

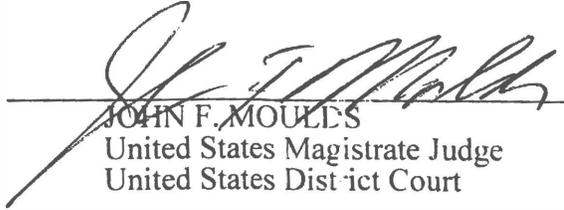
1 The Court, having considered the memorandum of plaintiffs Glynda Deparini and Lidiya
2 Polishchuk, having reviewed the parties' Stipulation for Entry of Consent Decree ("Stipulation"), and
3 finding that the terms of the Stipulation are fair, reasonable and adequate for the absent class members.

4 HEREBY ORDERS that:

- 5 1. The Stipulation entered into among the parties in this case is hereby APPROVED;
- 6 2. The Stipulation for Entry of Consent Decree attached hereto as Exhibit A is
7 hereby entered as a Consent Decree, and the terms of the Stipulation are hereby incorporated by
8 reference as if fully set forth herein;
- 9 3. The Court shall retain jurisdiction to enforce compliance by the parties with the
10 terms of the Consent Decree and the instant Order; and
- 11 4. Notwithstanding the time limits set forth in Local Rules 54-292 and 54-293,
12 plaintiffs may move for a determination of the amount of an award of reasonable attorneys' fees and
13 costs within 120 days after the date of entry of this order.

14 IT IS SO ORDERED.

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16 DATED: *January 2, 2002*



JOHN F. MOULES
United States Magistrate Judge
United States District Court

EXHIBIT A

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INTRODUCTION

WHEREAS the parties to this case desire to resolve this matter without further litigation, they have met and conferred, and with the assistance of the Court, have agreed to the following terms of this Stipulation (“Stipulation”) for Entry of Consent Decree:

HISTORY OF THE CASE

1. This is a civil rights action brought under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202 to require the director of the California Department of Health Services (“DHS” or “defendant”) to comply with federal Medicaid law and the United States and California Constitutions in notifying Medi-Cal beneficiaries when DHS denies requested dental services to these beneficiaries.

2. Plaintiffs Glynda Deparini and Lidiya Polishchuk, who are themselves Medi-Cal recipients, filed their complaint on March 27, 2000, as a class action on behalf of themselves and on behalf of similarly situated Medi-Cal beneficiaries.

3. In their complaint, plaintiffs challenged the adequacy of DHS’s standard notices for the denial of dental services in two main respects: 1) failure to specify the reasons for the denial of the requested services; and 2) failure to cite any relevant legal authority for the denials. Plaintiffs alleged that these inadequacies violated the due process rights of plaintiffs and the plaintiff class as secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the federal Medicaid Act and regulations at 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. § 431.210 and the Due Process Clause in Article I, §7 of the California Constitution. Plaintiffs sought prospective preliminary and permanent injunctions requiring adequate notices, retrospective notice relief, and declaratory relief.

4. On April 4, 2000, plaintiffs filed motions for class certification and preliminary injunction, which were subsequently continued and finally taken off calendar in view of ongoing settlement negotiations.

5. In addition to having conducted their own settlement meetings, the parties sought and obtained the assistance of the Court and conducted three settlement meetings under the Court’s auspices.

1 **PARTIES**

2 6. The parties in this case and to this Stipulation are Glynda Deparini and Lidiya
3 Polishchuk, on behalf of themselves and all others similarly situated (“plaintiffs,” “the plaintiff class”
4 and/or “class members”), and Diana Bontá, in her official capacity as Director of the California
5 Department of Health Services (“DHS” or “defendant”).

6 7. The relief afforded as a result of the Consent Decree entered upon this Stipulation will
7 benefit and bind the plaintiff class defined as follows:

8 All Medi-Cal recipients who have requested or will request authorization
9 for dental services under the Medi-Cal program and who have been
10 denied at any time since March 27, 1999, or will be denied authorization
11 for any such service(s).

12 8. Defendant and her contractors (specifically including her fiscal intermediary(ies) for the
13 Denti-Cal program), agents, employees, assigns, successors in interest, and all others acting in concert
14 with any of them shall be bound by the terms of this Stipulation and the Consent Decree entered upon
15 it. Those bound pursuant to this paragraph are collectively referred to in this Stipulation as “defendant”
16 and/or “DHS.”

17 **JURISDICTION**

18 9. Jurisdiction is conferred pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 1367.

19 **PROSPECTIVE RELIEF**

20 10. Beginning no later than December 19, 2001, DHS shall thenceforth notify Medi-Cal
21 beneficiaries of the denial of Medi-Cal authorization for requested dental services by using the language
22 and format of Beneficiary Treatment Authorization Request (TAR) Notice and the Reason for Action
23 Codes sheets which are attached as Exhibits 1 and 2, respectively, to this Stipulation and incorporated
24 by this reference. For each service denied, the Beneficiary TAR Notice shall reference one of the forty-
25 six listed Reason for Action Codes, which shall in turn refer to the explanations specified in Exhibit 2.
26 DHS retains the discretion to designate more than one Reason for Action by code or otherwise. In
27 notifying beneficiaries, DHS shall use the language contained in Exhibits 1 and 2, which the parties have
28

1 expressly negotiated and agreed upon. In choosing the Reason for Action Code to use for each service
2 denial in each notice, DHS shall use the most specific applicable Reason for Action Code. This
3 Stipulation only addresses adequacy of notice to class members and does not preclude a challenge on
4 any other basis.

