**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

| | |
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| KATIE A et al.,<br><br>Plaintiffs,<br><br>v.<br><br>DIANA BONTA,<br><br>Defendants. | CASE NO. CV 02-5662 AHM (SHx)<br><br>ORDER ON PLAINTIFFS' RENEWED MOTION FOR A PRELIMINARY INJUNCTION |

## I.

## INTRODUCTION

### A. Ninth Circuit Ruling

The Ninth Circuit ruled that this Court "applied an erroneous legal standard in concluding that the EPSDT provisions require the State to provide wraparound and TFC. The district court mistakenly assumed that if all the components of wraparound and TFC fall within categories listed in § 1396d(a), and that wraparound and TFC can be deemed health care 'services' in themselves, then the package of components must be offered in the form of wraparound or TFC." *Katie A., ex rel. Ludin v. Los Angeles County*, 481 F.3d 1150, 1157 (9th Cir. 2007).

The Ninth Circuit stated that this Court "did not explore the possibility that the State might only have an obligation to fund the component services of wraparound and TFC, rather than to offer the coordinated complex of services in a single package" and concluded that "the EPSDT provisions require only that the individual services listed in § 1396d(a) be provided, without specifying that they be provided in any particular form." *Id.* at 1157, 1158. The Ninth Circuit therefore concluded that this Court "should have examined whether all required component services under § 1396d(a) were already being supplied. If all mandated services under § 1396d(a) are being supplied effectively, the State is not obliged to go further and package the services as wraparound and TFC." *Id.* at 1158. The Ninth Circuit also noted that "[w]hile the states must live up to their obligations to provide all EPSDT services, the statute and regulations afford them discretion as to how to do so. There is nothing in the EPSDT statutory provisions or regulations that indicates that the state must generally design its Medicaid system to fund 'packages' of EPSDT services." *Id.* at 1159.[1]

The Ninth Circuit instructed this Court to employ the following approach on remand:

> The court should have first determined whether the State is meeting its legal obligation under the EPSDT provisions to provide all individual health services that fall under the categories listed in § 1396d(a). Then, if it found that the State is failing to provide the individual health services effectively, the court should have determined whether the failure could only be remedied by ordering the State to fund the individual services as a single "bundle." Rather

[1] At footnote 15 of its opinion the Ninth Circuit stated, "It is possible that if the State fails adequately to provide the component services, and the effectiveness of those services requires their coordinated delivery, it may be appropriate to require the State to provide services packaged together in a particular form, such as wraparound or TFC."

> than applying a legal rule that requires the State always to fund a coordinated bundle of services if the individual components fall under § 1396d(a), the court should have applied a legal rule that would allow the State to exercise its discretion as to how to meet its EPSDT obligation effectively to provide all the component services that fall under § 1396d(a). On remand, the district court should analyze plaintiffs' likelihood of success on their Medicaid Act claims in this manner.

*Id.* at 1160. Moreover, the Ninth Circuit noted,

> [O]n remand, in order to comply with Rule 52(a) and to facilitate appellate review, the district court should first make separate determinations as to (1) whether each component service of wraparound and TFC falls under a particular provision of § 1396d(a), and (2) whether defendants have effectively provided each mandated component service, before applying the standard discussed above to determine whether the State should be required to provide the required services in another manner which will render such services effective, or proceed directly to wraparound and TFC.

*Id.* at 1162-63.

**B. Status Upon Remand**

The parties are familiar with the voluminous papers that were filed after plaintiffs moved anew for a preliminary injunction. Although the Court was prepared to assess their positions in the manner required by the Ninth Circuit, the parties' respective memoranda and evidence did little to focus the analysis beyond what had been presented and argued back in 2006. For that reason, the Court issued separate orders on August 12, 2008 and August 13, 2008 directing the parties to address several specific questions at the August 14, 2008 hearing ("Hearing"). Among these questions were the following:

• *Question. (a) This Court did not deal with billing in its Order. (433 F.Supp.2d 1065.) Yet the Ninth Circuit ruled that the Court erred because, as the Ninth Circuit put it,*

