

Early and Periodic Screening, Diagnosis & Treatment Case Docket

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This docket summarizes published, reported, and unreported federal and state court cases that discuss the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

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Reported federal decisions:

Hawkins v. Comm’r, 2004 D.N.H. 23, 2004 U.S. Dist. LEXIS 807 (D. N.H. 2004) (final approval of a consent class action settlement) (certifying class and requiring defendant to take enumerated steps to assure the availability and accessibility of **dental services** through EPSDT)

Collins v. Hamilton, 349 F.3d 371 (7th Cir. 2003), *aff’g*, 231 F. Supp. 2d 840 (S.D. Ind. 2002) (state’s standing policy of refusing to provide **long-term residential treatment** for those patients for whom such treatment has been found necessary by EPSDT screenings violates Medicaid Act; state must provide Medicaid-eligible children under the age of 21 with the mental health treatment found to be necessary by EPSDT screenings)

Kenny A. v. Perdue, 218 F.R.D. 277 (N.D. Ga. 2003) (violation of EPSDT program creates a cause of action enforceable under 42 U.S.C. § 1983)

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

Frew v. Hawkins, 124 S. Ct. 899 (2004) (**enforcement of consent decree** does not violate the 11th Amendment, case remanded), *rev’g*, *Frazar v. Gilbert*, 300 F.3d 530 (5th Cir. 2002) (refusing to enforce consent decree that required state officials to take specific actions in administering Medicaid EPSDT program), *vacating*, *Frew v. Gilbert*, 109 F. Supp. 2d 579 (E.D. Tex. 2001) (finding defendant had violated certain provisions of EPSDT consent decree and ordering corrective action; re-affirming enforceability of EPSDT under § 1983), *earlier case*, *Frew v. Friedholm*, No. 3:93CV65 (E.D. Tex., Jan 25, 1996) (consent decree) (EPSDT informing and screening case; previous order finds EPSDT provisions enforceable through section 1983). The circuit court remanded the case to the district court in July 2004.

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

Westside Mothers v. Haveman, 289 F.3d 852 (6th Cir.) (holding Medicaid Act is supreme federal law and not simply a contract; also recognizing validity of the suit under **Ex parte Young** and private

cause of action under § 1983, *cert. denied*, 537 U.S. 1045 (2002), *rev.g.*, 133 F. Supp. 2d 549 (E.D. Mich. 2001)

Antrican v. Odom, 290 F.3d 178 (4th Cir.), *cert. denied*, 537 U.S. 973 (2002), *aff'g*, 158 F. Supp. 2d 663 (E.D.N.C. 2001) (denying motion to dismiss based on **11th Amendment** sovereign immunity and § **1983** in EPSDT dental case)

Oklahoma Chapter of American Academy of Pediatrics v. Fogarty, 205 F. Supp. 2d 1265 (N.D. Okla. 2002) (finding that organizational plaintiff and families had standing to challenge state's lack of proper **implementation of EPSDT** and determining that EPSDT is enforceable under § **1983**)

S.D. v. Hood, No. 02-2164, 2002 U.S. Dist. LEXIS 23535 (E.D. La Dec. 3, 2002) (on appeal) (state's policy of refusing to provide **incontinence underwear** for Medicaid recipient for whom such medical assistance was found medically necessary by EPSDT screenings violated Medicaid Act)

Foster Children Bonnie L. v. Bush, 180 F. Supp. 2d 1321 (S.D. Fla. 2001) (holding that the state is bound by federal law to provide EPSDT services to children in **foster care**), *aff'd in part and rev'd in part on other grounds*, 31 *Foster Children v. Bush*, 329 F.3d 1255 (11th Cir. 2003)

John B. v. Menke, 176 F. Supp. 2d 786 (M.D. Tenn. 2001) (held that the state's managed care system did not adequately meet **EPSDT mandates** and ordered it to remedy the violations, ordered state to carve out the 21 and under population from the pool of managed care recipients), *enforcing*, No. 3-98-0168 (M.D. Tenn. Feb. 25, 1998) (consent order) (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) (motion to enforce pending)

Memisovski v. Patla, 2001 U.S. Dist. LEXIS 16963 (N.D.Ill. Oct. 17, 2001) (denying state's motion to dismiss because plaintiffs seeking injunctive rather than compensatory relief, thus giving them private right of action under *Ex parte Young*; reaffirming that Medicaid-eligible children under 21 were intended beneficiaries of the EPSDT provisions)

Dajour B. v. City of New York, 2001 U.S. Dist. LEXIS 15661 (S.D.N.Y. Oct. 3, 2001) (class certification), *same case*, 2001 U.S. Dist. LEXIS 10251 (S.D.N.Y., July 23, 2001) (**asthmatic children's** claim for informing and screening under EPSDT enforceable under § **1983**)

Chisholm v. Hood, 133 F. Supp. 2d 894 (E.D. La. 2001) (EPSDT violated where behavioral health services from **psychologists** not available to all needy recipients), *same case*, 110 F. Supp. 2d 499 (E.D. La. 2000) (EPSDT violated by provision limiting **occupational, speech, and audiology therapies** exclusively to school boards), *same case*, *Chisholm v. Jindal*, No. Civ. A. 97-3274, 1998

WL 92272 (E.D. La. 1998) (granting motion to certify a class action case, of children with severe mental or physical impairments whose requests for EPSDT services are not acted on with reasonable promptness)

Emily Q v. Bonta, 208 F. Supp. 2d 1078 (C.D. Cal. 2001) (March 30, 2001 permanent injunction) (May 5, 1999 class certification) (Feb. 23, 1999 preliminary injunction) (ordering Department to provide **therapeutic behavior services** as a Medicaid EPSDT benefit and to implement procedures for children to access these services)

Salazar v. District of Columbia, No. CA-93-452 (GK) (Order Sept. 17, 2001) (ordering compliance with **screening, adolescent targeting, provider outreach, and tracking** requirements of settlement agreement), *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) (state must comply with EPSDT screening and informing requirements), *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)

J.K. v. Dillenberg, 836 F. Supp. 694 (D. Ariz. 1993) (residential mental health services terminated by managed care program without proper notice and **due process**), *later proceedings*, *J.K. v. Eden*, No. CIV-91-261-TUC-JMR (D. Ariz. Mar. 20, 2001) (settlement) (outlining 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.)

Risinger v. Concannon, 201 F.R.D. 16 (D.Me. 2001) (granting class certification), *same case*, 117 F. Supp. 2d 61 (D. Me. 2000) (denying motion to dismiss based on ripeness) (This case settled in May 2002, when 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.)

Carr v. Wilson-Coker, 203 F.R.D. 66 (D. Conn. Mar. 30, 2001) (granting class certification in a **dental services** case)

Prado-Steiman v. Bush, 221 F.3d 1266 (11th Cir. 2000) (vacating **class certification** based on lack of typicality and remanding for recertification, suggesting EPSDT subclass)

Kirk v. Houstoun, 2000 U.S. Dist. LEXIS 8768 (E.D. Pa. June 23, 2000) (children receiving **psychiatric care** under Medicaid granted summary judgment where state failed to provide timely needed care, forcing plaintiffs to wait months for behavioral health rehabilitative services; finding violation of HCFA waiver because of failure to ensure some managed care subcontractors maintained adequate number of providers as required by contract)

Charlie and Nadine H v. Whitman, 83 F. Supp. 2d 476 (D.N.J. 2000) (relying on *Blessing v. Freestone*, 520 U.S. 329 (1997), to grant **motion to dismiss** claims to enforce EPSDT screening and treatment provisions)

United States v. Mack, 2000 U.S. Dist. LEXIS 17367 (S.D. Tex. 2000) (finding **False Claims Act** violation by pediatrician providing EPSDT services)

Tallahassee Mem. Regional Med. Center v. Cook, 109 F.3d 693 (11th Cir. 1997) (requiring state to **reimburse hospitals for inpatient “grace days” needed by adolescents** during periods when lower level of care was medically necessary but alternative care settings are unavailable)

