



# NEW WORLD

For Persons with disAbilities

November 2014

Californians for DisAbility Rights, Inc.

San Jose Expo

## PRESIDENT'S COLUMN

By Susan Chandler

Leaders are responsible for doing a lot for their members! Randy and Ruthee knock themselves out at the Legislature; Kathy does the jobs of Treasurer, Newsletter Producer, Web Mistress, and Membership Chair; Ben staffs the CDR phone line. Ruthee and I pass along many email alerts from CDR members, national disAbility groups and advocates to keep CDR members and others informed through the CDR MembersXchange yahoo group. (I also write letters of support or opposition.) A few of the issues that come across in my email are: the CA Building Codes, HCD (Housing & Community Development) codes, Electric Vehicle Charging Stations, Long Term & IHSS & Managed Care including a bill of rights for Medi/Medi consumers; IHSS Overtime laws; etc. Another of my jobs is writing and editing NW articles and my column. CDR and CDRF also have to be kept legal and running smoothly. I attend the Foundation meetings and take the minutes and sell threshold ramps as a fundraiser.

Being active in the community allows me to bring awareness of disAbility issues to the cities, county, and businesses. When I meet new people, I like to give them information to help them with their access issues. I don't know about you, but I am automatically activated to fight the systematic discrimination against people with disabilities when I encounter them. Sometimes they are just missing or have bad curb ramps, no disabled parking, or a high threshold, or a bad path of travel on the public sidewalk. Sometimes it is blatant like a 4-1/4" step into a model home - my latest access issue! CDR needs to get the laws changed to include model homes as Title 24 businesses, not just the sales offices!

Every person with a disAbility faces access, health, logistical, equipment, and other challenges in their daily lives. I, myself, have been struggling with health issues for years, and more recently energy and aging issues. We all want to have lives and be with our families, but it is very discouraging when there are constant assaults on our civil rights. Some of us have to seek injunctive relief from cities and businesses for bad access (sue them); that takes time. Unfortunately, most people do not like lawsuits; that is one reason we still have poor access in many places. This is also why CDR works hard in Sacramento to get good laws passed and bad law proposals stopped...AND IS WHY WE STILL NEED CDR!

Unfortunately, it seems that the younger generation is complacent and thinks that access issues have all been solved--WRONG! We need to engage them in the continuing conversation of advocacy for change and enroll them into CDR. Let us hear about your successes, read Kathy's article on page 5. We help each other through emails and CDR MembersXchange. People seem to enjoy the information and the help they get. Have you tried it?

(Cont. on page 7)

**NEW WORLD**  
**San Jose Expo Edition**  
**CDR, Inc.**

**Californians for**  
**DisAbility Rights**  
www.disAbilityrights-cdr.org

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**CDR's Mission - To Improve the Quality of Life for All Persons with any DisAbility Through Education and Training - By Working to Remove Barriers Through Advocacy and Change in Public Policy.**

Originally organized in 1970 as CAPH (the California Association of the Physically Handicapped) --with five members, CDR has grown to become an effective and widely respected cross-disAbility advocacy force.

## LEGISLATIVE REPORT

By Randy Hicks and Ruthee Goldkorn

A few days ago, I met with reps from Asm. Jose Medina (D-61) and Sen. Richard Roth (D-41) to discuss the coming legislative session agenda for the disAbility community representing CDR, the CDP (CA Democratic Party) Disabilities Caucus and the CDP Veterans Caucus.

The issues we brought forward were:

1. **CCI** (California Collaborative on Long-term Services & Support) and the Cal Duals for managed health care.

2. **Revision of the asset requirements for Medi-Cal recipients** (SB 1124) and Health Parity (SB 1046) were both vetoed; there is no rhyme or reason to justify vetoing these bills.

3. **Personalized or special license plates** for the PWD community with the ISA (International Symbol of Accessibility) on it are unavailable. The state is losing millions, if not billions of dollars, with us not having this plate.

4. **Amending the Health and Safety Code** that requires smoking areas be at least 20 feet away from the entrance to a building *to include* the 20 feet (minimum provision) being away from accessible parking spaces and the accessible POT (path of travel) to the entrance of a building.