> *The Court did not explore the possibility that the State might only have an obligation to **fund** the component services of wraparound and TFC, rather than to offer the coordinated complex of services in a single package.*
>
> *. . . [D]efendants had stated in their opposition to Plaintiffs' motion for a preliminary injunction that 'Medi-Cal already covers the services that Plaintiffs are entitled to under Medicaid and that **Plaintiffs were seeking a bundled rate.'** There was also evidence in the record that Medi-Cal currently reimburses providers for at least some components of wraparound and TFC. Therefore the court should have examined whether all required component services under § 1396d(a) were already being supplied."*

*481 F.3d at 1158 (emphasis added). Does this quote and the passage cited below from 481 F.3d at 1161 suggest that the Ninth Circuit conflated the question of the required **delivery of** services with the different (albeit related) question of **billing** for services?*

*(b) Given that both sides agree that at least many of the component aspects of wraparound and TFC are required under § 1396d(a), is the real dispute about how providers will bill for services they render? Are Defendants opposing this motion because they do not want to reimburse providers for wraparound or TFC services that are billed as such--i.e., described and labeled as wraparound or TFC? If that is the crux of Defendants' concern, then is whether someone who is a coordinator or*

*integrator of component services, such as a "wraparound coordinator," eligible for Medicaid funding an example of the issue? (See App. A to 5/12/06 Addendum to Order Granting Plaintiffs' Motion for Preliminary Injunction, p.2.) How about a "wraparound facilitator"? A TFC "coordinator"? If that is the key concern, would Plaintiffs agree that persons who coordinate the delivery of those services could not bill for wraparound or TFC-- "as such"?*

- *Question. The Ninth Circuit directed this Court to determine whether "the State is failing to provide the individual health services **effectively**" before determining whether any failure to do so "could only be remedied by ordering the State to **fund** the individual services as a single 'bundle.'" (481 F.3d at 1161) (emphasis added). How is the Court to evaluate the effectiveness of the delivery of those components of wraparound and TFC that even Plaintiffs acknowledge are being provided? What is the key evidence on which each side relies for its position as to effectiveness vel non?*

- *Question. See n.15 to the Ninth Circuit's opinion (481 F.3d at 1157): Assuming the State does adequately provide the component services required by EPSDT, do Plaintiffs contend that "the effectiveness of those services requires their coordinated delivery . . ."? Plaintiffs repeatedly insist that "Plaintiffs do not contend that California must provide wraparound services (or TFC) as a single bundled service under Medi-Cal." [Reply Brief, 8:16-18]. (What do Plaintiffs mean by the phrase "single bundled service"?) How do Plaintiffs reconcile that assertion with their many other implicit, and sometimes explicit, contentions to the effect that all the components of both wraparound and TFC must be provided as if in a package? For example, Plaintiffs state ". . . [A]ll the components of wraparound services and TFC in Appendices A and B are necessary and . .*

*. they all must be provided in a coordinated fashion to be effective . . . ." [Opening Memo. 18:6-8]. Similarly, Plaintiffs assert that "[T]o be effective TFC 'must be provided as an integrated service,' which means that the 'components are interrelated and must be coordinated.'" Id., 21:2-4.*

The parties' responses to these questions, their arguments at the August 14, 2008 hearing on plaintiffs' Renewed Motion for a Preliminary Injunction and the papers they filed afterward have prompted the Court to step back and look at the proverbial "big picture." In some respects it is a disappointing picture indeed.

This case involves complex statutes and regulations; innovative strategies for dealing with mental illness and behavioral problems afflicting children and adolescents; the challenge of coordinating the efforts of such disparate Medicaid providers as physicians, social workers, lawyers, teachers, family members and foster parents, all of whom serve or treat those children; foster care systems throughout the state that are beleaguered on many fronts; and the ever-present (and growing) gap between the legal responsibilities of governments and their capacity to discharge those costly responsibilities. Moreover, both sides are forced to navigate through a bureaucratic maze: three different governmental systems - - federal, state and local - - with their own sets of laws, regulations and procedures. (Medicaid is a federal program. Medi-Cal is a state program, but it is administered by and dependent on California's 58 counties.) Moreover, each governmental system wishes to limit the amount of money it has to spend.[2]

The parties ostensibly share the basic objective of seeing to it that the right of these children to receive services mandated by Medicaid and Medi-Cal is fully enforced. Moreover, they now appear to be in agreement about certain issues they previously treated as in conflict. Yet, as the Court noted at the hearing,

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[2] To deal with severe fiscal and budgetary constraints, the State Defendants attempt to enforce complicated reporting, billing and reimbursement requirements by imposing rigorous audit procedures.

despite the huge costs in time, money and resources that litigation exacts, both sides seem more intent on vindicating their respective contentions than on pursuing promising opportunities to narrow their differences and even reach an agreement, especially as to wraparound.

