

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS, WESTERN DIVISION

ROSIE D., *et al.*,)
Plaintiffs,)
v.) CIVIL ACTION NO. 01-30199-MAP
)
DEVAL L. PATRICK, *et al.*,)
Defendants.)

JUDGMENT

This Judgment and the remedies ordered herein address the findings and rulings contained in the Court’s Memorandum of Decision dated January 26, 2006 (“Decision”). As detailed in the Decision, the Court found the Defendants in violation of two provisions of the Medicaid statute: the provision mandating “early and periodic screening, diagnostic, and treatment services (“EPSDT”), 42 U.S.C. §§1396a(a)(10)(A) and (a)(43), §§1396d(r)(5) and (a)(4)(B) (2005), and the “reasonable promptness provision,” 42 U.S.C. §1396a(a)(8) (2005).

As part of the Decision, the Court ordered the parties to confer and develop a joint remedial plan. When the parties were unable to reach an agreement, they submitted separate proposed remedial plans. The parties submitted memoranda thereafter detailing the areas of disagreement. The Court heard argument on December 12, 2006. On February 22, 2007, the Court issued a Memorandum and Order Regarding Remedy that adopted the Defendants’ proposed remedial plan (“Defendants’ Plan”) “as its remedial order . . . subject to four provisos.” See February 22, 2007, Memorandum

and Order on Remedy (“Remedy Order”) at 4. The Court also ordered the Defendants to submit a proposed form of judgment embodying the remedial plan adopted by the Court.

Having reviewed the Defendants’ submission, the Court now orders as follows:

I. DEFENDANTS’ PLAN

1. The Defendants shall take the steps described in below with respect to the class of children who are eligible for EPSDT¹ and who have “serious emotional disturbance” (“SED”), subject to the following provisos:

- a. Since the Medicaid Act (Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*) itself does not define a child suffering from SED, the governing definition for an eligible SED child under this Judgment will be the definition set forth in the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1401(3)(A)(i), and its implementing regulations or the definition set forth in the regulations governing the Substance Abuse and Mental Health Services Administration (“SAMHSA”) of the United States Department of Health and Human Services, 58 Fed. Reg. 29422-02 (May 10, 1993). Any child satisfying the SED criteria used in the IDEA or by SAHMSA, or both, will be eligible for services. While Defendants will be free to make clinical decisions based on the needs of the individual children, no language below that appears to categorically narrow the definition of class of children eligible for services will have any force and effect.
- b. Timelines for implementation of the Judgment are set forth in Section I.E.1 below. These timelines constitute a portion of this Judgment and will be subject to enforcement by the Court. They are, however, subject to modification for good cause upon application by any party.
- c. As an order of the Court, the substantive terms of this Judgment are mandatory and may not be modified unilaterally at the discretion of the Defendants. Absent a modification agreed to by the parties, or permitted for good cause by the Court, as further described in Section II below, the Judgment is to be implemented according to its terms.

¹ Currently, MassHealth Standard and CommonHealth Members are eligible for EPSDT. See MassHealth Special Terms and Conditions, MassHealth Medicaid Section 1115 Demonstration Waiver (11-W-00030/1) Attachment D —§§ 3.1.1.2 and 3.1.4.2.

- d. This Judgment embodies the Defendants' Plan as a final order of judgment, subject to the Court's exercise of ongoing jurisdiction to insure implementation as further described in Section IV below.

The terms of this Judgment constitute an order of the court and do not constitute a consent decree, settlement agreement, or any other agreement or consensual act of the parties.

A. **Informing Families, Providers, and Others of EPSDT Services for SED Children -- Education and Outreach and Screening**

2. As set forth below, the Defendants will improve their methods for notifying Medicaid-eligible individuals enrolled in MassHealth ("MassHealth Members" or "Members"), MassHealth providers, public and private child-serving agencies, and other interested parties about the availability of behavioral health services, including the services described in Section I.D. below, and behavioral health screenings in primary care settings.

1. **Education and Outreach**

3. The Defendants will inform all EPSDT-eligible MassHealth Members (Members under age 21 enrolled in MassHealth Standard or CommonHealth) and their families about the availability of EPSDT services (including services focused on the needs of children with SED) and the enhanced availability of screening services and Intensive Care Coordination as soon as the EPSDT-eligible child is enrolled in MassHealth.

