

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID OSTER, et al.,  
Plaintiffs,  
v.

No. C 09-4668 CW  
PRELIMINARY  
INJUNCTION

WILL LIGHTBOURNE, Director of the  
California Department of Social  
Services; TOBY DOUGLAS, Director  
of the California Department of  
Health Care Services; CALIFORNIA  
DEPARTMENT OF HEALTH CARE  
SERVICES; and CALIFORNIA  
DEPARTMENT OF SOCIAL SERVICES,  
Defendants.

\_\_\_\_\_ /

IT IS HEREBY ORDERED that, except in accordance with the  
order below, Defendants and their successors, agents, officers,  
servants, employees, attorneys and representatives and all persons  
acting in concert or participating with them are enjoined from  
implementing the provisions of SB 73 that enacted section 12301.07  
of the California Welfare and Institutions Code, which imposes a  
twenty percent reduction in authorized hours of In-Home Support  
Services for IHSS recipients not exempt or pre-approved for  
exceptions to the reductions, and establishes a Supplemental Care  
application process available to IHSS recipients to seek the  
restoration of reduced hours.

1 Defendants may reduce IHSS recipients' service hours by  
2 twenty percent, or any other number, only after conducting a needs  
3 reassessment to determine the number of IHSS service hours that  
4 are necessary to enable the recipient to remain safely at home. A  
5 reduction of IHSS hours shall not be based on functional ranks  
6 alone, or on Functional Index Scores. The State shall bear the  
7 cost of counties' reassessment efforts to the extent those  
8 activities go beyond existing legal requirements for  
9 reassessments.  
10

11 IHSS recipients who qualify, and are on waiting lists, for  
12 State Home and Community Based Services Waiver programs shall be  
13 exempt from the reductions, like those recipients who are  
14 currently enrolled in the programs.  
15

16 Based on the CDSS's representation that all IHSS recipients  
17 who receive Early Periodic Screening Diagnosis and Treatment  
18 (EPSDT) services will be pre-approved for an exception to the  
19 reduction in services, the reduction shall not be applied to these  
20 recipients.  
21

22 Twenty-one days prior to instructing the counties to conduct  
23 any reassessments, or making changes to the Case Management,  
24 Information and Payrolling System (CMIPS) to implement such  
25 reassessments, Defendants shall serve and file a copy of their  
26 plan for conducting reassessments. The plan shall include the  
27 notice or notices Defendants intend to send to IHSS recipients.  
28

1 All notices to IHSS recipients regarding SB 73, including any  
2 notice of the right to request a state hearing, shall be written  
3 in a manner comprehensible to an individual who reads at a fifth  
4 grade level. Defendants shall verify that the notices are  
5 comprehensible to fifth grade level readers by considering  
6 guidance from official resources, such as those cited by  
7 Plaintiffs' expert, regarding readability and by consulting with a  
8 qualified expert to review the notices.  
9

10 Notice to IHSS recipients shall not include misleading or  
11 confusing statements, such as those addressed in this Court's  
12 order granting the preliminary injunction.

13 If an IHSS recipient's service hours are to be reduced,  
14 notice to the recipient shall explain the grounds for the hours  
15 reduction. If functional ranks were used, the notice must  
16 identify the recipient's functional ranks and describe how the  
17 ranks affected the reduction of hours.  
18

19 Defendants shall provide the notices in English, Spanish,  
20 Chinese, Hmong, Armenian, Russian and Vietnamese, and shall send  
21 each notice in the language appropriate to the IHSS recipient.  
22 Defendants shall identify a telephone number through which an IHSS  
23 recipient who is not literate in one of the above languages, or  
24 who has cognitive or visual impairments, can seek a reading and/or  
25 translation of the content of the notice. The notices shall  
26 inform IHSS recipients that they may call that number for that  
27 purpose.  
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To ensure that all relevant parties are aware of the Court's injunction, Defendants shall, to the extent that they have not already done so in accordance with the December 1, 2011 Temporary Restraining Order, rescind any directions or notices issued to any person or entity for the reduction of IHSS benefits in accordance with SB 73, and shall notify all persons and entities that have received such directions or notices that IHSS benefits will not be reduced in the manner provided for in SB 73 and the ACL.

Defendants must mail this notice within four days of the date of this order.

Defendants shall post a copy of this preliminary injunction, with an explanation of its effects on IHSS services, conspicuously on the California Department of Social Services website within four days of the date of this order.

IT IS SO ORDERED.



Dated: