



September 9, 2010

**Via Facsimile and E-Mail**

David Maxwell-Jolly  
Director  
California Department of Health Care Services  
Fax No: 916-440-7404  
Email: [david.maxwell-jolly@dhcs.ca.gov](mailto:david.maxwell-jolly@dhcs.ca.gov)

**RE: California Public Records Act Request**

Dear Dr. Maxwell-Jolly,

We are writing on behalf of the American Civil Liberties Union of Northern California (ACLU), Lambda Legal, and the HIV and AIDS Legal Services Alliance (HALSA) to request a copy of the following records, which we understand to be in the possession of your agency, the California Department of Health Care Services (DHCS), and available to the public:<sup>1</sup>

1. Any and all contracts between DHCS and AIDS Healthcare Foundation (AHF) for the provision of services to HIV-positive Medi-Cal recipients;
2. Any and all additional guidelines or instructions provided by DHCS to AHF related to AHF's provision of services to HIV-positive Medi-Cal recipients;
3. Any and all forms provided by DHCS and/or Medi-Cal to Medi-Cal recipients seeking the recipients' consent or authorization to disclose their HIV-positive status and/or identifying information to AHF;
4. Any and all forms provided by DHCS and/or Medi-Cal to Medi-Cal recipients seeking the recipients' consent or authorization to disclose their HIV-positive status and/or identifying information to any contractor providing HIV/AIDS-related treatment or disease management services;

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<sup>1</sup> California Public Records Act (Cal. Gov't Code § 6250 *et seq.*); *see also* Cal. Const. Art. I § 3(b).

5. Any and all documentation regarding any consideration of whether DHCS and/or Medi-Cal would seek consent or authorization from Medi-Cal recipients prior to disclosing their HIV-positive status and/or identifying information to AHF;
6. Any and all documentation regarding any consideration of whether DHCS and/or Medi-Cal would seek consent or authorization from Medi-Cal recipients prior to disclosing their HIV-positive status and/or identifying information to any contractor providing HIV/AIDS-related treatment or disease management services;
7. Any and all documentation regarding the disclosure by DHCS to AHF of identifying information of Medi-Cal recipients, as referenced in a March 25, 2010 e-mail from Cindy Macklin to Courtney Mulhern-Pearson (attached hereto as Exhibit 1), with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
8. Any and all documents regarding any disclosure (other than that referenced in No. 7, above) by DHCS to AHF, or any other contractor providing HIV/AIDS-related treatment or disease management services, of identifying information of HIV-positive Medi-Cal recipients, with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
9. Any and all analyses regarding DHCS's legal basis for disclosing identifying information of HIV-positive Medi-Cal recipients to AHF, as referenced in an April 13, 2010 e-mail from Cindy Macklin to Melanie Moreno (attached hereto as Exhibit 2);
10. Any and all documentation regarding reports submitted to DHCS by AHF pursuant to Agreement Number 07-65584 (between DHCS and AHF) or any associated or similar agreements or provisions between DHCS and AHF, including but not limited to any reports described in Agreement Number 07-65584, Exhibit A, Attachment I ("Contract Performance"), Section A.3 ("Reporting Requirements");
11. Any and all documentation regarding assessments or evaluations of AHF's performance under Agreement Number 07-65584, including any documents required under Agreement Number 07-65584, Exhibit A, Attachment I, Section C.6 ("Monitoring and Evaluation");
12. Any and all documentation regarding the disclosure by DHCS to AHF of Medi-Cal recipients' claims data, including disclosures pursuant to Agreement 07-65584, Exhibit A, Attachment I, Section D ("Utilization Monitoring"), with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
13. Any and all documentation relating to AHF's marketing plans for an HIV/AIDS Disease Management Pilot Program (DMPP) and/or DHCS's review of such plans, including any and all documentation related to activities and/or obligations pursuant to Agreement 07-65584, Exhibit A, Attachment I, Section F ("Member-Services-Marketing");

