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10 Attorneys for Petitioners

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES**
14

15 CALIFORNIA MEDICAL ASSOCIATION;
16 CALIFORNIA HOSPITAL ASSOCIATION;
CALIFORNIA DENTAL ASSOCIATION;
17 CALIFORNIA ASSOCIATION FOR ADULT
DAY SERVICES; AMERICAN COLLEGE
18 OF EMERGENCY PHYSICIANS, STATE
CHAPTER OF CALIFORNIA, INC.;
19 CALIFORNIA PHARMACISTS
ASSOCIATION, and CALIFORNIA
20 ASSOCIATION OF PUBLIC HOSPITALS
AND HEALTH SYSTEMS
21 Petitioners,

22 vs.

23 SANDRA SHEWRY, Director of the
Department of Health Care Services, State of
24 California; CALIFORNIA DEPARTMENT
OF HEALTH CARE SERVICES
25

26 Respondents.
27
28

CASE NO.

CLASS ACTION

**COMPLAINT AND PETITION FOR
(1) INJUNCTIVE RELIEF;
(2) DECLARATORY RELIEF;
(3) WRIT OF MANDATE;**

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INTRODUCTION

1. California’s Medicaid program, Medi-Cal¹, is a major component of the “safety net” that ensures the State’s poor have access to health care services. Unfortunately for those who depend on it to access basic healthcare services, the low rates at which the State currently pays providers to care for Medi-Cal patients have created a gaping hole in that net. Health care providers of virtually every type have been steadily leaving the Medi-Cal program or scaling back services because the rates they are being paid are not even sufficient to cover the costs they incur in providing services. The exodus of providers from the program is leaving massive numbers of Californians without access to critical services or is forcing them to obtain care in the already over-crowded and increasingly scarce emergency departments of hospitals throughout the state. Despite this disturbing state of affairs, California has decided to reduce Medi-Cal rates again, without regard to the impact of these reductions.

2. The deterioration of the California safety net is perhaps most evident in Los Angeles County, where, in some areas, the healthcare system is now in crisis. Emergency room and hospital closures in Los Angeles County make Los Angeles County especially vulnerable to reductions in Medi-Cal payments. As other providers limit their participation in the Medi-Cal program, increasing numbers of patients will seek care at Los Angeles County's remaining emergency rooms, which will have to struggle operationally and financially to care for them.

3. By this action, several groups of Medi-Cal providers (physicians, hospitals, dentists, adult day health care centers ("ADHCs"), and pharmacies) seek mandate relief and an injunction to invalidate and stop the implementation of a ten percent cutback in Medi-Cal rates that was recently mandated by the California Legislature and is scheduled to take effect on July 1, 2008. This decrease in payments will drastically impair payments to, and accordingly, participation, by physicians, dentists, pharmacies, hospitals, ADHCs and many other providers of

¹ For the purposes of this pleading, the term "Medi-Cal" is used to encompass all components of the California Medi-Cal program, including Denti-Cal.

1 health services, creating significant gaps in access for Medi-Cal beneficiaries.

2 4. The Legislature decided to address its budgetary woes by unlawfully taking funds
3 away from the Medi-Cal program, without regard to the impact on providers, the availability of
4 Medi-Cal services to those who depend most on them, and the deteriorating safety net in
5 California.

6 5. Such a reduction is illegal because California failed to fulfill its legal mandate to
7 ensure that Medi-Cal payment rates are sufficient to enlist enough providers so that beneficiaries
8 have access to health care services to the extent such services are available to the general public.
9 The rates are invalid as the State failed to ensure that those rates are consistent with efficiency,
10 economy, quality of care and sufficiency of access. The State further violated state and federal
11 law by enacting the rate reduction without the proper public process required for rate adjustments
12 and without the required annual review and revision of reimbursement rates. In fact, by its terms,
13 the rate reduction requires an amendment to the California Medi-Cal State Plan, which may not be
14 implemented prior to federal approval. Lastly, the rate reduction is illegal because it violated the
15 State Constitution by exceeding the scope of the Legislature's authority during the special session
16 in which it was enacted.

17 6. For these and other reasons, the ten percent rate reduction violates both California
18 and federal law. The imposition of this rate reduction will cause irreparable injury to Petitioners,
19 their members and the populations they serve, both providers and beneficiaries. Causing
20 providers of services to withdraw from the Medi-Cal program because reimbursement levels will
21 fall so far below the costs of providing services, the rate reduction will threaten the health of
22 beneficiaries by interrupting provider/patient relationships and by resulting in the inability of
23 many beneficiaries to obtain necessary health care. Accordingly, Petitioners seek mandamus,
24 declaratory and injunctive relief to prevent the rate reduction from taking effect.

25
26 **THE PARTIES**

27 7. Respondent THE CALIFORNIA DEPARTMENT OF HEALTH CARE
28 SERVICES ("Department") is, and at all times mentioned herein was, a California governmental

1 agency. The Department is the single state agency charged with the administration of California's
2 Medicaid program, known as Medi-Cal. *See* California Welf. & Inst. Code §§ 14000 *et seq.* The
3 Department is located in Sacramento, California.

4 8. Respondent SANDRA SHEWRY is the Director of the Department ("Director").
5 The Director is sued in her official capacity. Respondent Shewry's office is located in
6 Sacramento, California.

7 9. Petitioner CALIFORNIA MEDICAL ASSOCIATION ("CMA") is a nonprofit,
8 incorporated professional association of more than 30,000 physicians practicing in the State of
9 California, with its principal office in Sacramento, California. CMA's membership includes
10 California physicians who are engaged in the private practice of medicine, in all specialties.
11 CMA's primary purposes are "to promote the science and art of medicine, the care and well-being
12 of patients, the protection of the public health, and the betterment of the medical profession."
13 CMA brings this action on its own behalf and in its representative capacity on behalf of its
14 members, most of which are providers under California's Medi-Cal program and will be directly
15 and adversely affected by the threatened rate reduction, and on behalf of its members' patients.

16 10. Petitioner CALIFORNIA HOSPITAL ASSOCIATION ("CHA") is a trade
17 association representing the interests of hospitals in the State of California. CHA is incorporated
18 in the State of California with its principal office in Sacramento, California. CHA's member
19 hospitals provide both inpatient and outpatient hospital services. In addition, many of CHA's
20 members operate special units, such as emergency departments or distinct part nursing units
21 ("DP/NFs") that provide skilled nursing care. CHA represents nearly 450 hospitals and health
22 systems throughout California, including general acute care hospitals, children's hospitals, rural
23 hospitals, psychiatric hospitals, academic medical centers, county hospitals, investor-owned
24 hospitals, and multi-hospital health systems. These hospitals furnish vital health care services to
25 millions of our states' citizens. CHA also represents more than 150 Executive, Associate and
26 Personal members. CHA brings this action on its own behalf and in its representative capacity on
27 behalf of its members, many of which are providers under California's Medi-Cal program and
28 will be directly and adversely affected by the threatened rate reduction, and on behalf of its

1 members' patients.

2 11. Petitioner CALIFORNIA DENTAL ASSOCIATION is a nonprofit, professional
3 association representing more than 22,000 dentists throughout the State of California. This
4 number reflects 72 percent of all California licensed dentists. Founded in 1870, CDA is the
5 largest constituent member of the American Dental Association. CDA is incorporated in the State
6 of California with its principal office in Sacramento, California. Through public policy,
7 advocacy, education and other means, CDA has promoted the health of the public, the profession
8 and the individuals it serves for over a century. CDA brings this action on its own behalf and in
9 its representative capacity on behalf of its members, many of whom are providers under
10 California's Medi-Cal program and will be directly and adversely affected by the threatened rate
11 reduction, and on behalf of its members' patients.

