SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME:	**August 1, 2014 10:00 a.m.**	**DEP. NO.:**	**24**
JUDGE:	**HON. SHELLEYANNE W. L. CHANG**	**CLERK:**	**E. HIGGINBOTHAM**
WESTSIDE CENTER FOR INDEPENDENT LIVING, a corporation; SOUTHERN CALIFORNIA REHABILITATION SERVICES, INC., a corporation; COMUNITIES ACTIVELY LIVING INDEPENDENT & FREE, a corporation; BLANE BECKWITH; NANCY BECKER KENNEDY; MANUEL PUIG-LLANO, M.D. and LOS ANGELES COUNTY MEDICAL ASSOCIATION, a corporation, **Petitioners,** **vs.** **CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES and TOBY DOUGLAS, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES,** **Respondents.**		**Case No. 34-2014-80001884**	
Nature of Proceedings:	**MOTION FOR PRELIMINARY INJUNCTION**		

The following shall constitute the Court's tentative ruling on the above matter, set for hearing in Department 24, on Friday, August 1, 2014, at 10:00 a.m. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

If a hearing is requested, oral argument shall not exceed 25 minutes per side.

Petitioners sought an ex parte request for a stay, which the Court declined to hear on July 11, 2014. With the consent of the parties, the Court deemed Petitioner's ex parte request to be a motion for a preliminary injunction, and set a hearing on the matter for August 1, 2014. After considering the extensive briefing and other documents filed by the parties, Petitioner's request for a preliminary injunction is **DENIED**.

At issue in this case is the Coordinated Care Initiative (CCI), which is jointly implemented by Respondent Department of Health Care Services (DHCS or Respondent) and the federal government, through the Center for Medicare and Medicaid Services (CMS). Petitioners seek (1) "a stay of the entire CCI program," (2) "a stay of use of the present CCI program notice enrollment forms," (3) a "stay" preventing "auto-enrollment" of dual-eligible beneficiaries into any CCI plan, and (4) a "stay" of voluntary enrollment

of dual-eligible persons into any managed plan for Medicaid services. (*See* Petitioners' Memorandum of Points and Authorities, pp. 3-4.)

I. LEGAL BACKGROUND

Medicaid is a cooperative federal-state program in which the federal government and participating state governments share the costs of medical treatment for generally low-income individuals. (42 U.S.C., § 1396, *et seq.*) Medi-Cal is California's program effectuating the federal Medicaid program.(*Children's Hospital and Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 747.) DHCS administers the Medi-Cal program.

In 2012, the Legislature established the Coordinated Care Initiative (CCI), through SB 1008. The CCI allows DHCS to operate a "demonstration project" coordinating Medicare and Medicaid benefits. DHCS may contract with CMS and "demonstration sites" to effectuate the CCI program, "which is overseen by the state." (*See* Welf. & Inst. Code, §§ 14132.275; 14182.16.)

The pertinent components of the CC1 program are as follows.

The CCI program is directed toward "dual-eligibles," or individuals who qualify for the federal Medicare and state Medi-Cal programs.[1] (DHCS Request for Judicial Notice (RJN), Exh. C, p. 2.)

The CCI program will allow dual-eligibles, through a demonstration project, to "receive a continuum of services, [] that maximize the coordination of benefits between the Medi-Cal and Medicare programs and access to the continuum" of services. (Welf. & Inst. Code, §14132.275, subd. (b).)[2] Stated another way, dual-eligibles in the CCI program will be enrolled into single managed health care plans. Additionally, the CCI requires dual-eligibles "to be assigned as mandatory enrollees into new or existing Medi-Cal managed care health plans for their Medi-Cal benefits in [CCI] counties." (*Id*., § 14182.16, subd. (a).)

The CCI program will be implemented in the following counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, and Santa Clara. (Welf. & Inst. Code, § 14182.16, subd. (b).)

