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## NEWS RELEASE

# Court Rules That Schwarzenegger Administration Illegally Changed State Policy Regarding Autism Coverage

On Other Key Issues, Ruling Leaves Autistic Children at Risk; Brown Administration Urged to Take Action

### Contact Info

**Name:**

Jerry Flanagan

**Email:**

[jerry@consumerwatchdog.org \(mailto:jerry@consumerwatchdog.org\)](mailto:jerry@consumerwatchdog.org)

**Phone Number:**

(310) 889-4912

Santa Monica, CA -- A Los Angeles County Superior Court issued a ruling late yesterday finding in part that the Schwarzenegger Administration illegally changed state policy relating to autism coverage without following the required public process. However the ruling failed to address key legal issues, including California's mental health parity law, and leaves children at risk of additional coverage denials for autism treatments, according to Consumer Watchdog.

"The immediate effect of the ruling is that the Brown Administration will have the opportunity and duty to close an insurer-sized loophole opened by the Schwarzenegger Administration in a backroom deal with insurance companies. Californians, including those stricken by autism, and their parents and caregivers, expect regulators to enforce the law, not to side with insurance companies seeking to boost their profits by denying patients the care they need," said Pamela Pressley, litigation director for Consumer Watchdog. "We will continue to pursue redress in the courts and work with the Brown Administration to ensure that autistic children get the health care services that their doctors prescribe."

The ruling came in response to a lawsuit filed by Consumer Watchdog and Strumwasser & Woocher LLP alleging that the Department of Managed Health Care ("DMHC") changed the state agency's policy for resolving consumer complaints over insurance company denials of treatments for autistic children. The change in policy led to significant delays in coverage for Applied Behavioral Analysis ("ABA"), an essential treatment for autism. It is well documented that without early treatment children with autism will remain substantially impaired throughout life and will require a more intense level of care as they grow older than if they had received ABA at an early age. ABA requires intensive treatments of 25-40 hours each week and can cost as much as \$70,000 each year or more.

The Los Angeles Superior Court found that the DMHC violated the Administrative Procedure Act, which requires state agencies to provide a public process for adopting such policy changes by regulation, including holding public hearings.

"The judge found that the DMHC did not live up to its responsibility to a fair and open process to make changes to the law for resolving denials of care for autistic children," said Jerry Flanagan, staff attorney for Consumer Watchdog. "Now its up to the Brown Administration to initiate an open public debate and put an end to the biased complaint review process."

DMHC made the change, formalized in a March 9, 2009 memo issued by the DMHC to health insurers, following a lobbying campaign to convince the Schwarzenegger Administration that ABA is an "educational" program not covered by health insurance policies. Governor Schwarzenegger, who appointed the Director of the DMHC, received \$741,200 in campaign contributions from Blue Cross, Kaiser and Blue Shield – three health insurers regulated by the DMHC that commonly deny coverage for autism treatments.

However, Consumer Watchdog said the ruling failed to address key legal issues raised by the lawsuit, most importantly the DMHC's current practice of refusing to require health insurers to cover ABA treatments provided by nationally certified ABA providers. Consumer Watchdog and Strumwasser & Woocher are considering their legal options to address this failure of the ruling.

The court rejected the DMHC's argument that state licensure is required to provide ABA, but wrongly determined that it is in the discretion of the DMHC to allow insurance companies to refuse to cover ABA on the basis that providers do not hold a state license. The court failed to address that the California Mental Health Parity and Knox-Keene Acts bar the DMHC from imposing such a licensing requirement.

DMHC wrongfully insists that ABA therapy can be a covered "health care service" only if it is provided by a California-licensed health care professional. Among other significant consequences, this policy perversely results in denying insurance coverage for ABA services that are provided by precisely those practitioners whose education and training make them the most qualified to provide such therapy—those who have passed the rigorous requirements for certification by the national Behavior Analysis Certification Board—because California presently has no other requirement for licensing or certifying ABA specialists.

Furthermore, under the DMHC's change in policy, autism treatments prescribed by licensed medical professionals are reviewed and second-guessed by DMHC bureaucrats under the guise of determining whether they qualify as covered benefits under the terms of the insurers' contracts, rather than having independent medical experts decide the appeals based upon medical evidence.

A study recently published in the American Academy of Pediatrics' journal Pediatrics found an autism prevalence rate of one in every 91 American children, including one in 58 boys. As of December 2007, the California Department of Developmental Services provided care to nearly 37,000 Californians with autism.

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Consumer Watchdog, formerly the Foundation for Taxpayer and Consumer Rights, is a non-partisan and non-profit public interest organization with offices in Washington D.C. and Santa Monica. Pamela Pressley is its Director of Litigation. For more information, go to: <http://www.ConsumerWatchdog.org> (<http://www.consumerwatchdog.org>).

Strumwasser & Woocher LLP is known for its successful litigation and resolution of major public policy matters. The firm's trial and appellate civil litigation practice focuses on government and electoral law, consumer law, environmental protection, land use, and administrative law. For more information, go to: <http://www.strumwooch.com> (<http://www.strumwooch.com>).

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