5 11. In each notice, DHS shall specify the statutory and regulatory authority on which it relies
6 for the specific denial. The following language as it appears on Exhibit 1 shall be sufficient for DHS
7 to comply with its obligation under this paragraph:

8 Denti-Cal has processed your dentist's request for your treatment in
9 accordance with Title 22, California Code of Regulations, Sections
10 50951, 51014.1 and 51014.2 and the Manual of Criteria. At least one of
11 the items cannot be approved or requires modification. Please refer to
12 the enclosed list for an explanation of the REASON FOR ACTION
13 CODE(S) listed. In addition, **specific, minimum requirements can be**
14 **found in the Denti-Cal Provider Manual, under Section 4 entitled**
15 **"MANUAL OF CRITERIA" under the specific Procedure Number**
16 **listed below.** A copy may be found at any Medi-Cal dentist's office.

17 In any instance, DHS may include a more specific reference to any statutory or regulatory authority on
18 which it relies for a denial.

19 20 **RETROACTIVE NOTICE RELIEF**

21 12. DHS shall provide retroactive notice relief to all class members whose requests for Medi-
22 Cal authorization for dental services were denied at any time during the "Retroactive Period," provided
23 that the basis for the denial was Reason Code 02, 06 or 08. The Retroactive Period runs from March
24 27, 1999, until the date DHS commences using the Beneficiary TAR Notice format and the Reason for
25 Action Codes sheets pursuant to paragraph 10, above. In the interests of administrative finality and the
26 avoidance of beneficiary confusion, and notwithstanding the foregoing language of this paragraph, DHS
27 shall not provide retroactive notice relief to a class member who has previously requested an
28 administrative hearing regarding a denied dental procedure.

1 13. Retroactive notice relief consists of:

2 a. Individual notice as provided in paragraphs 14 and 15, below, of the specific
3 reasons among the forty-six Reason for Action Codes and their explanations (set forth in Exhibit
4 2) for DHS' denial of requested dental services, and/or posted notice as set forth in paragraph
5 16, below; and

6 b. By operation of law upon the provision of notice, reinstatement of the
7 individual's right to an administrative hearing to appeal the denial, including all of attendant
8 rights provided by law.

9 14. By December 19, 2001, DHS shall mail individual notices to all class members whose
10 requests for Medi-Cal authorization for dental services were denied at any time during the Retroactive
11 Period. To do so, DHS shall use these class members' most recent addresses identified for any public
12 program through the statewide MEDS computer system. DHS shall provide plaintiffs' counsel five
13 days' advance notice of the commencement of the mailing of the individual retroactive notices.
14 Notwithstanding the foregoing language of this paragraph, DHS shall not mail notice to a class member
15 with respect to any denied dental service about which the class member has previously requested an
16 administrative hearing.

17 15. In the individual mailed notices, DHS shall use the language contained in the Retro
18 Stuffer Notice, which is attached as Exhibit 3 to this Stipulation and incorporated by this reference. The
19 parties have expressly negotiated and agreed upon the language contained in the Retro Stuffer Notice.
20 Altogether, individual mailed retroactive notice shall consist of:

21 a. A copy of the Retro Stuffer Notice (Exhibit 3);

22 b. An individualized notice in the format of the Beneficiary TAR Notice (Exhibit
23 1) bearing the beneficiary's requisite personal data; identifying by Tooth # or Arch, Treatment
24 Description, and Procedure Number each of the services previously denied to that individual
25 during the Retroactive Period; and providing a new Reason for Action Code for each such
26 previously denied service; and

27 c. A copy of the Reason for Action Codes sheets (Exhibit 2).

1 shall notify plaintiffs' counsel in writing forty-five (45) days in advance of the date of implementation
2 of any such change(s).

3 20. During the period in which the Court retains jurisdiction, any party who seeks any
4 modification, amendment or clarification of any provision of the Consent Decree as set forth in this
5 Stipulation, including any revision(s) and/or modification(s) to the Beneficiary Treatment Authorization
6 Request Notice (Exhibit 1) and/or Reason for Action Codes (Exhibit 2), shall before doing so provide
7 forty-five (45) days' advance written notice to opposing counsel.

8 21. Notwithstanding the provisions of paragraphs 10 and 20, above, DHS may from time to
9 time develop and implement specific Reason for Action Codes, with corresponding explanatory
10 language, in addition to those set forth in Exhibit 2 provided that if DHS proposes to implement any
11 such additional Code(s) during the period in which the Court retains jurisdiction, DHS shall provide
12 forty-five (45) days' advance written notice to plaintiffs' counsel.

13 22. If, during the period in which the Court retains jurisdiction, plaintiffs object to DHS'
14 proposed implementation of any provision of the Consent Decree as set forth in this Stipulation, or DHS
15 fails to perform any requirement under any such provision, or unforeseen problems regarding the
16 implementation of any such provision arise, the parties shall attempt to resolve their disagreement and
17 shall meet and confer as necessary.

18 23. During the period in which the Court retains jurisdiction, plaintiffs' counsel shall have
19 the advance opportunity to review and comment on all documents -- including but not limited to
20 instructions, directives, guidelines, information sheets, forms of notice, Denti-Cal bulletins and updates
21 to the Denti-Cal Provider Manual -- to class members, dentists and other health care providers, and/or
22 county welfare departments, regarding implementation of the provisions of Consent Decree as set forth
23 in this Stipulation. To ensure that DHS is able to comply with the time requirements set forth in this
24 Stipulation, DHS shall, with each document submitted to plaintiffs' counsel for review and comment,
25 specify a reasonable time by which comments are to be returned. If DHS does not receive comments
26 within the time specified, DHS shall be entitled to proceed as necessary to achieve compliance with the
27 terms of the Stipulation. If plaintiffs' counsel objects to the language of any of the implementation
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1 documents, the parties, through their counsel, shall meet and confer in a good faith attempt to resolve
2 their disagreement.