Fred C. v. Texas Health & Human Services, 167 F.3d 537 (5th Cir. 1998), *aff’g without opin.*, *Fred C. v. Texas Health & Human Serv. Comm.*, 988 F. Supp. 1032 (W.D. Tex. 1997) (discussion of EPSDT in case involving **augmentative communication device** for an adult)

Hunter v. Chiles, 944 F. Supp. 914 (D. Fla. 1996) (coverage of **augmentative communication device**; **third party liability** relationship with other state funding agencies and school districts)

Texas v. United States Dep’t of Health and Human Services, 61 F.3d 438 (5th Cir. 1995) (upholding HHS’ refusal to cover inpatient residential chemical dependency treatment (to include **room and board**) as 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) (requiring outreach and screening for **children in out-of-home placement**)

Miller by Miller v. Whitburn, 10 F.3d 1315 (7th Cir.), *aff’g*, 816 F. Supp. 505 (W.D. Wis. 1993) (requiring coverage of **transplant**; allowing enforcement of EPSDT through **section 1983**)

Pittman by Pope v. Sec’y of Fla. Dep’t. of Health and Rehab. Serv., 998 F.2d 887 (11th Cir.), *cert. denied*, 510 U.S. 1030 (1993) (state required to pay for liver-bowel **transplant and incidental medical treatment** for qualified Medicaid recipient under the age of 21)

Scott v. Snider, No. 91-CV-7080 (E.D. Pa. Dec. 2, 1994) (order and stipulation of settlement), (state Medicaid agency required to meet, and to include in **managed care** organizations’ contracts, specific performance standards for a variety of screening services; to execute a range of cooperation agreements; to implement specific protections for children in out-of-home placement and children with mental retardation; and to correct problems with prior authorization process), *same case*, (E.D.Pa. Aug. 11, 1993), *reprinted in*, MEDICARE & MEDICAID GUIDE (CCH) ¶ 42,056 (stipulated settlement) (requires **EPSDT informing** of Medicaid-eligible mothers and infants at the time of the child's birth and before the mother is discharged from care)

Pereira v. Kozlowski, 996 F. 2d 723 (4th Cir. 1993), *aff’g*, 805 F. Supp. 361 (E.D.Va. 1992) (Commonwealth required to provide funds for medically necessary organ **transplants** to children under age of 21 who were otherwise qualified under state’s Medicaid plan)

L.J. by Darr v. Massinga, 778 F. Supp. 253 (D. Ma. 1991), *same case*, 699 F. Supp. 508 (D. Md. 1988) (consent decree) (requiring initial and periodic examinations for children in **out-of-home placement**)

Mitchell v. Johnston, 701 F.2d 337 (5th Cir. 1983) (state required to cover preventive and restorative **dental** services)

Bond v. Stanton, 630 F.2d 1231 (1980), *appeal after remand*, 655 F.2d 766 (7th Cir.), *cert. denied*, 454 U.S. 1063 (1981) (EPSDT **screening**, identification of providers, and follow up), *same case*, *Stanton v. Bond*, 372 F. Supp. 872 (N.D. Ind. 1974), *aff'd*, 504 F.2d 1246 (7th Cir.), *cert. denied*, 420 U.S. 984 (1975) (rejecting state's "somewhat casual approach" to outreach)

Philadelphia Welf. Rights. Org. v. Shapp, 602 F.2d 1114 (3d Cir. 1979), *cert. denied sub nom. Thornburgh v. Philadelphia Welf. Rights Org.*, 444 U.S. 1026 (1980) (compliance with **screening** goals contained in a consent decree; coverage of orthodontia)

Chappell by Savage v. Bradley, 834 F. Supp. 1030 (N.D. Ill. 1993) (coverage of **orthodontia** required if medically necessary, and EPSDT **informing** of orthodontia required)

Thompson v. Raiford, No. 3:92-CV-1539-R, 1993 WL 497232 (N.D.Tex., Sept.24, 1993) (**lead blood** level assessments required)

Maher v. White, No. 90-4674, 1992 WL 122912 (E.D. Pa., June 2, 1992) (requiring EPSDT coverage of **children in foster care placement** and compliance with notice requirements)

