

California Sued for Singling Out Safety Net Providers for Drastic Cuts while Favoring Rite Aid, CVS Chains

Department of Health Care Services Breaks Federal and State Laws by Slashing Medi-Cal Reimbursement Rates for Drugs Dispensed by AHF and Other Safety Net Providers While Rates for CVS, Rite Aid and Other Giant National Pharmacy Chains Go Untouched—and Remain Much Higher

As California Shifts Financial Burden to State's Most Vulnerable Citizens, Federal Court Action Seeks Injunction to Prevent State Bureaucrats from Using Illegal Methods to Control Costs

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LOS ANGELES--([BUSINESS WIRE](#))-- [AIDS Healthcare Foundation](#) (AHF) has filed a federal lawsuit against **David Maxwell-Jolly**, Director of the California Department of Health Care Services (DHCS) seeking an injunction to prevent implementation of a new state law singling out nonprofit safety net providers—including AHF—forcing drastic Medi-Cal (Medicaid) reimbursements cuts for drugs purchased by AHF clinics and other safety net providers while favoring giant national for-profit pharmacy chains including Rite Aid, CVS, Walgreens and others. The lawsuit was filed today, Monday, November 9th, in United States District Court, Central District of California, Western Division (case # CV-09-08199-R-PLAx). As California continues to try and resolve its budget crisis while also meeting its state and federally-mandated obligation to provide lifesaving health care services to its most vulnerable citizens, AHF will host a press teleconference **Tuesday, November 10th at 10:30am** Pacific to discuss its lawsuit.

In its legal complaint, AHF asserts that, *“the State of California unfortunately, and illegally, has tried to address its budget woes by reducing Medi-Cal payment rates to nonprofit, safety net medical providers, paying less to these providers than it pays to for-profit businesses for the very same services.”* The suit adds, *“...the State has enacted a statute that (1) violates both federal and State constitutional guarantees of equal protection, (2) impermissibly intrudes on and is preempted by federal law specifically intended to provide a financial benefit to nonprofit safety net providers like AHF, and (3) violates federal law covering the Medicaid program.”*

“The rate cuts that California has forced on Medi-Cal safety net providers will cut lifesaving pharmacy services down to the bone for AIDS patients who depend on us and other nonprofit providers for their lifeblood. At the same time, giant for-profit pharmacy chains remain untouched, receiving much higher drug reimbursement rates from California,” said **Michael Weinstein**, AIDS Healthcare Foundation President. “It is clear that like many states, California faces a financial crisis of vast proportions. But trying to balance the budget on the backs of some of our poorest and most vulnerable citizens by squeezing safety net providers like AHF is not only illegal under state and federal law, it also threatens the very existence of such nonprofit providers. A rate cut that targets only 340B providers and rewards for-profit pharmacies threatens the survival of critically important safety net providers such as AHF and similar providers statewide.”

California Assembly Bill X4-5: How the Reimbursement Cut for Safety Net Providers Came About

California's rate cut targeting nonprofit safety net providers like AHF was signed into law on July 28, 2009, when, after the conclusion of the Fourth Extraordinary Session of the Legislature (to address the state's budget crisis), Governor Schwarzenegger signed the Special Session Budget Bill and Assembly Bill X4-5 (the Special Session healthcare trailer bill). The bill requires all 340B participants such as AHF, *“...to dispense only drugs purchased through the 340B program to Medi-Cal beneficiaries,”* and *“...requires 340B participants to bill Medi-Cal only the participant's*

actual acquisition cost for the drug as charged by the manufacturer at a price consistent with the 340B program, plus a professional fee set pursuant to Welfare and Institutions Code.”

Due to recent statewide cutbacks and statutory changes, healthcare providers have been steadily leaving the Medi-Cal program, making it progressively more difficult for patients with Medi-Cal to find appropriate care and services. Despite the exodus of health care providers from the program, the California legislature has continued to enact laws that are likely to further reduce provider participation in Medi-Cal. Assembly Bill X4-5 joins the ranks of such laws.

