

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

EVELYN PUTZ, et al.,  
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,  
Defendants.

No. 10-00344 CW

ORDER DENYING  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION AND  
GRANTING IN PART  
DEFENDANTS'  
MOTION TO DISMISS

Plaintiffs, In-Home Supportive Services (IHSS) consumers and two associations, the California Association of Public Authorities and the In-Home Supportive Services Consumer Alliance, filed suit against various state officials seeking to enjoin reductions in the funding of public authorities. A public authority is a "corporate governing body" that has "all powers necessary or convenient to carry out the delivery of in-home supportive services." Cal. Welf. & Inst. Code § 12301.6(b)(2)(B). Plaintiffs have filed a motion for a preliminary injunction. Defendants oppose the motion and have filed a motion to dismiss some of the causes of action asserted in Plaintiffs' complaint. The matter was heard on April 15, 2010. Having heard oral argument and considered all of the papers filed by the parties, the Court DENIES Plaintiffs' motion for a preliminary injunction and GRANTS IN PART Defendants' motion

1 to dismiss.

2 BACKGROUND<sup>1</sup>

3 Under the 1965 federal Medicaid Act, the federal government  
4 financially assists participating states that provide medical  
5 services to eligible beneficiaries. California participates in  
6 Medicaid through the Medi-Cal Program. In 1973, California  
7 established the IHSS program to provide assistance with the tasks  
8 of daily living to low-income elderly and disabled persons. IHSS  
9 is funded with a combination of state, county and federal Medicaid  
10 monies. Cal. Welf. & Inst. Code § 12306. IHSS providers give  
11 services such as assistance with bathing, dressing, cooking,  
12 feeding, bowel and bladder care, self-administration of medication  
13 and cleaning. Id. § 12300(b), (c). Over 360,000 IHSS providers  
14 serve over 440,000 individuals in California. Over sixty-two  
15 percent of IHSS recipients are served by a relative.

16 To qualify for federal matching funds for care and services, a  
17 state must establish and administer its Medicaid program through a  
18 state plan approved by the federal Secretary of Health and Human  
19 Services. 42 U.S.C. § 1369b(a)(7). The California Department of  
20 Health Care Services (DHCS) is the single state agency designated  
21 to administer California's state plan under Medi-Cal. The  
22 Department of Health Care Services has delegated authority to the  
23 California Department of Social Services (CDSS) to implement the  
24 IHSS program.

25 IHSS is administered by the state's counties. To provide for

26 \_\_\_\_\_  
27 <sup>1</sup>The Court takes judicial notice of the state and county  
28 records submitted by both Plaintiffs and Defendants.

1 the delivery of in-home supportive services, counties have the  
2 option of administering the IHSS program themselves, contracting  
3 with a non-profit consortium or establishing, by ordinance, a  
4 public authority for the delivery of in-home supportive services.  
5 Cal. Welf. & Inst Code § 12301.6(a), (b). This case concerns the  
6 funding of public authorities.

7 If a county chooses to administer IHSS through a public  
8 authority, the public authority must carry out the following  
9 specific "functions": (1) help recipients find IHSS providers by  
10 maintaining a provider registry, (2) conduct background checks on  
11 potential providers, (3) establish a provider referral system and  
12 (4) provide training for providers and recipients. Id.  
13 § 12306.1(e)(1)-(4). Public authorities must also perform "any  
14 other functions related to the delivery of in-home supportive  
15 services." Id. § 12306.1(e)(5). However, the work of public  
16 authorities "shall not be limited to those functions." Id.  
17 § 12306.1(e).

18 Public authorities are not the employers of the individual  
19 caregivers who provide IHSS to recipients. Although they are  
20 "deemed" to be the employer of individual providers for purposes of  
21 collective bargaining regarding provider wages and benefits,  
22 recipients retain full authority to hire, fire and supervise the  
23 work of their providers. Id. § 12301.6(c)(1). Also, public  
24 authorities are not the employers of IHSS providers for purposes of  
25 liability for a provider's negligent or intentional conduct. Id.  
26 § 12301.6(f)(1).

