

EPSDT Case Docket

National Health Law Program

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November 10, 2003: Revised: [new cases or case activities highlighted in **bold**]

Previous Posting: July 21, 2003

This docket summarizes published, reported and unreported federal and state court cases that discuss Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services. Unreported decisions are available from NHeLP, Los Angeles.

Reported federal decisions:

Collins v. Hamilton, 2003 U.S. App. LEXIS 22777 (7th Cir. Nov. 6, 2003), *aff'g*, 231 F. Supp. 2d 840, (S.D. Ind. 2002), *corrected*, 231 F. Supp. 2d 851 (S.D. Ind. 2002) (finding **residential psychiatric services** qualify as required EPSDT services)

Frew v. Hawkins, 123 S.Ct. 1481 (2003), *cert. granted*, *Frazer v. Gilbert*, 300 F.3d 530 (5th Cir. 2002) (finding **consent decree** ordering Texas to reform specific EPSDT outreach activities unenforceable), *rev'g*, 109 F. Supp. 2d 579 (E.D. Tex. 2001), *earlier case*, *Frew v. Friedholm*, No. 3:93CV65 (E.D. Tex. Jan 25, 1996) (consent decree)

Rosie D. v. Swift, 310 F. 3d 230 (1st Cir. 2002) (affirming district court order denying **sovereign immunity** in case alleging that the state must cover **home-based behavioral health** services under EPSDT for children diagnosed with severe psychiatric disorders), *same case*, 256 F. Supp. 2d 115 (D. Ma. 2003) (granting motion to compel **production of documents** containing private information about class members, finding documents held by contracting entities were within state control)

Pediatric Specialty Care, Inc. v. Arkansas Department of Human Services, 293 F.3d 472 (8th Cir. 2002) (affirmed district court's holding that a Medicaid eligible child has a federal right to **early intervention day treatment**, when recommended by a physician)

Antrican v. Odom, 290 F.3d 178 (4th Cir. 2002) (affirming denial of state's motion to dismiss based on sovereign immunity), *aff'g*, *Antrican v. Bruton*, 158 F. Supp. 2d 663 (E.D. N.C. 2001) (finding no **sovereign immunity** bars and that Medicaid claims in **dental** case were enforceable through **§ 1983**), *cert. denied*, 537 U.S. 973 (2002), *later proceeding*, *McCree v. Odom*, No. 4:00-CV-173 H(4) (E.D. N.C. Nov. 26, 2002), *reproduced at* <http://www.healthlaw.org/children>. (holding EPSDT, reasonable promptness, and equal access statutes create enforceable "federal rights" under § 1983 and granting class certification)

Westside Mothers v. Haveman, 289 F.3d 852 (6th Cir. 2002) (holding Medicaid is **supreme federal law** and not simply a contract; recognizing private right of action under **§ 1983** and the validity of the suit under *Ex Parte Young*), *reversing and remanding*, 133 F. Supp. 2d 549 (E.D. Mich. 2001), *cert. denied*, 537 U.S. 1045 (2002)

Kenny A. v. Perdue, No. 1:02-CV1686MHS, 2003 WL 22019593 (N.D. Ga. Aug. 18, 2003) (finding EPSDT provisions of Medicaid Act enforceable under **§ 1983**)

S.D. v. Hood, No. 02-2164, 2002 U.S. Dist. LEXIS 23535 (E.D. La. Dec. 5, 2002) (on appeal) (holding **incontinence supplies** within the scope of EPSDT services)

Okla. Ch. of Am. Acad. of Pediatrics v. Fogarty, 205 F. Supp. 2d 1265 (N.D. Okla. 2002) (finding no **sovereign immunity** bar and that Medicaid provisions were enforceable under § 1983, and organizations representing plaintiffs had **standing**)

Emily Q. v. Bonta, 208 F. Supp. 2d 1078 (C.D. Cal. 2001) (permanent injunction) (requiring **therapeutic behavioral services** (TBS) for class of children, including: (1) adequate notice about TBS, (2) TBS certification, (3) immediate assessment of all class members, (4) transitional TBS, (5) compensatory TBS as a form of equitable relief, and (6) monitoring of counties' provision of TBS)

Missouri ex rel. Nixon v. Prudential Health Care Plan, Inc., 2000 U.S. Dist. LEXIS 22407 (E.D. Mo. June 28, 2000), *appeal dismissed*, 259 F.3d 949 (8th Cir. 2001) (finding state failed to allege a claim under the state **Medicaid fraud act** where it alleged that health plan had continued to enroll Medicaid beneficiaries knowing that EPSDT **lead blood tests** were not being performed at an adequate level), *same case*, 2000 U.S. Dist. LEXIS 22406 (E.D. Mo. Apr. 13, 2000), *appeal dismissed*, 259 F.3d 949 (8th Cir. 2001) (finding federal question jurisdiction over a state breach of contract claim against health plan where managed care contract required an interpretation of federal EPSDT lead testing guidelines)