14. Any and all documentation regarding AHF's outreach and assessment policies and procedures for HIV/AIDS DMPP and/or DHCS's review of such policies and procedures, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit A, Attachment I, Section G.1 ("Member Services-Scope of Services," "Outreach and Assessment");
15. Any and all documentation regarding AHF's enrollment or disenrollment of potential members in HIV/AIDS DMPP, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit A, Attachment I, Section G.2 ("Member Services-Scope of Services," "Enrollment/Disenrollment"), with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
16. Any and all documentation regarding the Implementation Plan and Deliverables for Agreement 07-65584, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit A, Attachment I, Section J ("Implementation and Deliverables");
17. Any and all documentation regarding progress reports or meetings, findings, conclusions, recommendations, and final reports related to Agreement 07-65584, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit E, ("Additional Provisions"), Section 8 ("Progress Reports or Meetings");
18. Any and all documentation regarding AHF's efforts to contact potential members and members of HIV/AIDS DMPP and DHCS's determinations of whether AHF made such efforts, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit E, Section 22 ("Notification of Potential Members"), with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
19. Any and all documentation regarding any audit of AHF's performance of Agreement 07-65584, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit E, Section 26 ("Audit");
20. Any and all documentation regarding Confidentiality of Information concerning a potential member or member under Agreement 07-65584, including any and all documentation relating to activities and/or obligations pursuant to Agreement 07-65584, Exhibit E, Section 28 ("Confidentiality of Information").
21. Any and all documentation related to requests by AHF to DHCS to disclose identifiable information concerning a potential member or member, DHCS's responses to such requests, whether AHF has retained or will retain identifying information of HIV-positive potential members or members at the termination of the Agreement, and any written procedures for maintenance by AHF of such information, with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;

22. Any and all documentation relating to Agreement 07-65584, Exhibit G (“HIPAA Businesses Associate Addendum”), including, but not limited to, any and all documentation regarding audits, inspection, enforcement actions, termination, documentation of disclosures, and any breach, with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
23. Any and all documentation relating to the statement made by Cindy Macklin in a March 25, 2010 e-mail to Courtney Mulhern-Pearson (attached hereto as Exhibit 1) that: “We [DHCS] have received data from the vendor [AHF] that explains why approximately 10 percent of the eligibles do not enroll in the program (e.g. beneficiary expired, does not have condition, bad address, bad phone #, etc.),” with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
24. Any and all complaints or complaint logs regarding unsolicited and/or unauthorized contact by AHF of Medi-Cal recipients, with any identifying information (e.g., names and contact information) of Medi-Cal recipients redacted;
25. Any and all documentation regarding DHCS’s position on, interpretation of, and/or consideration of AB 2590; and
26. Documentation which sets forth, and/or is sufficient to reflect, the total number of HIV-positive Medi-Cal patients in California during the first six months of 2010 and during each of the following years: 2007, 2008, 2009.

Please respond to this request within ten days,<sup>2</sup> either by providing all the requested information or by providing a written response setting forth the legal authority on which you rely in failing to disclose each document.<sup>3</sup> This request applies to all documents in the agency’s possession, including – but not limited to – emails, video and audiotapes, and other electronic records. It also includes documents that were created by a member of another government agency or a member of the public which are in the custody or control of DHCS.<sup>4</sup> If specific portions of any documents are exempt from disclosure, please identify the exempt portions, provide the non-exempt portions, and state the bases for failing to disclose the exempt portions.<sup>5</sup>

If we can provide any clarification that will help identify responsive documents or focus this request,<sup>6</sup> please contact Elizabeth Gill at (415) 621-2493, ext. 437 or [egill@aclunc.org](mailto:egill@aclunc.org).

Because the ACLU, Lambda Legal, and HALSA are nonprofit civil rights organizations, we request that you waive any fees that would be applicable normally to a Public Records Act

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<sup>2</sup> Cal. Gov’t Code § 6253.

<sup>3</sup> Ca. Gov’t Code § 6255.

