

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WASHINGTON HEALTH CARE ASSOCIATION, a Washington non-profit corporation; EAGLE HEALTHCARE, INC., a Washington corporation, d/b/a GRANDVIEW HEALTHCARE CENTER, HIGHLAND TERRACE NURSING CENTER, HILLCREST MANOR, and PINEWOOD TERRACE NURSING CENTER; WASHINGTON CARE SERVICES, a Washington non-profit corporation, d/b/a WASHINGTON CARE CENTER; CASHMERE CONVALESCENT CENTER, INC., a Washington corporation; SOUNDCARE, INC., a Washington corporation, d/b/a MESSENGER HOUSE CARE CENTER; NIKKEI CONCERNS, a Washington non-profit corporation, d/b/a SEATTLE KEIRO; SUNRISE VIEW CONVALESCENT CENTER, L.L.C., a Washington limited liability company; and TEKOA MEDICAL FOUNDATION, INC., a Washington corporation, d/b/a TEKOA CARE CENTER,

Plaintiffs,

v.

SUSAN N. DREYFUS, Secretary of the Washington Department of Social and Health Services; and KATHY LEITCH, Assistant Secretary of the Aging and Disability Services Administration,

Defendants.

No. CV09-5395-RBL

**ORDER GRANTING PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER (No. CV09-5395-RBL) -1

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1 This Matter came before the Court on July 9, 2009 on Plaintiffs' Motion for  
2 Temporary Restraining Order (Dkt. No. 4). Plaintiffs seek to enjoin Defendants from  
3 implementing a 7.29% reduction in nursing facility Medicaid reimbursement rates for fiscal  
4 year 2010 (July 1, 2009 through June 30, 2010) pursuant to Washington's "budget-dial"  
5 statute, RCW 74.46.421, as triggered by the \$156.37 budget-dial rate set forth in ESHB 1244,  
6 § 206(1). Present at the hearing were Barbara J. Duffy, Robin Dale, Ryan P. McBride and  
7 Theodore A. Sheffield, counsel for Plaintiffs, and William T. Stephens and R. Timothy  
8 Crandell, Assistant Attorneys General, counsel for Defendants.

9 The Court has considered the parties' written submissions, declarations and exhibits,  
10 and has heard the parties' oral argument presented at the hearing on the motion, and hereby  
11 enters the following Order:

## 12 ORDER

13 1. To be entitled to injunctive relief, Plaintiffs must show that (1) they are likely  
14 to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of  
15 preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the  
16 public interest. *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 849 (9th Cir. 2009).

17 2. Given the legal, regulatory and public policy considerations inherent to both  
18 the nursing facility Medicaid reimbursement system and the state appropriations process, the  
19 Court has been presented with a difficult decision with respect to the first two elements for  
20 injunctive relief, and its decision is therefore a difficult call. Nevertheless, the Court finds  
21 that Plaintiffs have demonstrated a likelihood of success on the claims asserted in their  
22 Complaint for Declaratory and Injunctive Relief, and a likelihood that they will suffer  
23 irreparable harm absent a temporary restraining order ("TRO"). The Court further finds that  
24 the balance of the equities and the public interest support a TRO for a finite time period.

25 3. Therefore, the Court hereby ORDERS that Plaintiffs' Motion for Temporary  
26 Restraining Order is GRANTED. Defendants and their agents are ENJOINED from

ORDER GRANTING MOTION FOR TEMPORARY  
RESTRAINING ORDER (No. CV09-5395-RBL) -2

1 implementing or enforcing the 7.29% reduction in Medicaid reimbursement rates that would  
2 result from the application of ESHB 1244, § 206(1) and RCW 74.46.421 against Washington  
3 nursing facilities participating in the Medicaid program during the duration of this TRO.

4 4. This TRO shall remain in force until thirty (30) days following a decision by  
5 the Centers for Medicare & Medicaid Services (“CMS”) either approving or disapproving a  
6 proposed amendment to the Washington Medicaid State Plan relating to the establishment of a  
7 \$156.37 budget-dial rate. The parties shall immediately notify the Court upon any such  
8 decision by CMS.

9 5. No bond is required during the duration of this TRO.

10 6. The parties shall cooperate on the mutual exchange of information and  
11 discovery during the duration of this TRO.

12 DATED this 13<sup>th</sup> day of July, 2009.

13   
14 RONALD B. LEIGHTON  
15 UNITED STATES DISTRICT JUDGE

16 Approved and Presented by:

17 LANE POWELL PC

18 *s/Barbara J. Duffy*

19 Barbara J. Duffy, WSBA No. 18885  
20 Robin Dale, WSBA No. 22166  
21 Ryan P. McBride, WSBA No. 33280  
22 Theodore A. Sheffield, WSBA No. 35874  
23 *Attorneys for Plaintiffs*

24 ROBERT MCKENNA  
25 Attorney General

26 *s/William T. Stephens*

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