5. **Amending ERISA** (Employee Retirement Income Security Act) working with Rep. Mark Takano or other congressional reps and aligning a state law to definitively remove any room for the "We Reserve the Right to Refuse Service to Anyone" doctrine from health care providers, including but not limited to IPs, home health care companies, etc. It is currently allowable!!!

6. **Reintroducing SB 2714** to prevent municipalities from making changes to our parking rights as set in the CVC (CA Vehicle Code). This was a bill we sponsored but it got vetoed. If it was killed because it was determined to be an economic development bill, then we will frame it as such or it can be a trailer to a bill.

7. **Universal Design Requirement** Attaching it to any and all housing built for veterans under Prop 41.

We will be working with these legislators to see to it that these concepts become bills. Additionally, the Legislative Committee is discussing the idea of a bill that will once and for all address the abuses and abusers of our Civil Rights statutes and provide for injunctive relief and judicial approval of damages.

(Cont. on page 7)

## **DOL PROPOSES IHSS DELAYING OVERTIME LAW**

By: Bruce Darling, bdarling@cdrnys.org, Center for Disability Rights (NY)

"No news here. PWD's screwed by Washington again" - Ruthee Goldkorn (from CDR MembersXchange).

As a way to address the concerns of the Disability Community, the Department of Labor has announced that it will not enforce the changes to the Fair Labor Standards Act. Although delaying enforcement may sound like delaying the effective date, the two things are very different; the DOL announcement that it will delay enforcing the new FLSA companionship rule changes is a hollow, worthless, and insulting solution. To explain why, here is a simple analogy: Just because your friend, who is a cop, tells you that he will not give you a ticket for speeding, this does not mean that EVERY cop will give you a free pass to speed. Similarly, just because DOL says they will not enforce the law, does not mean that no one will.

DOL understands that there is still a private right of action and those who choose to not pay time and a half can be sued and forced to pay by the courts.

Don't take our word for it; according to Seth Harris, who preceded Tom Perez as Labor Secretary: "The reason to distinguish between a delayed effective date and a non-enforcement policy is that the Fair Labor Standards Act allows workers to enforce the law for themselves. They do not need the Wage & Hour Administration. The law permits what lawyers call a 'private right of action', which are lawsuits brought by private parties without the involvement of the government. When wage and hour law changes on January 1st to include home health workers, these workers will be able to file their own lawsuits against their employers to collect unpaid wages and overtime. The real question, raised by the Labor Department's announcement yesterday, is if worker advocates and plaintiff's lawyers will step in to enforce the Fair Labor Standards Act in 2015 when the Labor Department will not?"

DOL knows that the vast majority of states haven't figured out how to pay for the changes. In fact, some states with two-year budget cycles, like Texas, choose to not even start their budget process until after the effective date. Even states with annual budget cycles had virtually all finished their annual budget process when DOL issued the guidance on the rule's impact on consumer directed services.

Sadly, what ADAPT, the National Council on Independent Living and other disability-led organizations predicted is now happening. People with disabilities are getting notices that their attendants' hours will be capped.

Consequently, attendant service users are having to cut the hours of long-term attendants and these trusted workers are facing an uncertain future as they deal with lost wages.

Here's a notice that my friend and ADAPT'er, Susan Stahl, received from her fiscal intermediary, [http://cdrnys.org/files\\_maxim\\_letter\\_capping\\_hours.html](http://cdrnys.org/files_maxim_letter_capping_hours.html). Susan testified yesterday to New York State that she has had the same attendant for 15 years who provides about 70 hours of assistance each week. By not delaying these rules, she is going to need to find another worker which will cut her worker's income by over 40 percent. Based on \$11 per hour, that means the attendant will lose \$17,000 a year!

When Susan pushed state representatives to explain how they were going to fix this, they could only thank her for sharing her story because, with about ten weeks until the deadline, they do not

have a plan in New York. This shows how the thoughtless implementation of these rules by the Obama Administration and DOL Secretary Tm Perez is hurting the very people they were supposed to help.

**DON'T MOURN, ORGANIZE!**

Seth Harris has urged workers to step in and sue to enforce the FLSA changes, knowing that this move by DOL will undercut the freedom and body integrity of people with disabilities. Disability rights advocates need to step up to defend the freedom of people with significant disabilities and the paychecks of the attendants who make that the promise of freedom a reality.