<sup>4</sup> See *Cal. State Univ. v. Superior Court*, 90 Cal. App. 4th 810, 824-25 (1999).

<sup>5</sup> Cal. Gov’t Code § 6253(a).

<sup>6</sup> See Cal. Gov’t Code § 6253.1.

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request.<sup>7</sup> We also request that any records maintained in electronic format be provided in that same format, to avoid copying costs.<sup>8</sup> However, should you be unable to provide electronic records to us in electronic form, we will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. If you anticipate that copying costs will exceed \$50, please contact Elizabeth Gill before making any copies. Otherwise, please copy and send the copies as soon as possible to Ms. Gill's attention at the ACLU of Northern California, and we will promptly pay the required costs.

Thank you for your time and your prompt attention to this matter.

Sincerely,



Elizabeth Gill  
Staff Attorney  
LGBT & AIDS Project  
ACLU of Northern California

Peter Renn  
Staff Attorney  
Western Regional Office  
Lambda Legal

Margaret Brewer  
Legal Director  
HIV and AIDS Legal Services  
Alliance

Attachments:

- (1) March 25, 2010 email from Macklin to Mulhern-Pearson
- (2) April 13, 2010 email from Macklin to Moreno

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<sup>7</sup> See *N. County Parents Org. v. Dep't of Educ.*, 23 Cal. App. 4th 144 (1994).

<sup>8</sup> Cal. Gov't Code § 6253.9.

# ATTACHMENT 1

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**From:** Macklin, Cindy (DHCS-LGA) [mailto:Cindy.Macklin@dhcs.ca.gov]  
**Sent:** Thursday, March 25, 2010 11:27 AM  
**To:** Mulhern-Pearson, Courtney  
**Cc:** Gallegos, Carol (DHCS-LGA); Stratton, Terri (DHCS-LGA)  
**Subject:** FW: Follow up questions AIDS data/Disease Mgmt

Courtney,

Here are the responses to your questions. I hope this information is helpful. Let me know if you need anything else.

Thank you,

*Cindy Macklin*

Legislative Coordinator  
Legislative & Governmental Affairs  
Department of Health Care Services  
[cindy.macklin@dhcs.ca.gov](mailto:cindy.macklin@dhcs.ca.gov)  
Phone: 916.440.7520; Fax: 916.440.7510

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1. What were the parameters used to provide lists of Medi-Cal beneficiaries to AHF of potential enrollees? Were these lists comprised only of individuals with HIV/AIDS diagnoses, or was this a broader list? Was there any circumscribing of the list that relates to health condition? What personal information regarding the beneficiaries was included in the list?

The HIV/AIDS Disease Management Pilot Program (DMPP) provides Disease Management services to those persons who meet all of the following requirements:

1. Are Medi-Cal eligible;
2. Age 22 years or older;
3. Have a primary or secondary diagnosis of HIV/AIDS;

All Medi-Cal beneficiaries who meet the qualifications noted above will be considered eligible for the HIV/AIDS DMPP except those who:

1. Have restricted/emergency only Medi-Cal;
2. Are eligible for Medicare;
3. Have other health coverage that provides comparable DM services (e.g. Medi-Cal Managed Care)
4. Reside in nursing facilities;
5. Reside in all level of Intermediate Care Facilities for the Developmentally Disabled;
6. Have a Medi-Cal eligibility period that is less than 3 months;

7. Have a Medi-Cal eligibility period that is only retroactive;
8. Participate in Medicaid waiver programs, including Home and Community Based, Freedom of Choice and Research and Demonstration waivers, but not including the Hospital Financing/Mental health waiver;
9. Receive comparable case management services from another program (e.g. medical Case Management, AIDS Case Management Program, Targeted Case Management), or;
10. Receive services related to transplants, cancer severe trauma, end stage renal disease, and/or hospice.

The Recruitment file for the beneficiaries that were considered potentially eligible based on the criteria above contained:

1. Name
  2. Address
  3. Phone number
  4. Other information not considered personal health information (e.g. sex, spoken language, written language, etc.)
2. Is Medi-Cal data coded by diagnosis? How many people on Medi-Cal are HIV positive?