12 12. Petitioner CALIFORNIA ASSOCIATION FOR ADULT DAY SERVICES
13 ("CAADS") is a 501(c)(6) nonprofit statewide association to support the development of adult
14 day services as an alternative to institutional care. CAADS is incorporated in the State of
15 California with its principal office in Sacramento, California. Established in 1977, CAADS is the
16 largest state association for adult day services in the nation, representing more than 133 licensed
17 ADHC providers. CAADS is a membership-based association supported by dues, grants and
18 educational activities. CAADS members include providers, case managers, consultants, vendors
19 and others interested in supporting the mission of the organization. The vast majority of the
20 provider members own and/or operate ADHCs, which are licensed pursuant to the California
21 Adult Day Health Care Act, Health and Safety Code § 1570, *et seq.*, and are a benefit under the
22 Medi-Cal Program pursuant to the Adult Day Health Medi-Cal Law, Welfare and Institutions
23 Code § 14520, *et seq.* ADHCs provide intensive day services through a multi-disciplinary team
24 of health and social services professionals to frail elderly and disabled persons, in order to
25 maintain their ability to reside in the community. Without such ADHC services, many of the
26 ADHC participants would, within a short period of time, have to rely on emergency department
27 visits or be prematurely placed in a nursing facility. CAADS brings this action on its own behalf
28 and in its representative capacity on behalf of its members, many of which are providers under

1 California's Medi-Cal program and will be directly and adversely affected by the threatened rate
2 reduction, and on behalf of its members' patients.

3 13. Petitioner AMERICAN COLLEGE OF EMERGENCY PHYSICIANS, STATE
4 CHAPTER OF CALIFORNIA, INC. (CAL/ACEP) is an organization composed of more than
5 2,000 emergency physicians in California. CAL/ACEP is incorporated in the State of California
6 with its principal office in Sacramento, California. Membership includes emergency physicians
7 who practice in a wide variety of settings including large and small groups, academic centers, and
8 managed care. CAL/ACEP brings this action on its own behalf and in its representative capacity
9 on behalf of its members, many of whom are providers under California's Medi-Cal program and
10 will be directly and adversely affected by the threatened rate reduction, and on behalf of its
11 members' patients.

12 14. Petitioner CALIFORNIA PHARMACISTS ASSOCIATION ("CPHA") represents
13 more than 5,000 pharmacists in California. CPHA is incorporated in the State of California with
14 its principal office in Sacramento, California. It is the largest state professional association of
15 pharmacists in the United States. Many of CPHA's members own or operate pharmacies in the
16 State of California, many of which are providers under California's Medi-Cal program. The
17 mission of CPHA is to represent pharmacists in all practice settings in the State, and to advocate
18 the role of pharmacy as an essential venue of health care for patients. CPHA brings this action on
19 its own behalf and in its representative capacity on behalf of its members who will be directly and
20 adversely affected by the threatened rate reduction, and on behalf of the Medi-Cal patients served
21 by its members.

22 15. Petitioner CALIFORNIA ASSOCIATION OF PUBLIC HOSPITALS AND
23 HEALTH SYSTEMS ("CAPH") is a trade association representing 19 public hospital systems
24 throughout the state that are the core of the safety net. Though just six percent of all hospitals
25 statewide, CAPH members provide half of all hospital care to the state's 6.5 million uninsured.
26 Two-thirds of patients seen by the public hospitals are Medi-Cal recipients or are uninsured.
27 CAPH members operate approximately 60 percent of all top-level trauma centers and nearly 45
28 percent of all burn units. These public hospitals also deliver 11 million outpatient visits a year in

1 both hospital and non-hospital settings, where patients receive primary and specialty care. Public
2 hospitals' graduate medical education programs train almost half of all new physicians in
3 California. CAPH is incorporated in the State of California with its principal office in Oakland,
4 California. CAPH brings this action on its own behalf and in its representative capacity on behalf
5 of its members, all of which are providers under California's Medi-Cal program and will be
6 directly and adversely affected by the threatened rate reduction, and on behalf of its members'
7 patients.

8 16. Petitioners CMA, CHA, CDA, CAADS, CAL/ACEP, CPHA, and CAPH are
9 hereinafter referred to collectively as Associational Petitioners.

10
11 **FEDERAL MEDICAID LAW**

12 17. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, the Medicaid Act,
13 authorizes federal financial support to states for medical assistance to low-income persons who
14 are aged, blind, disabled, or members of families with dependent children. The program is jointly
15 financed by the federal and state governments and administered by the states, with the federal
16 financial participation level currently ranging between 50 to 83 percent. The states, in accordance
17 with federal law, decide eligible beneficiary groups, types and ranges of services, payment level
18 for services, and administrative and operative procedures. Payment for services is made directly
19 by states to the individuals or entities that furnish the services. 42 C.F.R. § 430.0.

20 18. In order to receive matching federal financial participation, states must agree to
21 comply with the applicable federal Medicaid law and regulations, 42 U.S.C. §§ 1396 *et seq.* Once
22 a state has decided to participate in the Medicaid program, compliance with the federal Medicaid
23 law and regulations is mandatory.

24 19. At the state level, the Medicaid program is administered by a single state agency,
25 which is charged with the responsibility of establishing and complying with a state Medicaid plan
26 (the "State Plan") that, in turn, must comply with the provisions of the applicable federal
27 Medicaid law. 42 U.S.C. § 1396a(a)(5) and 42 C.F.R. §§ 430.10 and 431.10. The State Plan
28 must be submitted to the Secretary of the United States Department of Health and Human

1 Services (the "Secretary") for approval and must describe the policies and methods to be used to
2 set payment rates for each type of service included in the state Medicaid plan. 42 C.F.R. §§
3 430.10 and 447.201(b). Changes to the State Plan may not be implemented by the state prior to
4 being approved by the Secretary.

5 20. Each State's Medicaid plan must provide that medical assistance will be furnished
6 with reasonable promptness to all eligible individuals. 42 U.S.C § 1396a(a)(8) [hereinafter
7 "Section (a)(8)"].

8 21. For hospitals and certain other institutional providers, states must establish rates
9 through a public process that includes: (a) publication of proposed rates, the methodologies
10 underlying the establishment of such rates, and justifications for the rates; (b) a reasonable
11 opportunity for comment on the proposed rates, methodologies and justifications by providers,
12 beneficiaries and their representatives, and other concerned State residents; and (c) publication of
13 the final rates, the methodologies underlying the establishment of such rates, and justifications for
14 such final rates. *See* 42 U.S.C. § 1396a(a)(13); 42 C.F.R. § 447.205.

15 22. Each state's Medicaid plan must "provide such methods and procedures . . .
16 relating to the utilization of, and the payment for, care and services available under the plan which
17 may be necessary . . . to assure that payments are consistent with efficiency, economy, and quality
18 of care and are sufficient to enlist enough providers so that care and services are available under
19 the plan at least to the extent that such care and services are available to the general public in the
20 geographic area . . ." 42 U.S.C. § 1396a(a)(30)(A) [hereinafter "Section (a)(30)(A)"] (emphasis
21 added).

22 23. In addition to Section (a)(30)(A), the federal Medicaid regulations establishing
23 requirements for Medicaid reimbursement rates state that, "*payments must be sufficient to enlist*
24 *enough providers so that services under the plan are available to recipients at least to the extent*
25 *that those services are available to the general public.*" 42 C.F.R. § 447.204 (emphasis added).