3 24. During the period in which the Court retains jurisdiction of this case, the parties shall
4 meet and confer in a good faith attempt to resolve any disagreement(s) pertaining to the Consent Decree
5 as set forth in this Stipulation. The parties contemplate that meet-and-confer sessions will generally take
6 place on an informal basis. However, any party may by written notice served on opposing counsel
7 formally invoke the meet-and-confer provisions of this paragraph. The parties contemplate that formal
8 invocation of the meet-and-confer process will occur when time is of the essence for the filing of a
9 noticed motion, including but not limited to any of the occurrences set forth in paragraphs 19 through
10 23. The written notice of formal invocation of the meet-and-confer process shall set forth with
11 reasonable specificity the matter(s) upon which there is disagreement and shall propose reasonable dates
12 and times within the following ten (10) calendar days when the invoking party's counsel is available for
13 meet-and-confer session(s). The counsel for the opposing party shall make him- or herself available
14 for at least one meet-and-confer session during the ten (10) calendar days following the date of service
15 of the meet-and-confer notice. The parties through their counsel shall conduct a meet-and-confer
16 session within ten (10) days of service of the meet-and-confer notice.

17 25. Within thirty days of the commencement of the mailing of individual retroactive notices
18 to class members pursuant to paragraphs 14 and 15, DHS shall serve on plaintiffs' counsel a preliminary
19 report, including a summary of any instructions to the dental fiscal intermediary regarding
20 implementation of any of the provisions of the Consent Decree based upon this Stipulation; and
21 specifying at a minimum the total number of individual retroactive notices mailed and confirming the
22 sites to which DHS provided posted notices. The sites may be identified by general category, specifying
23 the number in each such category, and need not list individual addresses.

24 26. During the period in which the Court retains jurisdiction, DHS shall serve on plaintiffs'
25 counsel quarterly reports on the implementation of the relief afforded by the terms of the Consent
26 Decree as set forth in this Stipulation. The reporting periods shall be calendar quarters. DHS shall serve
27 each quarterly report within thirty (30) days after the end of the pertinent quarter. The first reporting
28 period shall end on the last day of the first calendar quarter of the retained-jurisdiction period, even if

1 this results in a reporting period of less than a calendar quarter. The last reporting period shall end on
2 the last day of the retained-jurisdiction period, even if this results in a reporting period of less than a
3 calendar quarter. DHS shall serve the last quarterly report within thirty (30) days after the end of the
4 retained-jurisdiction period. The quarterly reports shall contain, at a minimum, the following data:

5 a. The number of dental services for which requested Medi-Cal treatment
6 authorization was denied ("procedures denied") during the preceding quarter;

7 b. The number of Beneficiary TAR Notices which were issued during the preceding
8 quarter;

9 c. Report entitled "Denied Procedures by Bene TAR Not Code" showing the
10 number of procedures denied during the preceding quarter, by Procedure Code matched with
11 Reason for Action Code and frequency;

12 d. With respect to administrative hearings regarding denied procedures:

13 i. the total number of cases requested ("hearing-cases") during the
14 preceding quarter;

15 ii. the number of hearing-cases requested during the preceding quarter, by
16 general dental category; and

17 iii. the total number of hearing-cases resolved during the preceding quarter;

18 iv. the number of hearing-cases resolved by each type of disposition (i.e.,
19 granted, denied, dismissed) during the preceding quarter; or the Fair Hearing Inventory
20 for the preceding quarter;

21 e. A copy of any version finalized during the preceding quarter of any of the
22 documents previously provided for review and comment pursuant to paragraph 23;

23 f. A copy of any and all instructions, directives, guidelines, Denti-Cal bulletins, and
24 similar documents to, or from, or developed by DHS for the Denti-Cal program regarding the
25 criteria and/or circumstances for the use of any of the Reason for Action Codes; and

26 g. A summary of any instructions to the dental fiscal intermediary regarding
27 implementation of any of the provisions of the Consent Decree based upon this Stipulation.
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1 award of attorneys' fees. The parties shall make a good faith effort to resolve and settle the question
2 of the amount of an award of attorneys' fees and costs before submitting the matter to the Court for
3 adjudication.

4 33. The parties acknowledge that because this case is brought as a class action, they must
5 seek Court approval of the Consent Decree based on this Stipulation pursuant to Fed.R.Civ.P. 23.

6
7 **WHEREFOR**, the parties so agree and stipulate.

8
9 Dated: September 13, 2001

COALITION OF CALIFORNIA WELFARE
RIGHTS ORGANIZATIONS
BREWER & MITCHELL, LLP
PROTECTION & ADVOCACY, INC.

10
11
12 By: Eugenie Denise Mitchell
13 **EUGENIE DENISE MITCHELL**
14 Attorneys for Plaintiffs

15
16
17
18 Dated: 9/13/01

19 for Gail Margal
DIANA M. BONTA, Director
California Department of Health Services
Defendant

20
21 Dated: 9/13/01

BILL LOCKYER, Attorney General
of the State of California
FRANK FURTEK, Supervising Deputy
Attorney General

22
23
24 By: Darryl F. Mansfield
25 **DARRYL F. MANSFIELD**
26 Deputy Attorney General
27 Attorneys for Defendant
28

EXHIBIT 1

**NOTICE OF DENTI-CAL ACTION
THIS IS NOT A BILL**

NOTICE DATE:

BILLIE MELTON 123 FOURTH STREET SACRAMENTO, CA 94121	Dentist: BLUE RIVER FAMILY DENTAL 730 SUNRISE AVE STE 120 ROSEVILLE, CA 95661 916) 123-4567
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MEDS ID:
 DCN:
 MRDCN:

PAGE OF
 DATE OF REQUEST:

Denti-Cal has processed your dentist's request for your treatment in accordance with Title 22, California Code of Regulations, Sections 51003, 51307, and the Manual of Criteria. At least one of the items cannot be approved or requires modification. Please refer to the attached list for an explanation of the REASON FOR ACTION CODE(S) listed. In addition, **specific, minimum requirements can be found in the Denti-Cal Provider Manual, under Section 4 entitled "MANUAL OF CRITERIA" under the specific Procedure Number listed below.** A copy of the manual may be found at any Medi-Cal Dentist's office.

