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### Disability Advocates Sue State Over Medicaid Cuts

HELENA – Disability rights advocates from across Montana sued the state today, alleging cuts to Medicaid reimbursement rates imposed by the Department of Public Health and Human Services are illegal and put Montanans with physical and mental disabilities at serious risk of institutionalization.

“This lawsuit is the direct result of unlawful and unconstitutional decisions by the state that threaten significant and long-lasting harm to Montanans and their families,” said Beth Brenneman, attorney for Disability Rights Montana. “The new rates have wreaked havoc on the community-based Medicaid services system. With this action today, we join providers and recipients of Medicaid services across the state in demanding an immediate end to these cuts.”

Plaintiffs in the lawsuit, which was filed in state District Court in Helena, include organizations that serve Montanans with developmental disabilities, mental illness and serious physical disabilities, as well as individuals who receive services through those providers.

The lawsuit is the second filed this summer in state District Court against the state and the department over Medicaid cuts that were initially the result of actions by the 2017 Legislature. In June, the Montana Health Care Association, which represents nursing homes and assisted living centers, sued the state and the department over the cuts.

Last summer, the department proposed cuts to Medicaid reimbursement rates of 3.47 percent, arguing the move was necessary to implement budget cuts included in Senate Bill 261. The department later reduced those cuts to 2.99 percent. But while initially saying they would last for only a matter of months, the department then decided to extend the cuts through fiscal year 2019.

The plaintiffs argue that the cuts were made in an “arbitrary, unlawful and unconstitutional manner,” including by improperly targeting the cuts to community-based services for those with disabilities.

“The Department failed to follow almost every requirement of the Montana Administrative Procedure Act in proposing the rate cuts,” the lawsuit states. “The rule-making notices of the cuts to Medicaid rates proposed by the Department in late June 2017 were not based on information in existence at the time of the cuts, but were done ‘in anticipation’ of such information. They were not supported by any official documentary or fiscal evidence.”

Although Gov. Bullock announced last week that surplus revenue will be used to “backfill” economic losses, the lawsuit notes that legal action, including a temporary restraining order against the state, are still necessary because it remains unclear when or how the rates will be restored, or how programs will be refunded.

“The petitioners have not been made whole. And the question of the department’s blatant violation of MAPA remains unresolved,” the plaintiffs state in their application for a restraining order.

Since the cuts were implemented, Medicaid providers across the state have been forced to stop providing certain services entirely, closed offices or ended services to individuals who previously had received them. Without assistance, many currently receiving community-based services could be forced into institutional settings.

Prior to the rate reductions, for instance, targeted case management services for individuals with mental illness were reimbursed at \$18.22 for 15 minutes per adult, and \$19.45 for 15 minutes for a child. After rate cuts, the reimbursement rates were \$8.19 per 15 minutes for both children and adults. Such cuts have had a devastating impact on community-based mental health services.

Given that these cuts were to multiple Medicaid providers, the effects have been felt throughout the system. “My sons who have severe physical disabilities lost critical supports because of these cuts,” said Vicki LaFond Smith of her sons who are plaintiffs in the action. “The cuts caused us to lose good staff we trusted, and finding new staff is going to be hard even with the rates restored, as they were already low paying jobs.”

The seven-count lawsuit also accuses the state of violating the Americans with Disabilities Act and the state constitutional rights of public participation, individual dignity and equal protection.

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