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CALIFORNIA MEDI-CAL PROGRAM

28 24. The State of California has elected to participate in the Medicaid program.

1 California has named its program "Medi-Cal." *See* Cal. Welf. & Inst. Code §§ 14000 *et seq.*; 22
2 Cal. Code of Regs. §§ 50000 *et seq.*

3 25. Medi-Cal healthcare payments are disbursed in two ways. The first is a "fee for
4 service" process whereby the Department determines whether the healthcare services were
5 covered and furnished to an eligible beneficiary, and, if so, pays the service providers directly.
6 Alternatively, the Department administers Medi-Cal through various managed care models
7 operated by public and private entities under contract.

8 26. In 1982, the California Legislature authorized the Department to enter into
9 contracts with selected hospitals to furnish inpatient services in accordance with the terms set
10 forth in those contracts. The system is known as the selective provider contracting program
11 ("SPCP"). *See* Cal. Welf. and Inst. Code § 14081 *et seq.* The hospitals pursuant to the SPCP are
12 often referred to as "contract hospitals" and generally are paid based on negotiated per diem rates
13 for inpatient services furnished by the hospital. Hospitals that do not have SPCP contracts are
14 referred to herein as "noncontract hospitals" and are paid directly by the Department from the fee
15 for service program.

16 27. State law reinforces the Department's mandatory duty to comply with the State Plan
17 pursuant to Title 22, California Code of Regulations, section 50004(b)(1), which specifically
18 requires that the Department "administer the Medi-Cal program in accordance with ... [t]he State
19 Plan under Title XIX of the Social Security Act." *See also* Welf. & Inst. Code § 14100.1.
20 Accordingly, the Department is required to administer the Medi-Cal program in accordance with:
21 (1) the State Plan; (2) applicable California law, as specified in the Welfare and Institutions Code;
22 (3) Medi-Cal regulations; and (4) federal Medicaid law and regulations.

23 28. The California State Plan requires that the Department's payments under the Medi-
24 Cal program be "sufficient to enlist enough providers so that services under the plan are available
25 to recipients at least to the extent that those services are available to the general population."

26 29. With respect to non-institutional services, pursuant to the State Plan, the State can
27 make "[n]o modification in method or amount of payment ... which does not meet all applicable
28 requirements of 42 CFR Part 447." Although the State Plan does permit rate adjustments required

1 by state statute "only when the applicable requirements of 42 C.F.R. Part 447 are met."

2 30. With respect to non-institutional services, the California State Plan also requires the
3 Department, when setting rates, to (1) develop an evidentiary base or rate study resulting in the
4 determination of a proposed rate, (2) present the proposed rate at a public hearing to gather public
5 input, (3) determine the final rate based on the evidentiary base including the pertinent public
6 input, and (4) establish the payment rate through adoption of regulations specifying such rates.

7 31. The California Legislature has independently stressed that all eligible Medi-Cal
8 beneficiaries receive necessary care and has established a system designed to ensure that
9 physicians and other health care providers will be available to render this care:

10 The Legislature intends that Medi-Cal recipients have
11 reasonable access to medical care services and especially to primary
12 and maternity care services. In order to obtain such access, the
13 Legislature intends that, to the extent feasible and permitted by
14 federal law, *physicians be reimbursed equally statewide for*
15 *comparable services, at a rate sufficient to provide Medi-Cal*
16 *recipients with such reasonable access*, and also intends that higher
17 rates be paid, relatively, for providing primary and maternity care
18 services.

19 (Welf & Inst. Code § 14075 [emphasis added].)

20 Accordingly, the Legislature created a procedure to ensure that Medi-Cal beneficiaries have
21 reasonable access to physician and dental services. Welf. & Inst. Code § 14079. State law
22 requires that Medi-Cal fee for service rates be adopted pursuant to the regulatory process and
23 requires that the Department annually review Medi-Cal rates for physician and dental services,
24 taking into account annual Consumer Price Index cost increases, reimbursement levels under
25 Medicare and other third party payors, prevailing customary charges and other factors. Welf. &
26 Inst. Code § 14079. Based on these reviews, the Legislature mandated that the Department revise
27 reimbursement rates "to physicians and dentists to ensure reasonable access of Medi-Cal
28 beneficiaries...." *Id*

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MEDI-CAL PAYMENTS TO PROVIDERS

32. Payments from the Medi-Cal fee for service program to providers are governed by various statutes, regulations, the State Plan, and in some instances, informal handbooks, manuals or bulletins.

33. Specific payments for different providers include the following:

- a. **Physician Services:** Medi-Cal pays physicians for their services pursuant to a physician services fee schedule. Physician payment rates are set forth in 22 C.C.R. § 51503.
- b. **Dental Services:** Medi-Cal pays dentists for their services pursuant to a dental services fee schedule. Dental rates are set forth in 22 C.C.R. §§ 51506, 51506.1 and 51506.2, but do not accurately reflect the most recent rate changes. The current dental rates can be found in the Denti-Cal Schedule of Maximum Allowances in the Denti-Cal Program Provider Handbook and/or the Denti-Cal Provider Bulletin, Volume 24, Number 1.
- c. **Pharmacy Services/Drugs:** Payment rates to pharmacies are governed by Welfare and Institutions Code § 14105.45. Pharmacy reimbursement under Medi-Cal is unique in that it is composed of two distinct components: payment for the ingredient cost of the drug product dispensed, plus a professional dispensing fee.
- d. **Hospital Services/Health Systems:**
 - i. Payments for inpatient hospital services to noncontract hospitals are governed by 22 C.C.R. §§ 51545-51556 and Attachment 4.19-A to the State Plan. Hospitals are reimbursed the lowest of their reasonable costs determined using Medicare reasonable cost principles, an all-inclusive rate per discharge based on cumulative annual adjustments to a base rate, the 60th percentile rate per discharge of hospitals in the same peer group, or customary charges. Hospitals receive interim payments throughout each

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year which are an estimate of the final reimbursement due the hospital. Final reimbursement is determined based on a cost report submitted by the hospital after the close of its fiscal year.

ii. Payments for outpatient hospital services are addressed at 22 C.C.R. § 51509. In general, specific rates are established for the use of hospital facilities and hospitals are paid for other services, such as laboratory or radiology services, at the rates that are payable to non-hospital providers. Payments provided in certain hospital outpatient departments are governed by Welfare and Institutions Code §14105.24.

iii. Payments for services provided by DP/NFs are governed by 22 C.C.R. § 51511 and Attachment 4.19-D to the State Plan. Reimbursement is the lower of the hospital's projected costs of providing DP/NF services, or a statewide per diem rate computed by the Department.

iv. Payments for publicly-owned hospitals and the governmental entities with which they are affiliated (health systems) that provide a spectrum of non-hospital services include, but are not limited to, those which are governed by Welfare and Institutions Code § 14105.24, and 22 CCR §§ 51503.1, 51507, 51507.1, 51507.2, and 51509.1.

e. **Adult Day Health Care Services:** Medi-Cal pays ADHCs \$76.22 as a bundled per diem payment for services. 22 C.C.R. § 54501 does not reflect the current reimbursement rate for ADHCs. Reimbursement rates for ADHC services may be found in the Inpatient/Outpatient Manual, Part 2.

Petitioners maintain the right to supplement this description of and authority cited for reimbursement rates.

34. The Legislature has not enacted any “across-the-board” increases in the Medi-Cal payment rates for non-institutional services during the last two decades, despite the fact that the costs of furnishing health care have increased dramatically during that same time.

