

THE OFFICES OF EARLE J. SCHWARZ

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VIA EMAIL ONLY

Dianne Stamey Dycus
Deputy Attorney General
General Civil Division
425 Fifth Avenue North
2nd Floor, Cordell Hull Bldg.
Nashville, Tennessee 37243

Jonathan P. Lakey
Pietrangelo & Cook, PLC
6410 Poplar Avenue, Suite 190
Memphis, Tennessee 38119

Re: ADC and CBDC

Dear Dianne and Jon:

DMRS has implemented several policy decisions within the last few months that jeopardize the health and safety of class members in both of the above referenced cases. First, DMRS began using a new protocol for administering the ICAP. Second, DMRS has refused to continue providing direct care nursing services to class members except through TennCare. Third, DMRS abruptly and unilaterally imposed a retroactive reduction in payments to main waiver providers; reversed the rate cut while delaying the refund; and then, ultimately announced a prospective rate cut effective January 2008. Fourth, DMRS has adopted a policy of retroactive review of ISPs that have already been approved with the sole goal of cutting services to save costs.

Use of the new ICAP protocol has resulted in the reduction of services in over 25% of the cases. The attempt to move nursing services from community based waiver providers to TennCare providers not only reverses existing DMRS policy and contravenes existing rules but also puts at risk all class members who require intensive nursing services. The unilateral, across the board rate cut has resulted in a cessation of all transitions and has threatened the financial viability of a number of community based waiver providers. The retroactive plans review has the sole effect of cutting services. It is often, if not always, done by the same persons who approved the ISPs in the first place.

Each such policy directive has placed class members at risk of substantial harm. The cumulative impact of these actions is going to have a catastrophically adverse impact on the delivery of services to class members with a concomitant risk to the health, safety and welfare of many class members living in the community.

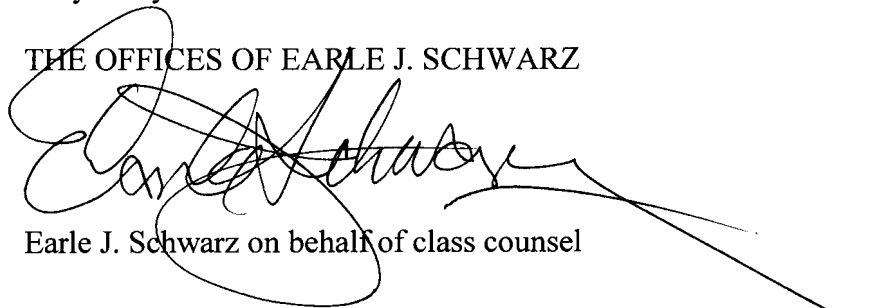
As class representatives, we cannot allow these directives to go unchallenged. Since there is an immediate and imminent risk of harm to the class in each case, we have no obligation to participate in a "meet and confer" with you prior to moving for judicial intervention. However, as a matter of courtesy, we are willing to give the State fifteen (15) days to implement a moratorium on implementation or the further use of each of these directives so that the parties can then confer on alternatives.

If the State is unwilling to voluntarily roll back each of these changes, then on January 18, 2008, People First will file in both cases, a Motion for Emergency Relief in which we will seek temporary and permanent injunctive relief preventing the implementation of: 1) any further funding cuts based on the results of the ICAP until the validity of the ICAP has been established or a new, more accurate mechanism for assessing "need" has been implemented; 2) any funding cuts to waiver providers based on the alleged budget deficit for the current fiscal year; 3) any further delivery of nursing services through TennCare, and 4) further retroactive plans reviews.

We look forward to the State's positive response.

Very Truly Yours

THE OFFICES OF EARLE J. SCHWARZ

A large, stylized handwritten signature in black ink, appearing to read 'Earle J. Schwarz', is written over the typed name and extends across the right side of the page.

Earle J. Schwarz on behalf of class counsel

cc: Judy Gran, Esq.
Jack Derryberry, Esq.
Dr. Nancy Ray
The QRP
Jonas Geissler, Esq.
Dudley West, Esq.