The Legislature has tasked DHCS with developing an enrollment process for the CCI counties and notifying dual-eligibles of the CCI program. (Welf. & Inst. Code, § 14182.17.) The specific notification requirements are contained in Section 14182.17,

[1] Dual-eligibles qualify for Medicare generally, through being elderly or disabled, and qualify for Medi-Cal by virtue of having low income. "They are among the most chronically ill and complex enrollees in both programs." (Respondent's RJN, Exh. C, p. 2.)

[2] The purpose of the pilot program is to develop effective health care models that integrate services authorized under the federal Medicaid Program and the federal Medicare Program. (Welf. & Inst. Code, § 14132.275, subd. (b).)

subdivision (d)(1), directing DHCS to "ensure timely and appropriate communications with beneficiaries."

For example, at least 90 days prior to enrollment, DHCS must send a notice informing dual-eligibles how the Medi-Cal system will change, when the changes will occur, and who they can contact for help with questions. (Welf. & Inst. Code, § 14182.17, subd. (d)(1)(A).)

DHCS must also furnish enrollment materials to dual-eligibles that inform them that they may stay in "fee-for-service" Medicare, rather than the CCI program, but that they must choose this option. (*Id*., § 14182.17, subd. (d)(1)(H)(iii).)

The 90-day notice and enrollment materials "shall be in not more than a sixth-grade reading level." (*Id*., § 14182.17, subd. (d)(1)(A), (d)(1)(H)(ii).)

Prior to enrollment of dual-eligibles, DHCS is sending out a 90-day notice, a 60-day notice, and a 30-day notice. (Petitioners' RJN, Exhs. 10-14.)

On March 27, 2013, DHCS and CMS entered a MOU for operating the CCI program. (Petitioners' RJN, Exh. 7.) DHCS, CMS and each health plan implementing the CCI program also entered into three-way contracts. (Declaration of Margaret Tatar, ¶9.)

The CCI programs have enrolled or will enroll dual-eligibles on a rolling basis. As of July 2014, approximately 155,000 dual-eligibles received 90-day notices for CalMediConnect, the pertinent CCI program. [3] As of July 2014, approximately 39,731 beneficiaries "have actively enrolled" in the program. (Supplemental Declaration of Javier Portela, ¶¶3- 6.) On July 29, 2014, either 90-day, 60-day, or 30-day notices will be sent out to the next five counties which are "Cal MediConnect ready." (*Id*. ¶18.) These notices were recently revised and are attached to the Supplemental Declaration of Javier Portela. (*Id*., ¶ 9, Exh. 2 thereto.)

II. DISCUSSION

a. Standard of Review for Injunctive Relief

"In deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.... The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the

[3] Petitioners' MPAs state that "active enrollment" in the CalMediConnect plans began on April 1, 2014 in San Mateo, San Bernardino, San Diego, Los Angeles, and Riverside counties. "Auto-enrollment" began on April 1, 2014 for San Mateo County; on May 1, 2014 in Riverside, San Bernardino and San Diego Counties; and on July 1, 2014 in Los Angeles County. (Petitioners MPAs, p. 9:9-13) (citing Petitioners' RJN, Exhs. 28-29).)

less must be shown on the other to support an injunction." (*See Butt v. California* (1992) 4 Cal.4th 668, 677-678.)

The party seeking injunctive relief bears the burden of showing all elements necessary to support issuance of a preliminary injunction. (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

b. Requests for Judicial Notice; Evidentiary Objections

The Court **GRANTS** the unopposed requests for judicial notice filed by Petitioners and Respondents.

Respondents have filed evidentiary objections to eight declarations filed by the Petitioners. The objections, however, do not quote from or otherwise specify the offending paragraphs or phrases, rather, they appear to request the Court to search for and strike the allegedly offending material for each declaration. The Court declines to do so. Accordingly, Respondents' evidentiary objections are **OVERRULED**.

c. Likelihood of Prevailing on the Merits

Petitioners argue that they have a likelihood of prevailing on the merits of their writ petition, which seeks writs of mandate directing respondents to refrain from implementing the CCI in its entirety, stop "auto-enrolling" or "passive enrollment" of dual-eligible beneficiaries in the eight CCI counties, and staying use of the CCI notice and enrollment materials.

Petitioners claim that the CCI program is void and that DHCS is implementing the program *ultra vires*, and that the notices and enrollment materials do not comply with the pertinent statute. The Court addresses each argument separately.

i. DHCS Has Authority to Implement the CCI Program

Petitioners argue that the CCI program is void in its entirety and the Court should stay its implementation. This is because the CMS/DHCS Memorandum of Understanding to implement the CCI program (MOU) was executed on March 27, 2013—*after* the statutory deadline of February 1, 2013, established by Section 10 of SB 1008. (Petitioners RJN, Exh. 1, p. 26.) Because the MOU was not timely entered, Petitioners contend that this rendered all subsequent actions void. The Court rejects this argument.

SB 1008 established the CCI program by adding and amending various existing provisions of the Welfare and Institutions Code, including adding Article 5.7 (commencing with Section 14186) of Chapter 7 of Part 3 of Division 9. Section 10 of SB 1008 ("Section 10") provided that:

> if DHCS "has not received by February 1, 2013, federal approval, or notification indicating pending approval, of a mutual rate-setting process,

> shared federal savings, and a six-month enrollment period in the [CCI] demonstration project [], effective March 1, 2013, [Welfare and Institutions Code][4] Sections 14132.275, 14182.16, and 14182.17 and [Welfare and Institutions Code] Article 5.7 (commencing with Section 14186) of Chapter 7 shall become inoperative…." (Stats. 2012, ch. 33 § 10; Petitioners' RJN, Exh. 1, p. 26.)

Respondents initially argued that the MOU complied with Section 10; however, they appear to abandon that argument in their supplemental opposition brief, and instead argue that because Section 10 of SB 1008 was repealed, DHCS has authority to implement the CCI program.

On June 27, 2013, the Governor approved SB 94, an act to amend and add various provisions of the Welfare and Institutions Code and "repeal Section 10 of Chapter 33 of the Statutes of 2012 [SB 1008]."[5] (Stats. 2013, Ch. 37; Petitioners' amended RJN, Exh. 2, p. 1.)

The Legislative Counsel's Digest stated that SB 94 "*would also repeal the provisions conditioning the operation* of Chapter 45 of the Statutes of 2012 and specified provisions of Chapter 33 of the Statutes of 2012 *on receipt of federal approval or notification of pending approval by February 1, 2013*. The bill would instead condition implementation of the Coordinated Care Initiative, as defined, on whether the Director of Finance estimates that the Coordinated Care Initiative will generate net General Fund savings, as specified." (Stats. 2013, Ch. 37 (emphasis added); Petitioners' amended RJN, Exh. 2, p. 2.)

Petitioners argue that because DHCS did not receive federal approval or pending approval by February 1, 2013, the statutes pertaining to the CCI program—Sections 14132.275, 14182.16, and 14182.17 and Welfare and Institutions Code Article 5.7—became inoperative and were repealed.

The Court agrees that DHCS had not received timely federal approval or pending federal approval under Section 10.[6] The issue is whether Section 10's language rendering Sections 14132.275, 14182.16, and 14182.17 and Welfare and Institutions Code Article 5.7 "inoperative" repealed the statutes.

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[4] Unless otherwise specified, all statutory references shall be to the Welfare and Institutions Code.

[5] SB 94 amended Sections 10101.1, 12300.7, 12306, 12306.1, 12306.15, 14182.16, 14182.17, 14186, 14186.1, 14186.2, 14186.3, 14186.36, and 14186.4 and "amend[ed] and add[ed] Sections 14132.275, 14183.6, and 14301.1," and added Sections 14132.277, 14182.18, and 14186.11. Thus, SB 94 added some new provisions of the Welfare and Institutions Code, but amended other provisions.

[6] DHCS initially contended that the federal government had sent a letter indicating pending federal approval of the CCI program. However, DHCS did not reiterate this point in its supplemental opposition. The Court has examined the letter and concludes that while the federal government expressed hope that a program could continue, the letter was not pending federal approval within the meaning of Section 10. (Petitioner's RJN, Exh. 6.)