THE TEN PERCENT RATE REDUCTION

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2 35. On January 10, 2008, Governor Schwarzenegger issued a Fiscal Emergency
3 Proclamation pursuant to Section 10(f) of Article IV of the Constitution of the State of California,
4 at the same time he proposed his budget for fiscal year 2008-09. The Governor determined that
5 the General Fund revenues for fiscal Year 2007-08 will decline substantially below the estimate
6 of General Fund revenues upon which the 2007 Budget Bill was based. Accordingly, the
7 Governor declared a fiscal emergency based on the projected budget imbalance and insufficient
8 cash reserves for Fiscal Year 2007-08 and the projected insufficient cash reserves and potential
9 budgetary and cash deficit in Fiscal Year 2008-09. The Governor caused the Legislature to
10 assemble in special session to address the fiscal emergency.

11 36. The Governor's budget proposed to save approximately \$668 million from the
12 General Fund from reductions to provider reimbursements for fiscal year 2008-09, an amount
13 which is in dispute. Even assuming the accuracy of the Governor's estimate, the true impact of
14 the rate reduction, accounting for loss of matching Federal funds, may be approximately \$1.336
15 billion.

16 37. The LAO recommended that the Legislature reject the Governor's proposed
17 reductions for nearly all providers. The LAO described physician rates as not having changed
18 since the Legislature granted rate increases in the 2000-01 budget year, though medical costs
19 continue to increase. The LAO further acknowledged evidence that the rates paid to providers
20 can positively affect access to care. For example, the LAO cited a study which suggested that
21 Medicaid rates had an effect on access as well as beneficiaries' perception of quality of care. On
22 this basis, the LAO concluded that further rate reductions could further limit access to primary
23 care in Medi-Cal and the other DHCS programs and may cause a shift to the utilization of costlier
24 sources of care, diminishing the net savings to the state.

25 38. On February 16, 2008, the California Legislature enacted Assembly Bill X3 5 ("AB
26 5") in special session. Section 14 of said Act added Section 14105.19 to the Welfare and
27 Institutions Code, which provides in relevant part, as follows:
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(a) Notwithstanding any other provision of law, in order to implement changes in the level of funding for health care services, the director shall reduce provider payments as specified in this section.

(b)(1) Except as provided in subdivision (c), payments shall be reduced by 10 percent for Medi-Cal fee for service benefits for dates of service on or after July 1, 2008

.....
(e) Notwithstanding Chapter 3.5 (commencing with section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of provider bulletin, or similar instruction, without taking regulatory action.

.....
(g) The department shall promptly seek any necessary federal approvals for the implementation of this section.

A copy of AB 5 is attached hereto as Exhibit A to this Petition.

39. Pursuant to paragraph (b)(1) of Welfare and Institutions Code § 14105.19, payments under the Medi-Cal fee for service program for physicians, dentists, pharmacies, ADHCs, clinics, health systems and other providers will be reduced by ten percent for services provided on or after July 1, 2008. The rate reduction will also impact inpatient services furnished by noncontract hospitals, outpatient services furnished by all hospitals, and DP/NF services.

40. Pursuant to section 15 of AB 5, the Legislature also enacted Welfare and Institutions Code § 14166.245, which reduces payments to noncontract hospitals for inpatient services furnished on or after July 1, 2008, by ten percent. This is accomplished by reducing interim payments for inpatient hospital services furnished by noncontract hospitals on or after July 1, 2008, by ten percent, and by limiting the final reimbursement for each patient day of inpatient hospital services furnished on or after July 1, 2008, to 90% of the hospital's audited allowable cost per day.

1 41. The rate and payment reductions set forth in Welfare and Institutions Code sections
2 14105.19(b)(1) and 14166.245 are referred to herein as "the Ten Percent Rate Reduction."

3 42. Pursuant to section 13 of AB 5, the Legislature enacted Welfare and Institutions
4 Code § 14041.1, which granted the Department the authority to "hold for a period of one month
5 ... payments to providers ... for health care services" provided to beneficiaries of the Medi-Cal
6 program. This authority is limited to one month ending prior to January 1, 2009. The
7 Department generally pays providers for health care services provided to Medi-Cal beneficiaries
8 on an at least once-per-month basis. Due to the budget impasse in 2007, payments to Medi-Cal
9 institutional providers were delayed for 52 days. For providers such as ADHCs which are heavily
10 dependent on Medi-Cal, the delay of even one payment can cause substantial operational and
11 financial difficulties.

12 43. Petitioners are informed and believe and thereon allege that, prior to enacting or
13 implementing AB 5, no studies or other analyses were conducted by the Legislature or by the
14 Department to determine the impact the Ten Percent Rate Reduction in rates would have on the
15 ability of Medi-Cal beneficiaries to have access to health care services to the same extent as the
16 general public. Petitioners are informed and believe and further allege that the Legislature has
17 long been aware that prior to and as of the date of enactment of AB 5, Medi-Cal beneficiaries did
18 not have adequate access to health care services.

19 44. Petitioners are informed and believe and thereon allege that, prior to enacting or
20 implementing this statute, no studies or other analyses were conducted by the Legislature or by
21 the Department to determine whether the Medi-Cal payment rates resulting from the Ten Percent
22 Rate Reduction would be consistent with efficiency, economy and quality of care or with the
23 costs of providing the services affected by the rate reduction.

24

25 **THE TEN PERCENT RATE REDUCTION WILL EXACERBATE THE ACCESS**
26 **PROBLEMS ALREADY CAUSED BY INADEQUATE MEDI-CAL RATES**

27 45. The Legislative Analyst's Office ("LAO") in 2001 acknowledged that "[d]espite
28 state and federal requirements, [the Department] has not conducted annual rate reviews or made

1 periodic adjustments to Medi-Cal rates to ensure reasonable access to health care services." The
2 LAO concluded that "there is not a rational basis for Medi-Cal rates."

3 46. When the Legislature enacted a five percent rate decrease in 2003, there already
4 were significant problems with respect to beneficiary access to physician services. In 2003,
5 nearly half of all physicians in urban counties in California were unwilling to treat Medi-Cal
6 beneficiaries, not surprising as reimbursement rates often fail to cover the costs of providing
7 services to these patients. According to a 2004 study of Medi-Cal access in urban counties
8 published by the Medi-Cal Policy Institute, an independent source of information on the Medi-Cal
9 program that is funded by the California HealthCare Foundation, only 50% of primary care
10 physicians, 55% of medical specialists and 52% of surgical specialists accepted Medi-Cal patients
11 in their practices.

12 47. The same 2004 study determined that the percentage of Medi-Cal participating
13 physicians who were willing to accept new Medi-Cal patients into their practice was low. Among
14 physicians accepting new patients into their practices, only 55% of primary care physicians, 48%
15 of medical specialists and 43% of surgical specialists were willing to accept any Medi-Cal
16 patients.

17 48. The study also showed that physician services are not available to Medi-Cal
18 beneficiaries to the same degree that they are available to the general population. The number of
19 available primary care physicians per capita for Medi-Cal beneficiaries in 2001 was one-third less
20 than for the general population. The number of medical specialists available per capita for Medi-
21 Cal beneficiaries in 2001 was one-half less than for the general population. The number of
22 surgical specialists available per capita for Medi-Cal beneficiaries in 2001 was two-thirds less
23 than for the general population.

24 49. Overall, the ratio of primary care physicians available for Medi-Cal beneficiaries in
25 2001 (46 per 100,000) was well below the workforce standards established by the Health
26 Resources Services Administration (which recommends 60 to 80 per 100,000) according to a
27 2003 study published by the Medi-Cal Policy Institute.

