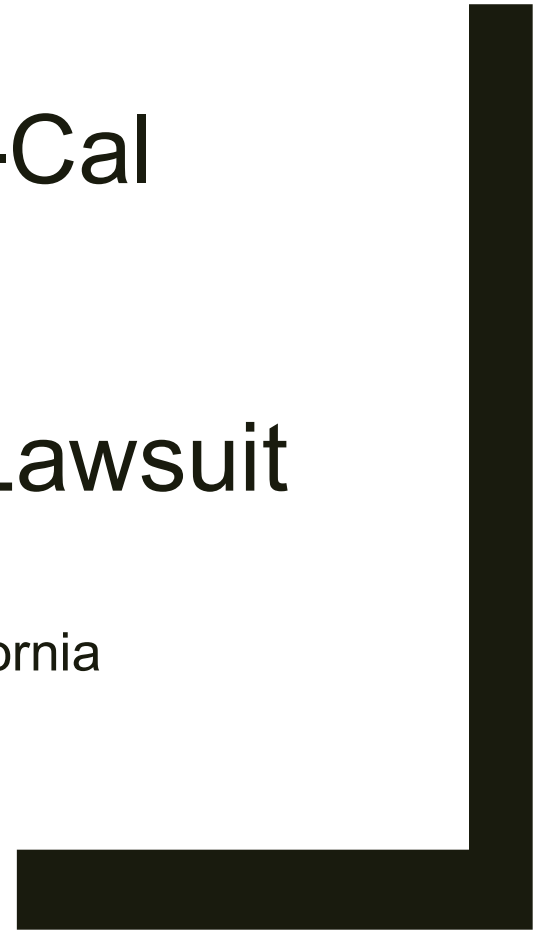


# Getting Help with Medi-Cal In-Home Nursing

## Settlement of *I.N. v. Kent* Lawsuit

William Leiner, Disability Rights California  
June 2019

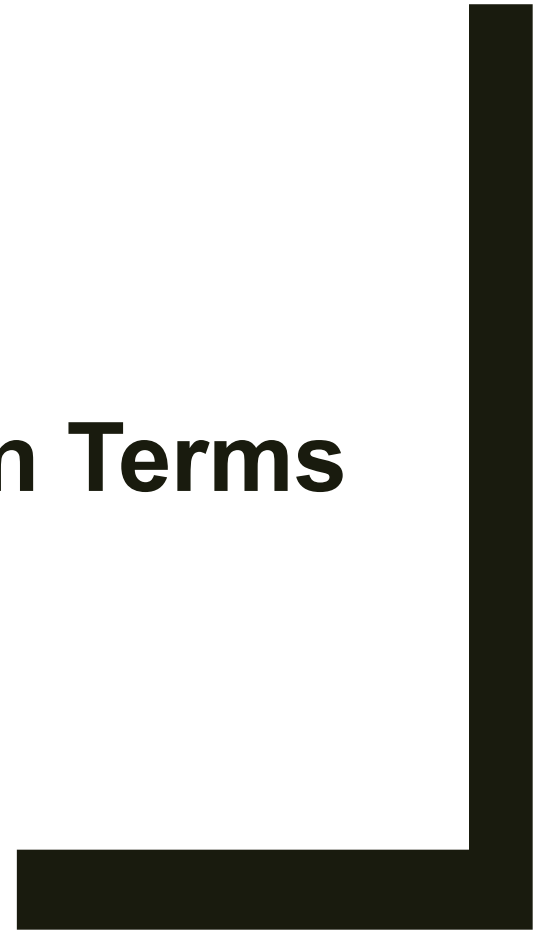




# Goals of Webinar

- Understand common terms used in the lawsuit and settlement agreement.
- Learn about the parties and allegations in the lawsuit.
- Review the core components of the settlement agreement and how families will be able to obtain case management assistance to secure Medi-Cal in-home nursing services.
- Learn about the process for final approval of the settlement agreement, timelines, and next steps.

# Common Terms



# Common Terms

- Medi-Cal is California's Medicaid program. This is a public health insurance program which provides needed health care services for low-income individuals including families with children, seniors, persons with disabilities, and others who meet eligibility requirements. Medi-Cal is financed equally by the state and federal government.
- EPSDT Services: Early and Periodic Screening, Diagnostic and Treatment services, a benefit of the State's Medi-Cal program that provides comprehensive, preventative, diagnostic, and treatment services to children and youth under the age of 21.