Here, the Legislature used the word "inoperative," rather than "repealed," in Section 10. Petitioners ignore the distinction between these two words. For example, "a statute declared unconstitutional is void in the sense that it is inoperative or unenforceable, but not void in the sense that it is repealed or abolished." (*Kopp v. Fair Political Practices Commission* (1995) 11 Cal.4th 607, 623.) Thus, unconstitutional or "inoperative" statutes can be reformed. (*Id*. pp. 632-625.)

Petitioners argue that SB 94 could not amend the pertinent statutes that became inoperative, because "a statute amending a section of a repealed statute is void." (Gov. Code, § 9609.) However, Government Code section 9609 is inapplicable: the statutes affected by Section 10 were not "repealed," but became "inoperative." Petitioners do not address this distinction or argue that the Legislature lacked the authority to reform statutes that became "inoperative."

Section 94 clearly reflects the Legislature's intent to continue the CCI program and "repeal" the provisions conditioning the program upon federal approval (or pending approval) by February 1, 2013, thereby removing a condition precedent for implementation of the program.

The Court concludes that the Legislature had the power to reform the pertinent CCI statutes after they became "inoperative." Supporting this view is the principle that all intendments favor the exercise of the Legislature's plenary authority to legislate; if there is any doubt as to the Legislature's power to act in a given case, the doubts should be resolved in the favor of the Legislature's action. (*Methodist Hospital of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691.)

Moreover, the Court cannot accept Petitioners' argument that DHCS is acting *ultra vires* or without authority to implement the CCI program, simply because it did not receive timely approval or pending approval under Section 10.

The Court recognizes that an agency's actions in excess of powers conferred on it by statute are void. (*Rich Vision Centers, Inc. v. Board of Medical Examiners* (1983) 144 Cal.App.3d 110, 114.) However, it is well known that agencies have express powers conferred upon them by statute and powers that may be implied from the statute. (*Ibid.*; *see also Glib v. Chiang* 186 Cal.App.4th 444, 463.) As discussed above, the Legislature clearly intended that the CCI program be implemented, and DHCS' actions are consistent with that Legislative intent.

Further, Petitioners cite no authority to support the argument that, under this particular factual scenario, DHCS is acting *ultra vires*, beyond the general proposition that an agency that exceeds the scope of its statutory authority acts *ultra vires*. Additionally, the case cited by Petitioners, *Water Replenishment Dist. of S. Cal v. City of Cerritos* (2012) 202 Cal.App.4th 1063, 1072, is simply inapplicable. First, that case is factually inapposite as DHCS is a state agency, not a local governmental entity. Moreover, that case held that the doctrine of *ultra vires* would not apply to the trial court's appointment of the district

as watermaster, because the district's power would be judicially authorized. The case holding is thus, inapposite.

Because DHCS's actions are consistent with the Legislative intent, and because Petitioners failed to present any applicable legal authority that DHCS acted in excess of its authority, the Court concludes that Petitioners cannot prevail on the merits of their argument that DHCS' implementation of the CCI program is a void act.

Additionally, Petitioners cannot show that they are entitled to relief on the second prong of the test for injunctive relief, as further discussed below.

ii. Whether the Notices and Enrollment Materials are Defective

Petitioners also argue that a stay is warranted because the notices and enrollment materials fail to comply with statutory requirements.

Petitioners' challenges to the notices and enrollment materials are based on DHCS' efforts to effectuate Section 14184.17, subdivision (d)(1), which requires DHCS to ensure "timely and appropriate communications" with dual-eligibles, and specifies how such communications shall occur. The Court concludes that Petitioners have not shown that DHCS's communications are so defective as to warrant a stay of their implementation.

Petitioners argue that the notice and enrollment materials violate Section 14182.17 subdivision (d)(1) because (1) they are not drafted at a sixth-grade level, (2) the 90-day notice does not apprise dual-eligibles how and when the Medi-Care system will change, and (3) the enrollment materials do not plainly state that the beneficiary may choose fee-for-service Medicare or Medicare advantage, and "opt out" of the CCI program.