McLaughlin v. Williams, 801 F. Supp. 633 (S.D. Fla. 1992) (preliminary injunction requiring state to provide university hospital with financial guarantee required to begin organ **transplant** search)

Clark v. Kizer, 758 F. Supp. 572 (E.D. Cal. 1990), *aff'd in part & vacated in part sub nom., Clark v. Coye*, 967 F.2d 585 (9th Cir. 1992), *on remand*, No. S-87-1700LKK, 1992 WL 370801, *reprinted in* MEDICARE & MEDICAID GUIDE (CCH) ¶ 40,888 (E.D. Cal. 1993), *aff'd in part & remanded in part*, 8 F.3d 26 (9th Cir. 1993), *related references*, 66 F.3d 334 (9th Cir. 1995), *vacating*, 1994 WL 764117, *reprinted in* MEDICAID & MEDICAID GUIDE (CCH) ¶ 43,026 (E.D.Cal., Dec. 13, 1994) (regarding legislation affecting adult eligibility), 60 F.3d 600 (9th Cir. 1995), *rev'g*, 1993 WL 720217, *reprinted in* MEDICARE & MEDICAID GUIDE (CCH) ¶ 42,418 (E.D. Cal., Dec. 17, 1993), *related reference*, 1989 WL 265478, *reprinted in* MEDICARE & MEDICAID GUIDE (CCH) ¶ 38,460 (E.D. Cal., Nov. 3, 1989) (adequate availability of **obstetrical and dental care providers**), 1988 WL 235548 (E.D.Cal., May 9, 1988)

L.J. by Darr v. Massinga, 699 F. Supp. 508 (D.Md. 1988), *same case*, 778 F. Supp. 253 (D. Md. 1991) (requiring timely EPSDT screens for **foster children**)

Montoya v. Johnston, 654 F. Supp. 511 (W.D. Tex. 1987) (requiring coverage of necessary **transplants**; and finding **caps** on EPSDT services improper)

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) (requiring initial and follow-up examinations for children in **out-of-home placement**)

United States v. Philadelphia Health Management Corp., 519 F. Supp. 818 (E.D. Pa. 1981) (**false claims** under EPSDT)

Philadelphia Welf. Rights Org. v. O'Bannon, 517 F. Supp. 501 (E.D. Pa. 1981) (dicta) (**notice of denial of EPSDT services**)

Doe v. Pickett, 480 F. Supp. 1218 (S.D.W.Va. 1979) (discussing **parental consent, contraceptives,** and EPSDT, providing treatment services)

Becker v. Toia, 439 F. Supp. 324 (S.D.N.Y. 1977) (noting exclusion of children from **copayment** requirements)

Wis. Welfare Rights Org. v. Newgent, 433 F. Supp. 204 (E.D. Wis. 1977) (adequacy of **outreach** and EPSDT implementation) (Cl. Rev. No. 14,647)

Vega v. Bloomsburgh, 472 F. Supp. 593 (D. Mass. 1977) (**discovery** in EPSDT litigation)

Crane v. Mathews, 417 F. Supp. 532 (N.D. Ga. 1976) (Medicaid **copayment** experiment)

Woodruff v. Lavine, 399 F. Supp. 1008 (S.D.N.Y. 1975), *same case*, 417 F. Supp. 824 (1976) (**state in substantial compliance** with EPSDT law)

Unreported federal decisions:

Alberto N. v. Gilbert, No. 6:99CV459 (E.D. Tex.) (Aug. 9, 1999: Complaint) (concerning **home health services** for children under age 21; partial settlement reached in 2001 that agreed that no preset limits apply to physical, occupational and speech and language therapy services and that addressed due process issues in the case, including a number of model forms. See <http://www.healthlaw.org/pubs/200403.AlbertoNdocs.html> (Settlement and forms).

