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11 Diana M. Bonta, et al.

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO
16 UNLIMITED JURISDICTION
17

18 CALIFORNIA ADVOCATES FOR)
NURSING HOME REFORM et al.)

NO. 315107

19
20 Plaintiffs,

PERMANENT INJUNCTION

21 vs.

22 DIANA M. BONTA, et al.

23 Defendants.
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1 Pursuant to the Stipulation and Agreement of the Parties and for Good
2 Cause,

3 IT IS HEREBY ORDERED:

4 That Defendants, Diana M. Bonta, Gail Margolis, Stan Rosenstein, the
5 California Department of Health Services (DHS), and their successors, agents,
6 employees, and all persons working in concert or participation with them, are
7 hereby permanently enjoined and required to:

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9 1. Submit regulations to the Office of Administrative Law for notice,
10 hearing, and publication in the California Code of Regulations, covering, but not
11 limited to, the following matters administered and interpreted by the Estate
12 Recovery Unit of the California Department of Health Services:

13 A. Specifying the types of property interests subject to recovery,
14 which will be limited to those listed in the regulation and will not include the term
15 “other arrangements”;

16 B. Specifying those annuities that are subject to recovery;

17 C. Clarifying which types of life estates are subject to recovery,
18 including the distinction between a Medi-Cal beneficiary’s interest in a life estate
19 and in a remainder interest;

20 D. Clarifying the treatment of In Home Support Services (IHSS) and any
21 amounts that will not be recovered;

22 E. Provide additional information regarding what costs are included in
23 the DHS’s estate recovery claims (e.g., nursing facility services) and what costs are
24 not included in its claims (e.g., Medicare premiums paid on behalf of a Qualified
25 Medicare or Specified-Low Income Medicare Beneficiary). The Department
26 agrees to provide a description of these costs similar in detail to that provided on
27 page 1 of the All County Letter No. 02-35, dated June 18, 2003 (under “Estate
28 Recovery Claims”).

1 F. Identifying the Estate Recovery Unit post office box as an additional
2 location to send the notice of death;

3 G. Identifying criteria and procedures under which alternatives to lump
4 sum payment of the amount due will be available;

5 H. Identifying the criteria under which voluntary liens may be negotiated
6 in lieu of immediate payment, the procedure for entering into such liens, whether
7 interest will be charged on the unpaid balance, and how interest will be calculated.

8 I. Enumerating all criteria used in considering hardship waiver
9 applications; and

10 J. Defining the disability exemption pursuant to 42 U.S.C. § 1396p(b)(2)
11 and 22 C.F.R. § 433.36, including the standard to be applied, the necessary
12 documentation, the burden of providing documentation, and the time when the
13 disability must exist.

14 2. Transmit the required submissions to the Office of Administrative
15 Law (OAL), no later than:

16 A. December 1, 2003: matters covered by 2.B (annuities) above.

17 B. June 1, 2004: all matters, except those covered by 2.B
18 (annuities) and 2.J. (disability) above.

19 C. December 1, 2004: matters covered by 2.J. (disability) above.

20 3. Submit monthly progress reports covering the process of drafting and
21 reviewing the regulations covered by paragraph 2 to Plaintiffs in writing, no later
22 than the first day of each month, beginning October 1, 2003, through and including
23 January 1, 2004. Thereafter, beginning on March 1, 2004, they shall submit bi-
24 monthly progress reports covering the process of drafting and reviewing any
25 regulations that have not been submitted to the OAL to Plaintiffs in writing no later
26 than the first day of each month, until all regulations covered by paragraph 2 have
27 been submitted.

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1 4. Deliver all regulations specified in paragraph 2 to Plaintiffs for review
2 and comment prior to submission to the OAL. Defendants shall deliver the drafts
3 of all matters other than those covered by paragraphs 2.B and 2.J (annuities and
4 disability) no later than December 1, 2003. Defendants shall deliver the drafts of
5 the matters covered by paragraph 2.J (disability) no later than the date on which the
6 drafts are submitted to the DHS's internal Office of Regulation for review.
7 Plaintiffs shall receive drafts covered by this paragraph in sufficient time to submit
8 substantive comments to the DHS before the regulations are transmitted to the
9 OAL. Defendants shall acknowledge receipt of Plaintiffs' comments and will
10 consider the comments. Nothing in this paragraph 4 requires Defendants to adopt
11 Plaintiffs' substantive position regarding any draft regulation or regulations.

12 5. In the event of a future change in the law that eliminates or reduces
13 any obligation or duty of the Defendants pursuant to this injunction, the parties
14 shall meet and confer with respect to such modifications of the injunction as may
15 be necessary to make it conform with the changed state of the law. If the parties
16 are unable to reach agreement, Defendants may request that the court modify their
17 obligations to conform with the changed state of the law.

18 6. All affirmative obligations assumed by Defendants under this
19 settlement agreement and stipulation will be met when Defendants have filed with
20 the OAL the final set of regulations contemplated by this agreement. However, the
21 injunction will remain in effect for a period of five years from the date of filing.
22 Thereafter the injunction will be deemed dissolved without further action by the
23 Court. Nothing in this paragraph precludes any party from asking the

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1 Court to dissolve the injunction at an earlier time, provided that all material terms
2 of the settlement agreement and stipulation and the injunction have been met.

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4 IT IS SO ORDERED.

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7 Dated: Judge of the Superior Court

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11 Approved as to Form:

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13 Dated: Bill Lockyer
14 Attorney General
15 Douglas M. Press
16 Supervising Deputy Attorney General
17 Karin S. Schwartz
18 Deputy Attorney General
19 Attorneys for Defendants

20 Dated: Amitai Schwartz
21 Attorney for Plaintiffs

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