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Attorneys for Plaintiffs

NOTE CHANGES MADE BY THE COURT.

FILED
CLERK, U.S. DISTRICT COURT
APR 22 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *[Signature]*

Priority
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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY *[Signature]*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EMILY Q et al.,
Plaintiffs,
v.
DIANA BONTÁ,
Defendant.

CASE NO. CV 98-4181 AHM (AJWx)
~~PROPOSED~~
AMENDED JUDGMENT AND
PERMANENT INJUNCTION

ENTERED
CLERK, U.S. DISTRICT COURT
APR 22 2004
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY
BY *[Signature]*

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

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The Order Granting Plaintiffs' Motion for Permanent Injunction was entered on March 30, 2001, and a Judgment and Permanent Injunction based upon that Order was entered on May 11, 2001. Thereafter, the parties entered into a stipulation to amend portions of the Judgment. Based on the Stipulation and the Declaration of Melinda Bird in support of the proposed amendments, and good cause appearing,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. By order dated May 5, 1999, this case has been certified as a class action on behalf of the following: All current and future beneficiaries of the Medicaid program below the age of 21 in California who: (a) are placed in a Rate Classification Level facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs; (b) are being considered for placement in these facilities; or (c) have undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months. Members of the plaintiff class shall not be eligible to receive therapeutic behavioral services during their residency in those Institutions for Mental Disease which disqualify them from receiving Medi-Cal services. However, while in such facilities, members of the plaintiff class will be able to establish their eligibility to receive therapeutic behavioral services immediately upon leaving the Institution for Mental Disease.

2. Judgment is hereby entered in favor of all the named Plaintiffs and members of the class against Defendant Diana Bontá, the current Director of the California Department of Health Services ("DHS"), on all claims for relief in Plaintiffs' first amended complaint. This Judgment does not resolve the issue of whether members of the Plaintiff class are entitled to receive therapeutic behavioral services that are not short term or transitional in nature and members of the Plaintiff class expressly reserve the right to litigate these issues in the future. This Judgment also does not address the question of whether Medi-Cal recipients below the age of

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21 who are not members of the Plaintiff class (e.g., recipients with developmental disabilities) are entitled to receive therapeutic behavioral services through the Medi-Cal program.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT:

Defendant Diana Bontá, her successor in office, agents, employees, and all persons in active concert with such individuals, including DHS, the California Department of Mental Health (“DMH”), and the County Mental Health Plans (“MHPs”), or any of them are hereby enjoined as follows:

3. DMH shall inform MHPs that members of the class are eligible for Therapeutic Behavioral Services (“TBS”) when other services are required and criteria are met, and the MHPs shall provide class members with TBS in accordance with the plan (a copy of which is Attachment “A” to ^{the original} ~~the~~ permanent injunction and incorporated herein by reference), and the directive from DMH, entitled “Therapeutic Behavioral Services,” dated July 23, 1999 (a copy of which is Attachment “B” to ^{the original} ~~this~~ permanent injunction and incorporated herein by reference). The phrase, “when other services are required and criteria are met,” means that for a child/youth to meet the medical necessity requirement, that child/youth must be receiving other specialty mental health services. This information is in the July 23, 1999 policy letter (^{original} Attachment B).

4. DHS shall require each MHP to submit a letter reporting how it intends to implement TBS within that MHP’s county, and DHS shall provide Plaintiffs’ counsel with copies of these letters.

5. DHS shall provide, or arrange through others to provide, ongoing training and technical assistance to the MHPs, as well as to the staff at Metropolitan State Hospital and Napa State Hospital regarding the provision of TBS. In the design and delivery of this training, DHS shall consult with staff of the California

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Department of Social Services who have developed training regarding "wraparound services" pursuant to Senate Bill 1631.

6. Insofar as there are written forms approving and denying TBS within the current Medi-Cal system, Defendant shall collect from each MHP, (1) copies of all written forms approving TBS for class members and (2) copies of all written notices denying, terminating or suspending TBS for class members. Defendant through the State of California Department of Mental Health shall make the copies available to plaintiffs' counsel for inspection on thirty (30) days notice and shall provide copies to plaintiffs' counsel within forty-five (45) days notice of a request therefore. Defendant shall report to Plaintiffs' counsel on a quarterly basis beginning on March 30, 2001 and ending on March 30, 2004, in its summary report, the total respective numbers of such approvals, denials, terminations and suspensions by MHP for each such quarter.

