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DEPARTMENT OF JUSTICE



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May 10, 2016

VIA U.S. MAIL

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Mexican American Legal Defense and Educational Fund
634 S. Spring Street, 11th Floor
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Bill Lann Lee, Esq.
Tim Fox, Esq.
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383 4th St., Suite 201
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Re: Medi-Cal Civil Rights Complaint (Saul Jimenez Perea, Analilia Jimenez Perea, Jose Berumen)

Dear Mr. Saenz, Mr. Lee, and Ms. Worthman:

Thank you for your December 22, 2015 letter to Secretary Dooley and Director Kent concerning the Medi-Cal civil rights complaint made by Saul Jimenez Perea, Analilia Jimenez Perea, and Jose Berumen. The Department of Health Care Services and the California Health and Human Services Agency are committed to ensuring that Medi-Cal beneficiaries have timely access to medical care and services, and accordingly the Department is currently in the process of evaluating your complaint. To more fully assess the specific access claims raised by Mr. Jimenez Perea and Mr. Berumen, the Department will need each complainant to sign and return the attached release form so that the Department's investigators can access the complainants'

relevant medical records.¹ Accordingly, we request that your clients sign and return the attached forms to the following address at your earliest convenience:

Gregory D. Brown
Deputy Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

While our evaluation of your claims remains ongoing, we note that the law currently provides a number of remedies that provide relief if a Medi-Cal patient is denied timely access to needed care and services. Among other things, when a patient is enrolled in a Medi-Cal managed care organization, the managed care organization is required by contract or law to provide timely access to needed care and services. (Cal. Code Regs., tit. 28, § 1300.67.2.) Further, all managed care organizations must establish internal grievance procedures that resolve grievances within 30 days, with expedited time frames for urgent cases. (*Id.*, tit. 28, §§ 1300.68 & 1300.68.01; *id.*, tit. 22, § 53858; 42 C.F.R. § 438.420.) And in cases where a managed care organization has denied authorization for a medically necessary and urgent procedure, the beneficiary or his or her authorized representative can contact the Medi-Cal Managed Care Ombudsman and request an emergency disenrollment from the plan and receive the procedure through fee-for-service coverage.

Similarly, patients who are enrolled in Medi-Cal fee-for-service coverage have the right to a prompt fair-hearing process if they are denied timely access to needed care and services. (42 U.S.C. § 1396a(a)(3); Cal. Welf. & Inst. Code, § 10950.) And if a fair hearing is timely requested, a beneficiary has the right to aid paid pending until the conclusion of the fair-hearing process. (42 C.F.R. § 438.420.)

We also note that your more generalized claims about patient access to care and services under Medi-Cal do not comport with our experience. In accordance with the access monitoring plan established under California's Medicaid State Plan, which has been approved by the federal government, the Department continuously monitors patient access to care and services in California. The monitoring plan tracks 23 different measures within the three categories of factors that the federal Medicaid and CHIP Payment and Access Commission (MACPAC) has identified as affecting access: beneficiary data, provider availability data, and service utilization data. The Department's continuous monitoring of beneficiary access does not currently show any systemic problems with patient access to services in the Medi-Cal program. In addition, California's Medi-Cal fee-for-service provider reimbursement rates have been thoroughly reviewed and approved by the federal government, which has found, among other things, that

¹ The release form is also available on the Department's website at <http://www.dhcs.ca.gov/services/Documents/Authorization%20for%20Release%20of%20Protected%20Health%20Information%20DHCS%206247.pdf>.

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California's fee-for-service rates comply with the requirements set forth in 42 U.S.C. § 1396a(a)(30)(A) (§ 30(A)). The federal government also reviews and approves all Medi-Cal managed care rates to ensure that they are actuarially sound, among other requirements. (42 C.F.R. § 438.6.) Further, in the event that access problems do arise, the monitoring plan allows the Department to make appropriate changes to quickly ensure that access is restored in a specific instance, and that Medi-Cal beneficiaries will continue to have timely access to needed care and services.