28 50. The access problems extant in 2004 have only worsened with time. It is now

1 virtually impossible for Medi-Cal beneficiaries in many areas of the state to find specialty
2 physicians, such as urologists, cardiologists and neurologists, that will take them on as patients or
3 at least find such specialty care in a timely manner. These specialty physicians have effectively
4 dropped out of Medi-Cal solely because the payment rates are inadequate. For example, the
5 LAO recently cited a study of otolaryngologists in Southern California which found that fewer
6 than 50 percent of the practicing physicians would accept appointments with children enrolled in
7 fee for service Medi-Cal. Of the physicians who would not accept new appointments, 90 percent
8 cited low reimbursement rates as a reason. While the cost of practicing medicine has increased,
9 reimbursement rates have remained stagnant, failing to compensate physicians for the costs
10 related to providing services.

11 51. The Ten Percent Rate Reduction to physician rates will force physicians who
12 currently treat Medi-Cal patients to limit the services they provide to Medi-Cal patients and/or
13 accelerate the exodus of physicians from the Medi-Cal program.

14 52. Like physicians, hospitals are also heavily impacted by low Medi-Cal
15 reimbursement rates. California hospitals, and emergency departments ("ED") in particular, are
16 failing at an alarming rate. Between 1995 and 2005, 85 California hospitals closed while. Four
17 more hospitals closed in 2007. These hospitals and ED closures have resulted from a variety of
18 factors, not the least of which is inadequate reimbursement rates from all manner of payors,
19 including Medi-Cal. One of the most troubling repercussions of the elimination of available
20 California hospitals is the increased strain it has placed on the hospitals and EDs that have
21 managed to remain in operation. To illustrate, in Los Angeles County, the number of uninsured
22 and low income patients visiting area hospitals has increased by roughly one-third since 2002.
23 Area EDs are often filled beyond capacity, leading to sometimes extraordinarily long wait times
24 (reportedly as long as 11 hours in some places) and less-than-optimal care.

25 53. Existing access problems for Medi-Cal patients also have contributed to the ED
26 overcrowding crisis. EDs are being visited with increasing frequency for non-emergency
27 conditions by patients with health insurance, including Medi-Cal, resulting in higher costs for the
28 State. In a 2006 study performed by the California Healthcare Foundation, Medi-Cal patients

1 identified the inability to easily access routine care from physicians as one of the main reasons for
2 frequent ED visits. Medi-Cal patients also identified a perceived increased inability to obtain
3 specialty care as a reason for visiting hospital EDs, rather than seeking care in a physicians office.
4 Care rendered in a hospital emergency department typically is more expensive than comparable
5 services provided in a physician's office or outpatient clinic.

6 54. These problems are only likely to worsen with further decreases in Medi-Cal
7 payment rates. The increase in doctors leaving Medi-Cal creates a void in available care that falls
8 on already overtaxed hospitals will only continue. However, as the recent hospital closures
9 illustrate, hospitals simply do not have the resources to fill the void.

10 55. Petitioners are informed and believe, and thereon allege, that certain California
11 hospitals, particularly smaller hospitals in rural areas, will either have to close their doors or
12 curtail their services, including services furnished to Medi-Cal beneficiaries, if the Ten Percent
13 Rate Reduction goes into effect. This will have a devastating effort on the access of individuals
14 in the areas in which these hospitals are located to hospital care, particularly Medi-Cal
15 beneficiaries who often do not have other means to travel significant distances to obtain services.

16 56. Access to dental services is also a problem for Medi-Cal beneficiaries. A 2007
17 publication by the California HealthCare Foundation identified difficulty finding a dentist who
18 serves Denti-Cal patients as a barrier to the use of the Denti-Cal program. The State estimates
19 that 4,000 dentists provide 97% of the services reimbursed by the Denti-Cal program. Denti-Cal
20 payments were much lower than the fees charged by general practice dentists, among the lowest
21 of all the state Medicaid programs. Despite dental benefits coverage, 13 percent of Denti-Cal
22 beneficiaries had never been to a dentist, compared to only 5 percent for those with private or
23 employment-based insurance and 9.1 percent for those without dental insurance. Rates of usage
24 of dental benefits were significantly lower than the use of other medical benefits. Having Denti-
25 Cal coverage "is not the same as having access to dental care."

26 57. A 2008 report by the California HealthCare Foundation determined that Denti-Cal
27 beneficiaries, aged 0-11 years, were the least likely to have ever seen the dentist compared to
28 those with other insurance types. The only children who had less frequent dentist visits were

1 children without dental insurance.

2 58. ADHCs are disproportionately reliant on Medi-Cal for reimbursement because
3 approximately 90% of the beneficiaries served are eligible for Medi-Cal. Access to ADHC
4 services has been limited by inadequate reimbursement as evidenced by the lack of any ADHC
5 program in 24 counties. For example, in 2008, an ADHC program closed in Placer County after
6 16 years of operation due to financial hardship. Similarly, in 2007, a program closed in the City
7 of Cypress after four years of operation and a program closed in Oakland after 21 years of
8 operation due to financial hardship. Another program closed in Butte County after three years of
9 operation due to financial hardship.

10 59. Any reduction in Medi-Cal payments will have a devastating affect on the ability of
11 ADHCs to continue to provide services. Implementation of the Ten Percent Rate Reduction to
12 payments to ADHCs is estimated to result in additional significant number of additional closures
13 estimated to be as high as 1/3 of the existing programs. The LAO acknowledged that if rate
14 reductions force ADHCs to close, beneficiaries who rely on ADHC services to stay in their homes
15 may be forced to enter into relatively more costly nursing homes.

16 60. Traditionally, a significant majority of retail community pharmacies have
17 participated as Medi-Cal providers. Two recent studies on the adequacy of the Medi-Cal
18 pharmacy dispensing fee, including one commissioned by the Department, have concluded the
19 current fee is not adequate to cover the cost of dispensing for the average pharmacy. In addition,
20 changes in federal and state law within the last two years will result in reductions in drug
21 ingredient cost reimbursement. These changes have reduced the ability of pharmacies to fill
22 Medi-Cal prescriptions profitably.

23 61. Implementation of the Ten Percent Rate Reduction to pharmacies will result in
24 many products being reimbursed at levels that are below acquisition costs for nearly all
25 pharmacies, both chain and independent. As a result, pharmacies will be forced to close their
26 doors, decline to fill prescriptions for Medi-Cal beneficiaries or selectively fill only those
27 prescriptions for which reimbursement covers their acquisition cost. In areas where a significant
28 portion of the patients are Medi-Cal beneficiaries, the pharmacies will have little choice but to

1 close. The impact of this decrease in access will be felt particularly in rural and inter-city areas
2 where the number of pharmacies is limited. In communities where there is only one pharmacy,
3 all residents, not just Medi-Cal beneficiaries, will be affected. The decrease in access to
4 prescription medications will drive patients to hospital emergency rooms to obtain their
5 medications or for treatment as their medical conditions worsen, driving up overall costs to the
6 Medi-Cal program.

7 62. The Legislature's passage of an additional the Ten Percent Rate Reduction will
8 cause numerous providers to further reduce the services they currently provide to Medi-Cal
9 beneficiaries or cease caring for Medi-Cal beneficiaries at all. As a result, Medi-Cal beneficiaries'
10 access to healthcare services will be further impaired, causing a ripple effect across the health
11 care landscape.

