UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 09-8642 CAS (MANx)	Date	February 22, 2010
Title	CALIFORNIA HOSPITAL ASSOCIATION v. DAVID MAXWELL-JOLLY, Director of the State of Department of Health Care Services, State of California		

Present: The Honorable	CHRISTINA A. SNYDER	
PAUL PIERSON	LAURA ELIAS	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Lloyd A. Bookman Jordan B. Keville	Brenda Ann Ray Lisa Tillman

Proceedings: **DEFENDANT'S MOTION FOR MORE DEFINITE STATEMENT OR, IN THE ALTERNATIVE, MOTION TO DISMISS** (filed 1/15/10)

I. INTRODUCTION & BACKGROUND

On November 24, 2009, plaintiff California Hospital Association ("CHA") filed the instant action against defendant David Maxwell-Jolly, Director of the California Department of Health Care Services (the "Director"). The California Department of Health Care Services (the "Department") is a California agency charged with the administration of California's Medicaid program, Medi-Cal. Plaintiff is a trade association representing certain California hospitals that "participate in the Medi-Cal program." Compl. ¶ 54.

On July 28, 2009, California Governor Arnold Schwarzenegger signed into law Assembly Bill X4 5 ("AB 5"). AB 5 amends Cal. Welf. & Inst. Code § 14105.191, in part, and effectively "freezes" the Medi-Cal reimbursement rates for certain designated services "rendered during the 2009-2010 rate year and each rate year thereafter" at 2008-2009 levels. Cal. Welf. & Inst. Code § 14105.191(f); Compl. ¶ 39. Among the designated services, are multiple categories of hospital services, including services provided by nursing facilities that are part of hospitals (distinct part/nursing facilities, or "DP/NFs"), and subacute and pediatric subacute care units that are part of hospitals. Cal. Welf. & Inst. Code § 14105.191(f) (referencing classes of providers identified in subdivision (b)(2)). AB 5 also amends Cal. Welf. & Inst. Code § 14166.245, which

governs payments to acute care hospitals not under contract with the Department for inpatient services. AB 5 eliminates the exemption for small and rural hospitals from the ten percent reduction on payments for inpatient services, originally enacted by Assembly Bill X3 5 in February 2008. Id. § 14166.245(g)(1); Compl. ¶ 40.

Plaintiff alleges that these two reimbursement rate provisions of AB 5 violate Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (the "Medicaid Act"), and that therefore, they are invalid under the Supremacy Clause of the United States Constitution. U.S. CONST. art. VI, cl. 2. Specifically, plaintiff alleges that AB 5 is preempted by § 30(A) of the Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A) ("§ 30(A)"), because neither the Director nor the California legislature considered the "quality of care" and "equal access" provisions of § 30(A), and thus whether reimbursement rates are reasonably related to provider costs, before its implementation. Compl. ¶ 58. Plaintiff further alleges that the Director failed to comply with additional requirements of the Medicaid Act, federal regulations, and the state plan. Specifically, plaintiffs alleges that the two rate provisions of AB 5 were implemented in violation of (1) the public process provisions of 42 U.S.C. § 1396a(a)(13)(A);[1] (2) the public notice provisions of 42 C.F.R. § 447.205; (3) the State Plan requirements. Compl. ¶¶ 59-66. Plaintiffs seek declaratory relief and injunctive relief to restrain the implementation and enforcement of the two rate provisions of AB 5 at issue.

Medicaid is a cooperative federal program: the federal government provides federal funding to the states so that states may provide medical care to their needy citizens. State participation is voluntary; however, once a state chooses to participate by accepting federal funds, it must comply with requirements imposed by the Medicaid Act. Because California has elected to participate in the Medicaid program, it must administer its state Medicaid program, Medi-Cal, in compliance with a state plan that has been pre-approved by the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), and which complies with the requirements set forth in 42 U.S.C. §

[1] In addition to bringing the instant action under the Supremacy Clause, plaintiff alleges that it has standing to enforce § 13(A) through a civil rights action under 42 U.S.C. § 1983. Compl. ¶ 61.

1396a(a)(1)-(70). In accordance with these requirements, California must provide "methods and procedures" for the payment of care and services that (1) are "consistent with efficiency, economy, and quality of care," and (2) ensure their availability to the Medicaid population to the same "extent as they are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). These requirements are known, respectively, as the "quality of care" and "equal access" provisions of § 30(A) of the Medicaid Act. In addition, for certain provider services, including hospital services, California must allow a public process for determination of payment rates, with publication of the proposed rates and their underlying methodologies, such that providers are "given a reasonable opportunity for review and comment." 42 U.S.C. § 1396a(a)(13)(A) ("§ 13(A)"). Further, the state must administer Medi-Cal in accordance with Medicaid regulations; applicable state law, as specified in sections 14000 to 14124 of the Welf. & Inst. Code; and Medi-Cal regulations.

On January 15, 2010, the Director filed the instant motions for more definite statement or, in the alternative, motion to dismiss. Plaintiff filed its opposition on February 1, 2010. A reply was filed on February 8, 2010. A hearing was held on February 22, 2010. After carefully considering the arguments set forth by both parties, the Court finds and concludes as follows.