7. DHS shall require that each MHP ensures that class members shall have access to TBS when the requirements in the July 23, 1999 policy letter (Attachment B) are met and that the MHPs shall have sufficient mental health providers able and willing to provide TBS to ensure access to this service by class members.

- A. The July 23, 1999 policy letter (Attachment B) sets forth the criteria for Medi-Cal reimbursement of TBS. The child/youth must:
 - 1) be a full-scope Medi-Cal beneficiary under age 21;
 - 2) meet the MHP medical necessity criteria; and

¹ The wraparound process is not a program or a type of process. The wraparound process can include any combination of services or supports. The guiding principle of the wraparound process is to do what is needed when it is needed to achieve the child/youth's treatment plan.

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3) be a member of the certified class or the child/youth must have previously received TBS while a member of the certified class.

B. The July 23, 1999 policy letter (^{original} Attachment B) also sets forth the criteria for TBS eligibility as follows:

- 1) The child/youth must be receiving other specialty mental health services; and
- 2) The clinical judgment of the mental health provider indicates that it is highly likely that without the additional short-term support of TBS that:
 - i) The child/youth will need to be placed in a higher level of residential care, including acute care because of a change in the child/youth's behaviors or symptoms which jeopardize continued placement in a current facility; OR
 - ii) The child/youth needs this additional support to transition to a lower level of residential placement. Although the child/youth may be stable in the current placement, a change in behavior or symptoms ^{is} are expected and TBS are needed to stabilize the child in the new environment.

8. Members of the class shall be entitled to receive TBS during the hours of day treatment intensive or day rehabilitation, as well as at other times.

9. Defendant shall provide a general informational notice describing Medi-Cal Early Periodic, Screening, Diagnosis and Treatment ("EPSDT") supplemental mental health services and where and how to obtain those services to the heads of all Medi-Cal beneficiary households with members under the age of 21, including households which are linked to Medi-Cal through their eligibility for Social Security benefits under the Supplemental Security Income ("SSI") program.

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This notice shall be provided when a household's application for Medi-Cal benefits is approved or when the beneficiary's Medi-Cal identification card is issued, and annually thereafter. Defendant shall confer in good faith with Plaintiffs' counsel regarding mutually agreeable text and format for this notice, but Defendant shall make the final determination, subject to the Court's review. Defendant shall begin providing this notice no later than 90 days from the date of entry of this Permanent Injunction.

10. Within one year from the entry of this Permanent Injunction, Defendant shall modify the following materials to include a description of EPSDT supplemental mental health services and where and how to obtain them: the DHS Child Health and Disability Prevention ("CHDP") brochure, the DHS brochure entitled "What Medi-Cal Means to You," and the MHP brochures required by 9 C.C.R. § 1810.360. Defendant shall confer in good faith with Plaintiffs' counsel regarding mutually agreeable text and format for these modifications, but Defendant shall make the final determination, subject to the Court's review.

11. Defendant shall send the above mentioned general EPSDT informational notice and a notice describing TBS to all children on Medi-Cal under age 21 at the time that the child is admitted to Metropolitan State Hospital or to Napa State Hospital and whenever these hospitals are informed that a child is being considered for admission to the hospitals. Such notice need not be given to children committed to Metropolitan State Hospital or Napa State Hospital by order of a court. Defendant shall confer in good faith with Plaintiffs' counsel regarding mutually agreeable text and format for this TBS notice, but Defendant shall make the final determination, subject to the Court's review. Defendant has 120 days from the entry of this Permanent Injunction to comply with this provision.

12. Defendant through the State of California Department of Mental Health shall ensure that each MHP makes the necessary arrangements with those hospitals with which that MHP has contracts for the delivery of specialty mental health

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services to assure that the TBS notice and the general EPSDT informational notice shall be given to all children on Medi-Cal under age 21 at the time of an emergency psychiatric hospitalization. No later than February 19, 2004, Defendant shall issue a directive instructing the MHPs to develop a system to comply with this requirement within 60 days of the date of the directive.

13. Defendant shall make the necessary arrangements (or ensure that the MHPs make the necessary arrangements) to assure that the TBS notice and the general EPSDT informational notice are provided to all children on Medi-Cal under age 21 at the time of admission to any Institution for Mental Disease in California or any Rate Classification Level ("RCL") 12 facility (when the MHPs are involved in the placement) or any RCL 13 or 14 facility. Within 120 days of entry of this Permanent Injunction, Defendant shall provide the above notices to children in RCL 12 to 14 group homes.