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

French v. Concannon, No. 97-CV-24-B-C (D. Me. July 16, 1998) (Order of dismissal and agreement) (state agrees to promulgate and implement a number of policy and regulatory changes regarding outreach, informing, and treatment to improve availability and access to EPSDT home and **community-based mental and behavioral health services**)

Bates-Booker v. Houstoun, No. 97-CV-3734 (E.D.Pa., Oct. 1997) (agreement) (state and managed care organizations would assure EPSDT coverage of necessary medical services and equipment to **children in special education or early intervention settings** and provide proper due process notices when services are denied)

Jeremy and Darvin J. et al. v. Morse, No. 96-48 (E.D. Ky) (Mar. 26, 1997) (class certification) (class consists of persons eligible for EPSDT but who have not been **informed** of the program or have not received the full range of needed services through the program); (Mar. 26, 1997) (order denying in part and granting motion to dismiss -- suit against state barred by the **11th Amendment** and state agency defendant dismissed; EPSDT provisions enforceable under **§ 1983**); (Mar. 1, 2001) (settlement: defendant agreed to use oral and written (at 6th grade level) informing methods, train **National Health Law Program (July 2004)**)

workers, establish toll-free assistance, offer and provide appointment scheduling and transportation assistance, and provide the range of treatment services required by 1396d(a))

Hinds v. Blue Cross and Blue Shield of Tennessee, No.3:95-0508 (M.D.Tenn., Jan. 3, 1996) (coverage of **transplant** services by a managed care organization pursuant to EPSDT and managed care contract)

K.L. v. Valdez, No. 93-1350 JP/DJS (D.N.Mex., Oct. 6, 1995) (enforcement of EPSDT provisions pursuant to **section 1983**)

Trusler v. Blouke, No. DV-95-106 (Mont. Dt. Ct., Sept. 25, 1995) (preliminary injunction) (coverage of **expandable prosthetic titanium rib** to treat scoliosis)

T.L. v. Belshe, No. CV-S-93-1782 LKKPAN (E.D. Cal., 1995) (settlement) (promulgation of **regulations to guide process for covering EPSDT treatment services** not included in the state Medicaid plan for adults)

Ellis v. Wetherbee, No. S92-0529 (S.D. Miss., May 1994) (consent decree) (covering **lead blood** level assessments; prior authorization for interperiodic screens)

Kelly v. Sheehan, No. 94-0140-B (D. Me., Sept. 21, 1994) (consent judgment)(requiring informing and outreach; coverage of **behavioral health services**)

Addison County Community Action Group v. Celani, No. 5:92cv22 (D.Vt., Mar. 9, 1993) (stipulation and dismissal) (requiring screening for **lead poisoning**)

Lawrence K. v. Snider, No. 91-6180 (E.D. Pa., Jan 5, 1993)(settlement agreement) (Medicaid reimbursement for children enrolled in prepaid **managed care** and needing mental health services)

Matthews v. Coye, No. C-90-3620-EFL (N.D. Cal., Oct. 17, 1992) (stipulation and dismissal) (requiring **lead blood** level assessments and outreach and informing) (Cl. Rev. No. 46,283)

Cameron v. Pilley, No. 91-4629 (E.D. La., June 24, 1992) (consent decree) (coverage of **diabetes supplies**) (Cl. Rev. No. 47,553)

Barajas v. Coye, No. CIV-S-92 (E.D. Cal., Oct. 29, 1992) (consent decree) (**dental sealants**) (Cl. Rev. No. 48,766)

DR., A.D., and P.C., v. Concannon, No. 90-483- (D. Or., 1990) (settlement) (timely and adequate **mental health services**)

Economic Rights Org. of Bridgeport v. Maher, No. -78-483 (D. Conn. 1979) (settlement) (funding for adequate **outreach**) (Cl. Rev. No. 26,283)

Telles v. California Health and Welf. Agency, No. C73-0967-WHO (N.D. Cal., May 16, 1975) (settlement) (**informing** and provision of EPSDT within **reasonable time frames**)

Morland v. Gilligan, No. C74-53 (N.D. Ohio, July 18,1974) (settlement) (informing and provision of EPSDT within **reasonable time frames**) (Cl. Rev. No.12,001)

Domingues v. Milliken, No. G 1988-72CA5 (W.D. Mich 1973) (**state ordered to implement EPSDT**) (Cl. Rev. No. 9,172)