Petitioners have not met their burden of showing that they are likely to prevail on the merits of these arguments.

Both sides have presented detailed declarations from experts opining why or why the notices are not confusing or defective. Petitioners ask the Court to accept the conclusions of Petitioners' expert and disregard the expertise and findings of DHCS.

As a preliminary matter, DHCS' interpretation of how to comply with Section 14182.17(d)(1)'s mandate to "ensure timely and appropriate communications" is entitled to deference. This is because DHCS is tasked with communicating with dual-eligibles, including drafting the notices and enrollment materials and developing and outreach and education program. (*See Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436; *see also Managed Pharmacy Care v. Sebilius* (2013) 716 F.3d 1235, 1241-1242, 1247-48 [holding that CMS' approval of Medicaid State Plan Amendment is entitled to deference].)

1. Requirement that 90-Day Notice and Enrollment Materials be at a Sixth-Grade Reading Level

Petitioners argue that the notices and enrollment materials violate Section 14182.17's directive that they be written at not more than a sixth-grade reading level.[7] Petitioners submit the declaration of Dr. Elfrieda Hiebert, who contends that the notices and enrollment materials, and revised notices exceed a sixth grade level.

In enacting Section 14182.17, the Legislature did not limit DHCS's discretion to determine under what mechanism a "sixth-grade reading level" is determined. DHCS initially concluded that the notices were "above a sixth grade reading level," under the "SMOG"[8] test, because they necessarily included words that described the services. These words include "Medicare, Medi-Cal, CalMediConnect, In-Home Supporting Services, Multipurpose Supportive Services Program, Community-Based Adult Services, California Health Insurance & Advocacy Program, Program of All-Inclusive Care for the Elderly, [and] Ombudsman." (Declaration of Peter Harbage, ¶20.) However, when these words were excluded, the notices, were at a 6.4, 6.5 and 5.8 grade level, respectively, under the SMOG test. (Id. ¶22.)

The Court also notes that DHCS extensively worked to assure that the notices and enrollment materials were comprehensible, including testing of and outreach to affected beneficiaries and seeking input from numerous interested stakeholders. DHCS also revised the notices to make them more comprehensible, and has mailed or intends to mail additional notices not required by Section 14182.17.

The Court defers to DHCS's expertise and recognizes its extensive efforts to make the materials understandable to the affected population. Because DHCS is afforded discretion in determining that the materials were comprehensible and met the statutory directives, the Court concludes that Petitioners have not shown that they are likely to prevail on the merits that the notices and enrollment materials violate Section 14182.17.

2. Requirement that 90-Day Notice Inform Beneficiaries How and When Medi-Cal System Will Change

Petitioners also argue that the 90-day notice violates Section 14182.17, subdivision (d)(1)(A)'s requirement that the notice must inform beneficiaries "how the Medi-Cal system of care will change, when the changes will occur, and who they can contact for assistance with choosing a managed care health plan or with problems they encounter."

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[7] Section 14182.17, subd. (d)(1)(A), (d)(1)(H)(ii) requires that the 90-day notice and enrollment materials not be at more than a sixth grade level.

[8] SMOG is an acronym for "Simple Measure of Gobbledygook" and is a measure of readability that estimates the years of education to understand written material.

The 90-day notice states that the beneficiary will receive more information about his or her choices "soon." (Petitioners' RJN, Exh. 8, p. 1.) It also instructs beneficiaries to watch their mail for a packet from Health Care Options in about one month.

Although reasonable minds could differ on whether DHCS could have provided more specific information as to when the plan would change, the notices' use of the word "soon" does not demonstrate that the notice is inconsistent with the statute. Moreover, the statute does not require that DHCS specify a particular month, date and year of the change. Additionally, the notice states that more materials will come in a month, which would necessarily pre-date any change.

Petitioners appear to ask the Court to re-write the notice, a task that is within the discretion and expertise of DHCS, not the Court. Although the notice could be drafted differently, this assertion is not enough to show that Petitioners are likely to prevail on the merits of this argument.