27 Public authorities are funded according to a public authority  
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1 rate. A public authority rate is the hourly rate paid to public  
2 authorities to run a county's IHSS program. The rate is comprised  
3 of two components: an hourly rate for administrative costs to run  
4 the public authority and an hourly rate for provider wages,  
5 benefits and taxes. The public authority rate must be approved by  
6 the county, CDSS and DHCS before providers and public authorities  
7 will be reimbursed for their work. Each county public authority  
8 has its own public authority rate.

9 For instance, on August 1, 2008, San Bernardino was approved  
10 for a public authority rate of \$10.54 per hour. This included a  
11 wage of \$9.25 per hour for IHSS providers, payroll taxes of \$.74  
12 per hour, health benefits of \$.38 per hour and administrative costs  
13 of \$.17 per hour. Lopez Decl., Exh. 3.

14 San Bernardino's administrative costs for fiscal year 2008-  
15 2009 include: salary and benefits for twenty-five employees, leases  
16 for office space and copy machines, maintenance of computers and  
17 software, postage and mailing, office supplies, telephones and cell  
18 phones, workshop and seminar registration fees, travel expenses,  
19 costs to perform background checks on IHSS providers, advertising,  
20 insurance, legal services and funds to pay for emergency back-up  
21 provider services. Id. The budget for San Bernardino's  
22 administrative costs for 2008-2009 was \$3,238,266. Id. The hourly  
23 rate for administrative costs (\$.17/hour) was calculated by  
24 dividing the total amount of administrative costs for 2008-2009  
25 (\$3,238,266) by the total number of projected hours to be worked by  
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1 IHSS providers in 2008-2009 (20,129,420).<sup>2</sup> DHCS must provide these  
2 hourly rates for administrative costs to Medicaid in order to be  
3 reimbursed. Lopez Decl. ¶ 12.

4 Public authorities do not receive payments directly from the  
5 State for their operations. Rather, the counties advance funds to  
6 public authorities and the counties are reimbursed by the State for  
7 the state and federal share of the public authorities'  
8 administrative costs. IHSS providers are paid in a different  
9 manner. Depending on the county, IHSS providers submit their  
10 timesheets to the county or the public authority and the  
11 information on the timesheets is entered into a state-wide payroll  
12 system called the Case Management, Information and Payrolling  
13 System. The State Controller's Office then pays the IHSS providers  
14 directly. The State seeks reimbursement from the counties and  
15 federal government for their respective shares of the IHSS provider  
16 wages. Public authorities neither receive nor pass-through  
17 payments for the care and services provided by IHSS providers.

18 In response to California's current budget crisis, the  
19 California Legislature passed AB X4 1 on July 23, 2009. AB X4 1  
20 contained a variety of cost cutting measures, including reductions  
21 to various appropriations previously set forth in the Budget Act of  
22 2009, which was signed into law on February 20, 2009. One such

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24 <sup>2</sup>Although San Bernardino states that its rate for  
25 administrative costs is \$.17 per hour, after dividing the total  
26 administrative costs by the total number of IHSS hours, the Court  
27 calculated the rate to be \$.16 per hour. Either San Bernardino  
28 miscalculated the rate or the Court has not accounted for a  
rounding error not explained in San Bernardino's financial report  
to the state.

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1 cost cutting measure reduced the appropriation for the IHSS  
2 program. At issue in this case is the Legislature's \$4.7 million  
3 reduction for public authorities. Before signing AB X4 1 into law,  
4 the governor used his line item veto power to reduce public  
5 authority funding by an additional \$8.6 million. In total, these  
6 reductions resulted in a fifty-seven percent reduction in the money  
7 the State contributed to the operations and services provided by  
8 public authorities. The new law also capped the amount of money  
9 the state general fund can contribute to the operation of public  
10 authorities at \$10 million.