## **Understanding the Labor Department's Decision on Home Care Workers**

By Seth Harris - October 08, 2014

Late yesterday afternoon, the Labor Department's top enforcers of wage and hour laws, Dr. David Weil and Laura Fortman, announced that they and their staff would not enforce a new rule extending minimum wage and overtime protections to home health care workers for six months after the rule takes effect on January 1, 2015. Because this is a subtle and uncommon action, it bears a little further explanation.

Home health workers are the people who care for people with disabilities and seniors so that they may live in the community rather than in nursing homes or other institutions, yet, these workers have not been protected by the federal minimum wage or the requirement that workers who work more than 40 hours in a week receive overtime pay for those additional hours. These requirements are found in the Fair Labor Standards Act. Home health workers have been excluded from the FLSA. On January 1st, that exclusion ends and home health workers will be entitled to at least the federal minimum wage and time-and-one-half for overtime worked beginning New Year's Day.

In order to change the effective date of a regulation, except in exceptional cases or for very short periods, regulatory agencies are required to propose the extension to the public through a notice and comment process, accept the public's comments, and then publish a new final regulation with the later effective date. It takes a while. The Labor Department didn't do that in this case. So, the effective date remains unchanged.

Rather, the Labor Department's Wage & Hour Administration will not enforce the regulation. I will not critique the argument that some states are making that they can't possibly pay home health workers a reasonable wage starting in January 2015. That is the basis for the Labor Department's decision. In response, the Wage & Hour Administration will not enforce the new regulation at all from January 1 to July 1, 2015. For six months thereafter, it will exercise its discretion when deciding whether to enforce the law. Of course, all of the Labor Department's worker protection agencies necessarily exercise prosecutorial discretion all the time. They could not possibly pursue every employment law violation they find, thus home health employers covered by the Wage & Hour Administration's non-enforcement policy and the state Medicaid agencies that fund many of them may risk a lawsuit and refuse to change their pay practices in the hope that no one will sue.

In sum, the real question raised by the Labor Department's announcement yesterday is again whether worker advocates and plaintiff s lawyers will step in to enforce the Fair Labor Standards Act in 2015 when the Labor Department will not. We will have to see.

# BE THE VOICE IN YOUR COMMUNITY

By Kathleen Barajas

My advocacy work, not to mention social activities, takes me many places in Los Angeles and surrounding areas. Much of the time, busses and my power wheelchair are my main source of transportation, which means that I travel many city and county sidewalks. I am fortunate that most sidewalks are suitable, however I occasionally find an access issue that the City has overlooked or ignored completely.

About seven years ago, a new complex with movie theatres was built in the City of Pico Rivera. An entire corner was demolished and built over, including the sidewalk surrounding it. One would think that since this was a recent construction, the City would ensure that ADA guidelines were followed; to think otherwise would be foolish, right?

One day, as I was on my way to a shopping area in another part of Pico Rivera, I got off the bus right by the new complex, as I had to switch to another bus around the corner (still by the complex). As I began to turn the corner, I was stunned to find a long cement barrier taking up at least half of the width of the sidewalk. This cement barrier surrounds a voltage tower. Because of this barrier, my wheelchair (which is a junior sized due to my small stature) would not fit on the sidewalk. Not knowing the surroundings very well, the only alternative I saw, at that time, was to get on the extremely busy street, and roll to the driveway in order to get to my next bus stop. I risked my life that day, all because the City did not adhere to ADA guidelines.

What astounds me all the more, is the fact that this new complex is on a large piece of land. Adjacent to the large voltage tower is a CVS Pharmacy with a good sized parking lot. With this amount of space, had the voltage tower been placed just a few more feet away from the sidewalk, this access issue would have been nonexistent. What were the City officials and contractors thinking when they did the blueprints for this new complex? I am pleased to say that I won my lawsuit against the City of Pico Rivera. The City estimates that it will take them up to two years to correct this access issue. It will be interesting to see if they follow through with what they say.

As citizens with disabilities, we need to be the voice in our community, and alert the County/City when we encounter an access issue. Currently, I have contacted local municipalities about several access issues that I have come across in my everyday travels. While I do not believe in seeking legal action on every access issue that I encounter, I will do so if I feel that the issue is blatant, meaning that it appears that the municipality has been neglectful in following the ADA guidelines.