So what, really, is the problem? There are actually *two* problems. First, there is genuine, but somewhat misplaced, confusion as to whether certain components of wraparound and TFC qualify as required EPSDT services. Second, and more importantly, it now is clear that the main practical barrier is determining how providers may and should bill for those services.

In 2006, after much prodding, plaintiffs finally described just what wraparound and TFC consist of. Since then, however, they have had difficulty demonstrating clearly that the State Defendants are not providing those services. Indeed, plaintiffs now acknowledge that in several respects at least some of these services *are* being provided, albeit not necessarily as part of Medi-Cal. The State Defendants, for their part, claim to provide *all* required EPSDT services to members of the plaintiff class. Yet in opposing plaintiffs' efforts to obtain wraparound and TFC under EPSDT as a matter of right, State Defendants still cling unreasonably to a semantical mantra dependent on an unnecessary technicality - *i.e.*, they are not required to provide wraparound and TFC "as such." This position fails to recognize not only the broad scope of EPSDT, but the essence of both wraparound and TFC.

And yet, there is a reasonable basis to find that the parties can reach agreement on many issues. Their respective responses to the Court's pre-hearing written questions, their concessions at the hearing, and their post-hearing submissions collectively provide a promising basis to do so, as the following summary demonstrates.

**C. Framework for Negotiations**

**1. Answers to Court's Pre-hearing Questionnaires**

At page 5 of plaintiffs' August 20, 2008 written response to this Court's Question 15, plaintiffs acknowledged that "the SB-163 wraparound programs and the pilot program in Marin County [are] currently providing wraparound programs" but that "whether they are providing all of the components of wraparound services . . . in a coordinated fashion" - - is unclear.[3] "However, plaintiffs suspect that many children enrolled in these programs are receiving all the components of wraparound services and in a coordinated fashion."

**2. Representations at Hearing**

(a) State Defendants' Representations. State Defendants' counsel represented that as to wraparound "California is already covering those things ["Immediate Crisis Stabilization" and "Engagement of Child/Family"] if they are billed under Case Management and Rehabilitative options." [Transcript, p.15.]

• It appears from the gist of other statements made by State Defendants' counsel that California's position is that other components of wraparound services that were listed on Dr. Redman's Table (attached hereto as Exhibit A), also are covered. See, *e.g.*, Transcript p.53:

> "In terms of the delivery of services that we're calling wraparound services, anything that involves immediate stabilization and bringing the people together to work with this child specifically and planning and providing the services, those services are already being covered under the Medicaid Act called Case Management and Rehabilitative Services.
>
> Specifically for Rehabilitative Services - excuse me, one second.
>
> I'll add that, in addition, any one of those components that cover improving or restoring a beneficiary's daily living skills, social and leisure skills, support resources or education shall be covered under the Medicaid Act and is already being covered . . . .

[3] Plaintiffs also emphasize that the SB-163 programs are in place on only some 40 counties.

> So however those components are broken down, if they fall into one of those categories under Case Management and Rehab option, we not only have covered them, we do cover them and will continue to cover them.
>
> Because Ms. Redman's charting talks about every other state, I think it's quite interesting that she lists Case Management and Rehabilitation options in those charts for all those other states. But here in California, we're saying the same language. *If you bill it under Rehabilitation and Case Management, we have covered it, we will cover it, we do cover it*. (Emphasis added.)

- State Defendants' counsel also confirmed that "[i]f work is performed that consists of 'engagement of child slash [sic] family,' the state agrees that falls within the Medicaid statute and the Medi-Cal program . . . ." *Id.*, p.56. Indeed, counsel volunteered that "all of the things listed here [Exhibit A, the Table of Contents for Redman Declaration] can fall under Case Management or Rehabilitative Services . . . ." *Id.* at 58.