Tooth # or Arch	Treatment Description	Procedure Number	Denti-Cal Action	Reason for Action Code(s)
14	Root Canal, Molar	513	Approved	
12	Root Canal, Molar	513 R	Modified	03
12	Root Canal, Bicuspid	512 S	Approved	
	Gum Treatment	452	Deferred	08
L	Full Lower Denture	701	Deferred	07
03	Complete Metal Crown	660	Denied	10

- You can discuss alternative treatment plans with your dentist to obtain the best care allowable under the Denti-Cal program
- If you have a question regarding this action, please contact your dentist or Denti-Cal at 1-800-322-6384 for a more detailed explanation.
- **If you are dissatisfied with the action described on this notice, you may request a state hearing within 90 days from the date of the notice (see back of this form).**

IF YOU ARE DISSATISFIED WITH THE ACTION DESCRIBED ON THIS NOTICE, YOU MAY REQUEST A STATE HEARING WITHIN 90 DAYS FROM THE NOTICE DATE .

To Request a Hearing:

Send this entire notice to:
Office of the Chief Administrative Law Judge
State Department of Social Services
Post Office Box 13189
Sacramento, CA 95813-3189

OR

You may call the TOLL-FREE number at the Public Inquiry and Response Unit. 1-800-952-5253 (ASSISTANCE AVAILABLE IN LANGUAGES OTHER THAN ENGLISH)

State Regulations:

A copy of Title 22, California Code of Regulations, Sections 50951, 51014.1, and 51014.2, which covers state hearings, is available at your county social services office or local library.

Authorized Representative:

You can represent yourself at the hearing or you can be represented by a friend, lawyer or any other person. You are expected to arrange for the representative yourself. You can get help in locating free legal assistance by calling the toll-free number of the Public Inquiry and Response Unit or from your local social services office.

I WILL NEED A TRANSLATOR (at no cost to me).
MY LANGUAGE OR DIALECT IS: _____

EXHIBIT 2

REASON FOR ACTION CODES

- 01 Your aid code covers emergency services only.
- 02 **Information submitted by your dentist about your current dental condition does not meet our minimum requirements for approval of this service.**
- 03 The request for dental treatment marked with an "R" was **changed** to the procedure marked with an "S". This change was based on the information submitted by your dentist concerning your current dental condition or on Program guidelines.
- 04 **Denti-Cal records show this service(s) or a similar service(s) was previously authorized, paid for, or was completed. (For example: In some cases, procedures are limited to once in 12 months or once in five (5) years and cannot be authorized again except under special circumstances, which must be documented by your dentist.)**
- 05 We are unable to verify your dentist's enrollment to participate in the Denti-Cal Program on the date the request was submitted.
- 06 **The service as requested by your dentist, IS NOT A BENEFIT OF THE DENTI-CAL PROGRAM. Please contact your dentist for a different treatment plan.**
- 07 You did not appear for a scheduled regional screening examination or failed to bring existing denture(s) (full or partial). Please contact your dentist to resubmit a request for this procedure.
- 08 **Your dentist did not submit enough information to allow us to process this request. Please contact your dentist to resubmit a request with new information.**
- 09 X-rays show that the tooth does not meet the requirements for a crown. At least 51% of the tooth must be missing and/or decayed. The tooth may be restored with a filling.
- 10 **X-rays show that the tooth/teeth may have an infection; please contact your dentist as another service may be needed first.**
- 11 Based on x-rays and/or your dentist's charting and confirmed by information we received from our regional screening examination, you do not have sufficient gum disease to need a deep scaling.
- 12 **This service cannot be authorized because it is related to a denied procedure in the same treatment plan submitted by your dentist.**
- 13 Based on the information submitted by your dentist and/or received from a regional screening examination, your current dental condition is stable and the requested service is not needed at this time.
- 14 **Based on x-rays and/or confirmed by information we received from a regional screening examination, Denti-Cal has determined that the tooth/teeth has worn down naturally or you have bruxism (teeth grinding). Crowns are not a benefit of the Denti-Cal Program to restore teeth worn down naturally or by bruxism or that do not have decay or have not fractured.**
- 15 X-rays show the tooth is too broken down and cannot be repaired. Your dentist may be able to provide a different treatment.
- 16 **Denti-Cal records show that the tooth has been restored with an acceptable filling or stainless steel crown.**
- 17 X-rays show the service requested cannot be approved because gum disease has destroyed the bone around the tooth. Your dentist may be able to recommend a different treatment.
- 18 **The minimum requirements for orthodontic treatment could not be verified by the Handicapping Labial-Lingual Deviation Index or submitted study models.**
- 19 A partial denture can be a benefit only when there is a full denture on the opposite arch.
- 20 **Root canal treatment must be satisfactorily completed before a crown can be considered.**
- 21 Tooth is not fully developed. Your dentist may be able to recommend a different treatment.

