease, cancer or Parkinson's disease. Most participants require care and supervision by family members and other caregivers around the clock. ADHC/CBAS provides both the medical care and supports needed for these individuals to remain at home. If services are not provided seamlessly, in accordance with existing plans of care, these individuals will be forced into nursing facilities or face hospitalization, or even death.

The MSSP waiver program provides home and community-based services to Medi-Cal eligible individuals who are 65 years or older and have disabilities, as an alternative to nursing facility placement. MSSP serves approximately 12,000 low-income seniors, and provides community-based case management, linkages to other needed services, and can fund or purchase some services needed to help participants remain in their homes.

### Litigation History

As you may be aware, during the period of 2009-2012, our organizations represented ADHC/CBAS participants in class action challenges to

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<sup>1</sup> [https://www.aging.ca.gov/Providers\\_and\\_Partners/Community-Based\\_Adult\\_Services/Center\\_Overview/](https://www.aging.ca.gov/Providers_and_Partners/Community-Based_Adult_Services/Center_Overview/) "Return to Main Document"

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proposed cuts to, and eventual elimination of the Adult Day Health Care Medi-Cal benefit (now the CBAS program).<sup>2</sup>

The first cut challenged (in *Brantley v. Maxwell-Jolly*) reduced the maximum number of days per week of Medi-Cal payment from five to three days, regardless of existing approved treatment plans and individual need for the service. The second cut challenged (in *Cota v. Maxwell-Jolly*) was prospective, and contained new, restrictive eligibility criteria which created different entrance criteria based on diagnosis or disability, and shrank the list of qualifying areas of need. This change would have terminated services entirely for up to 15,000 participants.

In issuing two separate preliminary injunctions, the first in *Brantley* in September 2009, and the second in *Cota* in February 2010, the Court for the Northern District of California found that, budget problems notwithstanding, the State could not abdicate its duty to ensure continuing compliance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. In *Cota*, the Court also ruled that new, restrictive eligibility standards would likely violate comparability and reasonable standards requirements under Medicaid law, in addition to violating the ADA and Section 504.

In 2011, the state proposed eliminating the ADHC program entirely. We again challenged that cut through a preliminary injunction (in *Darling v. Douglas*) and argued that wholesale elimination of the program would violate the ADA unless adequate replacement services were put in place which would maintain class members in the least restrictive environment.

After extensive negotiations, we were able to reach a Settlement Agreement which established the CBAS program as a Medi-Cal Managed Care benefit. The Settlement Agreement reflected a recognition by the state that eliminating the ADHC program without an adequate alternative tailored to individuals' needs would violate the ADA. Moreover, it was clear that the cost of increased institutional care as a result of the elimination of

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<sup>2</sup> *Darling et al. v. Douglas et al.* C:09-03798; *Harry Cota et al. v. Maxwell-Jolly et al.*, 688 F.Supp.2d 980 (N.D. Cal. 2010); *Lillie Brantley et al. v. Maxwell-Jolly et al.*, 656 F. Supp. 2d 1161 (N.D. Cal. 2009). ["Return to Main Document"](#)

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the AHDC program would obliterate any expected savings. Indeed, the Lewin Group<sup>3</sup> estimated that the cost of elimination would be:

more than offset by cost-shifting to other services and reductions to State revenue...In total, we estimate the State would lose \$51 million in 2010-11 over and above the estimated savings that would come from eliminating the program (excluding the loss of federal matching funds). Annual losses to the state are projected to increase to \$72 million in 2020-21, \$198 million in 2031 and over \$412 million in 2040-41. These costs are primarily driven by rapid growth in California's aging population...

### Proven Benefits of ADHC/CBAS and MSSP Services

As the California Association of Adult Day Services (CAADS) described in its May 17, 2020 letter to this Subcommittee, AHDC/CBAS programs went to Herculean lengths during these weeks of shelter in place to put in place a new model of care to meet their participants' needs. In just a few weeks time, these programs, in coalition with the Department of Aging, the Department of Public Health, and the Department of Health Care Services, conducted more than 324,000 COVID-19 wellness check-ins and assessments, and 972,000 related interventions and in-depth services to ensure that 36,000 vulnerable seniors and 73,000 caregiving family members remained safe.

As CAADS notes:

ADHC/CBAS services is the most cost effective community-based alternative to skilled nursing facility care, and we believe that the proposal to eliminate the program is extremely shortsighted. Mounting evidence shows that the use of ADHC/CBAS results in decreased use of more costly interventions including emergency room visits, hospital admissions/re-admissions and skilled nursing care. This is made possible through the delivery of essential nursing, clinical, occupational and other supports to adults with complex medical, cognitive and psychological conditions.

Likewise, the savings and benefits from MSSP are critical for seniors in California. The cost to serve MSSP clients is more than 45% than the cost

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<sup>3</sup> The Lewin Group, May 18, 2010, *Projected Economic Impact of Eliminating California's Medi-Cal Adult Day Health Care Program*. ["Return to Main Document"](#)

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of nursing facility placement. As the MSSP Site Association notes in its May 17, 2020 letter to this committee, “if just 18% of MSSP patients statewide (2,289) are placed in a nursing home, the entire “savings” from MSSP elimination is immediately wiped out.” MSSP programs have successfully served clients during the Covid-19 pandemic using telehealth, and have addressed their needs due to self-isolation and struggles with access to services and supplies. MSSP’s care coordination for low-income seniors is particularly important in these times.

### Conclusion

Given the evident and urgent benefits CBAS and MSSP provide to some 46,000 of California’s most vulnerable citizens, we ask that the proposal to eliminate these critical programs be rejected. The risk of placement in nursing facilities for the population of people who receive ADHC/CBAS or MSSP services is grave—indeed, nearly half of all deaths related to COVID-19 in California are linked to elder care facilities.<sup>4</sup> In addition to the human cost of the loss of CBAS and MSSP programs, and the 46,000 whose health and safety will be at risk, the proposal does not make fiscal sense. Significant increases in hospitalizations and long-term institutional care costs, as well as the expense of legal challenges will outweigh any savings. Thank you for your attention to this critical issue.

Sincerely,

/s/

Elizabeth Zirker, Managing Attorney  
Disability Rights California

/s/

Claire Ramsey, Senior Attorney  
Justice in Aging

/s/

Kimberly Lewis, Managing Attorney  
National Health Law Program

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<sup>4</sup> <https://www.latimes.com/california/story/2020-05-08/california-coronavirus-deaths-nearly-half-linked-to-elder-care-facilities>. [“Return to Main Document”](#)