(b) Plaintiffs' Representations.

- Counsel for plaintiffs, in turn, reiterated that 39-40 counties in California do provide "wraparound," albeit not as a Medi-Cal program and not "effectively" (in his opinion) because not as an entitlement for all eligible children.

- In addition, plaintiffs' counsel concluded his remarks with this observation:

> If we are where we are today and the state defendants are prepared to concede that all nine components of wraparound services are covered by Medicaid, and they are also representing to the Court that they can be covered under Medi-Cal currently, *then the relief that's being sought may be much more along the lines the Court talked about earlier, which is letters and notices going out advising both recipients as to what their entitlement is - - and we haven't gone into the issue of exactly who would be entitled and eligibility criteria - - and advising providers about how they could bill and deliver those services.*

*Id.* at 81. (Emphasis added.)

**3. Post-hearing Filings**[4]

(a) Plaintiffs

Plaintiffs filed several exhibits. The Court compiled a Table of Contents of those items. It is attached hereto as Exhibit B.[5] Exhibit 184, the DMH Letter No. 06-05 (July 24, 2006) appears to be the key one. The letter lists and describes in detail those wraparound components initially listed by plaintiffs that are reimbursable under Medi-Cal. [6] The DMH circulated that letter as a means of implementing the now-vacated Preliminary Injunction that this Court issued on March 14, 2006.

(b) Defendants

• Rita McCabe, currently the Chief of the Medi-Cal Mental Health Policy Branch and other Health Care Benefits of the California Department of Mental Health ("DMH"), is a dedicated, hard-working, official who has been required to devote long, difficult hours to addressing issues in this case and the related *Emily Q* litigation. On August 20, 2008, State Defendants filed her declaration in support of their Supplemental Brief. Among other things, Ms. McCabe explained in detail the basis for a revealing chart (attached hereto as Exhibit C) that constitutes page three of the Defendants' Supplemental Brief. Ms. McCabe represented that of the nine components of wraparound defined by plaintiffs' expert, Dr. Redman, four are authorized outright by Medi-Cal and the remaining

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[4] The Court takes judicial notice of all the documents that both sides filed, except as to disputed declarations. But even those declarations are nevertheless relevant and admissible for purposes of this order.

[5] In the future, all parties shall attach a Table of Contents to exhibits and declarations they file, which thus far have been unusually voluminous.

[6] This Court finds that those components are Medi-Cal eligible, notwithstanding Deputy Attorney General Goldsmith's remarks at the most recent deposition of Rita McCabe.

five could be authorized, under certain circumstances, which she helpfully described.

- State Defendants later filed a series of documents described in the attached Exhibit D, a Table of Contents the Court also compiled. State Defendants included the declaration of Bradley Norman, which identifies individuals and programs that currently provide guidance as to "Medi-Cal billing" for eligible wraparound services. (*See* Norman Decl. ¶¶ 6, 10.) In addition, State Defendants filed the declaration of Curtis Yukoi, which contains "Program Code Descriptions" that provide guidance on how to claim Medi-Cal funds. Moreover, they filed the Declaration of Gary Renslo, who reveals that as recently as July 2008 the DMH completed and posted on its website a Medi-Cal Billing Manual.

The Court is distinctly unimpressed with plaintiffs' negative approach in their September 4, 2008 opposition to the State Defendants' submission of this evidence, and the Court overrules their objection to the late filing of those documents. It is disappointing that plaintiffs utterly ignored the Court's explicit invitation at the Hearing to not only look for, but exploit, the many promising areas of agreement that emerged at the Hearing. Particularly disturbing is plaintiffs' complaint in their footnote 4 that the State Defendants changed their position as to which components of wraparound services are covered by MediCal. The change in the State Defendants' position went a considerable distance toward accepting plaintiffs' contentions. Plaintiffs could have figuratively declared partial victory. Instead, they complained that State Defendants did not explain why they changed their position. Plaintiffs also cavalierly pooh-poohed the potential benefit of the California Institute for Mental Health ("CIMH") EPSDT Chart Documentation Manual and they flatly ignored the potential benefit from the technical assistance that EMQ provides to California counties having SB 163 programs. Also regrettable is plaintiffs' failure to see the opening that the DMH letter No. 06-05 provides. Finally, while the DMH Billing Manual attached to Mr.

