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# T Minus ? Until System-wide Meltdown

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## MEDICAL PAYMENT CUTS

This year California legislators are in an unenviable position – with a \$16 billion budget deficit representing approximately 15% of California’s budget, difficult decisions must be made.<sup>1</sup> However, this sympathy evaporated with the announcement of the 10% Medi-Cal reimbursement cuts starting July 1. California’s healthcare system is already in crisis and cannot withstand further pressure. One-fifth of the state’s residents under 65 were uninsured at some period in 2006.<sup>2</sup> The Institute of Medicine in 2005 reported that the “emergency system had become a victim of its own success, warning of imminent collapse without corrective measures and the infusion of federal money to offset the ED’s money-losing status.”<sup>3</sup> Further, while the number of emergency departments (EDs) continues to dwindle in California, there has been a 31% increase in ED utilization over the past 10 years. This has resulted in longer wait times, decreased access, and lack of surge capacity. In short, the system is currently operating in persistent disaster mode.

This decision to cut Medi-Cal is not only *financially foolish*, but it is also *immoral* and probably even *illegal*.

## Finance 101

You don’t need to watch Suze Orman (although I’m quite a fan) or read the *Wall Street Journal* to understand that when an employer offers a matching 401(k) plan, you’d better contribute at least up to the match since you’re getting an instant, risk-free bonus on your contribution. The same principle applies when the federal government offers California matching funds to defray the costs of Medicaid (Medi-Cal). The Medi-Cal payment cuts will net the state a **loss** of more than \$500 million in federal Medicaid matching funds. The new reimbursement rates will set Medi-Cal rates to 57% of Medicare, a decline from 61% before the cuts. Even before the cuts, fewer than 50% of physicians in California accept Medi-Cal<sup>4</sup> and undoubtedly there will be an exodus from the program by primary care doctors who can no longer keep their practices open by accepting \$24 for a 20-minute office visit.<sup>5</sup>

## Morality?

Providing access to quality emergency medical care is a core value of emergency physicians. The AAEM code of ethics states, “emergency physicians shall embrace patient welfare as their primary professional responsibility” and that “every individual should have unencumbered access to quality emergency care provided by a specialist in emergency medicine.”<sup>6</sup> Simply put, “access to emergency medical care is a fundamental right.”<sup>7</sup>

So how are Medi-Cal rate cuts immoral? Simply put, as fewer patients are able to see their primary care physicians, routine and preventative health care will no longer be available to impoverished and low-income Californians. As their health suffers, many will stream into EDs seeking care for conditions that could have been avoided entirely or mitigated by routine primary care.

Who are the Medi-Cal enrollees who will bear the brunt of the morbidity and mortality from lack of access? The voting members of each representative’s district? Of course not! The constituency with the time to read about candidates and the energy to actually cast a ballot is **not** the poor, disabled Medi-Cal enrollee who worries if rent will be paid next month or if he should buy groceries or his medicine. Here, the most vulnerable segment of the population receives the least protection from the legislature. Is this in the Congressional Code of Ethics?

## Medi-Cal Rates Are Unconstitutional

We all agree that healthcare is a fundamental need, but is it an entitlement? No. “Health care is not a fundamental *right* in the United States, and it never can be, for one quintessential reason: No person has the right to take the services or resources of another without their consent – a physician’s services are his or hers alone to provide voluntarily.”<sup>8</sup> All people are endowed with the unalienable rights to liberty and the freedom from unlawful takings and indentured servitude.<sup>9</sup> Substantively, however, the Emergency Medical Treatment and Active Labor Act (EMTALA) created a federal right to emergency care by tying Medicare financing for hospitals to the condition of complying with the unfunded EMTALA mandate. Hence, Congress created a “legal fiction” in which a hospital could turn away an unfunded patient from emergency care so long as the hospital did not participate in Medicare – a paradigm that simply does not exist in practice. “Rather than address the issue of uncompensated care, Congress decreed universal access,” forcing hospitals and emergency care physicians to assume responsibility for taking care of the poor under threat of hefty fines or revocation of provider participation in Medicare.<sup>10</sup> Hence, Congress has clad our wrists with shackles and told us we are not indentured servants; we are free to chew through the steel.

How does the non-negotiable Medi-Cal reimbursement schedule violate the Constitution? By paying less than the cost of care for a patient, the government has actually taken the difference between the cost of care and the compensation provided. Even if cost and compensation were commensurate, the government has still violated the Fifth and Fourteenth Amendments by perpetrating a taking of physician labor without

due process of the law, as well as the Thirteenth Amendment which prohibits involuntary servitude.

It is no wonder why the director of Medi-Cal has ignored the law requiring annual review of reimbursement rates to ensure that Medi-Cal beneficiaries have access to physician services. In fact, the state has been ignoring this requirement for 15 years.<sup>11</sup> Escalating, uncompensated care will ultimately destroy hospitals and emergency medical services. If emergency medical care is indeed a basic *right*, adequate and reliable funding must be provided to prevent the impending meltdown.

Unfortunately, legal action to seek an injunction against the funding cuts is the last stop before critical mass is reached. San Francisco Mayor Gavin Newsom has already announced interest in filing suit to halt the cuts in Medi-Cal which will threaten that city's universal health access program and drain the city of approximately \$9 million in lost Medi-Cal revenue.

### Some Recent Legislative Victories

On a brighter note, a few successes are already taking form this legislative session. Senate Bill 1236 (Padilla) passed unanimously out of committee in late March and will be heard in Appropriations this Spring. This bill would eliminate the January 2009 sunset provision of the law that currently authorizes a county board of supervisors to levy additional fees upon fines, penalties, and forfeitures collected for criminal offenses, for the purpose of establishing a fund for reimbursing emergency and trauma medical services (Maddy Funds).

Senate Bill 1228 (Maldonado) also successfully passed out

of committee. This bill would prohibit a person under 16 years of age from operating an all-terrain vehicle on public lands unless that person is under direct supervision of a parent or guardian and is in possession of a specified safety certificate. The bill would also impose specified size restrictions on all-terrain vehicles operated by persons under 16 years of age. This bill, too, faces a hearing by Appropriations.

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