In another access issue, I was successful in getting a neighboring city by me to add a fourth curb cut and, more recently, to repair a portion of sidewalk that was buckling due to a tree root uplifting it. In the case of the fourth curb cut, I learned that the City was not obligated to install the fourth curb cut; whether they knew this or not, they proceeded to give me what I asked for. I am grateful to them for this, as the curb cut makes crossing the street safer, and ultimately this is a goal of the ADA.



## **VISIT CDR'S BOOTH AT THE SAN JOSE**

**San Jose McEnery Convention Center**

150 W. San Carlos Street

Nov 21<sup>st</sup>, 11-5; Nov. 22<sup>nd</sup>, 11-5;

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**[www.AbilityCenter.com](http://www.AbilityCenter.com)**

## PRESIDENT'S COLUMN (Cont.)

It is time for big changes in CDR! There's nothing like getting more people to join CDR -- organizing and holding meetings (chapter or community) around an access issue to get the juices flowing and get some butt kicking done! Are you with me? We've had the structure and legal status since 1970, let's use it and become a force to reckon with once more!

**THIS IS A CALL FOR ACTION! WHAT ARE YOU GOING TO DO FOR CDR? WITHOUT YOU, WE MAY LOSE CDR TO THE ANNALS OF HISTORY!**

## LEGISLATIVE REPORT (Cont.)

There are still three bills floating around the capitol authored by Democrats that will further erode our rights. We will meet to address these issues and look for authors of a bill to address the matter at a level of common sense. We invite interested CDR members to join the Legislative Committee, please email Randy Hicks at rhfactor\_98@yahoo.com.



### SafePath Offers a Selection of Transition Products:

- Threshold Ramps
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- Shower Ramps

### For campaign details, contact:

Susan Chandler at 805-528-4695,  
Barnonhill@aol.com or  
Shira Leeder, CDRF Chair, at  
Shira@leeder.com

For product details, go to:  
[www.SafePathProducts.com](http://www.SafePathProducts.com)

In partnership with SafePath,  
a portion of the ramp sales will go to  
CDR'S "New World" Publication and  
Laura Williams Memorial Scholarship Fund



Striving to ensure dignity,  
equality, and opportunity for  
all people with disabilities

DRA represents groups of individuals with the full spectrum of disabilities in complex, system-change class-action cases to advance equal rights and opportunities for people with disabilities nationwide.

[www.dralegal.org](http://www.dralegal.org)

## **CDR Foundation Update**

By Shira Leeder

We recently chose a winner for the **Laura Williams Memorial Scholarship**; the recipient is **Ruth Welland**, a senior from the University of San Francisco. Ruth is majoring in political science, hopes to attend law school, and eventually “serve in the California State legislature as a policy research analyst...” Ruth plans to help the Foundation by raising funds for next year’s scholarship. She will also consider being a Foundation Board Member for one year. Before and during this time, she intends on scouting out new potential board members. She also states that she will be speaking at Capitol Action Day 2015, and plans to lobby the support of legislators by personally visiting their offices at the State Capitol.” On behalf of the Foundation Board, we want to sincerely congratulate Ruth on winning the 2014 Laura Williams Memorial Scholarship. We will look forward to working with her during the coming year.

The CDR Foundation has made several good changes to the board, adding two more valuable board members, while preparing to say farewell to two productive board members at the end of this year. We have voted on to the Foundation board: Helen Walsh from Berkeley, who is a long time disabled advocate and has experience in diverse media fields, and Hazel Weiss, also from Berkeley, who has expertise in raising funds and educating the public on what the Foundation does.

On a sad note, we are preparing to say goodbye to two of our fellow board members: David Juare, who has contributed so much to the Foundation over the past two years by voting on crucial financial matters, making changes to the bylaws, and helping to raise funds for our scholarship fund. We are also saying goodbye to our other board member, Joannette Tavarez. She has helped the Foundation raise money, and also voted on crucial financial matters for the past year. I would like to extend my sincere gratitude to these two individuals for all of their hard work for the Foundation, and I wish them all the best of luck in their future endeavors.

We are always seeking new potential board members, and new donations for our annual scholarship. We will be working with the web designer on updating our website to reflect the current times; we will also be updating our bylaws. We hope to see you at the Abilities Expo with your questions and concerns about any related legislative bills or the scholarship.