4. The Defendants will take steps to publicize the program improvements they are required to take under the terms of this Judgment to eligible MassHealth Members (including newly-eligible MassHealth Members), MassHealth providers, and the general public. As part of this effort, the Defendants will take the actions described below and will also provide intensive training to MassHealth customer service representatives,

including updating scripts used by such representatives to facilitate timely and accurate responses to inquiries about the program improvements described in this Judgment.

5. *MassHealth Members* - The Defendants will take the following actions to educate MassHealth Members about the program improvements they are required to take under the terms of this Judgment:

- a. Updating and distributing EPSDT notices to specifically refer to the availability of behavioral health screening and services and to describe other program improvements set forth in this Judgment.
- b. Updating and distributing (in the normal course of communications with MassHealth Members) Member education materials, including Member handbooks created by MassHealth and MassHealth's contracted managed care entities, to include description of these improvements, and how to access behavioral health screenings and services including the home-based services described in Section I.D.
- c. Amending Member regulations, as necessary, to describe the services described in Sections I. C and D below and other program improvements.
- d. Participating in public programs, panels, and meetings with public agencies and with private advocacy organizations, such as PAL, the Federation for Parents of Children with Special Needs and others, whose membership includes MassHealth-eligible children and families.

6. *MassHealth Providers* - The Defendants will take the following actions to educate MassHealth providers about the program improvements they are required to take under the terms of this Judgment:

- a. Updating EPSDT regulations to reflect the program improvements described in this Judgment.
- b. Updating Appendix W of the MassHealth Provider Manual, which describes medical protocols and periodicity schedules for EPSDT services, to reflect the program improvements related to screenings for behavioral health described in Section I.A.2 below.
- c. Drafting and distributing special provider communications related to the program improvements described in this Judgment, including how to assist

MassHealth Members to access the home-based services described in Section I.D.

- d. Updating and distributing existing provider education materials to reflect the program improvements described in this Judgment.
- e. Expanding distribution points of existing materials regarding EPSDT generally, including the program improvements described in this Judgment.
- f. Implementing any other operational changes required to implement the program improvements described in this Judgment.
- g. Holding special forums for providers to encourage clinical performance activities consistent with the principles and goals of this Judgment.
- h. Amending MassHealth's managed care contracts to assure that all such entities educate the providers in their network about the program improvements described in this Judgment, as described in Paragraphs 6.a-g. above.
- i. Coordinating these efforts with the "Virtual Gateway," which is the EOHHS system for web-based, on-line access to programs, including MassHealth and related benefit programs such as food stamps, and which allows a wide array of hospitals, community health centers, health and human services providers, and other entities to assist children and families in enrolling in MassHealth.

7. *The Public* - To improve public information about the program improvements the Defendants are required to take under the terms of this Judgment, the Defendants will take the following actions to present the terms of this Judgment to public and private agencies that serve children and families:

- a. Presenting the Judgment to appropriate Commonwealth officials in the Executive Branch and the Legislature.
- b. Creating new pamphlets, informational booklets, fact sheets, and other outreach materials describing these improvements.
- c. Developing and implementing training programs for line staff at the Departments of Mental Health, Social Services, Youth Services, Mental Retardation, Transitional Assistance, and the Office for Refugees and Immigrants on how to access MassHealth services for children with SED.

- d. Distributing outreach materials in primary care settings, community health centers, and community mental health centers and posting electronic materials on the EOHHS Virtual Gateway that are designed to provide information to MassHealth Members and to public and private agencies that come in contact with or serve children with SED or their families.
- e. Working with the Department of Early Education and Care to educate pre-schools, childcare centers and Head Start Programs on how to access MassHealth services for children with SED.
- f. Working with the Department of Education, the Department of Public Health and Public School Districts to educate school nurses and other school personnel on how to access MassHealth services for children with SED.