Renslo's declaration may not answer all of plaintiffs' questions, it is a very recent document that should have prompted plaintiffs to reevaluate their position.

## II.

## MANDATED NEGOTIATIONS: WRAPAROUND

The foregoing summary confirms that at least as to wraparound what is urgently needed - - and clearly feasible - - is a good faith joint effort by the parties to develop letters and notices that the State Defendants will disseminate to all of the County Mental Health Plans ("MHPs"), and to as many eligible recipients (or their individual and institutional representatives) as possible. Such negotiations will surely assist the parties in reducing or eliminating the confusion about wraparound's Medicare/Medi-Cal status. They likely also will reduce or eliminate the concern of MHPs, providers and recipients as to whether such services will be reimbursed. The Court ORDERS the parties to undertake that effort promptly. The letter and notices that the parties shall develop shall list specifically, and in plain language, the components of wraparound defined by Dr. Redman that are covered by Medi-Cal, and it should explain how these services properly may be characterized and billed. In conducting these negotiations, the parties shall make maximum use of the offers, assurances and materials identified above.

The parties shall file a status report on their negotiations by not later than October 29, 2008. If at any point before then or by then they conclude that their efforts can be assisted by the Court, they are welcome to request such assistance.

## III.

## PRELIMINARY OBSERVATIONS RE WRAPAROUND COORDINATION

The Court may ultimately have to determine the second prong that the Ninth Circuit referred to as important for appellate review - - *i.e.*, whether providing the components of wraparound separately is "effective" or whether instead delivery of those services must be coordinated to satisfy the EPSDT

requirements. Because the State Defendants have (to their credit) re-evaluated their position as to which components of wraparound fall within EPSDT, if they request the opportunity to respond to the following preliminary observations -- they are not final findings -- the Court will allow them to do so, after the parties report to the Court about their negotiations and the Court makes its findings as to the first prong (*i.e.*, which components fall within EPSDT).

Under one statute, wraparound services are comprehensive and holistic services that should be provided in a coordinated fashion. *See, e.g.*, California Welfare and Institutions Code § 18251(d), defining wraparound services as "community-based intervention services that emphasize the strengths of the child and family and includes the delivery of *coordinated, highly individualized* unconditional services to address needs and achieve positive outcomes in their lives." Cal. Welf. & Inst. § 18251(d) (emphasis added).

As seen in the following evidence, there is clear support for the conclusion that wraparound services must be coordinated to be effective.[7] For example, the first component of wraparound services is "Engagement of the Child and Family." *See* App. A at 2. Bruce Kamradt, the Director of Wraparound Milwaukee, states that "one cannot provide necessary services for the child without engaging the family" because a "basic precept of wraparound services . . . is that a child is a member of [a] family" and that the family must become "an active participant in determining the child's strengths and needs, developing a plan to meet the child's needs and helping to marshal the services to meet those needs." Supp. Kamradt Decl. ¶ 4. *See also* Penrod Decl. ¶ 23 (Child family team "acts as the 'glue' to coordinating the implementation of all the components of wraparound services,

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[7] The evidence was encompassed in Plaintiffs' Proposed Findings of Fact and Conclusions of Law. *See e.g.*, ¶¶ 31-32. The Court invited State Defendants to challenge the accuracy of and factual basis for those citations, and State Defendants pointed to no errors.