11 More than seven months after AB X4 1 became law, Plaintiffs  
12 filed this suit. Plaintiffs challenge AB X4 1 on several grounds.  
13 Plaintiffs assert that the law is preempted by 42 U.S.C  
14 § 1396a(a)(30)(A) (hereinafter Section 30(A)) because the  
15 Legislature and Governor failed to conduct and consider a  
16 substantive analysis of the effects of AB X4 1 and because the  
17 funding reductions failed to meet the substantive requirements of  
18 Section 30(A). Plaintiffs also argue that AB X4 1 violates the  
19 Americans with Disabilities Act (ADA) and Section 504 of the  
20 Rehabilitation Act because it discriminates against IHSS recipients  
21 on the basis of disability and will lead to their unnecessary  
22 institutionalization. Lastly, Plaintiffs claim that the Governor  
23 abused the line-item veto power granted under Article IV, Section  
24 10 of the California Constitution.<sup>3</sup>

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27 <sup>3</sup>Plaintiffs do not rely on their line-item veto claim as a  
28 basis for seeking a preliminary injunction.

DISCUSSION

I. Preliminary Injunction

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, Inc., \_\_\_ U.S. \_\_\_, 129 S. Ct. 365, 374 (2008). "In each case, courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" Id. at 376 (quoting Amoco Prod. Co. v. Vill. of Gambell, Alaska, 480 U.S. 531, 542 (1987)).

A. Likelihood of Success on the Merits

1. State Sovereignty

Defendants first argue that Plaintiffs' claims fail because the remedy they seek impermissibly intrudes upon California's sovereign immunity. Under Ex Parte Young, 209 U.S. 123 (1908), the Eleventh Amendment does not provide immunity to state officials for claims of equitable relief that would have an ancillary effect on a state budget. See Suever v. Connell, 579 F.3d 1047, 1060 n.7 (9th Cir. 2009) ("The scope of the Ex Parte Young exception has since been limited to claims for prospective equitable relief and state funds 'ancillary' to such relief . . . ."). Defendants assert that Ex Parte Young does not extend to the type of challenge Plaintiffs make in this case. The Court disagrees.

Courts routinely rely on the Ex Parte Young exception to the Eleventh Amendment to ensure sufficient appropriations to comply

1 with the Medicaid Act. See Washington State Health Facilities Ass'n  
2 v. State of Washington Dep't of Social & Health Servs., 698 F.2d  
3 964, 966 (9th Cir. 1982); Dominquez v. Shwarzenegger, 596 F.3d 1087  
4 (9th Cir. 2010). Here, Plaintiffs seek declaratory and injunctive  
5 relief to compel Defendants to comply with federal laws; Plaintiffs  
6 do not seek retrospective damages. Plaintiffs' claim for this type  
7 of equitable relief does not violate the Eleventh Amendment.  
8 Plaintiffs seek a prospective order preventing Defendants from  
9 applying reductions to public authorities in the future. This is  
10 similar to the injunction enjoining the State from decreasing the  
11 wage that it would reimburse IHSS providers which was recently  
12 upheld by the Ninth Circuit in Dominquez. 596 F.3d at 1097.

13 1. Medicaid Act Claims

14 Plaintiffs' first two causes of action allege that Defendants  
15 violated the substantive and procedural requirements of Section  
16 30(A) of the Medicaid Act. To receive federal financial  
17 participation in payment for services that states provide to low  
18 income persons who are aged, blind, disabled or members of families  
19 with dependent children, states must agree to comply with  
20 applicable federal Medicaid law. Orthopaedic Hosp. v. Belshe, 103  
21 F.3d 1491, 1493 (9th Cir. 1997). As noted above, the Medicaid Act  
22 requires a participating state to develop a state plan which  
23 describes the policy and methods to be used to set payment rates  
24 for each type of service included in the program. 42 C.F.R.  
25 § 447.201(b). Section 30(A) of the Medicaid Act requires, in  
26 relevant part, that a state's Medicaid plan:

27 provide such methods and procedures relating to the

1 utilization of, and the payment for, care and services  
2 available under the plan . . . as may be necessary . . . to  
3 assure that payments are consistent with efficiency, economy,  
4 and quality of care and are sufficient to enlist enough  
5 providers so that care and services are available under the  
6 plan at least to the extent that such care and services are  
7 available to the general population in the geographic area.

8 (Emphasis added). Rather than argue that they have complied with  
9 the requirements of Section 30(A), Defendants argue that these  
10 requirements do not apply to payments to public authorities because  
11 public authorities do not provide any "care and services" to IHSS  
12 recipients.

