CALIFORNIA DEPARTMENT OF AGING (CDA)

FAX COVER SHEET

TO: All ADHC Providers

FROM: Adult Day Health Care Branch

DATE: December 14, 2011

SUBJECT: ADHC Class Action Notice

The Department of Health Care Services (DHCS) has asked CDA to transmit the attached Class Action Notice to all ADHC providers. **Please post this notice in a location where it can be easily viewed by your ADHC participants.**

- The Class Action Notice, in English, will be mailed to all ADHC Class Members on Friday, December 16, 2011. DHCS will be posting a printable, electronic version of the Class Action Notice at: http://www.dhcs.ca.gov/services/medi-cal/Pages/ADHCClassActionSettlement.aspx
- The Class Action Notice in threshold languages is scheduled for mailing to non-English speaking ADHC Class Members on Wednesday, December 21, 2011.
- The Class Action Notice translations will be posted on the DHCS website by Tuesday, December 20, 2011. You will receive a FAX notice when the translations are posted asking you to download, print and display the threshold languages that are found in your county.
- Additional information and updates may be obtained on the following websites:
  - DHCS ADHC Transition website at http://DHCS.ca.gov/ADHCtransition
  - CDA ADHC website at www.aging.ca.gov/programs/adhc

Number of pages (including this page): 9

If you do not receive all specified pages or if you have any questions regarding this transmission, please call (916) 419-7545.

United States District Court For The Northern District Of California

If you are in Medi-Cal and receive (or recently received) Adult Day Health Care (ADHC), this is a Notice of a Class Action Settlement Which May Affect You.

A federal court authorized this notice. This is not a solicitation from a lawyer.

A lawsuit was filed asking the Court to stop California from ending the Medi-Cal ADHC program unless other services were in place for people receiving ADHC services. The parties to the lawsuit have reached a settlement of the lawsuit. If the Settlement is approved by the Court, the ADHC program will end on February 29, 2012. Beginning March 1, 2012, you will receive other services depending on your situation. A full description of services which will be available and who will qualify for which services is set forth below. Also listed below is information about the Settlement Agreement that should answer the questions you have about it and a place to contact if you have more questions.

This Settlement will not affect your ability to continue to see your primary care provider if you are currently in Medicare. The services that are available under the Settlement Agreement will be in addition to the services you currently receive through Medicare.

This case is not one for money damages.

The Court still has to decide whether to approve the Settlement Agreement.

This Notice explains your rights and your options – and the deadlines to act on them. READ THIS NOTICE CAREFULLY.

Your Legal Rights and Options in This Settlement	
Do Nothing	If you do nothing, the Court will evaluate the Settlement without your comments. You will give up the right to challenge the end of the ADHC program in another lawsuit. If you receive ADHC services now, you do not have to respond to this Notice to get the services created by this Settlement.
Object in Writing By January 10, 2012	Write to the Court about why you don't like the Settlement. In addition, you may ask to speak in Court about your objections. Your objection must be sent to the Court by January 10, 2012 to be considered.
Go to the Fairness Hearing on January 24, 2012	If you want to speak at the Fairness Hearing, make sure to say that in your letter to the Court. However, you do not have to appear at the Fairness Hearing for your objection to be considered.

NOTICE OF CLASS ACTION SETTLEMENT AGREEMENT
Darling et al. v. Douglas et al., C09-03798 SBA

1. Why am I getting this Notice?

You are getting this notice because you are now receiving or, at some point since July 1, 2011, have received Medi-Cal Adult Day Health Care (ADHC) services and are considered a Class Member in this lawsuit.

You have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. This Notice explains the lawsuit, what Class Members will get if the Court approves the Settlement, and your legal rights regarding the Settlement.

The Court in charge of the case is the United States District Court for the Northern District of California. The case is named *Darling et al. v. Douglas et al.* The Case Number is C09-03798 SBA. The seven ADHC participants who sued are called named Plaintiffs, and the Defendants are the Department of Health Care Services (DHCS) and its Director Toby Douglas. All other individuals who receive ADHC services are called Class Members.

2. What is this lawsuit about?

In 2009, people receiving Medi-Cal Adult Day Health Care (ADHC) (the Plaintiffs) sued the Defendants. They asked the Court to stop Defendants from reducing ADHC services, which it did. In 2011, the Plaintiffs asked the Court to stop the Defendants from ending the ADHC benefit. They argued that, unless Defendants provided services to replace ADHC, ending the program would violate the Americans with Disabilities Act (ADA) and other laws. The State Defendants deny these arguments.

3. Why is this a class action?

In a class action, one or more people, called Class Representatives or named Plaintiffs, sue on behalf of people who have similar claims. All of these people are Class Members. One court resolves the issues for all Class Members. In this case, Esther Darling and the other named Plaintiffs sued on behalf of everyone receiving the Medi-Cal ADHC benefit. Any decision by the Court in this case will affect all Class Members.