and the team itself functions as a mode of treatment."). "It makes absolutely no sense to form a child and family team but not have this team intimately involved in and responsible for planning for any mental or behavioral crisis of the child, gathering information as to the child's strengths and needs, developing a plan to deliver necessary services to the child through both formal and natural supports, tracking the success of this plan and making necessary adjustments, and ultimately planning for the child's transition away from wraparound services." Further Farr Decl. ¶ 9. *See also* Supp. Penrod Decl. ¶ 22 ("By coordinated, I mean that the components of wraparound services are interrelated and interconnected. For example, the child and family must be engaged through the child's treatment and involved in forming the child and family team; the child and family team must be involved in developing and implementing the treatment and crisis plans; and the goals determined by the child and family team must drive the treatment and ultimately the transition from wraparound services."). *See also* Penrod Decl. ¶ 24 ("Disconnected efforts often led to less-effective outcomes. Instead, [Arizona] found that the best way to ensure that the services a child received from a provider were effective was to have the child and family team work together with the provider and coordinate the child's care from the provider."); *accord*, Supp. Friedman Decl. ¶ 18 (Providers in Nebraska of multi-systemic therapy ("MST"), a treatment for children with anti-social behavior, originally provided services independent of the wraparound team only to find that the children were not having the expected positive outcomes. Once the MST providers were integrated into the wraparound team, the children's mental health improved.)

Members of the statewide class are often involved with more than one state system (*i.e.*, welfare, mental health, probation) and they often receive care from more than one provider. Rauso Decl. ¶ 12; Supp. Farr. Decl. ¶ 10. Thus, it is critical that all those caregivers work together to meet the child's needs. Supp. Kamradt Decl. ¶ 8. Otherwise, there is a risk of "disjointed or competing

assignments or orders from different providers or systems [that] may make it virtually impossible for the child and family to accomplish them all, thereby setting the child and family up for failure." Rauso Decl. ¶ 12. Thus, absent coordination, providers may be working in opposite directions as to whether to keep a child in the home or allow him to remain in public school. Supp. Kamradt Decl. ¶ 8; Supp. Huffine Decl. ¶ 19 ("[C]hild and family are pulled in a variety of directions by different obligations and approaches and there is a replication of efforts by different child-serving agencies.")

Moreover, wraparound is considered an "evidence-based practice" and "the gold standard" in the mental health field, because the treatments have resulted from randomized clinical trials. *See* Chamberlain Decl. ¶ 14; Second Supp. Chamberlain Decl. ¶ 15; Friedman Decl. ¶¶ 19-21; Supp. Friedman Decl. ¶ 12; Supp. Bruns Decl. ¶¶ 20, 30. "As a general proposition regarding evidence-based practices, there is no evidence, and no reason to believe, that the intervention will lead to the positive results that have been proven if you vary the method of providing it from the way it was designed, developed and researched." Supp. Friedman Decl. ¶ 13; *accord*, Supp. Huffine Decl. ¶ 14; Second Supp. Chamberlain Decl. ¶ 16.

Thus, given that wraparound was researched and developed with specific components, the evidence shows that modifying or omitting any of these components lessens the effectiveness of the services. *See, e.g.*, Supp. Bruns Decl. ¶¶ 21-24 ("There must be adherence to the fully specified practice for its benefits to be conferred . . . One cannot take out any of the components and expect successful outcomes for children."). One wraparound provider in Sacramento states that "even if a case manager is attentive, engaged and thoughtful, that arrangement is not an adequate substitute for a functioning child and family team." Further Farr Decl. ¶ 3. *See also* Supp. Bruns Decl. ¶ 18 (noting that research has found better outcomes through the "provision of services through a

treatment team"). Two studies by Dr. Eric Bruns further show that "the more that the wraparound provider adhered to the core components," the "better the outcomes would be for children and their families." Supp. Bruns Decl. ¶¶ 28-29. *See also* Supp. Friedman Decl. ¶ 18 (A multi-site Department of Defense wraparound project did not provide all the components and did not coordinate the components that were provided; as a result, there were not statistically significant differences between children in the program and those receiving traditional mental health services.)