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13 **RESPONDENTS' VIOLATIONS OF STATE AND FEDERAL LAW**

14 63. Petitioners are informed and believe, and on that basis allege, that respondents have
15 violated, and continue to violate the State Plan, California Medi-Cal regulations and federal
16 Medicaid statutes and regulations by failing to analyze Medi-Cal reimbursement rates for the
17 services affected by the Ten Percent Rate Reduction to ensure that those rates are sufficient to
18 ensure that beneficiaries of the Medi-Cal program have access to services to the same extent as
19 the general public. The Medi-Cal rates currently paid for physician, hospital, dentist, ADHC and
20 pharmacy services do not afford Medi-Cal beneficiaries adequate access to services. The Ten
21 Percent Rate Reduction will only exacerbate this already severe access problem.

22 64. Violation of the State Plan: As mentioned above, the Department must follow the
23 State Plan as a Federal requirement for participation in the Medicaid program and pursuant to
24 C.C.R. § 50004. The Ten Percent Rate Reduction is invalid and may not lawfully be
25 implemented as it violates the State Plan, and accordingly, State and Federal law, because:

26 a. Neither the Department nor the Legislature ensured that Medi-Cal payment
27 rates incorporating the Ten Percent Rate Reduction are sufficient to
28 establish equal access to services for Medi-Cal beneficiaries;

- 1 b. With respect to non-institutional services, neither the Department nor the
2 Legislature (1) Developed an evidentiary base or rate study resulting in the
3 determination of proposed rates incorporating the Ten Percent Rate
4 Reduction; (2) Presented the proposed rates incorporating the Ten Percent
5 Rate Reduction at a public hearing to gather public input; (3) Determined
6 the final rates based on the evidentiary base including the pertinent public
7 input; or (4) established the payment rates incorporating the Ten Percent
8 Rate Reduction through adoption of regulations specifying such rates;
9 and/or
10 c. With respect to non-institutional services, the rate adjustments made by the
11 Ten Percent Rate Reduction otherwise fail to meet the requirements of 42
12 C.F.R. Part 447.

13 65. No State Plan Amendment: The Ten Percent Rate Reduction is invalid and may not
14 lawfully be implemented because it is inconsistent with and violates the State Plan, including, but
15 not limited to, Attachment 4.19-A of the State Plan as to hospital inpatient services and
16 Attachment 4.19-D as to DP/NF services. The Department may not lawfully implement the Ten
17 Percent Rate Reduction unless and until it submits the necessary amendments to the State Plan to
18 the federal government and obtains federal approval of such amendments. The Department has
19 not submitted any State Plan Amendments to the federal government needed to implement the
20 Ten Percent Rate Reduction and has not obtained federal approval for the Ten Percent Rate
21 Reduction.

22 66. Violation of California Statute: The Ten Percent Rate Reduction is invalid and may
23 not lawfully be implemented because it violates Welfare and Institutions Code section 14079 by
24 mandating a rate reduction without the required annual review and corresponding revision of
25 reimbursement rates to "ensure reasonable access of Medi-Cal beneficiaries."

26 67. Violation of California Constitution: The Ten Percent Rate Reduction is invalid and
27 may not lawfully be implemented because it violates the California Constitution by exceeding the
28 Legislature's authority during the special session called by Governor Schwarzenegger.

1 68. Violation of Federal Regulation: The Ten Percent Rate Reduction is invalid and
2 may not lawfully be implemented because it violates 42 C.F.R. § 447.204 by failing to ensure that
3 “payments [are] sufficient to enlist enough providers so that services under the [State Plan] are
4 available to recipients at least to the extent that those services are available to the general
5 population.”

6 69. Violation of Federal Statute: The Ten Percent Rate Reduction is invalid and may
7 not lawfully be implemented because it violates federal Medicaid law because:

8 a. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(30)(A)
9 because

10 i. The rates resulting from the Ten Percent Rate Reduction are not
11 consistent with efficiency, economy, and quality of care, and are not
12 sufficient to enlist enough providers so that care and services under the
13 Medi-Cal program are available at least to the extent that such care and
14 services are available to the general population;

15 ii. Neither the Department nor the Legislature considered the factors of
16 efficiency, economy, quality of care, and access to services prior to enacting
17 the Ten Percent Rate Reduction;

18 iii. Neither the Department nor the Legislature demonstrated a
19 reasonable connection between the Ten Percent Rate Reduction and the
20 provision of quality care efficiently and economically, or ensuring access to
21 services, prior to enacting the Ten percent Rate Reduction; and/or

22 iv. Neither the Legislature nor the Department considered the costs of
23 providing quality care or demonstrated a reasonable connection between
24 Medi-Cal rates as affected by the Ten Percent Rate Reduction and provider
25 costs.

26 b. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(8) because it
27 fails to ensure that Medi-Cal beneficiaries may access care in a prompt
28 manner; and/or

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c. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(13) as to hospital services (including DP/NF services) because it was not adopted through a public process as required by this provision.

JURISDICTION AND VENUE

70. Jurisdiction is proper in this case.

71. Jurisdiction in the State of California is proper pursuant to 28 U.S.C. § 1332(d)(5)(A).

72. Jurisdiction in the state of California is further proper because Petitioners are informed and believe and on that basis allege that more than two-thirds of the proposed petitioner class and the primary respondents are citizens of the State of California. 28 U.S.C. § 1332(d)(4)(B).

73. Venue is proper in the County of Los Angeles. (Code of Civ. Proc. § 401.)

PETITIONERS' STANDING TO SEEK ENFORCEMENT OF THE LAW

74. Many of the members of Associational Petitioners are Medi-Cal providers. These Medi-Cal providers will suffer a concrete economic injury by the unlawful implementation of the Ten Percent Rate Reduction.

75. Medi-Cal providers are in a unique position to advance the interests of Medi-Cal beneficiaries. The members of Associational Petitioners which provide services to Medi-Cal beneficiaries have an extremely close relationship with their Medi-Cal beneficiary patients who seek that care. A Medi-Cal beneficiary cannot secure medical services without his/her health care providers, and without reimbursement by Medi-Cal for those services.

76. Medi-Cal providers are better positioned and informed as to the impact of a reimbursement rate cut on the services they intend to provide. Medi-Cal beneficiaries lack information about the effect of Medi-Cal reimbursement rates on providers in light of providers' costs and the further effect of a rate cut on the provision of services to Medi-Cal beneficiaries. Providers know the relationship of reimbursement to service and to their costs. As compared to

1 beneficiaries, providers are in a better position to evaluate the State's decisional process and the
2 data relied upon by the State in determining reimbursement rates. This informational hurdle is
3 sufficient to confer standing on providers, who comprise substantial portions of Petitioner's
4 membership, to assert the interests of their patients who are Medi-Cal beneficiaries.

5 77. Furthermore, Medi-Cal beneficiaries face economic hindrances to their ability to
6 assert their own rights in this case. To qualify for Medi-Cal, an individual must demonstrate
7 financial need for medical assistance from the State. In light of their finances and the cost of
8 litigation, Medi-Cal beneficiaries may not be able to effectively protect their interests.

9 78. Associational Petitioners, as associations representing the interests of hospitals,
10 physicians, dentists, ADHCs and pharmacies that participate in the Medi-Cal program and the
11 Medi-Cal beneficiaries served by these providers, and as parties seeking to compel the
12 Department and Director to comply with their public duties, as defined by both state and federal
13 law, have a right and an enforceable interest to maintain this action to: (1) enjoin respondents'
14 continuing violation of state and federal Medicaid law; and (2) compel respondents to comply
15 with the provisions of the applicable state and federal laws.

16 79. Moreover, under California Code of Civil Procedure Section 1060, Petitioners are
17 entitled to a declaration of their rights, their members' rights, and/or their members' patients'
18 rights under state Medi-Cal law and federal Medicaid law.