# Common Terms

- Private Duty Nursing (PDN): Also known as in-home shift nursing or in-home nursing, this service is a Medi-Cal benefit which is provided in a beneficiary's home by a registered nurse (RN) or a licensed vocational nurse (LVN), under the direction of a physician, to beneficiaries who require more individual and continuous care than is available from a visiting nurse.
- Home Health Agency (HHA): A private organization licensed by the State which recruits, hires, and trains health professionals to provide services such as private duty nursing in beneficiaries' homes. These agencies also develop plans of treatment for review and approval by physicians and then provide services in accordance with those plans of treatment.
- Independent Nurse Provider (INP): A Medi-Cal enrolled registered nurse or licensed vocational nurse who independently provides private duty nursing services in the beneficiaries' homes

# Common Terms

- Medi-Cal Fee for Service (FFS): The traditional method of billing for health services under which a health care provider charges separately for each patient encounter or service rendered.
- Managed Care Plan (MCP): A health care delivery system that contracts with the Medi-Cal Program to provide services within a defined network of health care providers who are given the responsibility to manage and provide quality, cost-effective health care. Managed care plans, which may include Health Maintenance Organizations (HMOs), typically receive a prepaid rate for each member enrolled in the plan.

# Common Terms

- California Children's Services (CCS): The CCS program provides health services in every county to eligible children with certain physical limitations and chronic health conditions or diseases. CCS typically authorizes private duty nursing when related to a CCS-eligible condition.
- Waiver Agency: An agency contracted with the Department of Health Care Services to provide comprehensive care management services pursuant to the Home and Community-Based Alternatives (HCBA) Waiver, which authorizes home-based services to persons at risk for nursing home or other institutional placement.

## **Basics of Lawsuit**

*I.N. et al., v. Jennifer Kent et al.*

Case No. 3:18-cv-03099 WHA (N.D. Cal.)

Filed May 24, 2018



# Plaintiffs

- I.N. and J.B. are Medi-Cal beneficiaries with significant medical needs.
- Their doctors signed a plan of treatment recommending private duty nursing so they can live safely at home with their families. I.N.'s doctor said she needs 56 hours per week. J.B. needs 135 hours per week.
- The Department of Health Care Services, either on its own or through one of its various service delivery systems, approved these private duty nursing hours as medically necessary.

# Plaintiffs

- I.N. and J.B. rarely received the all of their approved hours. Some weeks, they received no hours at all.
- When I.N.'s and J.B.'s families asked the State for help, they got . . .
  - Outdated referral lists to Home Health Agencies and Independent Nurse Providers
  - Referrals to providers that do not accept Medi-Cal
  - Referrals to search engines, such as Google or Craigslist
- In the meantime, I.N.'s and J.B.'s parents were struggling to meet their needs in the absence of nursing hours, and they were at risk of unnecessary hospitalizations or even placement outside the family home.



# Defendants

- The Department of Health Care Services (DHCS) is the California agency responsible for administering the Medi-Cal program.
- Jennifer Kent is DHCS' current Director and is responsible for directing, organizing, and administering DHCS' programs and contractual arrangements. Her responsibilities in this role include ensuring DHCS' compliance with state and federal law.

# Claims

- Medicaid Law: Obligation under EPSDT to “arrange for” medically necessary services, including approved private duty nursing services.
- Medicaid Law: Obligation to furnish medical assistance (which includes private duty nursing) with reasonable promptness.
- Americans with Disabilities Act and Section 504 of the Rehabilitation Act: Obligation to ensure that services are provided in the most integrated setting appropriate.



# Primary Allegations

- The Department of Health Care Services and its Director, Jennifer Kent violated federal law by:
  - failing to maintain an effective system to arrange for approved Medi-Cal private duty nursing services for beneficiaries under the age of 21;
  - which created a serious risk of institutionalization or out of home placement.



# Why a Class Action?

- I.N.'s and J.B.'s stories are not unique.
- Hundreds, if not thousands, of children and youth who have been approved for Medi-Cal private duty nursing services are not receiving all of their approved hours.
- There is currently no system in place to help I.N., J.B., and children like them to secure nursing services, and their families are left to navigate a complex system with little to no support.