## IV.

## THERAPEUTIC FOSTER CARE

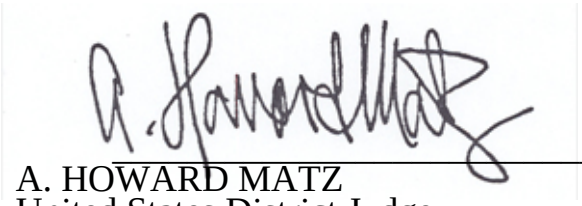
The Court finds that the parties are further along in narrowing their differences as to wraparound than they are as to "TFC." Moreover, there is a complication as to TFC: will the moratorium on the Centers for Medicare and Medicaid Services ("CMS") regulations expire on April 1, 2009?[8] Because the wraparound negotiations mandated by the preceding section of this order may entail various problems in their own right, it would be imprudent to require the parties simultaneously to embark on the same path as to TFC. Accordingly, at

[8] On June 30, 2008, President Bush signed into law Public Law 110-252 (H.R. 2642), Supplemental Appropriations Act of 2008. Section 7001(a) of that law: (1) extended the existing moratorium on the CMS regulations regarding rehabilitative services until April 1, 2009 (Section 7001(a)(2)); (2) imposed a new moratorium on the CMS regulations regarding case management services until April 1, 2009 (Section 7001(a)(3)(B)); and (3) prohibited the U.S. Department of Health and Human Services from taking "any action" to impose restrictions related to any of the regulations that are subject to these moratoria (Section 7001(a)(3)(A)).

this time the Court intends to take the preliminary injunction motion as to TFC under submission.

IT IS SO ORDERED.

DATED: 9/22/08



A. HOWARD MATZ
United States District Judge

# Table with Selected States' Coverage of Components of Wraparound Services and Therapeutic Foster Care

## Table of Contents

**Plaintiffs' Submission of Additional Documents (filed 8/20/08)**
*Katie A. et al v. Bonta et al* (CV 02-05662)

Ex. 181: California Dept. of Mental Health ("DMH") Letter No. 040-4 Re: EPSDT Services Notices at Time of Admission (dated 2/19/04)

Ex. 182: DMH Letter No. 99-03 Re: EPSDT Services Notices at Time of Admission (dated 7/23/99)

Ex. 183: DMH Letter No. 01-01 Re: One to One Mental Health Services (dated 5/4/01)

Ex. 184: DMH Letter No. 06-05 Re: Implementation of the Preliminary Injunction in *Katie A.* (dated 7/24/06)

Ex. 185: Standard Contract Between DMH and the County Mental Health Plans

Ex. 186: Introduction, TOC, and Sections 2, 3 and 10 of the manual for providers from the Fresno Mental Health Plans

Ex. 187: A Guide to Procedure Codes for Claiming Mental Health Services from the LA County Dept. of Mental Health (dated 4/12/07)

Ex. 188: Short-Doyle/Medi-Cal Organizational Provider's Manual for Specialty Mental Health Services under the Rehabilitation Option and Targeted Case Management Services by the LA County Dept. of Mental Health (updated April 2007)

Ex. 189: Checklists developed by the County of San Diego for billing various mental health services

**EXHIBIT B**

8/20/07

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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

**KATIE A., by and through her next friend Michael Ludin; MARY B., by and through her next friend Robert Jacobs; JANET C., by and through her next friend Dolores Johnson; HENRY D., by and through his next friend Gillian Brown; AND GARY E., by and through his next friend Michael Ludin, individually and on behalf of others similarly situated,**

Plaintiffs,

**v.**

**DIANA BONTA, Director of California Department of Health Services; LOS ANGELES COUNTY; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES; ANITA BOCK, Director of the Los Angeles County Department of Children and Family Services; RITA SAENZ, Director of the California Department of Social Services, and Does 1 through 100, inclusive,**

Defendants.

CV-02-05662 AHM (SHx)

**STATE DEFENDANTS' SUPPLEMENTAL BRIEF IN RESPONSE TO THE COURT'S AUGUST 14, 2008 ORDER**

Hearing: Under Submission
Time: Under Submission
Courtroom: 14
Judge: Hon. A. Howard Matz

**EXHIBIT C-1**

To the Court and Plaintiffs:

By this pleading State Defendants submit their supplemental brief in response to the order of the Court issued on August 14, 2008 as follows:

1) Declaration setting forth whether the components of wraparound as listed in Appendix A and Therapeutic Foster Care as listed in Appendix B of the Table of Contents attached to Redman's declaration (Exhibit A) are covered by Medicaid/Medi-Cal program.