II. LEGAL STANDARD

A. Motion for a More Definite Statement under Fed. R. Civ. P. 12(e)

Federal Rule of Civil Procedure 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Federal Rule of Civil Procedure 12(e) provides that "[a] party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response." Furthermore, a motion filed pursuant to Rule 12(e) "must point out the defects complained of and the details desired." Fed. R. Civ. P. 12(e).

B. Motion to Dismiss under Fed. R. Civ. P. 12(b)(1) for Lack of Standing

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In order to establish standing to assert a claim, a plaintiff must do the following: (1) demonstrate an injury in fact, which is concrete, distinct and palpable, and actual or imminent; (2) establish a causal connection between the injury and the conduct complained of; and (3) show a substantial likelihood that the requested relief will remedy the alleged injury in fact. See McConnell v. Federal Election Comm'n, 540 U.S. 93, 225-26 (2003).

Because standing relates to a federal court's subject matter jurisdiction under Article III, it is properly raised in a motion to dismiss under Fed. R. Civ. P. 12(b)(1), not Rule 12(b)(6). White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000). The Ninth Circuit has noted a distinction between facial and factual jurisdictional attacks under Rule 12(b)(1). White, 227 F.3d at 1242 ("Rule 12(b)(1) jurisdictional attacks can be either facial or factual."). "Where the motion presents a facial jurisdictional attack — that is, where the motion is based solely on the allegations in the complaint — the court must accept these allegations as true. Where, however, the challenge is factual — where it is based on extrinsic evidence, apart from the pleadings — the court may resolve factual disputes in order to determine whether it has jurisdiction." Nat'l Licensing Ass'n, LLC v. Inland Joseph Fruit Co., 361 F. Supp. 2d 1244, 1247 (E.D. Wash. 2004) (citing Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)). The court, however, may not resolve these disputes "'if issues of jurisdiction and substance are intertwined,' that is, if the jurisdictional question is dependent on the resolution of factual issues going to the merits." Id. (quoting Roberts, 812 F.2d at 1177).

"It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." Warth v. Seldin, 422 U.S. 490, 518 (1975). "For the purposes of ruling on a motion to dismiss for want of standing, both the trial and the reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." Id. at 501; Takhar v. Kessler, 76 F.3d 995, 1000 (9th Cir. 1996). "At the same time, it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing. If, after this opportunity, the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." Warth, 422 U.S. at 501-02.

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III. DISCUSSION

The Director contends that although plaintiff CHA asserts representational standing, it fails to support this assertion with a plain statement identifying those members with standing to bring the instant action.[2] Mot. at 3. Accordingly, the Director moves for a more definite statement of CHA's membership, or in the alternative, moves to dismiss the instant action for lack of subject matter jurisdiction and failure to state a claim for relief. Id. Specifically, the Director asserts that plaintiff simply alleges that it represents "nearly 450 hospitals and health systems throughout California" and that it brings this suit on behalf of its members, "many of which are providers under California's Medi-Cal program." Id. at 8 (citing Compl. ¶ 52). He argues, however, that plaintiff must allege which of these CHA members, on their own, have standing to challenge these statutory enactments. Id. According to the Director, while there are some 66 rural hospitals within the state of California, certain rural hospitals that were formed as public hospital districts, pursuant to Cal. Health & Safety Code §§ 32000 et seq., are political subdivisions of the state, and thus lack standing to challenge any state statute in federal court.[3] Id. (citing Heath v. Redbud Hosp. Dist., 436 F. Supp. 766, 768

[2] According to the Director, an organization asserting representational standing must demonstrate: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to vindicate are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Mot. at 7 (citing Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)).

[3] The Director requests that the Court take judicial notice of four filings with the Court: (1) Governor Arnold Schwarzenegger's Emergency Proclamation of July 1, 2009; (2) the complaint in CHA v. Health Net of Cal., Los Angeles County Superior Ct. Case No. BC414389; (3) map prepared by the California Office of Statewide Health Planning and Development ("OSHPD") locating all of the rural hospitals within California; and (4) excerpts from the websites of Hazel Hawkins Memorial Hospital, Hi-Desert Medical Center, and Seneca Healthcare District stating that these facilities are "political subdivisions of the state." Under Fed. R. Evid. 201, a court may take judicial notice of

(N.D. Cal. 1977), for the proposition that hospital districts organized under state statutes were subdivisions of the state for purposes of § 1983 claims; and Palomar Pomerado Health Sys. v. Belshe, 180 F.3d 1104 (9th Cir. 1999)). Thus, he argues that to the extent CHA represents the interests of rural hospitals impacted by the challenged rate reduction statute, plaintiff must allege its membership includes rural hospitals that have standing to sue; and further, that plaintiff must distinguish between those members with standing to sue from those without standing to sue, such that these members do not "participate in discovery and enjoy any awarded injunctive relief." Id. at 8-9.

