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COMMUNITY HEALTH CENTER ALLIANCE
FOR PATIENT ACCESS, ET AL.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

COMMUNITY HEALTH CENTER
ALLIANCE FOR PATIENT ACCESS, et
al.,

Plaintiffs,

v.

MICHELLE BAASS, Director of the
California Department of Health Care
Services; CHIQUITA BROOKS-LaSURE,
Administrator of the Centers for Medicare
and Medicaid Services,

Defendants.

Case No. 2:20-CV-02171-JAM-KJN

**PLAINTIFFS' EMERGENCY NOTICE OF
MOTION AND MOTION FOR
TEMPORARY RESTRAINING ORDER
TO PREVENT AGENCY ACTION AS OF
JANUARY 1, 2022**

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiffs are filing an emergency application for a temporary restraining order, seeking immediate injunction of the implementation of Medi-Cal Rx. Immediate action is necessary and appropriate because defendant the Director

1 of the Department of Health Care Services (“Department”) intends to implement Medi-Cal
2 Rx on January 1, 2022, and defendant Administrator of the Centers for Medicare and
3 Medicaid Services (“CMS”) approved Medi-Cal Rx on December 29, 2021. Per the
4 Court’s earlier order, Plaintiffs’ claims were not ripe and a First Amended Complaint and
5 motion for injunctive relief could not be filed, until Medi-Cal Rx was approved by the
6 CMS. This leaves one full ,court day between approval and implementation.

7 On Monday, December 27, 2021 Plaintiffs’ counsel sent a meet and confer email
8 to counsel for the Department noting that the circumstances were such that it would be
9 virtually impossible for the Court to act on a motion for a temporary restraining order
10 (“TRO”) submitted between then and the intended January 1, 2022 implementation of
11 Medi-Cal Rx. Plaintiffs therefore proposed that the Department delay implementation of
12 Medi-Cal Rx until CMS, as a new defendant to the lawsuit, had an opportunity to consider
13 the merits of Plaintiffs’ position on the new Administrative Procedures Act causes of
14 action, and the Court had the opportunity to give careful consideration to the issues
15 before ruling on a motion for a temporary restraining order. Plaintiffs noted the lack of
16 urgency to the implementation of Medi-Cal Rx, since implementation has been delayed
17 by a year already, and that principles of due process dictate that legitimate public
18 concerns be addressed prior to government action. Plaintiffs proposed that a minimum
19 30-day delay would be appropriate to allow for briefing and considered review of the
20 issues.

21 Shortly before noon on Wednesday, December 29, 2021, counsel for the
22 Department advised that CMS had approved Medi-Cal Rx and that the Department
23 “intends to ‘go live’ with Medi-Cal Rx on January 1, 2021 [sic], and does not agree to
24 plaintiffs’ request to delay implementation” These meet and confer discussions are set
25 forth in further detail in the declaration of Kathryn E. Doi, served and filed herewith

26 Pursuant to Fed. R. Civ. P. 65 and Local Rule 231, Plaintiffs hereby move for entry
27 of a temporary restraining order restraining and enjoining Defendants and all persons
28 associated with and acting in concert with Defendants from taking any further action to

1 carve-out the pharmacy benefit from the Medi-Cal managed care package of benefits, on
2 the following grounds:

3 First, Medi-Cal Rx violates federal law by requiring Plaintiffs to seek
4 reimbursement for pharmacy costs through the Medi-Cal fee-for-service (“FFS”)
5 reimbursement system, which does not comply with the federally-mandated FQHC
6 reimbursement requirements of 42 U.S.C. § 1396a(bb).

7 Second, the FFS system that Medi-Cal Rx imposes for Medi-Cal pharmacy drugs
8 and services is legally deficient, and CMS erroneously approved it in California State plan
9 amendment 17-002, paragraph 7. SPA 17-002 failed to establish a reimbursement
10 formula that considered FQHCs’ actual costs in buying 340B medications and their costs
11 in dispensing those medications to patients, as required by federal law. See 81 Fed.
12 Reg. 5170, 5318 (governing reimbursement for outpatient drugs); 42 U.S.C. § 1396a(bb)
13 (governing FQHC reimbursement under Medicaid).

14 Third, Medi-Cal Rx and SPA 17-002 violate federal law by depriving Plaintiffs of
15 the federally-granted choice to participate in the 340B program, and subjects them to
16 alternative state-level 340B duplicate discounts/rebates avoidance mechanisms that are
17 preempted by federal law. 42 U.S.C. §§ 256b(a)(5)(A) and 1396r-8(a)(5)(C).

18 Fourth, Medi-Cal Rx must be enjoined because it interferes with the 340B
19 Program’s purpose of enabling FQHCs to use their 340B program savings to provide
20 better health care services to underserved communities. 42 U.S.C. § 256b and H.R.
21 Rep. No. 102-384, pt. 2 at 12 (1992).

22 A temporary restraining order is needed because the pharmacy benefit carve-out is
23 scheduled to go into effect on January 1, 2022, less than two days away, and the Defendants
24 timed the approval of Medi-Cal Rx in such a manner as to deny the Plaintiffs an opportunity
25 to ask the Court to review the legality of Medi-Cal Rx before the implementation date. The
26 State must be enjoined from taking further action to implement the pharmacy benefit carve-
27 out in order to avoid harm to low-income patients who rely on FQHCs for their health care
28 services, before the Court can consider the merits of Plaintiffs’ motion.

1 Plaintiffs seek this temporary restraining order to preserve the status quo and to
2 prevent irreparable harm to Plaintiffs' patients and staff. Plaintiffs are likely to succeed on
3 the merits and the balance of equities tips in Plaintiffs' favor. As Defendants will not
4 suffer injury as a result of the injunction, no bond is required.

5 This application is based on this notice of motion and motion, the memorandum of
6 points and authorities served and filed herewith, and the declarations of Luisa Buada,
7 Ronald E. Castle, Colleen Curtis, Kathryn Doi, C. Dean Germano, Dr. Paramvir Sidhu,
8 and Dr. Kelvin Vu, served and filed concurrently herewith, all of the pleadings, files, and
9 records in this proceeding, all other matters of which the Court may take judicial notice,
10 and any argument or evidence that may be presented to or considered by the Court prior
11 to its ruling.

12
13 DATED: December 30, 2021

HANSON BRIDGETT LLP

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15 By: /s/ Kathryn E. Doi
16 KATHRYN E. DOI
17 ANDREW W. STROUD
18 G. THOMAS RIVERA III
19 Attorneys for Plaintiffs
COMMUNITY HEALTH CENTER ALLIANCE
FOR PATIENT ACCESS, ET AL.

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21 DATED: December 30, 2021

LAW OFFICES OF REGINA M. BOYLE

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23 By: /s/ Regina M. Boyle
24 REGINA M. BOYLE
25 Attorneys for Plaintiffs
26 COMMUNITY HEALTH CENTER ALLIANCE
27 FOR PATIENT ACCESS, ET AL.
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