- 22 **Treatment is not necessary because neither x-rays nor documentation supports that there is nerve damage.**
- 23 A stayplate can be a benefit only to replace a missing permanent front tooth.
- 24 **X-rays show that additional extractions are necessary before the treatment plan can be approved; please contact your dentist.**
- 25 Based on the information submitted by your dentist, your teeth are in such a poor condition that the requested service is not a benefit under the Denti-Cal Program.
- 26 **Based on the information submitted by your dentist, your teeth are stable at this time and should not be replaced by a full denture.**
- 27 Based on the information submitted by your dentist, you have no opposing full denture; therefore, you do not qualify for a partial denture. However, if you are missing front teeth, you qualify for a stayplate.
- 28 **Based on x-rays and/or your dentist's charting, and confirmed by information we received from our regional screening examination, your teeth and/or gums are in such poor condition that the requested treatment is not a benefit under the Denti-Cal Program. Your dentist may be able to recommend a different treatment.**
- 29 Deep scaling is not a benefit for patients under 18 years of age, except for cases where medications have caused the overgrowth of gum tissue.
- 30 **Fixed bridges are allowable when severe epilepsy, paraplegia or uncontrollable spasticity prevents the use of a removable denture.**
- 31 Tooth is not in its normal position and cannot be repaired under the Denti-Cal Program.
- 32 **Based on information received from a regional screening examination, your existing denture is satisfactory at this time.**
- 33 Based on information received from a regional screening examination, it has been determined that you cannot adapt to a denture because of physical limitations or health conditions.
- 34 **The requested service is not necessary because there are enough teeth remaining in this arch to support the opposing denture.**
- 35 During your regional screening examination, you indicated you do not want extractions or any other dental services at this time.
- 36 **The number of authorized visits has been adjusted because you will turn 21 years of age before treatment is completed. Please make arrangements with your dentist.**
- 37 The tooth is not visible on the submitted x-rays.
- 38 **Based on x-rays and/or confirmed by information we received from our regional screening examination, you need additional treatment from your dentist before the procedure can be considered.**
- 39 X-rays show there is not enough space present for the requested false tooth.
- 40 **The Denti-Cal Program does not cover orthodontics when there are still baby teeth present.**
- 41 Based on x-rays and/or confirmed by information we received from our regional screening examination, Denti-Cal has determined that you have bruxism (teeth grinding). The treatment of bruxism is not a benefit of the Denti-Cal Program.
- 42 **The procedure is not a benefit for a baby tooth. Your dentist may be able to recommend a different treatment for your condition.**
- 43 The procedure requested will not correct your dental problem. Your dentist may be able to recommend a different treatment for your condition.
- 44 **Based on information received from your dentist, Denti-Cal has determined that the requested service is for cosmetic reasons only. Services for cosmetic purposes only are not a benefit of the Denti-Cal Program.**
- 45 Your current denture can be made satisfactory by a laboratory relin.
- 46 **We are unable to verify your eligibility in the Denti-Cal Program.**

EXHIBIT 3

Denti-Cal

California Medi-Cal Dental Program

ATTENTION

Our records show that authorization was denied for Medi-Cal dental procedure(s) that were requested by a Denti-Cal dentist for you between March 27, 1999 and _____ [date of implementation]. Please refer to the enclosed Notice of Denti-Cal Action.

When you were originally notified about the denial, you were not given specific reasons for the denial, so you may not have understood the denial well enough to be able to decide what to do about it. The procedure(s) that were requested and denied at that time are listed on the enclosed Notice of Denti-Cal Action with specific reason(s) for their denial.

You have a right to a hearing if you disagree with the action described in the enclosed notice or think your treatment is medically necessary. You have 90 days from the Notice Date to appeal the denial. The Notice Date is on the enclosed Notice of Denti-Cal Action.

If you do not want to appeal the denial(s), you do not need to do anything further.

If you wish to appeal, please see the back of the Notice of Denti-Cal Action about how to request a hearing.

If you appeal and the Date of Request on the enclosed Notice of Denti-Cal Action was before _____ [six months before the date of the notice] and you have not had the procedure performed, you will need to have a Denti-Cal dentist submit a new Treatment Authorization Request.

EVHPT

**To all persons who were denied dental services under Medi-Cal
at any time since March 27, 1999**

Medi-Cal has changed the notices it sends to beneficiaries when a dentist submits a Treatment Authorization Request (TAR) for dental services but Medi-Cal denies the TAR. The new notices give beneficiaries more specific reasons for the denials of dental services.

Medi-Cal is sending new notices to everyone who had a TAR denial for dental services at any time since March 27, 1999. These persons received the old notices and may not have understood them well enough to be able to decide what to do about them. The new notices give more specific reasons for the TAR denials for dental services, so that beneficiaries can decide whether to appeal the denials. The new notices start over again the time allowed for these persons to appeal. **If you receive or have received a new notice about Medi-Cal's denial of TAR's for dental services, please follow the instructions enclosed with that new notice.**

The rest of this poster is for persons who have not received a new notice – even though Medi-Cal denied them dental services at some time since March 27, 1999.

If Medi-Cal denied you any dental services since March 27, 1999, but you have not received a new notice about the denial, you can get a new notice. The notice you got when the dental service was first denied may not have been specific enough for you to be able to decide what to do about the denial.

The new notice will give you a more specific reason why Medi-Cal denied the dental service your dentist requested for you. Then you can decide whether to appeal the denial. The new notice will start over again the time allowed for you to appeal the denial.

To get a new notice to help you decide whether to appeal Medi-Cal's denial of dental services, call Medi-Cal at the following number:

1-(800)-322-6384

The call is free. Ask for a new notice about the dental services Medi-Cal denied you. You have until _____ to ask for a new notice.

IF YOU CAN'T READ THIS NOTICE, ASK YOUR COUNTY MEDI-CAL WORKER FOR A TRANSLATION (CAM)
IF YOU CAN'T READ THIS NOTICE, ASK YOUR COUNTY MEDI-CAL WORKER FOR A TRANSLATION (CHN)
IF YOU CAN'T READ THIS NOTICE, ASK YOUR COUNTY MEDI-CAL WORKER FOR A TRANSLATION (VIET)
IF YOU CAN'T READ THIS NOTICE, ASK YOUR COUNTY MEDI-CAL WORKER FOR A TRANSLATION (RUSS)

United States District Court
for the
Eastern District of California
January 3, 2002

* * CERTIFICATE OF SERVICE * *

2:00-cv-00655

Deparini

v.

Bonta

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on January 3, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Grace A Galligher
Coalition of California Welfare Rights Organizations
1901 Alhambra Boulevard
Second Floor
Sacramento, CA 95816

CF/JFM

Eugenie Denise Mitchell
Brewer and Mitchell
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Katherine Marie Mottarella
Protection and Advocacy
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Santa Barbara, CA 93103

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Attorney General's Office
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1300 I Street
Suite 125
Sacramento, CA 94244-2550

Jack L. Wagner, Clerk


by: Deputy Clerk

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of the State of California
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FILED

MAR 25 2002

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

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MAR 26 2002

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DEPUTY CLERK

11
12 GLYNDA DEPARINI and LIDIYA
POLISHCHUK on behalf of themselves
and others similarly situated,

13 Plaintiffs,

14 v.