There are various forms of Medi-Cal data including Paid Claims data and Eligibility data. In searching for potential DMPP eligibles, Paid Claims data is searched first using the criteria above (including diagnosis). Potential Eligibles identified through Paid Claims data are then processed through the Medi-Cal Eligibility Determination System (MEDS) for the remaining criteria to establish the final potential eligible list. An initial analysis of the number of estimated Medi-Cal beneficiaries that might qualify for the DMPP was determined to be approximately 5,400 individuals statewide.

3. Please provide us with the specific code sections in state and federal law that prevent DHCS from sharing HIV data with AHF or other potential contractors. Which specific sections prevented DHCS from setting up this disease management program the same way that the McKesson program was set up? What code sections would need to be amended in order for AHF to obtain the information that it wanted?

State law: Health and Safety Code section 120980 imposes civil penalties for negligently or willfully disclosing the results of an HIV test except pursuant to a written authorization. Giving someone a list of people whose HIV status is positive is tantamount to disclosing the results of the test.

4. What would the measure of success be in a DM contract such as this? What are the enrollments rates in the opt out programs that McKesson manages? How does the Medi-Cal measure savings to the state for this population? Does Medi-Cal have data on other opt in programs, like New York's, to compare contract performance to?



The primary measures of success included cost-neutrality and improved health outcomes. UCLA Center for Health Policy Research (CHPR) will analyze clinical, humanistic, financial and plan operations metrics in an effort to determine the success of the program.

McKesson's enrollment rates exceed 90 percent of the eligible population for their DM program.

For the HIV/AIDS DMPP, savings are calculated by UCLA CHPR using a complex formula that compares baseline costs for the eligible group to actual costs for the intervention group (i.e. pre-post evaluation methodology). In the McKesson DM program, cost savings are calculated based on costs for a control group versus actual costs for the intervention group.

Medi-Cal does not have exact figures for other opt-in programs in other states.

5. Does Medi-Cal have any data showing that claims or personal health care data would increase the rate of enrollment in an opt-in program such as this?

No. We have received data from the vendor that explains why approximately 10 percent of the eligibles do not enroll in the program (e.g. beneficiary expired, does not have condition, bad address, bad phone #, etc.).

# ATTACHMENT 2

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From: Macklin, Cindy (DHCS-LGA) [Cindy.Macklin@dhcs.ca.gov]  
Sent: Tuesday, April 13, 2010 4:18 PM  
To: Moreno, Melanie  
Cc: Gallegos, Carol (DHCS-LGA); Stratton, Terri (DHCS-LGA)  
Subject: RE: AB 2590 (Lowenthal)

Melanie,

There isn't a specific exemption anywhere in statute; the issue is complex with numerous statutes addressing the issue. I don't have any further information now, but I can tell you our legal staff is reviewing this and we will be discussing it soon in a telephone call with the bill's sponsor. Our legal staff was also very involved in the RFP and the contract for the HIV/AIDS DM pilot and made sure everything complied with statutory requirements.

Thank you,

Cindy Macklin  
Legislative Coordinator  
Legislative & Governmental Affairs  
Department of Health Care Services  
cindy.macklin@dhcs.ca.gov<mailto:cindy.macklin@dhcs.ca.gov>  
Phone: 916.440.7520; Fax: 916.440.7510

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From: Moreno, Melanie [mailto:Melanie.Moreno@asm.ca.gov]  
Sent: Tuesday, April 13, 2010 11:50 AM  
To: Macklin, Cindy (DHCS-LGA)  
Cc: Gallegos, Carol (DHCS-LGA); Stratton, Terri (DHCS-LGA)  
Subject: RE: AB 2590 (Lowenthal)

Also, can you tell me how you got around H&S Section 120980 when releasing the names/addresses of HIV positive Medi-Cal enrollees? Is there some exemption somewhere in the statutes?