4. Why is there a settlement?

The Plaintiffs and Defendants have agreed to a settlement in which they have worked together to design new programs to replace the ADHC program. The Class Representatives and the Plaintiffs' attorneys think the Settlement is fair. **A Fairness Hearing to approve the final Settlement will be held in the U.S. District Court in Oakland on January 24, 2012 at 1 pm. See questions 14-17 below for more information about the Court hearing.**

5. How do I know if I am part of the Settlement?

You are a Class Member and are part of the Settlement if you fit this description:

> "All Medi-Cal beneficiaries in the State of California for whom Adult Day Health Care benefits will be eliminated under the provisions of Assembly Bill 97 (AB 97) including those who met or will meet the current eligibility and medical necessity criteria for ADHC at any point prior to the Effective Date of this Settlement; or who will meet the eligibility and medical necessity criteria for Community Based Adult Services (CBAS) at any point prior to Termination of this Agreement."

This means you are covered by the Settlement if you would have had your Medi-Cal ADHC benefit eliminated by AB 97 or you will qualify for ADHC before March 1, 2012. It also means that people who qualify for the new program, CBAS, will be covered by the Settlement. AB 97 is a new law that eliminated ADHC as a Medi-Cal benefit.

6. What does the Settlement provide?

Under the Settlement Agreement, DHCS will set up a new Medi-Cal program called Community Based Adult Services (CBAS).

- CBAS allows eligible people in Medi-Cal to get skilled nursing care, social services, therapies, personal care, family/caregiver training and support, meals, transportation, and case management in one central location.
- CBAS will be available at some former ADHC centers that are approved by DHCS as CBAS providers.
- CBAS will start on March 1, 2012.

The Settlement will set up "Enhanced Case Management" for those who were in ADHC, but who do not qualify for CBAS.

- Enhanced Case Management will help eligible people get the medical and social services they need once ADHC ends. You will have a say in what services they get and how they get them.

ADHC services will continue until February 29, 2012 to give people time to change from getting their services from ADHC providers to getting their services from CBAS providers or to begin receiving Enhanced Case Management. All Class Members will receive either CBAS or Enhanced Case Management.

This is not a case for money damages, so no Plaintiffs or Class Members will receive payment for being part of the lawsuit.

7. What happens to me under the Settlement?

- If you have Medi-Cal and are in ADHC now:
  - You will be assessed for CBAS sometime between December 2011 and February 2012. Your ADHC provider will give you more information about the assessment process.
  - If you qualify for CBAS, you will receive these services as soon as ADHC services end, March 1, 2012.
  - If you do not qualify for CBAS, February 29, 2012 will be your last day of ADHC services. You will get Enhanced Case Management services to help you transition to other services that you need.
- If you have Medi-Cal but are not in ADHC now:
  - You may still apply for ADHC until February 29, 2012.
  - You may ask to be assessed for CBAS.

8. How do I know if I qualify for CBAS?

You can receive CBAS if you are in Medi-Cal AND currently qualify for ADHC, AND:

- Need enough nursing to meet "Nursing Facility Level of Care A" (NF-A) or above; OR
- Have a moderate to severe cognitive impairment, including moderate to severe Alzheimer's Disease or other dementia; OR
- Have a developmental disability; OR
- Have a mild to moderate cognitive disability, including Alzheimer's or dementia AND need assistance or supervision with two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, or hygiene; OR
- Have a chronic mental illness or a brain injury AND need assistance or supervision with two of the following: bathing, dressing, self-feeding, toileting, ambulation, transferring, medication management, and hygiene; OR one need from the above list and one of the following: money management, accessing resources, meal preparation, and transportation.

9. If I am assessed and I qualify, do I automatically get CBAS?

Yes. Once you are found eligible for CBAS, you will get instructions on how to enroll if there is a CBAS center where you live. If there is no CBAS center where you live, you will be able to get the services that are offered at CBAS centers, but from other providers.

- Between March 1, 2012 and approximately July 1, 2012, CBAS will be available through regular Medi-Cal. Eventually, CBAS will mostly be available through Medi-Cal managed care.
- Once CBAS is mostly available only through Medi-Cal managed care, if you live in a county that offers Medi-Cal managed care, and you qualify to enroll in a managed care plan, you may ONLY get CBAS through managed care.
  - If you enroll in Medi-Cal managed care any time before July 1, 2012, or if you are already enrolled in Medi-Cal managed care, your managed care plan will pay for CBAS when it becomes a managed care option. You will not need to make any changes to continue to get CBAS.
  - If you could be enrolled in Medi-Cal managed care but are not now, you will have to enroll to continue to get CBAS when it becomes available through Medi-Cal managed care.
  - If you get Medicare, enrollment into Medi-Cal managed care **WILL NOT** affect your ability to choose your Medicare doctors.
- If you live in a county that does not have Medi-Cal managed care or you cannot get managed care, you do not need to make any changes to continue to get CBAS. You may continue to receive CBAS as a regular Medi-Cal benefit.

