

**Early and Periodic Screening, Diagnosis & Treatment
Case Docket
mental and behavioral health services**

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This docket summarizes published, reported, and unreported federal and state court cases that discuss the Medicaid EPSDT program as it relates to the behavioral health needs of children.

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Reported federal decisions:

Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Services, 364 F.3d 925 (8th Cir. 2004) (appeal after remand), *earlier case*, 293 F.3d 472 (8th Cir. 2002)

On remand, the district court had found that ADHS violated the “equal access provision” (§ 1396a(a)(30)(A)) of Medicaid Act and enjoined ADHS from changing the program until impact study was completed. The Eighth Circuit affirmed in part, ordering Arkansas to continue **Child Health Management Services (CHMS)** program until impact study on terminating program was completed. The Court of Appeals reversed the injunction as it extended to CMS, which was not a party to the underlying action and did not actively participate in decision to terminate program. In the earlier 2002 ruling, the Court said that when the state agency planned cutbacks in state Medicaid CHMS services, plaintiffs had standing and state plan was required to reimburse certain physician-approved services, but federal law did not require state to provide for CHMS services.

Collins v. Hamilton, 349 F.3d 371 (7th Cir. 2003), *aff’g*, 231 F. Supp. 2d 840 (S.D. Ind. 2002)

Appellee minor Medicaid recipients brought a class action suit against the state of Indiana, alleging violations of the Medicaid Act based on the state’s failure to provide **long-term residential treatment** in psychiatric residential treatment facilities for children under age 21. The state’s standing policy of refusing to provide long-term residential treatment for those patients for whom such treatment is found necessary by EPSDT screening violated the federal Medicaid Act. The state was ordered to provide Medicaid-eligible children under the age of 21 with the mental health treatment found to be necessary by EPSDT screening.

Rosie D. v. Swift, 310 F.3d 230 (1st Cir. 2002), *same case*, 256 F. Supp. 2d 115 (D. Mass. 2003) (granting motion to compel production of documents having private information regarding class members)

In case on behalf of children diagnosed with behavioral disorders and needing EPSDT and home-based therapies, **11th Amendment** immunity does not protect state officials from federal court suits for prospective injunctive relief under the Medicaid Act; fair hearing requirement set forth in § 1396a(a)(3) falls short of showing that Congress intended to foreclose injunctive relief and *Ex parte Young* controls.

Westside Mothers v. Haveman, 289 F.3d 852 (6th Cir.), *cert denied*, 537 U.S. 1045 (2002), *rev’g*, 133 F. Supp. 2d 549 (E.D. Mich. 2001)

Westside Mothers was filed by children who are not receiving sufficient and timely medical, dental, and developmental health screening services through Michigan’s Medicaid managed care program. The district court had dismissed the case, finding neither **jurisdiction or a cause of action** because, among other things, individual could not bring actions under *Ex parte Young* against state officials to enjoin ongoing violations of spending clause programs such as Medicaid. The Sixth Circuit reversed and remanded district court holding, noting the

Medicaid program as supreme federal law and not simply a contract. It also recognized plaintiff's private right of action under § 1983 and the validity of the suit under Ex parte Young.

Emily Q v. Bonta, 208 F. Supp. 2d 1078 (C.D. Cal. 2001) (permanent injunction)

This injunction requires the state to take a number of steps to provide home and residential therapies to children who would otherwise be locked in state mental hospitals. Among other things, the state was ordered to: (1) include **therapeutic behavioral services** (TBS) in the Medi-Cal program; (2) assess institutionalized children to determine if they qualify for TBS; (3) develop and distribute a request and referral form for providers to request TBS services, (4) revise the EPSDT brochure to inform beneficiaries and applicants about TBS and other developmental services; and (5) provide compensatory benefits to class members wrongfully denied TBS services.

John B. v. Menke, 176 F. Supp. 2d 786 (M.D. Tenn. 2001), *John B. v. Menke*, No. 3-98-0168 (M.D. Tenn. Feb. 25, 1998) (consent order) (motion to enforce pending)

In this case, children complained of the failure of the TennCare managed care system to provide screening and diagnostic services and to provide needed treatment, from wheelchairs to home-based mental health services. The case settled when the state agreed to implement a plan that includes requirements for, among other things: (1) updating and implementing statewide periodic screening requirements to identify both medical and mental health problems. **Developmental screening** is to include the use of culturally sensitive developmental assessments and avoidance of premature diagnosis labeling; (2) improving access to needed treatments, with particular attention to children who are medically fragile; and (3) better integration of health care and custodial services for children in foster care. In 2001, the district court held that state's managed care system did not adequately meet EPSDT mandates and to remedy the violations, the state would be ordered to carve out the 21 and under population from the pool of managed care recipients.