14. For purposes of the above mentioned paragraphs 10 through 12, the TBS notices shall be given to the child, and at least one adult who is a de facto or legally authorized representative of the child, if there is any such adult.

A. "Authorized Representative" means any person or entity authorized by law to act on behalf of any client or any person or entity in fact acting on behalf of or helping provide support for any client. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency. See Cal. Code Regs. Tit. 22, § 80001(a)(9) (2000)

B. The notice shall contain the following information:

- 1) Information about EPSDT services in general, including specific information about TBS;
- 2) The definition of TBS;
- 3) TBS eligibility requirements; and

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4) The contact point at the local MHP for requesting an assessment for TBS and other EPSDT services.

C. DMH shall require the MHPs to attempt to develop a memorandum of understanding with the local child welfare agency or the local dependency court under which a copy of the aforementioned notice would be attached to the initial court documents filed for all children.

D. Each MHP shall provide the aforementioned notice, on a one-time basis, to all panel attorneys and/or law firms which have agreed to accept court appointments in dependency proceedings, only to the extent that these names are available from the dependency court.

15. Within 90 days of entry of this Permanent Injunction, Defendant shall issue a directive which lists the mental health services which have been or may be covered as an EPSDT supplemental mental health service and shall provide information about the procedure for obtaining coverage of additional non-listed services as an EPSDT supplemental mental health service. Defendant shall distribute this directive to all MHPs.

16. Defendant shall adopt and implement procedures to ensure that prior to the placement of a class member in Metropolitan State Hospital, Napa State Hospital, a RCL 12 facility (when the MHPs are "involved" in the placement) or in any RCL 13 or 14 facility or an Institution for Mental Diseases, a form shall be completed by a qualified mental health practitioner certifying to the consideration of TBS for the child and the reason(s) for denying and/or not providing this mental health service for the child. Such certification need not be performed when children are committed by order of a court. An MHP is "involved" in the RCL 12 placement if: (1) the MHP has participated in an interagency review prior to placement; and (2) the child is receiving MHP services or has received an MHP assessment and the

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MHP participates in the placement discussion; or (3) the MHP has done a screening or assessment prior to placement under the provisions of SB 933. Defendant shall adopt and implement similar procedures concerning completion of this certification form at all regularly scheduled placement review meetings for class members at Metropolitan State Hospital and Napa State Hospital.

A. The certification form shall describe the reason(s) for denying and/or not providing TBS with sufficient specificity to enable the minor or his/her de facto or authorized representative to understand why TBS was not provided. The certification form shall also certify one of the following statements:

- 1) To the best of the MHP's knowledge, the child would not be eligible for Medi-Cal while at home, and therefore the child would not be eligible for TBS while at home, or
- 2) TBS has been provided and the placement is still required, or
- 3) TBS has been considered and:
 - i) Has been determined to be inappropriate, or
 - ii) Is appropriate, but is not available, or
 - iii) Is appropriate, but was refused by family/caregiver or the beneficiary.

B. Completion or failure to complete this form shall not prevent an otherwise appropriate placement.

C. Defendant shall ensure that a copy of the TBS certification form is provided to the child, at least one adult who is a de facto or legally authorized representative of the child, if there is any such adult, the child's court-appointed attorney, if any, and the child's social worker, if any.

D. MHPs shall retain a copy of all TBS certification forms and make these forms accessible and available for annual on-site

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compliance reviews by Defendant. During such reviews, a statistically significant sample of forms shall be reviewed.

E. This provision is effective 90 days from entry of this Permanent Injunction.

17. Defendant shall retain at least one mental health care practitioner who meets the qualifications set forth below and is mutually agreeable to the parties to be available to prepare an assessment of each class member who has been placed at Metropolitan State Hospital or Napa State Hospital for three months or more. The assessment shall address the feasibility of providing TBS to enable the child to transition to a less restrictive level of care at discharge. The parties shall identify mutually agreeable mental health care practitioners within thirty days of entry of this Permanent Injunction. All assessments shall be completed and copies made available to Plaintiffs' counsel and the applicable MHP within 180 days of entry of this Permanent Injunction, or by a later date if the parties so stipulate. The mental health care practitioner(s) shall possess qualifications that include training in behavior analysis with an emphasis on positive behavior interventions.

18. Defendant shall provide TBS as a transition for children and youth in state hospitals: (1) when medically necessary, (2) when TBS for the class member is not duplicative of other Medi-Cal services; and (3) if Defendant's existing procedures can be modified to entitle her to receive federal Medicaid reimbursement.

