

FILED
JAN 17 9 45 AM '95
RICHARD...
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LYNN ROY DEMILLE, et al.,
Plaintiffs,
v.
KIMBERLY BELSHE, et al.,
Defendants.

NO. C-94-0726-VRW

PERMANENT INJUNCTION
AND DECLARATORY JUDGMENT

For the reasons stated in this court's order filed
September 16, 1994, granting in part and denying in part cross
motions for summary judgment, and for good cause shown,

IT IS HEREBY ORDERED that defendants Kimberly Belshe,
Gerald Rohlfes and John Rodriguez, and their officers, agents,
servants, employees, successors and all persons acting in concert
or participation with them are hereby restrained and permanently
enjoined:

1. From causing to be imposed or recorded any lien
against real property for the recovery of payments for health
care services correctly paid on behalf of a deceased Medi-Cal
beneficiary, pursuant to California Welfare & Institutions Code

For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 § 14009.5(c) ("§ 14009.5(c) Liens"), without providing prior
2 notice to all persons who, in the exercise of reasonable
3 diligence, become known to the Department of Health Services
4 (Department) to have an ownership interest in the affected
5 property and affording them an opportunity for a hearing prior to
6 imposition or recordation of the § 14009.5(c) Lien;

7 2. From foreclosing upon, attempting to foreclose upon or
8 otherwise recovering any monies as a result of § 14009.5(c) Liens
9 imposed or recorded without prior notice and an opportunity for a
10 hearing as set forth in this permanent injunction;

11 3. To release and extinguish all § 14009.5(c) Liens that
12 have been imposed or recorded without prior notice and an
13 opportunity for a hearing as set forth in this permanent
14 injunction, and to notify all county recorders and all other
15 persons and entities who have previously been notified of the
16 Liens, as may be necessary as to each property, that such liens
17 have been released and extinguished;

18 4. From causing to be imposed or recorded any §
19 14009.5(c) Lien for the recovery of payments for health care
20 services correctly made before October 1, 1993, from property
21 held by the Medi-Cal recipient, at the time of his or her death
22 in living revocable trust or in joint tenancy;

23 5. From causing to be imposed or recorded any
24 § 14009.5(c) Lien for the recovery of payments for health care
25 services made on behalf of persons who died before October 1,
26 1993;

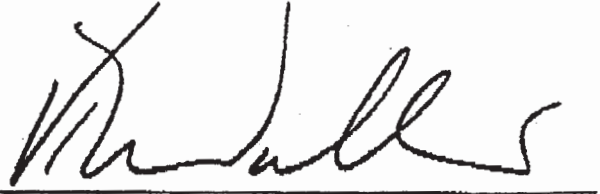
27 6. To take steps reasonably necessary to identify all
28

1 previous recoveries for health care services correctly made as a
 2 result of the imposition, recordation or foreclosure of a
 3 § 14009.5(c) Lien, and to provide notice in writing within sixty
 4 (60) days of the date this permanent injunction is filed, by
 5 certified mail to each person from whom payments were recovered,
 6 of the procedures whereby the persons may seek complete and
 7 timely reimbursement from the California Department of Health
 8 Services.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

10 The language of California Welfare & Institutions Code §
 11 14009.5(c) and language in the Notice of Medi-Cal Liens providing
 12 that "[t]he lien shall become due and payable...upon the sale,
 13 transfer, or exchange of the real property" is invalid and
 14 unenforceable because it is inconsistent with the federal
 15 Medicaid Act, 42 USC § 1396p(b), to the extent that it requires
 16 payment during the lifetime of a surviving spouse. Any language
 17 in § 14009.5(c) Liens making them "due and payable" during the
 18 lifetime of the surviving spouse is invalid and unenforceable.

19 IT IS SO ORDERED, ADJUDGED, AND DECREED.



20
21
22
23 VAUGHN R. WALKER
24 United States District Judge
25
26
27
28

United States District Court
 For the Northern District of California