

The Arc UCP (San Diego) Lawsuit

A Presentation to Help Local
Advocates Understand the Lawsuit

The Arc CA v. Douglas

THE ARC OF CALIFORNIA; UNITED CEREBRAL PALSY ASSOCIATION OF SAN DIEGO, Plaintiffs/Petitioners,
v.
TOBY DOUGLAS, in his official capacity as Director of the California Department of Health Care Services; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES; TERRI DELGADILLO, in her official capacity as Director of the California Department of Developmental Services; CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES; and DOES 1-100, inclusive, Defendants/Respondents

1. Why - Background
2. What Legal Grounds
3. Expert Declarations
4. The Lanterman Act
5. The Arc
6. UCP
7. Contact

Background Information

The following slides were discovered through:

- **Challenges to Sustaining California's Developmental Disability Services System**
- *Declarations from locals.*
- *2000 DDS request for rate increase.*

Background: Impact of Cuts on the State's Service Delivery System

- DDS warned inadequate \$ threatens viability of providers, destabilize the service system, adds to its “continued and rapid deterioration” and creates a “...risk to the health, safety, and well-being.”
- Despite this still underfunded the system.
- 7 yrs of the rate freezes & costs increases = financial strain forcing providers to limit programs, cut back on staffing and their salaries and benefits.
- Vendors can't bridge the gap – payments and actual costs.
- They operate programs at a loss and incur mounting deficits – and some rely on cash reserves and loans to continue.
- The rate cuts and freezes threaten the solvency and degrade the service system, jeopardize the health, safety, and well-being.
- The vendors \$ problems adversely impact quality services and supports.

Background: Impact of Cuts on the State's Service Delivery System – con't

- Staffing problem due to non-competitive salaries and benefits, which hinders efforts to get good staff to replace the those lost to better paying jobs.
- The service system de-stabilized because of this and rapidly deteriorates the quality of care increasing the risk to consumers.
- The state struggling to attract new qualified vendors to replace departing vendors and meet the increasing demands.
- Prospective vendors, particularly more qualified ones, hard to attract due to the state's chronic inadequate funding.
- The state will lower its recruitment standards and streamline the selection process, contributes to the deterioration of the service system and risks.

Background: Impact of Cuts on the State's Service Delivery System – con't

- This will be reflected in disparities in support between those with the highest need and those with less needs and their providers disproportionately subjected to cut backs and terminations.
- Some may find themselves forced to cost cutting measures that target services and supports involving higher costs, related to staffing.
- They may have to cut back or terminate programs requiring a greater or higher level of staffing.
- Even vendors having adequate numbers of staff may be reluctant to provide such services based on concerns over their ability to adequately meet the particular needs of consumers who require expensive supports.
- Fewer programs for people with greater needs are accessible and available.

Freezes and Reductions in Payments to Vendors since 2003

- In 2003, the state froze reimbursement rates for community vendors rates have not been increased despite substantial increases in operating costs.
- On February 20, 2009, CA cut reimbursement rates by 3%
- October 19, 2010 CA reduced rates by an additional 1.25% through June 30, 2011.
- On March 24, 2011, CA extended the reductions through June 30, 2012.
- On July 28, 2009, CA mandated fourteen (14) unpaid holidays which removed payment from providers for services or supports, which further reduced payments.

Violation of Federal Law

- The State and the defendants have violated and continue to violate federal law
 - Acting solely on budgetary considerations (implementing and enforcing the rate reductions and mandatory unpaid holidays),
 - (1) by failing to obtain prior federal approval before modifying the reimbursement rates;
 - (2) by implementing and enforcing the rate reductions and mandatory unpaid holidays for purely budgetary reasons and without giving meaningful consideration to the statutory factors set forth in Section 30(A);
 - (3) by failing to consider the impact of the reduction in payment rates on the safeguards required by the HCBS waiver program to protect the health and welfare of consumers;
 - and by failing to conduct or consider appropriate rate studies.

Challenges to Sustaining California's Developmental Disability Services System

Daphna Gans, Anna C. Davis, Christina M. Kinane, and Gerald F. Kominski

- Challenging to give adequate funding for these services to an increasing caseload, limited resources, rate freezes, and inadequate transparency in resource allocation.
- Threatens the financial solvency of service providers decreasing access to high-quality care and increasing the cost of care for the state.
- CA must pursue multiple strategies in order to meet the goals of this entitlement and to ensure both adequate and equitable access to services.
- CA must adjust frozen rates for services, adopt equitable and transparent vendor payment systems, and maximize the efficiency of the current system of service provision...

Conclusion

- California's DDS system faces considerable challenges due to rate freezes that have extended for more than a decade, despite ongoing growth in both the demand for services and in the underlying costs of providing services.
- The policy recommendations presented above suggest that the legislature and governor need to give serious consideration to finding additional solutions to these challenges.