3. Whether Notices Inform Dual-Eligibles How to Stay With a Fee-For-Service Provider

Petitioners also argue that the enrollment materials do not plainly state that the dual-eligible beneficiary may choose a fee-for-service Medicare or Medicare Advantage, rather than being enrolled in the CCI program, but must return a form to do so.

Petitioners cite Section 14182.17, subd. (d)(1)(H). This subdivision provides in part:

> "The materials shall plainly state that the beneficiary may choose fee-for-service Medicare or Medicare Advantage, but must return the form to indicate this choice, and that if the beneficiary does not return the form, the state shall assign the beneficiary to a plan and all Medicare and Medi-Cal benefits shall only be available through that plan." (*Id.*, § 14182.17, subd. (d)(1)(H)(iii).)
>
> "The materials shall plainly state that the beneficiary shall be enrolled in a Medi-Cal managed care health plan even if he or she chooses to stay in fee-for-service Medicare." (*Id.*, § 14182.17, subd. (d)(1)(H)(iv).)
>
> The materials must also "plainly explain" the plan choices, continuity of care provisions, how to determine which providers are enrolled in each plan, and how to obtain assistance. (*Id.*, § 14182.17, subd. (d)(1)(H)(v).)

Petitioners argue that the enrollment materials do not comply with the statute because the enrollment materials require dual-eligible beneficiaries to "choose a Medi-Cal" plan, if they wish to stay in "regular" fee-for-service Medicare. Petitioners contend that the enrollment materials are confusing, because they do not list "Stay in Medicare" as its own option, but require beneficiaries to make a "non-Medicare" selection (chose a Medi-Cal plan) to remain in the fee-for-service Medicare or Medicare advantage.

Petitioners cite to the "CalMediConnect Plan Choice Book" issued by DHCS to Los Angeles, Riverside, San Bernardino and San Diego counties ("Choice Book"). (Petitioners' RJN, Exhs. 11-14.)

The Court has reviewed the Choice Book. The pertinent provisions follow.

The Choice Book instructs the recipient to choose a health plan by either: calling a representative, visiting the enrollment specialist in person, or "mail[ing] in your choice form by [date to be specified later]. Complete the Choice Form in this book and mail in the postage paid envelope provided." (Petitioner's RJN, Exhs. 11-14, p. 3.)

The Choice Book informs the recipient that "you must choose one of these options" (1) CalMediConnect Plan, (2) Medi-Cal Plans for Long Term Services and Supports, or (3) Program of All Inclusive Care for the Elderly. (Petitioner's RJN, Exhs. 11-14, p. 4.) Under the heading entitled "CalMediConnect Plan," the Choice Book states: "You can choose to stay in regular Medicare. If you choose to stay in regular Medicare, you will still need to choose a Medi-Cal plan." (*Ibid*.)

Under the heading "Health Plan Choice Form Instructions," in bold font is the statement that "If you do nothing, you will be enrolled in a CalMediConnect plan." (Petitioner's RJN, Exhs. 11-14, p. 7.) Further on that page it instructs beneficiaries to "Pick a Cal MediConnect Plan [¶] If you want to get both Medicare and Medi-Cal benefits in one plan so they can work together, fill in the circle to the left of the CalMediConnect plan you want." (*Ibid*.) Further on that page, it states "Pick a Medi-Cal plan for your Medi-Cal services. [¶] If you do not pick a CalMediConnect plan, you must pick a Medi-Cal plan. Your Medicare will not change…[¶] to pick a Medi-Cal plan and keep your Medi-Care fill in the circle to the left of the Medi-Cal plan you want." (*Ibid*.)

The Choice Book further instructs beneficiaries to sign and date the completed health plan choice form and mail it in the enclosed addressed and prepaid envelope.

In sum, the Choice Book informs beneficiaries that if they do nothing, they will be enrolled in a Cal MediConnect Plan; informs beneficiaries that they can stay in Medicare, but to do so they must pick a Medi-Cal Plan; and informs beneficiaries if they do not pick a CalMediConnect Plan, they must pick a Medi-Cal Plan. Further, the enrollment materials provide a self-addressed stamped envelope and direct the beneficiary to contract a representative if they need assistance. The import of the enrollment materials, is that if the beneficiary takes no action, his services will change.