Plaintiff responds that the Director's motion under Rule 12(e) fails because this rule is reserved for complaints that are so unintelligible that the defendant literally cannot produce a responsive pleading. Opp'n at 1. Plaintiff contends that the Director's succinct discussion of the complaint in the instant motion "amply demonstrates" that the Director understands the issues raised by the complaint and the grounds upon which plaintiff challenges the two Medi-Cal rate provisions of AB 5. Id. at 6. Plaintiff further contends that the complaint sufficiently alleges facts to show that CHA has associational standing to bring this action. Id. at 7. In support of this argument, plaintiff argues that the complaint alleges that CHA's members include small and/or rural hospitals, Compl. ¶ 52, and that for purposes of a motion to dismiss, these allegations must be accepted as true. Id. at 8. Further, it argues that associational standing may exist when even just one member would have standing. Id. Plaintiff contends that the Director provides no legal basis for his contention that plaintiff must identify in its complaint which of its members would have standing in their own right to challenge the Medi-Cal rate provisions at issue. Id. at 10 (citing Nat'l Ass'n for the Advancement of Colored People v. Ameriquest Mortgage Co., 635 F. Supp. 2d 1096, 1102 (C.D. Cal. 2009), for the contrary proposition that an organization does not have to identify individual association members with

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"matters of public record." Mack v. South Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir.1986). As such, judicial notice is proper insofar as judicial notice is taken that these four court filings were made. The Court GRANTS the Director's request for judicial notice to the extent they request that the Court take judicial notice that the four documents were filed with the Court. However, the Court does not take judicial notice of the truth of the matters asserted therein.

standing in its pleadings in order to satisfy the first prong of the Hunt test). Finally, plaintiff argues that the fact that some of CHA's members may lack standing is immaterial for purposes of the instant motion. Id. at 11. Accordingly, plaintiff contends that the holding of Palomar, 180 F.3d at 1108, that Medi-Cal providers that are operated by political subdivisions of the state do not have standing in federal court to bring an action against the Director on federal constitutional grounds, would, at most, only apply to a small subset of CHA's members.[4] Id. at 12. Further, it contends that the Director's concerns are unwarranted given that this case involves a broad based challenge to two statutes under the Supremacy Clause, that if plaintiff prevails on its claims, then it will necessarily impact all Medi-Cal participating hospitals, regardless of individual provider standing or participation. Id. at 14-15.

The Director replies that a particularized statement of standing is necessary to ensure that any awarded injunction is narrowly tailored and within this Court's jurisdictional scope. Reply at 3. The Director contends that to the extent this Court awards any injunctive relief in this case, that relief must be tailored to address only those persons with standing to sue in this Court. Id. at 4. Accordingly, the Director reiterates his request that this Court grant the instant motions, or in the alternative, requests that the Court rule that any CHA members with the status of political subdivisions of the state are exempt from any awarded relief in this matter. Id. at 5.

It appears to the Court that the primary issue raised by the Director is not whether some members of CHA have standing, but whether CHA may assert associational standing when some of its members would otherwise not have standing to sue in their own right. However, "[a]ssociational standing may exist even when just one of the association's members would have standing." Retail Industry Leaders Ass'n v. Fielder, 475 F.3d 180, 186 (4th Cir. 2007) (citing Warth v. Seldin, 422 U.S. 490, 511 (1975) (explaining that an "association must allege that its members, or any one of them, are

[4] Plaintiff further argues that the Director's concerns arising from Palomar do not extend to all of the claims because the holding in Palomar is limited to claims asserted under the United States Constitution, and plaintiff's second claim is brought under the Supremacy Clause and 42 U.S.C. § 1983. Opp'n at 12-13, n.4.

suffering immediate or threatened injury"). Thus, given that plaintiff alleges that some of its members, including small and rural hospitals, "will suffer a concrete economic injury in the form of reduced payments for services" as a result of the two rate provisions of AB 5 at issue, the Court finds that plaintiff CHA has sufficiently alleged associational standing to bring the instant action, for declaratory and injunctive relief, on behalf of its members.[5] See, e.g., Indep. Living Ctr. of S. Cal. v. Shewry, 543 F.3d 1050, 1065-66 (9th Cir. 2008) (holding that Medi-Cal providers have standing to bring suit, under the Supremacy Clause, to challenge state legislation that directly reduces reimbursement payments to such providers). Accordingly, the Court denies the Director's instant motions.

IV. CONCLUSION

Based on the foregoing, the Court DENIES the Director's motion for a more definite statement, and in the alternative, motion to dismiss the complaint.

IT IS SO ORDERED.

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[5] Moreover, at oral argument, plaintiff represented to the Court that at least five of its members qualify as "small and rural hospitals" under the statute, which are not public hospital districts — specifically, Coalinga Regional Medical Center, Barton Memorial Hospital, George L. Mee Memorial Hospital, Marshall Medical Center SNF, and Sutter Amador. See Suppl. Blaisdell Decl. In Support of Mot. For Preliminary Injunction, Ex. A; Def.'s Req. For Judicial Not. In Support of Opp'n to Mot. For Preliminary Inunction, Ex. 17.