13 Plaintiffs disagree and point to a 1994 letter written by a  
14 Deputy Director of the Department of Health Services, John  
15 Rodriguez. In this letter, Rodriguez noted that, irrespective of  
16 whether IHSS was administered by counties, public authorities or  
17 non-profit consortiums, rate changes are "subject to the provisions  
18 of [Section] 30(A)." Rolfe Decl., Exh. 16. However, Rodriguez's  
19 statement refers generally to the total public authority rate  
20 methodology, not specifically the administrative cost rate  
21 component of the total public authority rate. Thus, his comment  
22 cannot be read to imply that the public authority's administrative  
23 costs go toward providing personal "care and services."

24 Plaintiffs also argue that, because the state plan "deems" an  
25 IHSS public authority to be a "Medi-Cal provider," payments to  
26 public authorities are necessarily made for care and services.  
27 This argument has no merit. The section of the state plan to which  
28 Plaintiffs cite addresses the relationship between public  
authorities and individual service providers for purposes of  
collective bargaining. It states, "Within the meaning of . . .

1 [the sections of] the California Government Code relating to  
2 collective bargaining by employee organizations that include  
3 employees of a public agency, any public authority created pursuant  
4 to this section is deemed to be the employer of persons referred to  
5 recipients to provide personal care services and is also deemed to  
6 be the Medi-Cal provider of record." Gomez Decl., Exh. 3. By  
7 deeming public authorities the employers of the IHSS providers for  
8 collective bargaining purposes, this provision placed the public  
9 authorities on the opposite site of the bargaining table from the  
10 IHSS providers for purposes of negotiating wages and benefits.  
11 Thus, this section of the state plan cannot fairly be read to imply  
12 that public authorities provide care and services to IHSS  
13 recipients. Moreover, Plaintiffs' argument carries even less  
14 weight now that the current version of the state plan contains no  
15 reference to public authorities being "deemed" to be Medi-Cal  
16 providers of record. Gomez Decl., Exh. 4.

17 Plaintiffs also emphasize that the state plan discusses public  
18 authority rates in the section entitled, "Payment for Services,"  
19 not the section entitled "Administration." However, this is not  
20 surprising considering that the total public authority rate  
21 consists primarily of the wages and benefits paid to IHSS  
22 providers. The fact that the total public authority rate also  
23 contains a small portion of administrative costs associated with  
24 providing those services is not inconsistent with placing the  
25 description of the entire public authority rate in the "Payment for  
26 Services" section of the state plan.

27 Plaintiffs lastly rely on the manner in which California has  
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1 sought reimbursement for IHSS costs from the federal government  
2 under the Medicaid Act. Under the Act, state expenditures for  
3 "care and services" are subject to a different level of federal  
4 funding than administrative costs. Specifically, expenditures for  
5 "care and services" may receive federal funding at a state's  
6 Federal Medical Assistance Percentage (FMAP). See 42 U.S.C.  
7 § 1396b(a)(1); 42 C.F.R. § 433.10. As noted above, FMAP is a  
8 higher reimbursement rate than the federal matching provided for  
9 amounts spent "for the proper and efficient administration of the  
10 State plan," otherwise called, Federal Financial Participation  
11 (FFP). 42 U.S.C. § 1396b(a)(7); see also 42 C.F.R. § 433.15.  
12 Prior to 2009, all expenditures associated with the IHSS program,  
13 including expenditures for administering public authorities, were  
14 subject to federal reimbursements at the rate of the state's FMAP.  
15 Thus, Plaintiffs argue, because the federal government reimbursed  
16 public authorities as if they provided "care and services," payment  
17 to them should be subject to the requirements of Section 30(A).