Harris v. Candon, No. 74-49 (D. Vt., Apr. 27, 1978) (**EPSDT outreach**)

Reported state decisions:

Semerzakis v. Wilson-Coker, CV030520876S, 2003 Conn. Super. LEXIS 3478 (Dec. 24, 2003) (recognizing EPSDT **treatment** mandate to provide such necessary health care, **orthodontic** services, to correct or ameliorate defects whether or not such services are covered under the state plan; Medicaid does not grant state authority to make available less treatment than that mandated by the federal legislation)

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) (agency decision to reduce **home-based therapeutic services** from 40 hours a week to 15 lacked sufficient rationale; remanded to the agency for consideration of the requisite number of hours warranted by the evidence before it.)

Jackson v. Millstone, 801 A.2d 1034 (Md. 2002) (once state elects to participate in Medicaid, it must comply with all mandates, including **EPSDT treatment** and cannot require that medically necessary treatment, liver **transplant** surgery, also be “appropriate”)

New York City Coalition to End Lead Poisoning v. Giuliani, 187 Misc. 2d 425, 720 N.Y.S.2d 298 (S.Ct. N.Y. 2000) (finding § **1983** cause of action based on **EPSDT lead screening** requirements)

Georgia Dep't. of Cmty. Health v. Freels, 258 Ga. App. 446 (Ga Ct. App. 2002) (discussion of EPSDT **treatment** in case involving Medicaid coverage for **hyperbaric oxygen therapy** for a child with cystic fibrosis)

Salgado v. Kirschner, 878 P.2d 659 (Ariz. 1994), *rev'g*, 172 Ariz.. 285, 836 P.2d 995 (Ariz. App. Div. 1992) (discussion of EPSDT in case involving **transplant for an adult**)

Tomorrow's Hope v. Idaho Dep't of Health and Welf., 124 Idaho 843, 864 P.2d 1128 (Wyo. 1993) (EPSDT as reimbursable cost for **ICF/MR**)

Common Cause of West Virginia v. Tomblin, 186 W.Va. 537, 413 S.E.2d 358 (W.Va. 1991) (**guidelines for budget**, including EPSDT)

New York Coalition to End Lead Poisoning v. Koch, 524 N.Y.S.2d 314, 138 Misc.2d 188 (Supp. 1987) (**lead blood** level assessment)

Persico v. Maher, 191 Conn. 384, 465 A.2d 308 (1983) (coverage of **orthodontia**)

State v. McMahon, No. 810728, 1983 WL 5375 (Ohio App., Jan. 12, 1983) (**false claims** under EPSDT)

Dahlquist v. L.N. and V.N., 319 N.W.2d 801 (N.D. 1982) (**continuation of parental rights** included obligation to obtain EPSDT services)

Biewald v. State, 451 A.2d 98 (Me. 1982) (obligation of state to assure medically necessary treatment **diabetic supplies** not covered by state Medicaid plan)

Brooks v. Smith, 356 A.2d 723 (Me. 1976) (**orthodontia** coverage)

Unreported state decisions:

Lawson v. Dep't. of Health & Soc. Servs. No. 02A-09-002 HDR (Del. Super. Ct. Feb. 25, 2004) (hearing officer's decision to deny coverage of child's **orthodontic** treatment under Medicaid invalid because federal and state Medicaid requirements for a **fair hearing** not followed)

E.H. v. Matin, No. 81-MISC-585 (Cir. Ct. Kanawha Co., W.Va.) (Order, Oct. 29, 1998) (blocking changes in Medicaid clinic and rehabilitation services for the mentally ill (Order, June 24, 1992) (State Plan Amendment to provide rehabilitative services complies with June 4th Order) (Temporary Restraining Order, June 4, 1992) (required continued **rehabilitative services** for children even though state was ending coverage of off-site clinic services)

Brown v. Kizer, No. 641954-3 (Cal. Super. Ct., Dec. 23, 1989) (settlement) (**orthodontia**)

California Welfare Rights Org. v. Brian, No. 428960 (Cal. Super. Ct., 1972) (state ordered to **implement EPSDT program**) (Cl. Rev. No. 9,213)