19. Special Services for youth between the ages of 21 and 25:

A. The Defendant shall provide a fund of three-hundred fifty thousand dollars (\$350,000.00) as a one-time disbursement for one-to-one services that meet the service criteria set forth in Department of Mental Health Letter 99-03, dated July 23, 1999, which services (hereafter, "special services") shall be provided solely pursuant to the terms of the agreement between the parties

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to settle the appeal from the Judgment and Permanent Injunction entered herein on May 11, 2001, which appeal was filed by the Defendant on June 8, 2001, and in order to settle the disputes between the parties to that appeal, and which services are not to be labeled or deemed "compensatory therapeutic behavioral services (TBS)" or construed in any way as creating a Medi-Cal benefit.

B. The fund of \$350,000 will be transferred to the California Institute of Mental Health/Cathie Wright Technical Assistance Center (CWTAC) for distribution. Monies will be distributed from the fund on a first-come, first-served basis until the fund is exhausted. CWTAC will be entitled to a reasonable administrative fee for this service, the amount of which will be determined by CWTAC and Protection & Advocacy, Inc. (PAI), and which will be deducted from the fund.

C. CWTAC will distribute monies from the fund directly to providers to provide special services, as defined in paragraph 19A above, to youth between the ages of 21 and 25, based on a certification by the provider that the one-to-one special services will meet the criteria in Department of Mental Health Letter 99-03 and that the youth met those criteria when he or she was under age 21.

D. Distribution of monies from the fund will not be contingent on a determination that TBS was incorrectly denied in the past to the youth who will receive the special services, nor will distribution of monies from the fund be contingent on a formal request by a TBS provider to a mental health provider (MHP) for compensatory TBS.

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- E. CWTAC and PAI may develop additional mutually-agreeable distribution guidelines for administration of the fund, consistent with the terms hereof.
- F. The State of California Department of Mental Health will issue an All-County Letter describing the availability of the fund on a one-time basis and the procedure for requesting monies from the fund from CWTAC. CWTAC will further publicize the availability of the fund through its website and through trainings.
- G. The aforementioned funds may be provided to youth regardless of the type of facility or setting in which they reside, so long as the youth meet other applicable requirements for the fund.

20. In consultation with MHPs, Defendant in conjunction with the State of California Department of Mental Health shall adopt standards for minimum qualifications for mental health practitioners to assess and/or provide TBS to class members. These qualifications shall include training in behavior analysis with an emphasis on positive behavioral interventions.

- A. Defendant shall not require that these mental health providers be existing participants in the Medi-Cal program or that these providers agree to participate in the Medi-Cal program for any other purpose besides assessing eligibility for TBS and/or providing TBS.
- B. Defendant shall inform all such providers of the procedures for contracting with the MHP to receive Medi-Cal EPSDT reimbursement pursuant to this Permanent Injunction and 22 C.C.R. § 51242, which specifies the qualifications required of an EPSDT supplemental services provider.
- C. An MHP may allow a provider to participate in its managed care Medi-Cal program solely to provide TBS and no other service.

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D. This provision does not require Defendant or any MHP to appoint and/or compensate as a provider any person or entity who or which would not otherwise be eligible to provide services to class members.

21. Defendant shall ensure that class members have access to TBS within their respective MHPs. Defendant shall require each MHP with at least one class member to provide a list to DMH of the TBS providers or provider within the MHP. Defendant shall ensure that a MHP expands its provider network or takes other measures if necessary for that MHP to meet its obligations to TBS class members in its jurisdiction. If necessary, Defendant shall also assist the MHPs to compile a list of mental health providers qualified, willing and logistically capable of providing TBS to children within the area served by each MHP.

A. The parties have agreed to refer the question of defining and ensuring needed capacity and access to TBS within the MHPs to the consultants for a joint recommendation. In the interim, if there are no class members in a particular county, then the sufficient number of providers would be zero.

B. A MHP may contract with a single large institutional provider with the capacity to serve scores of children since the number of "providers" is not itself significant.

C. The parties shall cooperate to monitor capacity and access on an ongoing basis for three years from the date of entry of this Permanent Injunction. They shall, at a minimum, review on an annual basis all available TBS statistics collected (1) by each MHP or (2) about the TBS services provided by each MHP.

D. The parties shall work with any MHP that fails to provide sufficient access to TBS for class members, with the goal of