18 Plaintiffs' argument has been called into question in light of  
19 the California Department of Health Care Services' (DHCS)  
20 interpretation of the recently passed American Recovery and  
21 Reinvestment Act of 2009 (ARRA). Under the ARRA, section 5001,  
22 states may receive an enhanced share of federal funding at a higher  
23 level for expenditures for "medical assistance," compared to  
24 "administrative" costs. On September 2, 2009, Plaintiffs' attorney  
25 wrote to the DHCS and asserted that public authority expenditures  
26 should be classified as "medical assistance," not "administrative."  
27 Gomez Decl, Exh. 1. DHCS disagreed and concluded that all public  
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1 authority costs "cannot be appropriately classified as 'medical  
2 assistance'" for purposes of the ARRA and, therefore, those costs  
3 are ineligible for funding at the higher reimbursement rate. Id.,  
4 Exh. 3. The Department relied on the following three facts in  
5 rendering its conclusion: "(1) PA employees do not provide any  
6 direct services to beneficiaries whatsoever, even case management  
7 services; (2) the PA is not considered to be the actual employer of  
8 the individual IHSS providers for purposes outside of the  
9 collective bargaining setting; and (3) the PA does not directly pay  
10 the wages of the IHSS providers." Id. at 3. Therefore, DHCS found  
11 that all public authority expenses are "necessarily administrative  
12 in nature." Id.

13 Although the Court is not bound by the DHCS's interpretation  
14 of a federal statute, see Orthopaedic Hospital, 103 F.3d at 1495  
15 ("We review de novo a state agency's interpretation of a federal  
16 statute."), its analysis of the ARRA's application to the funding  
17 of public authorities is instructive. Plaintiffs do not dispute  
18 the three facts underlying the DHCS's conclusion. Public  
19 authorities do not provide any direct services to IHSS recipients;  
20 they do not employ IHSS providers; and they do not directly pay  
21 the wages of IHSS providers. However, Plaintiffs argue that the  
22 administrative work of public authorities is so integral to the  
23 proper functioning of delivery of services to IHSS recipients that  
24 it should be considered "care and services," and subject to Section  
25 30(A).

26 The Court concludes that, although most of the work performed  
27 by public authorities is purely administrative in nature,

1 Plaintiffs have submitted evidence that at least some of the work  
2 performed by public authorities provides for the care and services  
3 of IHSS recipients. For instance, the public authorities in San  
4 Francisco, San Bernardino and Tulare Counties provide IHSS  
5 recipients with emergency replacement services from employed home  
6 care workers in the event that a recipient's regularly scheduled  
7 provider is unable to provide services on any given day. Calame  
8 Supp. Decl. ¶¶ 3-5, Lopez Supp. Decl. ¶¶ 10-11, Tarvin Decl. ¶ 4.  
9 These emergency on-call services prevent unnecessary and more  
10 costly public expenses through 9-1-1 calls and emergency room  
11 visits. Moreover, Plaintiffs have shown that public authorities  
12 train IHSS providers in various care-related skills, such as  
13 properly lifting an individual out of bed or bath, properly  
14 ambulating a bed-ridden individual and changing bandages. Calame  
15 Supp. Decl. ¶ 8, Lopez Supp. Decl. ¶ 10, Tarvin Decl. ¶ 3.

16 Thus, although public authorities do not directly care for  
17 IHSS recipients in the same way that IHSS providers do, Plaintiffs  
18 have submitted evidence that public authorities provide integral  
19 services that directly impact the care IHSS recipients receive.  
20 Accordingly, Plaintiffs have shown at least some likelihood of  
21 success on the merits of their Medicaid claims.

22 2. Americans with Disabilities Act and Rehabilitation  
23 Act Claims

24 The Americans with Disabilities Act (ADA) and the  
25 Rehabilitation Act prohibit discrimination based on disability. 42  
26 U.S.C. § 12132; 29 U.S.C. § 794(a). Unnecessary isolation is a  
27 form of discrimination against people with disabilities. As the

1 Supreme Court has explained, “[u]njustified isolation of the  
2 disabled” amounts to discrimination because institutional placement  
3 “perpetuates unwarranted assumptions that persons so isolated are  
4 incapable or unworthy of participating in community life” and  
5 “severely diminishes everyday life activities of individuals,  
6 including family relations, social contacts, work options, economic  
7 independence, educational advancement, and cultural enrichment.”  
8 Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 597, 60-61 (1999).