Causes of Action

1. No study was done to examine the impact of the rate reductions etc on people with I/DD.
2. People with the most severe disabilities will be disproportionately impacted
3. ADA Claim – we allege the disproportionate impact violates ADA civil rights.
4. Developmental Disabilities Bill of Rights Act “DD Act – we allege the disproportionate impact violates ADA civil rights.

Causes of Action – What We Want

- No damages award.
- Stop the changes to Medicaid reimbursement rates w/out federal approval of the new rates;
- Study (as required) the impact of any reduction in reimbursement rates on efficiency, economy, quality, and access to care prior to enacting such rate reductions and consider cost statements
- Study the impact of any reduction in payments to HCBS providers on safeguards to protect the health and welfare of HCBS beneficiaries;
- Make and keep an "equitable" rate setting system related to provider costs to ensure Lanterman Act rights, including their individualized services and supports for consumers and families.

Resources

- Lanterman Act
- The Arc
- UCP San Diego

About the Lanterman Act

- The Lanterman Developmental Disabilities Services Act, known as the “Lanterman Act,” is an important piece of legislation passed by the California Legislature in 1969. This state law says people with developmental disabilities and their families have a right to get the services and support they need to live as independently as possible in community based settings.
- The Lanterman Act outlines the rights of individuals with developmental disabilities and their families, how the regional centers and service providers can help these individuals, what services and supports they can obtain, how to use the individualized program plan to get needed services, what to do when someone violates the Lanterman Act, and how to improve the system.
- Learn more here:
http://www.dds.ca.gov/Statutes/Statutes_Home.cfm
- (2011) *Lanterman Regional Center*. Retrieved from:
http://www.lanterman.org/lanterman_act/



The Arc California



A Leader in Disability Rights

We are the largest national community-based organization advocating for and serving people with intellectual and developmental disabilities and their families. We encompass all ages and all spectrums from autism, Down syndrome, Fragile X and various other developmental disabilities.

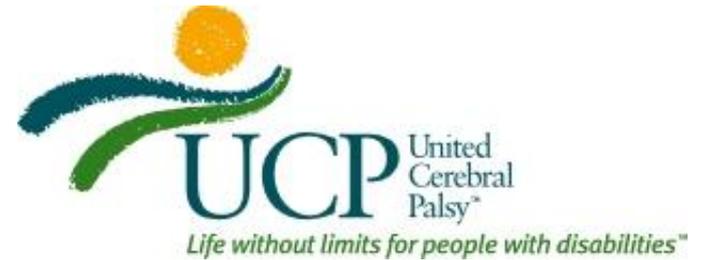
Mission Statement

The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes.

History

- [Founded in 1950](#), The Arc began as a grassroots movement of families working vigilantly to create services for children and adults who were being denied day care, educational opportunities and work programs. The Arc started with a small group of concerned and passionate parents and community members who would be catalyst for changing the public perception of children with disabilities. For the past 60 years, The Arc has continued to grow and evolve along with the changing needs and issues people with disabilities and their families face.
- Governed by a volunteer [board of directors](#) and managed by key [staff, The Arc](#), work works passionately to uphold our vision that every individual and family living with an intellectual or developmental disability in the United States has access to the information, advocacy and skills they need to participate as active citizens of our democracy and active members of their community.

United Cerebral Palsy Association San Diego



History

- United Cerebral Palsy Association is a non-profit 501 c (3) corporation and has provided programs and services to individuals with disabilities since 1958. Over 65% of the people we serve have disabilities other than cerebral palsy.
- United Cerebral Palsy is recognized as one of the largest and most efficient health charities in America. Approximately 85% of UCP San Diego's total income is spent on community programs and services.
- According to the most recent Census report, an estimated forty-nine million citizens, one in every five, are Americans with a disability. Since the passage of the Americans with Disabilities Act, people who are disabled have become more visible and active in the community.

Mission and Goals

- The mission of UCP of San Diego is to advance the independence, productivity and full citizenship of people affected by cerebral palsy and other disabilities. In pursuing our mission, our main focus is to find ways to include individuals with disabilities into every aspect of life and areas of society, including the home, schools, workplaces, and the community, regardless of severity of disability.

Current Programs and Activities

- To meet our mission we offer the following programs and services to the community: adult occupational skill training, supported employment services, adaptive aquatics for infants, children and adults, a toy and software lending library, parent, teen and sibling support groups, respite, an assistive technology center including augmentative communication devices and adaptive computer technology, computer recycling, disability awareness training, funding assistance and an extensive information and referral service regarding cerebral palsy and the many community resources available to people with disabilities of all ages.

Accomplishments

- During July 2009 to June 2010, our agency served 8,141 people with disabilities of all ages, their families, special educators, college students and a wide range of other health professionals with our array of services. We are a United Way legacy agency, are accredited by the Commission on Accreditation of Rehabilitation and have met the criteria for affiliation by National UCPA, Inc.

Questions?