10. Will I Be Able to Go to the Same Center to Get CBAS?

It depends. Many ADHC centers will be able to offer CBAS. ADHC centers can apply to the state to become CBAS providers. If you qualify for CBAS and your ADHC center is approved to be a CBAS provider by February 29, 2012, you will be able to keep receiving services at the same center once ADHC ends. If your ADHC center does not become a CBAS provider, you will be given information about other CBAS providers.

11. What if I don't qualify for CBAS?

If you are in ADHC, but don't qualify for CBAS, you will get Enhanced Case Management to help you get the medical and social services you need after ADHC ends. Case managers in this program will work with you so that you have a say as to what services you get and how you get them.

You will have the choice to receive Enhanced Case Management as a regular Medi-Cal service or through Medi-Cal managed care.

12. Do I have a lawyer in the case?

Yes. Disability Rights California, the National Senior Citizens Law Center, the National Health Law Program, AARP Foundation Litigation, and the law firm of Morrison & Foerster LLP were approved by the Court to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers.

13. How will the lawyers be paid?

If the Settlement is approved, the Defendants will pay attorneys' fees to plaintiffs' attorneys for their work on this case. The Court must approve the amount of fees. Plaintiffs and Defendants will ask the Court to approve fees of $2.2 million for the work done over the last 2-1/2 years. They will also ask the Court to approve up to $400,000 for Plaintiffs' lawyers to monitor the Settlement over the next 2-1/2 years. You do not need to pay the attorneys.

14. What are my options about the Settlement?

You may do nothing, and you will remain a Class Member. You may write a letter to the Court stating the reasons why you do not like the Settlement, and mail it by January 10, 2012. If you want to speak at the Fairness Hearing on January 24, 2012, you MUST say that in your letter. It is up to the Court whether you will be permitted to speak at the hearing. However, you do not have to appear in Court on January 24, 2012 in order for your objection to be considered.

15. If the Settlement is approved, what does that mean?

If this Settlement is approved, you will be able to get either CBAS or Enhanced Case Management depending on your situation. You will not be able to be part of another lawsuit about whether California can end the Medi-Cal ADHC benefit.

16. How do I tell the Court if I don't like the Settlement?

If you're a Class Member, you can tell the Court that you do not agree with the Settlement or with any part of it by sending a letter with your objections by January 10, 2012. You may write the letter yourself or through an attorney at your own expense.

To object, you must send a letter to the Court saying that you object and explain the reasons for your objection. At the top of the letter, be sure to include your name, address, telephone number, and write *Darling et al. v. Douglas et al.*, C09-03798 SBA. Be sure to sign your letter.

Mail the original letter to the Clerk of the Court and copies of the letter to the attorneys for the parties. The objection must be mailed to these three different places postmarked no later than **January 10, 2012**:

Clerk of the Court:	Attorneys for Class Members:	Attorneys for DHCS:
U.S. District Court 1301 Clay Street Oakland, CA 94612 Reference: *Darling et al. v. Douglas et al.*, Case No. C09-03798 SBA	Elissa Gershon Disability Rights California 1330 Broadway, Suite 500, Oakland, CA 94612 ATTN: *Darling v. Douglas*	Susan M. Carson Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing to decide whether to approve the Settlement on **January 24, 2012 at 1 p.m.** The Court will consider whether the Settlement is fair, reasonable, and adequate. The Judge will listen to Class Members who have asked to speak at the hearing. You may attend even if you do not wish to speak. The hearing will take place at:

United States District Court
Northern District of California
1301 Clay Street
Courtroom 1, 4th Floor
Oakland, CA 94612

18. What happens if I do nothing at all?

If you do nothing, you will remain a Class Member. If this Settlement is approved, you will be able to get CBAS or Enhanced Case Management depending on your situation. You will not be able to be part of another lawsuit about whether California can end the Medi-Cal ADHC benefit.

GETTING MORE INFORMATION

19. How do I get more details about the Settlement?

To get more information, a copy of the Settlement Agreement, or help in making an objection to the Court, you may contact Disability Rights California:

darling@disabilityrightsca.org	(888) 599-3921

20. How do I get more information about the case?

You can get more information about the case by looking at the case file located in the office of the Clerk of the U.S. District Court located at the address listed in question 17. You can also look at the full settlement and get other information at:

- http://www.disabilityrightsca.org/advocacy/Darling-v-Douglas/index.html
  OR
- http://www.dhcs.ca.gov/services/medi-cal/Pages/ADHC/ADHC.aspx

21. How do I get copies of this notice in other languages or in formats that accommodate people with disabilities?

If you need a copy of this notice in another language, have a disability and need an accommodation such as an alternate format for notice (for example, Braille, or large print), or an alternate way to ask questions about the notice (for example, a sign language interpreter), you can:

- Contact Plaintiffs' attorney Disability Rights California at (888) 599-3921;

  OR
- Visit the Disability Rights California or DHCS websites listed in Question 20.