9 Thus, both the ADA and the Rehabilitation Act contain an  
10 “integration mandate” which “serves one of the principal purposes  
11 of Title II of the ADA: ending the isolation and segregation of  
12 disabled persons.” Arc of Washington State v. Braddock, 427 F.3d  
13 615, 618 (9th Cir. 2005). States are required to provide care in  
14 integrated environments for as many disabled persons as is  
15 reasonably feasible, so long as such an environment is appropriate  
16 to their health needs. Specifically, the ADA regulations provide:  
17 “A public entity shall administer services, programs, and  
18 activities in the most integrated setting appropriate to the needs  
19 of qualified persons with disabilities.” 28 C.F.R. § 35.130(d).

20 “The ‘most integrated setting’ is defined as ‘a setting that  
21 enables individuals with disabilities to interact with non-disabled  
22 persons to the fullest extent possible.’” Brantley, 2009 WL  
23 2941519, at \*6 (citing 28 C.F.R. pt. 35 app. A; Olmstead, 527 U.S.  
24 at 592).

25 Plaintiffs allege that AB X4 1 violates the “integration  
26 mandate” of the ADA and the Rehabilitation Act by placing people in  
27 serious risk of being forced to move out of their homes to the less  
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1 integrated setting of institutions. Although Olmstead addressed  
2 ongoing institutionalization, persons who currently reside in  
3 community settings may assert ADA integration claims to challenge  
4 state actions that give rise to a risk of unnecessary  
5 institutionalization. See Fisher v. Oklahoma Health Care Auth.,  
6 335 F.3d 1175, 1181-82 (10th Cir. 2003) (imposition of cap on  
7 prescription medications placed participants in community-based  
8 program at high risk for premature entry into nursing homes in  
9 violation of ADA); Ball v. Rogers, 2009 WL 1395423, at \*5 (D.  
10 Ariz.) (failure to provide them with needed services "threatened  
11 Plaintiffs with institutionalization, prevented them from leaving  
12 institutions, and in some instances forced them into institutions  
13 in order to receive their necessary care" in violation of the ADA  
14 and Rehabilitation Act); Mental Disability Law Clinic v. Hogan,  
15 2008 WL 4104460, at \*15 (E.D.N.Y.) ("even the risk of unjustified  
16 segregation may be sufficient under Olmstead").

17 AB X4 1 was implemented on October 1, 2009, more than six  
18 months ago, and the individual Plaintiffs have not asserted that,  
19 in that time, they have been threatened with institutionalization  
20 because of decreased funding for public authorities. Neither have  
21 Plaintiffs identified any particular future threat of  
22 institutionalization. Although funding cuts to public authorities  
23 may affect IHSS recipients' ability to find qualified providers,  
24 Plaintiffs have not supported this assertion with persuasive  
25 evidence. At most, Plaintiffs have presented declarations from  
26 IHSS recipients who describe their fears of institutionalization if  
27 public authorities were no longer able to provide any assistance.

1 However, Plaintiffs' evidence does not suggest that the present  
2 budget cuts have threatened the very existence of public  
3 authorities. Accordingly, Plaintiffs have not shown a likelihood  
4 of success on their ADA and Rehabilitation Act claims.

5 B. Irreparable Harm, Balance of Hardships and the Public  
6 Interest

7 Plaintiffs must show that they are likely "to suffer  
8 irreparable harm in the absence of preliminary relief." Winter,  
9 129 S. Ct. 374. Because injunctive relief is an "extraordinary  
10 remedy," the Court will not issue a preliminary injunction "based  
11 only on a possibility of irreparable harm." Id. at 375-76. Here,  
12 Plaintiffs' evidence does not establish that they are likely to  
13 suffer irreparable harm absent an injunction while this action  
14 proceeds to a judgment on the merits.

15 As noted above, AB X4 1 was signed into law on July 28, 2009  
16 and the State issued its allocations of funding to public  
17 authorities under the new law on October 1, 2009; however,  
18 Plaintiffs did not seek a preliminary injunction until February 24,  
19 2010. "Plaintiff's long delay before seeking a preliminary  
20 injunction implies a lack of urgency and irreparable harm."  
21 Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374,  
22 1377 (9th Cir. 1985). By now, Plaintiffs have lived with reduced  
23 funding for public authorities for over one-half of a year, but  
24 have not produced evidence of any specific injuries they have  
25 suffered as a result of AB X4 1.