## **MEDI-CAL, MEDICARE CONSUMER’S BILL OF RIGHTS**

The Disability Rights Movement has always been devoted to self-determination and the following our declaration of our rights in the health care arena:

### **THE RIGHT TO IN HOME SUPPORT SERVICES (IHSS):**

- Choose the Individual Provider (IP) mode for home care delivery.
- Maintain an Independent Relationship between the consumer and their Individual Provider.
- Retain their authority as the employer with all employer rights.
- Emergency help with a system of 24/7 response services.
- Direct their own paramedical services.
- Train their own providers.

- Self-Determination and choices.
- Freedom from intrusive monitoring, supervision, and other violations of Civil Rights.

### **IN MANAGED CARE, THE RIGHT TO:**

- Seamless Service Delivery.
- Real-Time Solutions.
- Ombudsman to address same day solutions when medical plans are not ready.
- Freedom from “Care Coordination or Management Teams”.
- Exemptions must be expedited and guaranteed for long-time disability specialists and other necessary medical treatments.
- Continuum of Care must be maintained thru entire period of contract.
- Active—not passive—Enrollment.
- "Person Centered Care."
- “Nothing About Us Without Us”. Consumers must be included in policy making bodies that discuss or suggest changes.
- Legal Protections.

### **THE RIGHT TO HEALTH CARE ACCESS:**

- Access to Examination Tables and Fittings for durable medical equipment.
- Assistance with accessing examination tables and disrobing as is required by the ADA.
- Communication Access in all forms.

### **THE RIGHT TO A UNIFORM STANDARD OF REHABILITATION** (approved by the National Institute on Disability and Rehabilitation (NIDR)).

- Comprehensive Acute Onset Rehabilitation that helps a person become as independent as possible.
- To stay in Rehab until they are ready to live on their own NOT a skilled nursing facility.
- Comprehensive Training and Discharge Planning for independence of consumer, family, and providers.
- Housing help to rehab their own home or find an appropriate place.

### **THE RIGHT TO APPROPRIATE DURABLE MEDICAL EQUIPMENT (DME):**

- Appropriate Durable Medical Equipment Prescriptions (including a Volker turning mattress for all rehab patients at risk of pressure sores) and Complex Rehab Technology (CRT) prescribed by the primary medical team should not be over-ridden by the funding source.
- Choice of DME and Maintenance provider.
- Authorization for Emergency Durable Medical Equipment to prevent Consumer from being medically endangered, stranded, and deprived of basic mobility.

### **THE RIGHT TO BASIC FREEDOM OF MOVEMENT:**

We find the Federal “Home Bound” rule extraordinarily egregious. No other citizen is required to be under “house arrest” for the basic right to go anywhere. There cannot be any restrictions of movement on how a person uses whatever equipment they have.

This is a draft by Nancy Becker Kennedy and Susan K Chandler, and we want comments sent to barnonhill@aol.com. **Join the IHSS Consumers Union on Facebook at <http://www.facebook.com/groups/IHSS.ConsumersUnion/265103970234336>.**

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<b>FREE MATTER          FOR THE          PHYSICALLY          HANDICAPPED          AND BLIND</b>
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<b>STREET ADDRESS, APT. #</b>		
<b>CITY</b>	<b>STATE</b>	<b>ZIP</b>
<b>TELEPHONE (Home/Cell)</b>	<b>E-MAIL ADDRESS</b>	<b>DATE</b>
<b>MEMBERSHIP FEES:</b> ___ Regular - \$25.00 ___ Student/Low Income – \$10.00 ___ Family (2 people) - \$40.00 ___ Lifetime - \$200.00		<b>AMOUNT ENCLOSED</b>
<input type="checkbox"/> Please put me on the CDR Members Exchange via Yahoo Groups (must supply e-mail address)		
<b>INSTRUCTIONS:</b> Check the web site for more membership info: <a href="http://www.disabilityrights-cdr.org">www.disabilityrights-cdr.org</a> Print out this form, complete all entries, and mail it with a check for amount due, payable to: <b>CDR, INC., C/O Kathleen Barajas, 1410 Simmons Avenue, Los Angeles, CA 90022</b>		

If you would like this newsletter in Word or PDF format, please contact Kathleen Barajas at <a href="mailto:kdbarajas@aol.com">kdbarajas@aol.com</a>
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