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CLASS ACTION ALLEGATIONS

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80. Associational Petitioners bring this action on behalf of their members as a class
and/or representative action pursuant to section 382 of the California Code of Civil Procedure.

81. The class which Associational Petitioners seek to represent is composed of and
defined as follows:

Provider Class: All health care providers owned and/or operated by
any members of the Associational Petitioners (and the governmental
or other entities with which they are affiliated), physicians,
hospitals, dentists, ADHCs and pharmacies that provide services or

1 goods subject to the Ten Percent Rate Reduction to Medi-Cal
2 beneficiaries.

3 82. Petitioners further seek certification of the following subclasses:

- 4 a. CMA Sub-Class: All members of CMA that provide services or goods
5 subject to the Ten Percent Rate Reduction to Medi-Cal beneficiaries.
6 b. CHA Sub-Class: All members of CHA and entities affiliated with members
7 of CHA that provide services or goods subject to the Ten Percent Rate
8 Reduction to Medi-Cal beneficiaries.
9 c. CDA Sub-Class: All members of CDA that provide services or goods
10 subject to the Ten Percent Rate Reduction to Medi-Cal beneficiaries.
11 d. CAADS Sub-Class: All members of CAADS that provide services or goods
12 subject to the Ten Percent Rate Reduction to Medi-Cal beneficiaries.
13 e. CAL/ACEP Sub-Class: All members of CAL/ACEP that provide services
14 or goods subject to the Ten Percent Rate Reduction to Medi-Cal
15 beneficiaries.
16 f. CPHA Sub-Class: All pharmacies that provide services or goods subject to
17 the Ten Percent Rate Reduction to Medi-Cal beneficiaries.
18 g. CAPH Sub-Class: All members of CAPH, and the governmental entities
19 with which they are affiliated, that provide services or goods subject to the
20 Ten Percent Rate Reduction to Medi-Cal beneficiaries.

21 83. Petitioners reserve the right under California Rules of Court Rule 3.765(b) to
22 amend or modify the Class description with greater specificity or further division into subclasses
23 or limitation to particular issues.

24 84. This action has been brought and may properly be maintained pursuant to the
25 provisions of California Code of Civil Procedure section 382 because there is a well-defined
26 community of interest in the litigation and the proposed class is easily ascertainable.

- 27 a. Numerosity: The members of the class are so numerous that joinder of all
28 members for purposes of pursuing this action is unfeasible and impractical.

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Associational Petitioners estimate that there are as many as 50,000 members in the class.

- b. Common Questions Predominate: Common questions of law and fact exist as to all members of the Class and predominate over any questions which affect individual members of the class. The questions of fact and law common to the proposed class and subclasses include, without limitation, whether the Ten Percent Rate Reduction is invalid and may not be unlawfully implemented on the bases set forth in paragraphs 64-69 of this Complaint.
- c. Typicality: Associational Petitioners' claims are typical of the claims of the members of the Provider Class. Petitioners' members have sustained injuries and damages arising out of respondents' common course of conduct in violation of law as complained of herein.
- d. Adequacy: Associational Petitioners, as representative parties, will fairly and adequately protect the interests of the Provider Class by vigorously pursuing this suit through attorneys who are skilled and experienced in handling matters of this type.

85. This action is maintainable as a class action because Respondents have acted or refused to act on grounds applicable generally to the class, so that final injunctive relief, extraordinary writ relief or corresponding declaratory relief is appropriate respective the class as a whole.

86. This action is maintainable as a class action because the common questions of law and fact, summarized in subparagraph 84(b) above predominate over any questions affecting individual members of the classes. Moreover, a class action is clearly superior to alternative methods for the fair and efficient adjudication of the controversy.

87. Notice to class members is not required because of the nature of the relief sought by Petitioners in this case.

FIRST CAUSE OF ACTION

(Writ of Mandate for Violation of State and Federal Law and State Medicaid Plan)

By Associational Petitioners, On Behalf of Themselves, Their Members, the Provider Class, All Sub-Classes and The Medi-Cal Beneficiaries Served by their Members, against All Respondents

88. Petitioners hereby incorporate by reference paragraphs 1 through 87, inclusive, as though fully set forth herein.

89. As associations representing the interests of physicians, hospitals, dentists, ADHCs or pharmacies, as well as the patients services by those respective groups of providers, Petitioners have a clear, present and beneficial interest in ensuring that the Department complies with both state and federal law in administering the Medi-Cal program, including setting the rates of reimbursement paid to providers.

90. Petitioners have no speedy and adequate remedy in the ordinary course of law since Respondents' violations of law are continuing and ongoing and, if not corrected, will cause Petitioners' members who are continuing to render services to Medi-Cal beneficiaries to suffer substantial monetary loses which can only be recovered through subsequent litigation, thus leading to repeated litigation and a multiplicity of actions.

91. Respondents have a mandatory duty to comply with the mandates of the State Plan, federal Medicaid statutes and regulations, the State Constitution, and other applicable State law. The Ten Percent Rate Reduction is unlawful and invalid, has been adopted in violation of mandatory duties imposed upon Respondents by state and federal law, may not be lawfully implemented, and is otherwise arbitrary and capricious.

92. Unless enjoined, Respondents will neglect to perform their legal duties because:

a. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented as it violates the State Plan, and accordingly, State and Federal law, because:

i. Neither the Department nor the Legislature ensured that Medi-Cal payment rates incorporating The Ten Percent Rate Reduction are sufficient to establish equal access to services for Medi-Cal beneficiaries;

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ii. With respect to non-institutional services, neither the Department nor the Legislature (1) Developed an evidentiary base or rate study resulting in the determination of a proposed rates incorporating The Ten Percent Rate Reduction; (2) Presented the proposed rates incorporating The Ten Percent Rate Reduction at a public hearing to gather public input; (3) Determined the final rate based on the evidentiary base including the pertinent public input; or (4) established the payment rates incorporating The Ten Percent Rate Reduction through adoption of regulations specifying such rates; and/or

iii. With respect to non-institutional services, the rate adjustments made by The Ten Percent Rate Reduction otherwise fail to meet the requirements of 42 C.F.R. Part 447.

b. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented because it is inconsistent with and violates the State Plan. The Department may not lawfully implement The Ten Percent Rate Reduction unless and until it submits the necessary amendments to the State Plan to the federal government and obtains federal approval of such amendments. The Department has not submitted any State Plan Amendments to the federal government needed to implement The Ten Percent Rate Reduction and has not obtained federal approval for The Ten Percent Rate Reduction.

c. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented because it violates Welfare and Institutions Code section 14079 by mandating a rate reduction without the required annual review and corresponding revision of reimbursement rates to "ensure reasonable access of Medi-Cal beneficiaries."

d. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented because it violates the California Constitution by exceeding the Legislature's authority during the special session called by Governor

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Schwarzenegger.

e. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented because it violates 42 C.F.R. § 447.204 by failing to ensure that “payments [are] sufficient to enlist enough providers so that services under the [State Plan] are available to recipients at least to the extent that those services are available to the general population.”

f. The Ten Percent Rate Reduction is invalid and may not lawfully be implemented because it violates federal Medicaid law because:

i. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(30)(A) because:

(1) The rates resulting from The Ten Percent Rate Reduction are not consistent with efficiency, economy, and quality of care, and are not sufficient to enlist enough providers so that care and services under the Medi-Cal program are available at least to the extent that such care and services are available to the general population;

(2) Neither the Department nor the Legislature considered the factors of efficiency, economy, quality of care, and access to services prior to enacting The Ten Percent Rate Reduction;

(3) Neither the Department nor the Legislature demonstrated a reasonable connection between the Ten Percent Rate Reduction and the provision of quality care efficiently and economically, or ensuring access to services, prior to enacting the Ten percent Rate Reduction; and/or

(4) Neither the Legislature nor the Department considered the costs of providing quality care or demonstrated a reasonable connection between Medi-Cal rates as affected by the Ten Percent Rate Reduction and provider costs.

ii. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(8) because it fails to ensure that Medi-Cal beneficiaries may access care in a

1 prompt manner; and/or

2 iii. The Ten Percent Rate Reduction violates 42 U.S.C. § 1396a(a)(13)
3 as to hospital services (including DP/NF services) because it was not
4 adopted through a public process as required by this provision.