2) A declaration stating whether there is some State level "document" (letter, regulation, etc.) that sets forth the characteristics of what services fall within 1396(d)(a), such as Case Management, clinical services, Rehab, and Medical. The declaration should also explain the "document."

State Defendants provide the chart below to address the Court's directive for a "yes" or "no" answer. Please note, State Defendants have provided "yes" or "no" answers where possible. However, because there are components listed in Appendix A and B that do not lend themselves to yes or no answers because the components are only covered by Medicaid/Medi-Cal with additional qualifications, State Defendants have identified these components as a "maybe." All references are supported by explanations in the attached declaration of Rita McCabe. (Exhibit B.)

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**EXHIBIT C-2**

Components of Wraparound[1/] from Redman's Table of Contents

| **Is component covered?** | **Appendix A: Components of Wraparound Services** | **Authority in Declaration of Rita McCabe[2/]** |
|---|---|---|
| Yes | Engagement of Child/Family | Page (p.) 6, paragraph (par.) 1. |
| Yes | Immediate Crisis Stabilization | P. 7, par. 2. |
| Yes | Ongoing Crisis and Safety Planning | P.8, par. 3. |
| Yes | Strengths and Needs Assessment | Id. at par. 4. |
| Maybe with additional qualifications | Team Formation | P. 9, par. 5. |
| Maybe with additional qualifications | Service Plan Development | Id. at par. 6. |
| Maybe with additional qualifications | Services Plan Implementation | P. 10, par. 7. |
| Maybe with additional qualifications | Tracking and Adapting the Service Plan | P. 11, par. 8. |
| Maybe with additional qualifications | Transition | Id. at par. 9. |

1. Please note that the word "wraparound" has been deleted from the description of the component, per the Court's directive.

2. Rita McCabe's Declaration explains the conditions of Medicaid/Medi-Cal's coverage of the components as indicated in this chart.

**EXHIBIT C-3**

Components of Therapeutic Foster Care from Redman's Table of Contents

| Is component covered? | Appendix B: Components of Therapeutic Foster Care | Authority in Declaration of Rita McCabe |
|---|---|---|
| No | Therapeutic Foster Care | P. 12, par. 1. |
| No | Recruiting and Matching | P. 13, par. 2. |
| No | Foster Parent Training | Id. at par. 3. |
| Maybe with additional qualifications | Development of Treatment Plan | Id. at par. 4. |
| Maybe with additional qualifications | Tracking and Adapting the Treatment Plan | Id. at par. 5. |
| Maybe with additional qualifications | Plan Implementation. | P. 14, par. 6. |
| Maybe with additional qualifications | Family Treatment | Id. at par. 7. |
| Maybe with additional qualifications | Transition | P. 15, par. 8. |

As for the second directive relating to a State level "documents," State Defendants include the pertinent text of Title 9 California Code of Regulations which describes the Medi-Cal criteria. (McCabe's Decl.) Also, State Defendants have included a copy of relevant portions of California's State Plan, effective July 1, 1993 with information from Richard Hildebrand. The State Plan describes the services provided under the medi-Cal Specialty Mental Health Services Program. (Richard Hildebrand at par. 3, 4.)

Finally, the State Defendants would like to reiterate its position that Plaintiffs' Motion for Preliminary Injunction should be denied because Plaintiffs

**EXHIBIT C-4**

**Defendants' Further Submission of Supplemental Information (filed 8/27/08)**
*Katie A. et al v. Bonta et al* (CV 02-05662)

**Ex. A:** EPSDT Chart Documentation Manual published by California Institute of Mental Health (p.1-89)

**Ex. B:** Norman Decl. (p.90-93)

**Ex. 1:** Norman CV (p.95)

**Ex. 2:** Rodriguez CV (p.97)

**Ex. 3:** DMH Letter No. 06-05 Re Implementation of the Preliminary Injunction in *Katie A.* (p.99-107)

**Ex. 4:** "Progress Note Quick Notation" (p.109-113)

**Ex. 1:** Yokoi Decl. (p. 4-6)

**Ex. A:** Program Code Descriptions (p.8-103)

**Ex. 2:** Renslo Decl. (p. 105)

**Ex. A:** Mental Health Medi-Cal Billing Manual (p. 109-156)

**EXHIBIT D**