Finally, while we take seriously the claims presented in your complaint and continue to be committed to ensuring that all Medi-Cal beneficiaries have timely access to care and services, we note that your complaint does not raise any cognizable legal claims against Secretary Dooley, Director Kent, the Agency, the Department, or any other state entity. To the extent that you challenge the adequacy of Medi-Cal reimbursement rates under § 30(A), the United States Supreme Court has expressly held that such claims are not privately enforceable against the States, and instead may only be raised in an action brought under the federal Administrative Procedure Act (APA) to challenge the federal government's approval of the relevant state plan provisions. (*Armstrong v. Exceptional Child Center, Inc.* (2015) 135 S.Ct. 1378.) In addition, the federal government's approval of California's State Plan provisions for reimbursement rates—which includes a determination that such State Plan provisions fully comply with the Medicaid Act—is entitled to deference under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837. (*Managed Pharmacy Care v. Sebelius* (9th Cir. 2013) 716 F.3d 1235; see also *Douglas v. Independent Living Center of Southern California, Inc.* (2012) 132 S.Ct. 1204.)

To the extent that you claim that Medi-Cal reimbursement rates discriminate against Latinos, there is no evidence of any such discrimination, nor are the claims articulated in your letter legally cognizable. You have not alleged, and we are not aware of, any evidence that Latino beneficiaries are being treated differently than other beneficiaries under the Medi-Cal program. (See 42 U.S.C. § 2000d; 42 U.S.C. § 18116(a); Cal. Gov. Code, § 11135, subd. (a).) Indeed, Medi-Cal rates are uniform for all providers and patients, and they do not discriminate in any way on the basis of race, color, national origin, or any other protected category.

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We thank you again for bringing your complaint to our attention, and once we receive the releases discussed above we will look further into the individual access claims raised by Mr. Jimenez Perea and Mr. Berumen.

Sincerely,

A handwritten signature in black ink that reads "Gregory D. Brown". The signature is written in a cursive style with a long horizontal flourish at the end.

GREGORY D. BROWN
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

I, _____, hereby authorize _____ to
 (Name of patient) (Name of person or facility which has information)

release the following health information: _____

To: _____
 (Name and title or facility name to receive health information)

_____ (Street address, city, state, ZIP code) _____ (Telephone number) _____ (Fax number)

For the following purposes: _____

This authorization is in effect until _____ (date or event), when it expires.

I understand that by signing this authorization:

- I authorize the use or disclosure of my individually identifiable health information as described above for the purpose listed.
- I have the right to withdraw permission for the release of my information. If I sign this authorization to use or disclose information, I can revoke that authorization at any time. The revocation must be made in writing and will not affect information that has already been used or disclosed.
- I have the right to receive a copy of this authorization.
- I am signing this authorization voluntarily and treatment, payment, or my eligibility for benefits will not be affected if I do not sign this authorization.
- I further understand that a person to whom records and information are disclosed pursuant to this authorization may not further use or disclose the medical information unless another authorization is obtained from me or unless such disclosure is specifically required or permitted by law.

Signed by Patient: _____	Date _____
Or Signed by Personal Representative: _____	Date _____
On Behalf of _____ _____ Name of Patient	

IDENTIFYING INFORMATION

COPY OF IDENTIFICATION ATTACHED

TYPE _____ (CA DRIVER'S LICENSE, CA DMV IDENTIFICATION CARD, BIRTH CERTIFICATE, BENEFITS IDENTIFICATION CARD, MANAGED CARE CARD, STATE OR FEDERAL EMPLOYEE ID CARD)

NUMBER _____

IF NO IDENTIFICATION IS ATTACHED, YOUR SIGNATURE MUST BE NOTARIZED.

NOTARIZED BY _____

ON _____ (DATE)

NOTARY PUBLIC NUMBER _____

NOT OFFICIAL UNLESS STAMPED BY NOTARY PUBLIC

PERSONAL REPRESENTATIVE INFORMATION

WHAT LEGAL AUTHORITY DO YOU HAVE TO MAKE MEDICAL DECISIONS FOR THE

- | | |
|--|---|
| <input type="checkbox"/> PARENT | <input type="checkbox"/> CONSERVATOR |
| <input type="checkbox"/> GUARDIAN | <input type="checkbox"/> EXECUTOR OF WILL |
| <input type="checkbox"/> MEDICAL POWER OF ATTORNEY | <input type="checkbox"/> OTHER |

NOTE: ATTACHING LEGAL DOCUMENTATION IS REQUIRED TO VERIFY THAT YOU ARE THE PARENT, CONSERVATOR, GUARDIAN, EXECUTOR OF A DECEDENT'S WILL, OR HAVE MEDICAL DECISION-MAKING AUTHORITY FOR THE INDIVIDUAL.