Foster Children v. Bush, 180 F. Supp. 2d 1321 (S.D. Fla. 2001), *aff'd in part and rev'd in part on other grounds*, 329 F.3d 1255 (11th Cir. 2003)

This case is filed on behalf of children in the defendant's custody, alleging systemic abuse and neglect of children in the foster care system, including the failure to provide treatment services through EPSDT. This magistrates decision looks at whether the EPSDT provisions are enforceable through § 1983, and it holds that they are. All Medicaid EPSDT claims were settled before reaching the 11th Circuit.

Chisholm v. Hood, 133 F. Supp. 2d 894 (E.D. La. 2001) *same case*, 110 F. Supp. 2d 499 (E.D. La. 2000)

Chisholm is filed on behalf of children with mental health care needs who are waiting for home and community-based waiver services. A class has been certified (1998 WL 92272 (E.D. La. 1998)). In February 2001, the state was required to provide access to **community-based psychological and behavioral** services to children with autism. In a decision from 2000,

the court found it a violation of EPSDT to restrict **therapy services** to school settings and to limit home health services to only those mandated by federal regulations. In an unpublished partial settlement, the state agreed to improve outreach and informing of this population.

Risinger v. Concannon, 201 F.R.D. 16 (D.Me. 2001), *same case*, 117 F. Supp. 2d 61 (D. Me. 2000)

This case is a follow-up to *French v. Concannon*, described below. The complaint sought to address problems with **quality and continuity of home and community services** for children with behavioral health needs. The 2000 decision denies the defendant's motion to dismiss the case. The district court in 2001 granted Plaintiff's motion for class certification. The case settled in May 2002, which the defendant agreed to comply with timeliness standards for the provision of case management and in-home behavioral support services for children under age 21—with these services to commence in accordance with reasonable standards of behavioral health practice and generally within an outer limit of 180 days.

Kirk v. Houstoun, 2000 U.S. Dist. LEXIS 8768 (E.D. Pa. June 23, 2000)

Plaintiffs alleged that Pennsylvania failed to adequately provide **behavioral health rehabilitative services** to children who qualified for and were in need of services. The court granted summary judgement to the plaintiffs, finding that defendant never established adequate time lines to measure the prompt initiation of services w/n the managed services counties; therefore, it had not adequately provided prompt treatment to many within the plaintiff class. The court also found a violation of HCFA waiver because of failure to ensure some managed care subcontractors maintained an adequate number of providers as required by contract.

Charlie and Nadine H v. Whitman, 83 F. Supp. 2d 476 (D.N.J. 2000)

This case, which focuses on children in out of home placement, includes an EPSDT claim to improve developmental screening and services. Relying on *Blessing v. Freestone*, 520 U.S. 329 (1997), the court **dismissed the EPSDT claim as unenforceable** under 42 U.S.C. § 1983.

Tallahassee Mem. Regional Med. Center v. Cook, 109 F.3d 693 (11th Cir. 1997)

This case required the state to reimburse hospitals for **inpatient “grace days” needed by adolescents** during periods when lower levels of mental health care were medically necessary but alternative care settings were unavailable.

Texas v. United States Dep't of Health and Human Services, 61 F.3d 438 (5th Cir. 1995)

This decision upholds the U.S. Department of Health and Human Services' refusal to recognize **inpatient residential chemical dependency treatment** (to include room and board) as a EPSDT rehabilitation service.

Sanders v. Lewis, No. 2:92-0353, 1995 WL 228308, *reprinted in*, MEDICARE & MEDICAID GUIDE ¶ 43,120 (S.D.W.Va., March 1, 1995 and Aug.16, 1993, March 1, 1995) (Consent order and compliance plan)

Sanders involved a certified class of **children in out of home placement** who were not receive needed EPSDT outreach and screening services. The state agreed to take a number of steps to provide better information about EPSDT, including revisions to its EPSDT brochure and training of health care providers.

