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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA PHARMACISTS ASSOCIATION; et al.,

Plaintiffs,

and

CALIFORNIA HOSPITAL ASSOCIATION; et al.,

Plaintiffs - Appellants,

v.

DAVID MAXWELL-JOLLY, Director of The California Department of Health Care Services,

Defendant - Appellee.

No. 09-55365

D.C. No. 2:09-cv-00722-CAS-MAN

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Argued and Submitted January 19, 2010
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Before: REINHARDT, W. FLETCHER and M. SMITH, Circuit Judges.

Plaintiffs-Appellants California Hospital Association et al. sought a preliminary injunction in the district court to enjoin AB 1183's five percent Medi-Cal reimbursement rate reduction as to certain types of hospital services.[1] As the facts and procedural history are familiar to the parties, we do not recite them here except as necessary to explain our decision. We reverse the district court's denial of a preliminary injunction.

While the district court held that Plaintiffs had shown a likelihood of success on the merits, it held that the evidence submitted by Plaintiffs did not demonstrate that "Medi-Cal *beneficiaries* will go without access to needed inpatient and outpatient services under the AB 1183 rate reductions." (emphasis addded).

The district court abused its discretion in light of our holding in *California Pharmacists Association v. Maxwell-Jolly*, 563 F.3d 847 (9th Cir. 2009) (*California Pharmacists I*). In *California Pharmacists I*, we held that in an action brought under the Supremacy Clause, a finding of irreparable harm does not turn

[1] AB 1183's reimbursement rates vary depending on four types of hospital services: (1) inpatient services; (2) outpatient services; (3) Distinct Part Nursing Facilities; and (4) subacute services. With respect to inpatient services, this appeal concerns reimbursement for *non-contract* inpatient hospital services. Reimbursement rates for inpatient services at hospitals that have contracted with the State are unaffected by AB 1183.

on "whether the plaintiffs asserting the economic injury were in any sense intended beneficiaries of the federal statute on which the Supremacy Clause cause of action was premised." 563 F.3d at 851. Because "[a] cause of action based on the Supremacy Clause obviates the need for reliance on third-party rights," Plaintiffs "could enforce the structural relationship between the federal and state governments so long as they had Article III standing as, essentially, private enforcers of the Supremacy Clause." *Id.* We went on to hold that the reduction in Medi-Cal revenue mandated by AB 1183 harmed Plaintiffs, *id.*, and that any such harm was irreparable because Plaintiffs could not recover money damages against the Department due to the State's Eleventh Amendment sovereign immunity, *id.* at 852.

We recently reaffirmed that holding. *Cal. Pharms. Ass'n v. Maxwell-Jolly*, No. 09-55532, slip op. at 3358-59 (9th Cir. Mar. 5, 2010) (*California Pharmacists II*). Here, Plaintiffs provided evidence of financial loss under each of the four categories of hospital services. With regard to inpatient services, Plaintiffs submitted evidence that no non-contract hospital would receive more than 90 percent of costs, while one-third of hospitals would receive less than 55 percent of their costs. Prior to AB 5 and AB 1183, 87 of the 95 affected hospitals were reimbursed between 95 and 100 percent for inpatient services. As to Distinct Part

Nursing Facilities, prior to AB 5 and AB 1183, 84 percent of costs were reimbursed, whereas only 79 percent would be reimbursed under AB 1183, and many facilities would receive less than half of their costs. Reimbursement for costs of subacute services would decrease from 98 to 93 percent for non-ventilator service providers and from 95 to 91 percent for ventilator service providers. And for outpatient services, reimbursement would decrease from 43 to 41 percent. Thus, Plaintiffs submitted substantial evidence demonstrating providers' financial loss under each of the four categories of hospital services. Such harm is to be considered irreparable in light of the State's Eleventh Amendment sovereign immunity. *California Pharmacists I*, 563 F.3d at 852. Accordingly, the district court abused its discretion in holding that the evidence submitted by Plaintiffs did not demonstrate a likelihood of irreparable harm.

We affirm the district court's holding as to Plaintiffs' likelihood of success on the merits for the reasons discussed in *California Pharmacists II*, slip op. at 33341-56.

We note that while the district court did not reach the issues of the balance of hardships and public interest with respect to Plaintiffs, it held in the related case dealing with adult-day health care centers that both factors weighed in favor of injunctive relief. We agree, and for the reasons set forth in *California Pharmacists*

II, slip op. at 3360, hold that a preliminary injunction would be in the public interest. *See also California Pharmacists I*, 563 F.3d at 852-53.

For these reasons and those we provided in *California Pharmacists II*, slip op. at 3331-61, we reverse the district court's denial of a preliminary injunction, and remand for it to enjoin AB 1183's five percent Medi-Cal reimbursement rate reduction as to the hospital services detailed *supra*.

REVERSED and REMANDED.