The gravamen of Petitioners' argument is that the enrollment materials are so confusing and poorly-written that dual-eligible beneficiaries will not know how to opt out of CalMediConnect, and stay in a fee-for-service plan. Having read the enrollment materials cited by Petitioners, the Court cannot conclude that they violate Section 14182.17, subd. (d)(1)(H).) Rather, Petitioners' complaint appears to be that the

enrollment materials could be better drafted. This does not rise to a showing that they are likely to prevail on the merits of this argument.

Even assuming, arguendo, that these materials violate the statutory requirements, the appropriate remedy may be to revise them, not stay the entire CCI program, stay the CCI program notice enrollment forms, stay "auto-enrollment, and/or stay voluntary enrollment of dual-eligible persons, as Petitioners request.

Accordingly, Petitioners have not shown that they are likely to prevail on the merits of either argument: (1) that DHCS has no authority to implement the CCI program, and (2) that the notices violate the statutory requirements.[9]

d. Balance of Harms

Petitioners also cannot show that the balance of harms tips in their favor, in part, because they have not furnished the Court with information about the parties that would be affected if the injunction were granted: namely those already enrolled in the CalMediConnect program.

Petitioners first argued in their MPAs that the balance of harms weighed in their favor, because Respondent, a state agency, would not suffer any harm. However, it is undisputed that approximately 40,000 persons are already enrolled in the program. Petitioners' injunction seeks to stay the entire program,[10] which if granted, would change health care services for those already enrolled. Petitioners state in their reply, with little elaboration, that they now "clarify that they do not seek to immediately disenroll those who have been enrolled." (Reply, 19:14-15.)

The essence of Petitioners' motion is that the potential change in care and service is likely to have serious negative consequences for enrollees, such as a change in physician or location in medical services. Accepting this contention as true, the Court could conclude that a disenrollment or change in care resulting from a stay of the CCI program would also have similarly negative consequences for enrollees. Petitioners have submitted numerous declarations describing the types of harm that have or will occur. However, the Court has no information about how the change sought by Petitioners (a stay of the program and disenrollment) would affect those already enrolled.

This is perhaps why Petitioners now claim not to seek "immediate disenrollment" of those enrolled in the program. However, beyond this statement, Petitioners offer no

[9] The Court thus, does not address the merits of DHCS' "procedural" argument that the lawsuit is vulnerable to a motion to dismiss because the Federal CMS program is a necessary and indispensable party that cannot be joined. The Court's determination of this issue depends upon the nature and extent to which the federal government is involved in the program, which DHCS does not thoroughly address. Additionally, because of the numerous and complex issues raised in these proceedings, the Court will not consider this argument in the context of a preliminary injunction. Rather, Respondents are free to address this argument in a separate motion.

[10] Petitioners assert this contention again in their Reply brief. (Reply, p. 20.)

explanation as to what the Program would look like if the Court were to issue a preliminary injunction. Nor do Petitioners reconcile this request with their request that the Court stay the entire CCI program on the basis that it is *ultra vires*. Based on the record before it, the Court is simply unable to quantify the harms between those enrolled and those not yet enrolled, and thus, weigh the harms. The injunction is therefore denied.

III. DISPOSITION

Petitioners' motion for a preliminary injunction is denied.

The parties have filed numerous briefs, which are all well in excess of the page limits set by the rules of Court. For this motion the briefs alone exceed 120 pages. Although the Court understands that the law and facts are complex, the Court orders the parties to seek leave of court before filing briefs that do not comply with the applicable Rules of Court or Local Rules. Additionally, the parties must submit a stipulated briefing schedule for signature by the Court at least 60 days before the hearing on the merits of the Petition.

If this tentative ruling becomes the final ruling of the Court, Counsel for Respondents is directed to prepare a formal order for the Court's signature pursuant to California Rules of Court, Rule 3.1312.