26 The balance of hardships and the public interest does not  
27 clearly weigh in either side's favor. If the preliminary  
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1 injunction issues, the State Defendants' sole injury will be the  
2 financial costs associated with continuing to provide services  
3 under the status quo. The Court weighs California's budget crisis  
4 in the balance. However, "[a] budget crisis does not excuse  
5 ongoing violations of federal law, particularly when there are no  
6 adequate remedies available other than an injunction." Independent  
7 Living Ctr., 572 F.3d at 659. Although budget cuts to the public  
8 authorities makes administering IHSS more difficult, Plaintiffs  
9 have not demonstrated that AB X4 1 has harmed IHSS recipients in  
10 any significant and immediate manner. Therefore, the public does  
11 not have a strong interest in enjoining the law.

12 In sum, Plaintiffs have not demonstrated a strong likelihood  
13 of success on the merits of their Section 30(A), ADA and  
14 Rehabilitation Act claims. Moreover, Plaintiffs have not shown  
15 that, absent a preliminary injunction, they are likely to suffer  
16 irreparable harm. Further, neither the balance of hardships nor  
17 the public interest demand an issuance of an injunction.  
18 Accordingly, the Court denies Plaintiffs' motion for a preliminary  
19 injunction.

20 II. Motion to Dismiss for Failing to State a Claim

21 A complaint must contain a "short and plain statement of the  
22 claim showing that the pleader is entitled to relief." Fed. R.  
23 Civ. P. 8(a). When considering a motion to dismiss under Rule  
24 12(b)(6) for failure to state a claim, dismissal is appropriate  
25 only when the complaint does not give the defendant fair notice of  
26 a legally cognizable claim and the grounds on which it rests.  
27 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In

1 considering whether the complaint is sufficient to state a claim,  
2 the court will take all material allegations as true and construe  
3 them in the light most favorable to the plaintiff. NL Indus., Inc.  
4 v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, this  
5 principle is inapplicable to legal conclusions; "threadbare  
6 recitals of the elements of a cause of action, supported by mere  
7 conclusory statements," are not taken as true. Ashcroft v. Iqbal,  
8 \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1949-50 (2009) (citing Twombly, 550  
9 U.S. at 555).

10 Defendants move to dismiss Plaintiffs' first, second and fifth  
11 causes of action. Plaintiffs' first and second causes of action  
12 concern claims under the procedural and substantive requirements of  
13 Section 30(A) of the Medicaid Act. Although the Court denied  
14 Plaintiffs' motion for a preliminary injunction based on these  
15 claims, the Court notes that, as plead, they state proper claims  
16 for relief. Accordingly, the Court will allow the first and second  
17 causes of action to proceed beyond the pleadings stage and into  
18 discovery.

19 Plaintiffs' fifth cause of action asserts that Governor  
20 Schwarzenegger exceeded the line-item veto authority granted to him  
21 under Article IV, Section 10(e) of the California Constitution.  
22 Plaintiffs seek an injunction against implementation of the  
23 Governor's reductions to public authority funding for fiscal year  
24 2009-2010 and a declaratory judgment that his line-item veto  
25 reducing public authority funding violates the California  
26 Constitution and is thus null and void.

27 The Eleventh Amendment bars claims in federal court that  
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1 allege that state officials acting in their official capacities  
2 violated state law. Pennhurst State School & Hospital v.  
3 Halderman, 465 U.S. 89, 117 (1984) ("A federal suit against a state  
4 official on the basis of state law contravenes the Eleventh  
5 Amendment when -- as here -- the relief sought and ordered has an  
6 impact directly on the State itself."). Plaintiffs claim that the  
7 Eleventh Amendment does not bar this claim because the Governor was  
8 acting "ultra vires" when he exercised his line-item veto power to  
9 further reduce funding for public authorities. However, it is  
10 irrelevant whether the Governor acted "ultra vires." Because  
11 Plaintiffs seek to sue the Governor based on an alleged violation  
12 of state law, any relief a federal court could provide would not  
13 "vindicate the supreme authority of federal law." Id. at 105  
14 ("[I]t is difficult to think of a greater intrusion on state  
15 sovereignty than when a federal court instructs state officials on  
16 how to conform their conduct to state law. Such a result conflicts  
17 directly with the principles of federalism that underlie the  
18 Eleventh Amendment."). Therefore, no exception to the application  
19 of the Eleventh Amendment applies. Accordingly, the Court grants  
20 Defendants' motion to dismiss Plaintiffs' fifth cause of action.