Scott v. Snider, No. 91-CV-7080 (E.D. Pa. Dec. 2, 1994) (order and stipulation of settlement), *same case*, (E.D.Pa. Aug. 11, 1993), *reprinted in*, MEDICARE & MEDICAID GUIDE (CCH) ¶ 42,056 (stipulated partial settlement)

Scott focuses on a range of issues confronted by children enrolled in managed care. Among issues addressed in the order and stipulation of settlement are requirements to implement **specific protections for children in out-of-home placement and children with mental retardation**.

J.K. v. Dillenberg, 836 F. Supp. 694 (D. Ariz. 1993), *later proceeding*, *J.K. v. Eden*, No. CIV-91-261-TUC-JMR (D. Ariz. Mar. 20, 2001) (settlement)

The first *J.K.* decision requires **proper notice and due process** when residential mental health services are denied, reduced or terminated by managed care providers. The final settlement of this case envisions **broad systemic change of the mental health system** over a six-year period, during which pilot projects, ongoing training of front line staff, and other activities will occur. The settlement is based on 11 principles that the defendant will follow to improve the mental healthcare system for children: (1) collaboration with the child and families; (2) focus on functional outcomes (e.g. improved school performance); (3) multi-system collaboration on behalf of the child; (4) accessible services, including case management; (5) development of best practices; (6) use of most appropriate care settings; (7) timely services; (8) services tailor to the child and family; (9) stability in health care providers; (10) respect for cultural heritage; (11) support of independence; (12) identification of and connection to the “natural” support system of the child.

Salazar v. District of Columbia, No. CA-93-452 (GK) (Order Sept. 17, 2001), *same case*, (Jan. 25, 1999) (Consent Judgment; Order Modifying the Amended Remedial Order of May 6, 1997 and vacating the order of March 27, 1997); 1997 WL 306876 (D.D.C., Jan. 17, 1997) (remedial order), *earlier case history*, 938 F. Supp. 926 (D.D.C.), *amended and superceded by*, 954 F. Supp. 278 (D.D.C. 1996), *same case*, *Wellington v. District of Columbia*, 851 F. Supp. 1 (D.D.C. 1994) (EPSDT provisions enforceable through § 1983)

This broad and ongoing case includes EPSDT services for children with behavioral health needs,. Since consent judgment was entered, individual and systemwide enforcement actions have involved, among other things, **transportation to mental health services, requirements for lead testing, and home-based services**.

Maher v. White, No. 90-4674, 1992 WL 122912 (E.D. Pa., June 2, 1992)

This case requires improved EPSDT coverage of **children in foster care placement**.

L.J. by Darr v. Massinga, 778 F. Supp. (D. Md. 1991), *same case*, 699 F. Supp. 508 (D. Md. 1988) (consent decree)

This decree requires initial and periodic examinations for **children in out-of-home placement**.

G.L. v. Stangler, 873 F. Supp. 252 (W.D. Mo. 1994) (modified consent decree), *same case*, 731 F. Supp. 365 (W.D. Mo. 1990), 564 F. Supp. 1030 (W.D. Mo. 1983) (consent decree).

Among other things, this consent decree addresses initial and follow-up examinations for **children in out-of-home placement**.

Unreported federal decisions:

Alberto N. v. Gilbert, No. 6:99CV459 (E.D. Tex.) (Aug. 9, 1999: Complaint) (Partial settlement 2001)

This case concerns in-home health services for children under age 21; particularly therapy services. Partial settlement was reached in 2001, where the parties agreed that no preset limits would apply to physical, occupational and speech and language therapy services and that specified due process protections would apply. See <http://www.healthlaw.org/pubs/200403.AlbertoNdocs.html> (Settlement and model forms).