5 93. *De facto* amending the State Plan without prior approval from the federal
6 government in violation of federal law.

- 7 a. Violating Welfare and Institutions Code section 14079 by implementing a
8 rate reduction without the required annual review and corresponding
9 revision of reimbursement rates to "ensure reasonable access of Medi-Cal
10 beneficiaries."
11 b. Violating the California Constitution by implementing AB 5 which was
12 enacted in excess of the Legislature's authority during the special session
13 called by Governor Schwarzenegger.
14 c. Violating 42 C.F.R. section 447.204 by failing to ensure that "payments
15 [are] sufficient to enlist enough providers so that services under the [State
16 Plan] are available to recipients at least to the extent that those services are
17 available to the general population."
18 d. Violating federal Medicaid law by:
19 i. Failing to review, analyze, and appropriately adjust the Medi-Cal
20 reimbursement rates paid to physicians, hospitals, dentists, ADHCs, and
21 pharmacies to ensure that those rates are consistent with the factors set out
22 in Section (a)(30)(A);
23 ii. Failing to ensure that Medi-Cal beneficiaries may access care in a
24 prompt manner as required by 42 U.S.C. § 1396a(a)(8); and/or
25 iii. Failing to establish rates pursuant to a public process as required by
26 42 U.S.C. § 1396a(a)(13).

27 94. The Ten Percent Rate Reduction will negatively affect Medi-Cal beneficiaries'
28 access to services, which is already severely deficient, and will ultimately increase the cost of the

1 Medi-Cal program by forcing patients to seek care in overcrowded and over burdened hospital
2 emergency departments.

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4 **SECOND CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 By Associational Petitioners, On Behalf of Themselves, Their Members, the Provider Class, All
7 Sub-Classes and The Medi-Cal Beneficiaries Served by their Members, against All Respondents

8 95. Petitioners hereby incorporate by reference paragraphs 1 through 87, inclusive, as
9 though fully set forth herein.

10 96. An actual and justiciable controversy exists between Petitioners and Respondents
11 regarding the validity of the Ten Percent Rate Reduction that is scheduled to take effect on July 1,
12 2008. Petitioners contend that the rate reduction is invalid and unlawful in violation of state law,
13 the state Constitution, the State Plan, federal law and federal regulations, while the Respondent
14 contends that the rate reduction is valid in all respects. Accordingly, pursuant to Code of Civil
15 Procedure section 1060, Petitioners request this Court declare that the rate reduction is invalid and
16 unlawful.

17 **THIRD CAUSE OF ACTION**

18 **(Preliminary and Permanent Injunctive Relief)**

19 By Associational Petitioners, On Behalf of Themselves, Their Members, the Provider Class, All
20 Sub-Classes and The Medi-Cal Beneficiaries Served by their Members, against All Respondents

21 97. Petitioners hereby incorporate by reference paragraphs 1 through 87, inclusive, as
22 though fully set forth herein.

23 98. Unless and until Respondents are enjoined from reducing Medi-Cal rates for health
24 care services, as set forth in Welfare and Institutions Code §§ 14105.19 and 14166.245,
25 Petitioners' members and patients those members treat will be irreparably harmed because of the
26 invalid and illegal reduction in Medi-Cal rates in violation of state regulations, the State Plan,
27 federal law and federal regulations, in that:

28 a. Because the reduction in rates will result in a large number of physicians

1 and other providers of health care services to either withdraw from or
2 reduce their participation in the Medi-Cal program due to the inadequacy of
3 the Medi-Cal rates to meet the costs of providing services, Medi-Cal
4 beneficiaries in need of health care services will have increasing difficulty
5 gaining access to needed services. This will result in delays in the receipt of
6 necessary health care services or the inability of Medi-Cal beneficiaries to
7 receive needed services at all.

8 b. The relationships between patients and providers will be permanently and
9 irreparably disrupted, because many Medi-Cal beneficiaries will be forced
10 to interrupt current courses of treatment with their providers, as those
11 providers are forced to withdraw from or reduce their participation in the
12 Medi-Cal program due to the decrease in Medi-Cal rates.

13 c. The reduction in Medi-Cal rates below the levels necessary to be consistent
14 with efficiency, economy and quality of care will make it increasingly
15 difficult for providers who do remain in the Medi-Cal program to provide
16 services consistent with community standards of quality care since they will
17 incur costs in providing those services greater than the applicable Medi-Cal
18 payments, thus endangering the health and well-being of Medi-Cal
19 beneficiaries and the financial solvency of the Medi-Cal providers.

20 99. No administrative appeal process or other administrative remedy is available to
21 Petitioners to challenge the Ten Percent Rate Reduction for health care services.

22 100. All of the said injuries are great, immediate, and irreparable, for which damages at
23 law are inadequate, and for which petitioners have no plain, adequate or speedy relief at law or
24 otherwise.

25 WHEREFORE, Petitioners pray for judgment as follows:

26 1. For a Writ of Mandate precluding Respondents from implementing the Ten Percent
27 Rate Reduction called for by Welfare and Institutions Code §§ 14105.19 and 14166.245 on the
28 grounds that the reduction violates state regulations, the State Plan, federal law and federal

1 regulations;

2 2. For an Order declaring that the Medi-Cal rate reduction imposed by Welfare and
3 Institutions Code §§ 14105.19 and 14166.245 violates the provisions of 22 C.C.R. § 50004, the
4 State Plan, 42 U.S.C. §§ 1396a(a)(8), (a)(13), (a)(30)(A), and 42 C.F.R. § 447.204 and is therefore
5 illegal and invalid;

6 3. For an Order declaring that the Medi-Cal rate reduction imposed by Welfare and
7 Institutions Code §§ 14105.19 and 14166.245 represents a *de facto* amendment to the State Plan
8 and therefore said rate reduction cannot be imposed without federal approval;

9 4. For an Order declaring that, when setting Medi-Cal rates in the future, the
10 Department must consider whether the rates have a reasonable relationship to the costs of
11 providing services to Medi-Cal beneficiaries and are sufficient to ensure equal access to services
12 for Medi-Cal beneficiaries and, to the extent rates deviate from such costs or are insufficient to
13 ensure equal access, may not alter nor adjust the rates;

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1 5. For an Order preliminarily and permanently enjoining Respondents from
2 effectuating the Medi-Cal rate reduction imposed by Welfare and Institutions Code §§ 14105.19
3 and 14166.245 or reducing to any degree the Medi-Cal rates for health care services that are
4 affected by Welfare and Institutions Code §§ 14105.19 and 14166.245; and

5 6. For the costs of suit, including reasonable attorneys' fees incurred by Petitioners.

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7 DATED: May , 2008

HOOPER, LUNDY & BOOKMAN, INC.
CRAIG J. CANNIZZO
LLOYD A. BOOKMAN
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13 Attorneys for Petitioners
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