“By enacting this law, the State has instituted a rate reduction in its reimbursement for pharmacy services for service providers like AHF that participate in the 340B program,” said **Brian Chase**, Associate General Counsel for AIDS Healthcare Foundation. “In a nutshell, the State is imposing price discrimination on vendors for services. For one set of vendors, the State will pay one price for drugs, and for another set of vendors, it will pay a different price. The price discrimination resulting from this law harms nonprofits and social safety net providers like AHF. For-profit pharmacies actually receive a higher reimbursement rate, and thus receive higher revenues, than do 340B participants. This violates the equal protection clauses of both the California and United States Constitutions.”

Background on the Federal 340B Program:

Reducing Drug Prices for Safety Net Providers in Order to Advance their Missions

The Veterans Health Care Act of 1992 created what is now commonly known as the 340B Program. A component of this Act requires drug manufacturers to provide outpatient drugs to specific entities at a reduced price. For participating entities, the reduced price affords an average savings of approximately 20% on prescription drug purchases.

The entities eligible to participate in the 340B program are all, by and large, nonprofit and governmental safety net medical providers, who primarily provide medical care to low income and indigent people. AHF is able to participate in the 340B program because it provides medical care to people with HIV/AIDS under the Ryan White CARE Act, a federal program designed to provide care to indigent Americans with HIV/AIDS.

Savings from the 340B program work in two ways. First, for entities that directly pay for and distribute drugs, they are able to buy these drugs at a lower price, and thus can either purchase more drugs to provide more services, or utilize the savings to provide other services. Second, for entities that purchase the drugs but are reimbursed by a third party (such as an insurance plan), the 340B program allows for a larger difference between the purchase cost and the reimbursement fee, which creates additional revenue for the nonprofit entity.

340B participating entities are able to utilize the savings from drug purchases in numerous ways that further their nonprofit and governmental missions as safety net providers. Entities that participate in the 340B program most commonly use the savings to:

- Increase the number of patients served;
- Offset losses from providing pharmacy services for less than full compensation;
- Reduce prescription prices to patients; and
- Increase the services provided.

Medicaid, Drug Company Rebates and the 340B Program

Medicaid, the federally-funded, state administered program to deliver quality health care services to low income participants currently serves more than 60 million enrollees nationwide, with over 6 million participants in California. Given the size of the entire Medicaid program, most drug manufacturers want to participate in the program and sell their drugs to this population.

Federal law allows 340B providers to either provide drugs purchased under the 340B to Medicaid patients, or to provide Medicaid patients with drugs purchased on the open market. Giving safety net providers that choice allows them to choose the option that best supports their nonprofit missions.

If a nonprofit chooses to provide 340B drugs to Medicaid patients, it must pass the savings along to the Medicaid program. But if the provider uses non-340B drugs and bills the Medicaid program at normal reimbursement rates, just like Rite Aid or Walgreens is allowed to, the Medicaid program can still recover savings because federal Medicaid law requires that drug manufacturers that wish to have their products paid for by the Medicaid program must rebate to the individual states a portion of the price of the drugs purchased for Medicaid purposes. California already receives substantial rebates for drugs it buys for Medi-Cal patients, so the new law won't save the state any real money, but it will devastate safety-net providers.

“Although a state’s participation in the Medicaid program is entirely voluntary, once California chose to participate—which it has done since the inception of Medicaid in the 1960s—it must carry out the requirements of Title XIX and its regulations,” said **Tom Myers**, General Counsel for AIDS Healthcare Foundation. “With this new state law, California is unconstitutionally interfering with the carefully crafted Federal 340B/Medicaid drug reimbursement mechanism, and causing great harm to AHF, many other safety net providers and the patients we all serve.”

In addition to its state and federal equal protection claims, and violation of federal laws to benefit nonprofit safety net providers and govern the Medicaid program, AHF is seeking declaratory relief asserting that, “...*the restriction that law places on safety-net pharmacies is invalid and in violation of federal statutes, regulations, and guidance.*” AHF is also seeking an injunction to prevent the implementation of the new California law.

AIDS Healthcare Foundation (AHF), the largest global AIDS organization, currently provides medical care and/or services to more than 120,000 individuals in 22 countries worldwide in the US, Africa, Latin America/Caribbean, the Asia Pacific Region and Eastern Europe. www.aidshealth.org

Source: AIDS Healthcare Foundation