15 DIANA BONTA', in her official capacity
16 as Director, California Department of
Health Services,

17 Defendant.
18

No. CIV. S-00 655 FCD JFM

STIPULATION TO REMEDY
PROBLEMS IN
IMPLEMENTATION OF CONSENT
DECREE

19 WHEREAS the parties, through their counsel, having met and conferred, and desiring to remedy
20 problems in the implementation of the Consent Decree herein, state as follows:

21 The Consent Decree requires that defendant ("the Department" or "DHS") provide
22 retroactive notice relief to all class members whose requests for Medi-Cal authorization of dental
23 services were denied at any time from March 27, 1999 until December 19, 2001 (the "Retroactive
24 Period"), Order Approving Class Action Settlement and Entering Consent Decree (Jan. 3, 2002),
25 Exhibit A, Stipulation for Entry of Consent Decree ("Consent Decree"), ¶¶ 12-16;

26 Problem with English Version of Notice Poster

27 The Consent Decree mandates the language of posted public notices for the notification of
28 class members for whom the Department did not have addresses current at the time of the mailing

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1 of individual notices on December 19, 2001, *id.*, ¶ 16 and Exhibit 4, Poster, and specifies that the
2 Department provide the poster to identified sites by December 19, 2001 with instructions that the
3 poster remain posted for a period of ninety (90) days, thus allowing class members a ninety (90)-
4 day period to contact the Department for pursuit of retroactive relief coincident with the time
5 limitation for requesting hearings set forth in the individual mailed notices;

6 The Department provided posters to the requisite sites by December 19, 2001, and
7 instructed that they be posted for an additional thirty (30) days beyond those required under the
8 Consent Decree, thereby allowing putative class members an additional thirty (30) days – that is,
9 until April 19, 2002 – to respond to the poster in pursuit of the retroactive relief provided under
10 the settlement;

11 However, through the inadvertence of one of the Department’s agents/contractors, the
12 English version of the poster varied in several respects from, and omitted one full paragraph of,
13 the poster text required under paragraph 16 and Exhibit 4 of the Consent Decree;

14 To correct this problem, the Department, by January 19, 2002, produced and provided to
15 each of the sites required under paragraph 16 of the Consent Decree, a replacement English-
16 language poster which uses the language set forth in Exhibit 4 to the Consent Decree, and
17 specified in the poster that the time limit for a class member to contact the Department to pursue
18 retroactive relief remained April 19, 2002, ninety (90) days after the correction;

19 Problem with the Implementation of Individual Mailed Retroactive Notice to Class Members

20 The Consent Decree mandates that by December 19, 2001 the Department mail individual
21 retroactive notices to all class members whose requests for Medi-Cal authorization for dental
22 services were denied at any time during the Retroactive Period, Consent Decree, ¶14, and requires
23 that this notice include an individualized document in the format of the Beneficiary TAR Notice
24 incorporated as Exhibit 1 to the Consent Decree, setting forth a new Reason for Action Code for
25 each of that class member’s previously denied services, *id.*, ¶ 15.b.;

26 By December 19, 2001, the Department mailed individual retroactive notices to
27 approximately 650,000 class members pursuant to paragraph 14 of the Consent Decree;

28 However, after the mailing was completed, the Department discovered that due to an error

1 of its agent, over 60% of these individual mailed notices did not set forth the new Reason for
2 Action Codes specific to the class members' previously denied services as required by paragraph
3 15.b. of the Consent Decree, *see* Declaration of Robert P. Pierson, Chief, Office of Medi-Cal
4 Dental Services, Exhibit 9, attached;

5 Problem with Hearing Requests on Stale TARs

6 The Consent Decree additionally mandates the language of a Retro Stuffer Notice required
7 to be included in the individual, mailed retroactive notice, *id.*, ¶15 and Exhibit 3, Retro Stuffer
8 Notice, and in so doing specifies that if a class member appeals the denial of a treatment
9 authorization request for a dental service originally denied between March 27, 1999 and June 19,
10 2001 (in other words, all but the last six months of the Retroactive Period), and the class member
11 has "not had the procedure performed, [the class member] will need to have a Denti-Cal dentist
12 submit a new Treatment Authorization Request," *id.*;

13 The term "treatment authorization request," or "TAR," refers to a health care provider's
14 formal request for the Department to authorize a particular treatment or service for a Medi-Cal
15 beneficiary, *see* 22 Cal. Code of Regs. §51003; and for the purpose of previously denied dental
16 services reflected on the individual retroactive notices mailed to class members by December 19,
17 2001, the term "stale TAR" refers to a TAR on behalf of a class member for a dental service
18 originally denied between March 27, 1999 and June 19, 2001 (all but the last six months of the
19 Retroactive Period);

20 Defendant's provision of retroactive notice pursuant to the Consent Decree reinstates each
21 class member's right to an administrative hearing to appeal the TAR denial, including all
22 attendant rights provided by law, *id.*, ¶13b;

23 As of March 6, 2002, the Department had received over five hundred seventy (570)
24 requests for hearing involving stale TAR's; however, without information from individual class
25 members, the Department does not have and is unable to devise any system to distinguish hearing
26 requests where the class member has not received the subject dental service thus triggering the
27 need for a new TAR, from hearing requests where the class member has received the subject
28 dental service, *id.*;

1 For the Department to allow a class member, before his or her hearing is scheduled, a
2 reasonable time after the hearing request to cure any stale TAR would routinely consume more
3 than ninety (90) days; yet, the Department is required by law to take prompt, definitive and final
4 action within 90 days of a request for hearing, 42 C.F.R. §431.244(f); *see also* 42 U.S.C.
5 §1398a(a)(8) and (a)(3);

6 In addition, pursuant to an unpublished Order in *Ball v. Swoap*, Alameda County Superior
7 Court No. H105716-0, (December 4, 1987), attached as Exhibit 10, the Department must render a
8 decision within ninety (90) days of a request for hearing, or face possible penalties;

9 **WHEREFOR**, the parties agree and stipulate as follows:

10 Extension of Retroactive Notice Period on Posters

11 1. The Department shall issue an instruction letter or postcard to all county welfare
12 departments, public health agencies, Denti-Cal billing provider offices, and legal aid offices as
13 specified in paragraph 16 of the Consent Decree immediately to extend the date on the English
14 and Spanish posters to August 15, 2002, by affixing a colored sticker, provided by the
15 Department with the letter or postcard, over the April 19, 2002 date.

