

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUL 30 2002

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PEDIATRIC SPECIALTY CARE, INC., ET AL.

PLAINTIFFS

VS.

CASE NO. 4:01CV00830 WRW

ARKANSAS DEPARTMENT OF HUMAN
SERVICES; ET AL.

DEFENDANTS

AMENDED INJUNCTION

Consistent with the Eighth Circuit's opinion and mandate entered on the district court docket on July 15, 2002, the December 19, 2001 Injunction is amended as follows:

Defendants are not obligated to specifically include Child Health Management Services Program ("CHMS") early intervention day treatment services in the Arkansas State Medicaid Plan ("State Plan"). It is defendants' position that there are no funds specifically dedicated to CHMS early intervention day treatment services. Thus, they contend that they cannot be enjoined from cutting funding which does not exist. If this is the case, then defendant is correct, i.e. they cannot be enjoined from cutting funds which do not exist. Therefore, I enjoin the defendants to pay¹ for early intervention day treatment services when prescribed by a physician for the purpose stated in the Medicaid Act. Where defendants get the money, and what mechanism they establish to pay for these services, are left up to them. Moreover, under 42

¹The Eighth Circuit uses "provide," "reimburse," and "pay" when addressing the defendants' duty regarding early intervention day treatment services. For consistency's sake, I will use the verb "pay."

U.S.C. § 1396a (43) the State has a duty to inform Medicaid recipients (1) about early and periodic screening, diagnosis, and treatment (“EPSDT”) services (which include early intervention day treatment services), and (2) that the State must arrange for the corrective treatments prescribed by physicians.

The Eighth Circuit did not directly discuss defendants’ duty to provide therapy to Medicaid recipients because defendant Arkansas Department of Human Services during oral arguments at the Eighth Circuit stated that CHMS therapists could enroll as Medicaid therapists under the new state plan. Since the 8th Circuit affirmed my December 19, 2001 Order on all points except the one concerning the naming of CHMS early intervention day treatment services, my ruling that defendants could not cut funding to therapy services stands. However, to be consistent (and to follow the 8th Circuit’s directions), the December 19th Injunction is amended to provide that the defendants do not have to include CHMS therapy in the State Plan, but like the early intervention day treatment services, they do have to pay for the therapy, provide a mechanism for this payment, and they must inform Medicaid recipients about the available therapy services.

The 8th Circuit stated that it understood that under the State Plan the

diagnostic and evaluation leg of CHMS [would remain] intact, meaning that a physician would still refer a child to a CHMS clinic for an evaluation, the staff at the CHMS clinic would perform the evaluation, and a CHMS physician would recommend the needed therapies.²

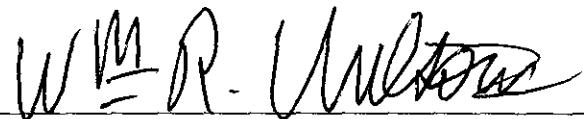
Based on this language, defendants are enjoined to continue to pay for the “diagnostic and evaluation leg” of CHMS, and to inform Medicaid recipients in an understandable manner about

²*Pediatric Speciality Care, Inc. v. Arkansas Department of Human Services*, 293 F.3d 472, 476 (8th Cir. 2002).

the services. However, like the early intervention day treatment services, and therapy services, defendants may use another mechanism (i.e., other than CHMS) to pay for the “diagnostic and evaluation” services.

To summarize and conclude, defendants do not have to specifically include CHMS early intervention day treatment services, therapies and other treatments, or diagnostic and evaluation services, by name, in the State Plan, but they do have to pay for the these services (and provide a mechanism for payment) when prescribed by a physician for the purpose stated in the Medicaid Act. Moreover, and importantly, defendants must inform potential Medicaid recipients in an understandable manner about these available services.

IT IS SO ORDERED this 30th day of July, 2002.



Wm. R. Wilson, Jr.
United States District Judge

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bm

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
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July 30, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:01-cv-00830.

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Date:

7/30/02

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