21 III. Standing

22 Article III limits the jurisdiction of the federal courts to  
23 "cases" and "controversies." In order to satisfy the "case or  
24 controversy" requirement, a plaintiff must show that: "(1) he or  
25 she has suffered an injury in fact that is concrete and  
26 particularized, and actual or imminent; (2) the injury is fairly  
27 traceable to the challenged conduct; and (3) the injury is likely

1 to be redressed by a favorable court decision." Salmon Spawning &  
2 Recovery Alliance v. Gutierrez, 545 F.3d 1220, 1225 (9th Cir.  
3 2008). "Article III standing requires an injury that is actual or  
4 imminent, not conjectural or hypothetical." Cole v. Oroville Union  
5 High Sch. Dist., 228 F.3d 1092, 1100 (9th Cir. 2000) (internal  
6 quotation marks omitted).

7 An entity has associational standing where "(a) its members  
8 would otherwise have standing to sue in their own right; (b) the  
9 interests it seeks to protect are germane to the organization's  
10 purpose; and (c) neither the claim asserted nor the relief  
11 requested requires the participation of individual members in the  
12 lawsuit." Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333,  
13 343 (1977).

14 Defendants argue that Plaintiff California Association of  
15 Public Authorities does not have standing because it cannot meet  
16 the first element of Hunt. Defendants assert that, because public  
17 authorities are "political subdivisions of a state," they "may not  
18 challenge the validity of a state statute in a federal court on  
19 federal constitutional grounds." Palomar Pomerado Health System v.  
20 Belshe, 180 F.3d 1104, 1107 (9th Cir. 1999) (internal quotation  
21 marks and citation omitted). In Palomar, the Ninth Circuit  
22 concluded that Palomar Pomerado Health System, a health care  
23 district, was a political subdivision of California because it was  
24 a "public corporation formed under California law," and the State  
25 granted it "limited governmental functions within a particular  
26 area of the state." Id. at 1107. For example, Palomar Pomerado  
27 possessed the power to levy taxes, issue bonds and the power of  
28

1 eminent domain. Id.

2 Similar to the hospital district in Palomar, a public  
3 authority is authorized pursuant to state law as a "corporate  
4 public body, exercising public and essential governmental  
5 functions" within a particular county. Cal. Welf. & Inst. Code  
6 § 12301.6(b)(2)(B). However, public authorities do not exercise  
7 any governmental functions similar in scale to those exercised by  
8 the hospital district in Palomar. Public authorities do not levy  
9 taxes, issue bonds or have the power of eminent domain. Rather,  
10 public authorities are established for the sole and limited purpose  
11 of "provid[ing] for the delivery of in-home supportive services."  
12 Id. § 12301.6(a)(2). Their delineated powers consist of the powers  
13 to contract for services and to pay for such services. These  
14 powers are much more limited than those of the health care district  
15 in Palomar. Therefore, public authorities are not political  
16 subdivisions for purposes of standing. Accordingly, Defendants'  
17 challenge to Plaintiffs' standing fails.

18 CONCLUSION

19 For the foregoing reasons, the Court denies Plaintiffs' motion  
20 for a preliminary injunction (Docket No. 10) and grants in part  
21 Defendants' motion to dismiss (Docket No. 11). Plaintiffs fifth  
22 cause of action for violation of the California Constitution is  
23 dismissed with prejudice because amendment would be futile.

24 IT IS SO ORDERED.

25 Dated: 05/05/10



26 CLAUDIA WILKEN  
27 United States District Judge