French v. Concannon, No. 97-CV-24-B-C (D. Me. July 16, 1998) (Order of dismissal and agreement)

This case concerned that lack of EPSDT services, particularly **case management, in-home aides, medication monitoring, and mental health counseling**, for children with behavioral health needs. Settlement of the case included: (1) designation of an employee position within the Department of Mental Health to identify children who need services and to make sure that treatment plans are developed and implemented.; (2) revision of the EPSDT brochure was revised to include easy-to-understand information about the range of behavioral services that are available to children; (3) development of a “regional resource directory” that includes information about available providers and resources; (4) creation of a new provider category — behavioral health specialist — targeted to home and community-based settings; (4) regional EPSDT training sessions for providers and case managers; (5) streamlining the prior authorization process, including a presumption that mental and behavioral health services described in treatment plans developed by authorized providers are medically necessary; (6) revision of the EPSDT provider screening forms to reflect age-specific information about mental health needs and anticipatory guidance; (7) promulgation of regulations that require prompt delivery of treatment services, equality of services between children with physical and mental health needs and between children with mental illness and mental retardation, and collaborative efforts to focus on child-and family-oriented care.

Metts v. Houstoun, No. 97-CV-4123 (E.D. Pa. Mar. 27, 1998) (settlement agreement)

This settlement concerns coverage and due process protections for a number of EPSDT **in-home services in managed care settings**, including nursing services, home health aid services, personal care services, and case management services.

Bates-Booker v. Houstoun, No. 97-CV-3734 (E.D.Pa., Oct. 1997) (agreement)

The defendant agreed that the state and its managed care contractors would assure EPSDT coverage of necessary medical **services and equipment for children in special education or early intervention settings** and provide proper due process notices when services are denied.

T.L. v. Belshe, No. CV-S-93-1782 LKKPAN (E.D. Cal. 1995) (settlement)

The state agreed to promulgate regulations to guide process for covering EPSDT **treatment services not included in the state Medicaid plan for adults**. Many of these non-covered services for adults assist children with disabilities.

Kelly v. Sheehan, No. 94-0140-B (D. Me., Sept. 21, 1994)

This is a consent judgement concerning coverage of **behavioral health** services.

Lawrence K. v. Snider, No. 91-6180 (E.D. Pa., Jan 5, 1993) (settlement)

This case concerns reimbursement for mental health services in **prepaid managed care**.

Reported state decisions:

Manglass v. Rhode Island Dep't. of Human Servs., No. PC 03-0125, 2003 R.I. Super. LEXIS 122 (R.I. Super. Ct. Oct. 6, 2003)

The Medicaid agency's decision to reduce **home-based therapeutic services** from 40 hours a week to 15 lacked sufficient rationale. The case was remanded to the agency for consideration of the requisite number of hours warranted by the evidence before it.

Georgia Dep't. of Cmty. Health v. Freels, 258 Ga. App. 446 (Ga Ct. App. 2002)

The case discusses EPSDT treatment and requires coverage of **hyperbaric oxygen therapy** for a child with cystic fibrosis.

Tomorrow's Hope v. Idaho Dep't of Health and Welf., 124 Idaho 843, 864 P.2d 1128 (Wyo. 1993)

This case finds **EPSDT as a reimbursable cost for ICF/MRs.**

Unreported state decisions:

E.H. v. Matin, No. 81-MISC-585 (Cir. Ct. Kanawha Co., W.Va.) (Temporary Restraining Order, June 4, 1992)

The TRO issued to block termination of off-site rehabilitative clinic services for the mentally ill. The dispute settled when the state agreed to provide off-site **rehabilitative services** to children through EPSDT.

Lead poisoning cases:

The following cases concern testing for lead poisoning, which can cause mild and severe developmental delay: *Thompson v. Raiford*, No. 3:92-CV-1539-R, 1993 WL 497232, reprinted in *MEDICARE & MEDICAID GUIDE (CCH)* ¶ 41,776 (N.D.Tex., Sept.24, 1993) (settlement of this nationwide class action lawsuit resulting in the Health Care Financing Administration publishing a *State Medicaid Manual* section regarding lead blood level assessments); *Ellis v. Wetherbee*, No. S92-0529 (S.D. Miss., May 1994) (consent decree) (state agreed to provide assessments); *Addison County Community Action Group v. Celani*, No. 5:92cv22 (D.Vt., Mar. 9, 1993) (stipulation and dismissal) (same); *Matthews v. Coye*, No. C-90-3620-EFL (N.D. Cal., Oct. 17, 1992) (stipulation and dismissal) (same); *New York Coalition to End Lead Poisoning v. Koch*, 524 N.Y.S.2d 314, 138 Misc.2d 188 (Supp. 1987) (ordering assessments).