2. *Screening for Behavioral Health*

8. The Defendants will require primary care providers who perform periodic and medically necessary inter-periodic screenings pursuant to 42 U.S.C. §1395d(r)(1) to select from a menu of standardized behavioral health screening tools. The menu of standardized tools will include, but not be limited to, the Pediatric Symptom Checklist (PSC) and the Parents' Evaluation of Developmental Status (PEDS). Where additional screening tools may be needed, for instance to screen for autistic conditions, depression or substance abuse, primary care providers will use their best clinical judgment to determine which of the approved tools are appropriate for use.
9. The Defendants will amend pertinent MassHealth provider regulations to clarify that all primary care providers, whether they are paid through the managed-care or the fee-for-service system, are required to provide periodic and inter-periodic screens.
10. There will be a renewed emphasis on screening, combined with ongoing training opportunities for providers and quality improvement initiatives directed at informing primary care providers about the most effective use of approved screening tools, how to

evaluate behavioral health information gathered in the screening, and most particularly how and where to make referrals for follow-up behavioral health clinical assessment. Additional quality improvement initiatives will include improved tracking of delivered screenings and of utilization of services delivered by pediatricians or other medical providers or behavioral health providers following a screening and use of data collected to help improve delivery of EPSDT screening, including assuring that providers offer behavioral health screenings according to the State's periodicity schedule and more often as requested (described in Section I.E.2).

3. **Identification of Behavioral Health Needs – The Role of Other EOHHS Agencies, and other Public and Private Agencies**

11. MassHealth will continue its practice of not requiring a primary care visit or EPSDT screening as a prerequisite for an eligible child to receive MassHealth behavioral health services. MassHealth-eligible children and eligible family members can be referred or can self-refer for Medicaid services at any time by another agency, including other EOHHS agencies, state agencies, public schools, community health centers, hospitals and community mental health providers.

12. The Defendants will provide information, outreach and training activities, focused on such other agencies and providers. In addition, the Defendants will develop and distribute written guidance that establishes protocols for referrals for behavioral health EPSDT screenings, assessments, and services, including the home-based services described in Section I.D., and will work with EOHHS agencies and other providers to enhance the capacity of their staff to connect children with SED and their families to behavioral health EPSDT screenings, assessments, and medically necessary services.

B. Assessment and Diagnosis

13. The Defendants will ensure that EPSDT services include a clinical assessment process for eligible children who may need behavioral health services, and will connect those assessments to a treatment planning process as follows:

14. The Defendants will require a clinical behavioral health assessment in the circumstances described below by licensed clinicians and other appropriately trained and credentialed professionals.

15. In addition to the clinical assessment, the Defendants will require providers to use the standardized clinical information collection tool known as the Child and Adolescent Needs and Strengths (CANS) as an information integration and decision support tool to help clinicians and other staff in collaboration with families identify and assess a child's behavioral health needs. Information obtained through the CANS process provides a profile of the child which trained clinicians use in conjunction with their clinical judgment and expertise to inform treatment planning and to ensure that treatment addresses identified needs.

16. The Defendants will implement an assessment process that meets the following description:

- a. In most instances, the assessment process will be initiated when a child presents for treatment to a MassHealth behavioral health clinician following a referral by the child's primary care physician based on the results of a behavioral health screening. However, there are other ways for children to be referred for mental health services. A parent may make a request for mental health services and assessment directly to a MassHealth-enrolled mental health provider, with or without a referral. A child may also be referred for assessment and services by a provider, a state agency, or a school that comes into contact with a child and identifies a potential behavioral health need.

- b. Assessment typically commences with a clinical intake process. As noted, Defendants will require MassHealth providers to use the CANS as a standardized tool to organize information gathered during the assessment process. Defendants will require trained MassHealth behavioral health providers to offer a clinical assessment to each child who appears for treatment, including a diagnostic evaluation from a licensed clinician.
- c. The assessment process leads to a clinical diagnosis and the commencement of treatment planning. During the assessment process, medically necessary services are available to the child, including, but not limited to, crisis services and short-term home based services, pending completion of the assessment and the development of the treatment plan.
- d. As described in more detail in Section I.C. below, upon referral to the Intensive Care Coordination process, an intensive, home-based assessment and treatment planning process will take place, organized by a care manager and with the involvement of the child's family and other community supports.
- e. The assessment process described here, including the use of the CANS where appropriate, will be required as part of discharge planning for children who have been identified as having behavioral health problems who are being discharged from acute inpatient hospitals, community based acute treatment settings (CBATS), from Department of Mental Health (DMH) intensive residential settings, and DMH continuing care programs, with the goal of identifying children for whom Intensive Care Coordination services may be appropriate. For those identified children, a referral for those services will be a component of a discharge treatment plan.

[Sections 17 and 18 deleted]