16 Issuance of New Retroactive Notices to all Affected Class Members

17 2. By May 15, 2002, DHS shall mail new individual retroactive notices to all living
18 class members identified pursuant to paragraph 12 of the Consent Decree, except for those class
19 members who have requested hearings by April 19, 2002. The content of the retroactive notice
20 shall be as provided in the Consent Decree, except that the Retro Stuffer Notice shall be provided
21 in the revised form and content set forth in Exhibit 11 (two-sided "OOPS Notice"), attached
22 hereto;

23 3. The Department may treat any hearing requested after April 19, 2002 as made
24 pursuant to the May 15, 2002 notice and as pertinent to a stale TAR. Any hearing requested after
25 April 19, 2002 and treated as pertinent to a stale TAR shall be subject to the Procedures for
26 Hearing Requests on Stale TARs set forth in paragraphs 4-10 below.

27 Procedures for Hearing Requests on Stale TARs

28 4. The Department may uphold the denial of a class member's stale TAR without

1 providing an administrative hearing and may dismiss on its merits the class member's request for
2 hearing pursuant to the retroactive notice relief afforded under the Consent Decree if and only if
3 both of the circumstances set forth in a. and b. below occur:

4 a. Within ten (10) working days of the Department's receipt of a class
5 member's hearing request on a stale TAR, the Department notifies the class member that
6 the denial of his or her TAR will be upheld and the request for hearing dismissed on its
7 merits unless the class member either:

8 i. provides to the Department, within ninety (90) days of the date of
9 such notice, additional information to indicate that the class member has received
10 the previously denied dental service from a Medi-Cal dental service provider by
11 May 20, 2002; or

12 ii. engages a Medi-Cal dentist who within ninety (90) days of the date
13 of such notice submits to the Department a new TAR on the class member's
14 behalf. The Department shall authorize an initial dental examination (Procedure
15 Code No. 010) for any class member who requests a hearing and has not received
16 the dental service at issue but who is no longer eligible for Medi-Cal.

17 b. The Department provides such notice to the class member in writing using
18 the language and form of notice set forth in Exhibit 12, which is attached hereto and
19 incorporated by reference herein ("Stale TAR Letter").

20 5. Where within ten (10) working days of the Department's receipt of a class
21 member's hearing request on a stale TAR, the Department notifies the class member according to
22 the content and form of notice set forth in paragraph 4 above, the time period within which the
23 Department is otherwise required by law to render a hearing decision shall not commence until
24 either the date the Department receives a new TAR, or the date the Department receives additional
25 information to indicate that the class member has already received the previously denied service
26 in accord with the requirements set forth in paragraph 4, whichever occurs first.

27 6. Where by the ninety-fifth (95th) day after having notified a class member in accord
28 with paragraph 4, above, the Department has received neither a new TAR nor additional

1 information to indicate that the class member has already received the previously denied service
2 according to the requirements set forth in paragraph 4.a. i., the Department may uphold the denial
3 of the stale TAR without hearing and dismiss the request for hearing on its merits.

4 Notwithstanding the foregoing, the Department shall extend for a reasonable time a class
5 member's ninety (90)-day time period described in paragraph 4 where the Department authorizes
6 an initial dental examination pursuant to that paragraph, and may extend the time period for
7 reasonable time where a class member requests an extension.

8 7. Where the Department upholds the denial of the stale TAR without a hearing and
9 dismisses the request for hearing on its merits under the circumstances set forth in paragraphs 4
10 and 6, the Department shall provide written notice to the class member that:

11 a. the denial of the stale TAR has been upheld and the hearing request
12 dismissed on its merits;

13 b. the action constitutes the final decision of the agency; and

14 c. pursuant to California Welfare and Institutions Code section 10962, the
15 class member has a right to pursue the matter by appropriate petition for writ of mandate
16 filed in the Superior Court of California within one year of receipt of the agency's final
17 decision.

18 The Department shall use the content and form of the Dismissal Decision set forth in Exhibit 13
19 attached hereto and incorporated by reference herein, for the purpose of the provision of notice
20 pursuant to this paragraph.

21 8. Where within ten (10) working days of the Department's receipt of a class
22 member's hearing request on a stale TAR, the Department notifies the class member according to
23 the content and form of notice set forth in paragraph 4 above, and thereafter determines to
24 authorize the service requested, whether based on additional information submitted or based on a
25 new TAR or for another reason, the Department shall promptly so notify the class member. The
26 Department shall use the content and form of the Authorization Letter set forth in Exhibit 14
27 attached hereto and incorporated by reference herein, for the purpose of the provision of notice
28 pursuant to this paragraph of the authorization of a requested service; where the Department does

1 so, the class member's hearing request as to the denial of that service shall be moot and may be
2 canceled without further notice to the class member.