# Why a Class Action?

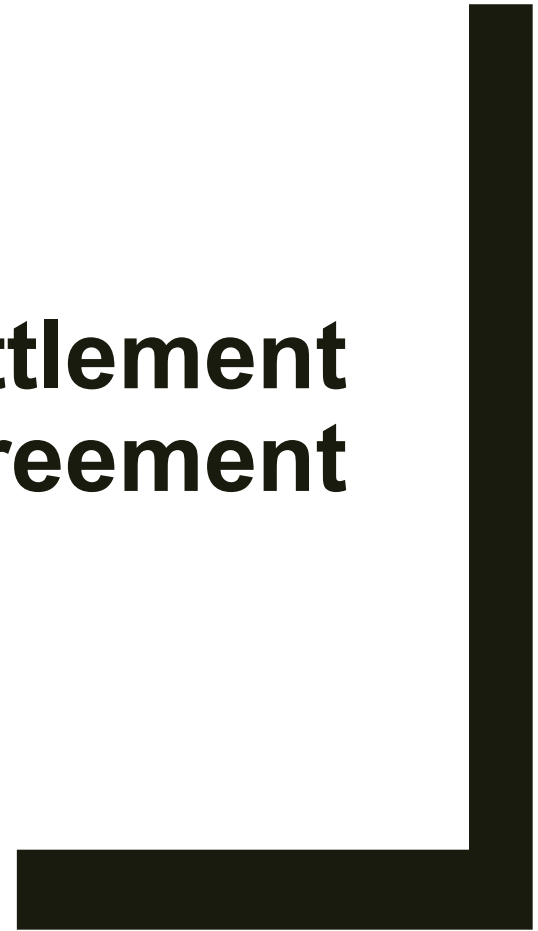


Access Study to Private Duty Nursing  
December 15, 2016

Table 2

Number of PDN Hours Authorized and Rendered	
Description	Hours
Number of Hours Authorized	4,166,257
Number of Hours Rendered	2,942,347

# **Overview of the Settlement Agreement**







# The Settlement Class

- All **Medi-Cal** beneficiaries . . .
- who are EPSDT eligible [children and youth **under 21**] . . .
- and for whom Medi-Cal Private Duty Nursing services **have been approved.**

According to DHCS, there over 4,000 members of the settlement class.



# Case Management Obligations

- If the Court approves the settlement, DHCS will issue directives to Medi-Cal programs (county CCS and Waiver Agencies) and contracted agencies (managed care plans).
- The DHCS directives will notify these agencies of their obligation to secure approved private duty nursing for class members and require them to provide case management services to affirmatively help class members obtain these services.

# Case Management Obligations

- Examples of required case management activities include:
  - tracking the number of private duty nursing hours that class members are approved to receive;
  - contacting individual nurses providers and home health agencies on behalf of class members;
  - working with individual nurses providers and home health agencies to remove barriers to joint provision of services when necessary; and
  - helping individual nurses providers and home health agencies to enroll as Medi-Cal providers.



# Case Management Obligations

- There will be a 90-day comment period where the public will have a chance to provide feedback about these directives before they are final.
- Once the directives are finalized, every class member will receive a notice describing who to contact for case management assistance, as well as information about how to obtain information and help from DHCS and Disability Rights California.



# Primary Case Management

- The managed care plan is responsible when the class member is in a managed care plan, including a Whole Child Model Program, where the managed care plan has approved the private duty nursing services.
- CCS is responsible when CCS has approved private duty nursing services for treatment of a CCS condition.
- Waiver Agencies are responsible when the class member is on the Home and Community Based Alternatives Waiver and neither CCS or the managed care plan approved the services.

# Primary Case Management



# Primary Case Management

- NO WRONG DOOR.
- Regardless of which Medi-Cal program has the primary responsibility to help class members secure approved private duty nursing services, the class member (or their family) may contact ANY Medi-Cal program entity that the class member is enrolled in (which may be a managed care plan, CCS, or a Waiver Agency) for case management assistance.
- The contacted Medi-Cal program must provide case management to the class member or work with the Medi-Cal program primarily responsible for case management to secure nursing services.

# DHCS Oversight

- DHCS will maintain an email address that class members can contact with questions or concerns about private duty nursing or the case management services they are receiving.
- When contacted by a class member, DHCS will:
  - Forward the message to the appropriate service delivery system (CCS, managed care, waiver agency);
  - Respond to the sender to acknowledge receipt and describe any action taken in response to the inquiry;
  - If the class member notifies DHCS that the issue is not resolved, DHCS will take other actions it deems appropriate to assist the sender to resolve the issue.
- Audits of managed care plans and monitoring the service delivery system for compliance with agreement.



# **Hearing on Final Approval of the Agreement and Next Steps**





# Dates to Remember

- June 13, 2019: deadline for Defendants to mail class notice with information about the settlement agreement and how to comment or object.
- July 11, 2019: deadline for filing objections.
- August 8, 2019: final approval hearing.
- 31 days following final approval: settlement agreement takes effect.

# RESOURCES



## **Disability Rights California**

Visit our settlement website:

<https://www.disabilityrightsca.org/cases/in-v-kent>

Phone number for questions related to the lawsuit, the settlement agreement, or questions about access to Medi-Cal in-home nursing for children and youth: (888) 852-9241

For all other inquiries: (800) 776-5746

## **Department of Health Care Services**

DHCS Website Devoted to EPSDT Skilled Nursing Services:

<https://www.dhcs.ca.gov/services/Pages/EPSDT-Skilled-Nursing-Services.aspx>

Statement on DHCS Website: For questions regarding approved EPSDT in-home private duty nursing hours, or to report unresolved partial service or no service:

[EPSDT@dhcs.ca.gov](mailto:EPSDT@dhcs.ca.gov)