3 9. Where within ten (10) working days of the Department's receipt of a class
4 member's hearing request on a stale TAR, the Department notifies the class member according to
5 the content and form of notice set forth in paragraph 4 above, and thereafter determines to deny
6 authorization of the service requested, whether based on additional information submitted or
7 based on a new TAR or for another reason, the Department shall:

8 a. Use the content and form of notice set forth in Exhibits 1 (Beneficiary TAR
9 Notice) and 2 (Reason for Action Codes) to the Consent Decree, thereby to notify the class
10 member in writing of the Department's decision with respect to the additional information
11 submitted and/or the new TAR; and

12 b. Thereupon ensure that an administrative hearing is promptly scheduled for
13 the class member.

14 10. With respect to any request for hearing on a stale TAR which the Department has
15 received before the date this Stipulation is approved by the Court, the ten (10)-working-day period
16 set forth in subparagraph 4.a. shall commence on the date this Stipulation is approved by the
17 Court.

18 11. Where an administrative hearing is scheduled or takes place, the Department shall
19 conduct the hearing and all processes associated with it, including notification of the decision, in a
20 manner which comports with applicable law. If the hearing occurs following denial and/or
21 modification of a requisite new TAR, the subject of the hearing will be the new TAR, rather than
22 the stale TAR. In a case where the class member alleges that he or she has already received the
23 service, evidence that the class member has received and has incurred a cost for the previously
24 denied dental service from a Medi-Cal dental service provider by May 20, 2002, must be
25 presented at the administrative hearing.

26 ///

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1 12. On or before April 19, 2002, the Department shall send to all Denti-Cal billing
2 provider offices a copy of the Denti-Cal bulletin containing the language set forth in Exhibit 15.

3 13. Within thirty (30) days of the commencement of the mailing of individual
4 retroactive notices to class members pursuant to paragraph 4, DHS shall serve on plaintiffs'
5 counsel a preliminary report, including a summary of any instructions to the dental fiscal
6 intermediary regarding implementation of any of the provisions of this Stipulation; and specifying
7 at a minimum the total number of individual retroactive notices mailed and the number of sites to
8 which DHS provided stickers to amend posted notices. In addition, DHS shall sample the notices
9 mailed pursuant to paragraph 4 by faxing to plaintiffs' counsel on a daily basis three randomly
10 selected notices from each day's run of such notices.

11 14. In any judicial proceeding concerning any administrative hearing decision
12 pertaining to any notice provided by this Stipulation, the parties, including all absent class
13 members, shall retain all claims and defenses otherwise available.

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1 15. This Stipulation to Remedy Problems in Implementation of Consent Decree is the
2 product of mutual negotiations and is deemed to have been drafted by both plaintiffs and
3 defendant.

4 16. The Court may enter an order consistent with the foregoing.

5 **So Stipulated and Agreed:**

6 Dated: March 20, 2002.

COALITION OF CALIFORNIA WELFARE
RIGHTS ORGANIZATIONS
BREWER & MITCHELL, LLP
PROTECTION AND ADVOCACY, INC.

7
8
9 By: Eugenie Denise Mitchell
10 EUGENIE DENISE MITCHELL
Attorney for Plaintiffs

11
12 Dated: 3/20, 2002

BILL LOCKYER, Attorney General
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Attorneys for Defendant
Diana Bontá

17
18
19 Dated March 20, 2002

The Department of Health Services

20
21 Gail Margolis
22 GAIL MARGOLIS,
Deputy Director, Medical Care Services

23
24 **IT IS SO ORDERED:**

25
26 Dated: March 21, 2002

27 John F. Moulds
The Honorable JOHN F. MOULDS,
United States Magistrate Judge

United States District Court
for the
Eastern District of California
January 3, 2002

* * CERTIFICATE OF SERVICE * *

2:00-cv-00655

Deparini

v.

Bonta

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on January 3, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Jack L. Wagner, Clerk


by: Deputy Clerk

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me

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JAN 3 2002

CLERK U.S. DISTRICT COURT
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11 Attorneys for Plaintiffs

LOGGED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

13 SEP 14 2001

14 CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY *[Signature]*
DEPUTY CLERK

16 GLYNDA DEPARINI and)
17 LIDIYA POLISHCHUK,)
18 individually and on behalf of all)
19 similarly situated persons,)

Case No. CIV-S-00-655 FCD/JFM

20 Plaintiffs,)

**ORDER APPROVING CLASS
ACTION SETTLEMENT AND
ENTERING CONSENT DECREE**

21 v.)

Class Action

22 DIANA BONTA, Director,)
23 California Department of Health)
24 Services,)

CA

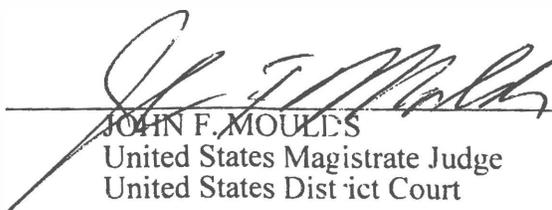
25 Defendant.)
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1 The Court, having considered the memorandum of plaintiffs Glynda Deparini and Lidiya
2 Polishchuk, having reviewed the parties' Stipulation for Entry of Consent Decree ("Stipulation"), and
3 finding that the terms of the Stipulation are fair, reasonable and adequate for the absent class members.
4 HEREBY ORDERS that:

- 5 1. The Stipulation entered into among the parties in this case is hereby APPROVED;
- 6 2. The Stipulation for Entry of Consent Decree attached hereto as Exhibit A is
7 hereby entered as a Consent Decree, and the terms of the Stipulation are hereby incorporated by
8 reference as if fully set forth herein;
- 9 3. The Court shall retain jurisdiction to enforce compliance by the parties with the
10 terms of the Consent Decree and the instant Order; and
- 11 4. Notwithstanding the time limits set forth in Local Rules 54-292 and 54-293,
12 plaintiffs may move for a determination of the amount of an award of reasonable attorneys' fees and
13 costs within 120 days after the date of entry of this order.

14 IT IS SO ORDERED.

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16 DATED: January 7, 2002


17 JOHN F. MOULES
18 United States Magistrate Judge
19 United States District Court
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