John B. v. Menke, 176 F. Supp. 2d 786 (M.D. Tenn. 2001) (finding **managed care** system failed to assure EPSDT and appointing special master to develop compliance plan) (for updates, *see* <http://www.tnjustice.org/Links/settlement.html>)

Memisovski v. Patla, 2001 U.S. Dist. LEXIS 16963 (N.D. Ill. 2001) (denying state's motion to dismiss on **sovereign immunity** grounds; affirming that Medicaid-eligible children under 21 were intended beneficiaries of the EPSDT provisions under § 1983)

Dajour B. v. City of New York, 2001 U.S. Dist. LEXIS 15661 (S.D.N.Y. 2001) (class certification), *same case*, 2001 U.S. Dist. LEXIS 10251 (S.D.N.Y. 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 schools), *same case*, *Chisholm v. Jindal*, No. 97-3274, 1998 WL 92272 (E.D. La. 1998) (class certification)

Prado-Steiman v. Bush, 221 F.3d 1266 (11th Cir. 2001) (vacating **class certification** based on lack of typicality and remanding for re-certification, suggesting EPSDT subclass)

Risinger v. Concannon, 201 F.R.D. 16 (D. Me. 2001) (**class certification** in home-based behavioral services case), *same case*, 117 F. Supp. 2d 61 (D. Me. 2000) (denying motion to dismiss based on **ripeness**)

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

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*: 123 F. Supp. 2d 8 (D.D.C. 2000) (fees and costs); (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), *findings of fact/conclusions of law at*, 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) (granting summary judgment, finding class entitled to notice when **residential mental health services** terminated by managed care program), *later proceeding*, *J.K. v. Eden*, No. CIV-91-261-TUC-JMR (D. Ariz. Mar. 20, 2001) (settlement) (envisioning broad systemic change of the **mental health system** over six-year period, during which pilot projects, training, and other activities will occur, based on the following principles: (1) collaboration with the child and families; (2) focus on functional outcomes; (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 tailored 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)

Charlie and Nadine H. v. Whitman, 83 F. Supp. 2d 476 (D.N.J. 2000) (granting motion to dismiss claims to enforce EPSDT screening and treatment provisions under **§ 1983**)

Kirk T. v. Houstoun, 2000 U.S. Dist. Lexis 8768 (E.D. Pa. June 23, 2000) (granting summary judgment against state for failing to provide timely **behavioral health rehabilitative services** to children needing care), *earlier case*, 1999 U.S. Dist. LEXIS 15794 (E.D. Pa. 1999) (class certification)

United States v. Mack, 2000 U.S. Dist. LEXIS 17367 (S.D. Tex. 2000) (granting summary judgment against pediatrician for filing **fraudulent claims**)

Tran v. Concannon, 2000 U.S. Dist. LEXIS 2411 (D. Me. Mar. 24, 2000) (approving settlement agreement in case involving **speech therapy** under EPSDT, in which state also agreed to implement “**pay and chase**” for EPSDT services)

Thompson v. Raiford, 1998 U.S. Dist. 2605 (N.D. Tex. 1998) (fee award in case that caused Secretary of HHS to issue national policy re: **lead blood** level assessments)

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

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. U.S. Dep't of Health and Human Services, 61 F.3d 438 (5th Cir. 1995) (upheld HHS' rejection of State's proposed amendment of state plan 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. Mar. 1, 1995 and Aug.16, 1993) (consent order and compliance plan requiring outreach and screening for **children in out-of-home placement**)

Scott v. Snyder, No. 91-CV-7080 (E.D. Pa. Dec. 2, 1994) (stipulated settlement) (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 intellectual disabilities; and to correct problems with prior authorization process), *same case*, MEDICARE & MEDICAID GUIDE (CCH) ¶ 42,056 (E.D. Pa. Dec. 13, 1993) (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)

Miller v. Whitburn, 10 F.3d 1315 (7th Cir. 1993), *aff'g*, 816 F. Supp. 505 (W.D. Wis. 1993) (finding state's classification of **organ transplant** as experimental is subject to review)

Pittman v. Sec'y of Fla. Dep't. of Health and Rehabilitative. Servs., 998 F.2d 887 (11th Cir. 1993), *cert. denied*, 510 U.S. 1030 (1993) (requiring Medicaid coverage, finding that EPSDT does not give the state discretion not to pay for necessary **organ transplants**)

Pereira v. Kozlowski, 996 F. 2d 723 (4th Cir. 1993), *aff'g*, 805 F. Supp. 361 (E.D.Va. 1992) (EPSDT covers necessary **heart transplant**)

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

Maher v. White, 1992 U.S. Dist. LEXIS 7537 (E.D. Pa. 1992) (EPSDT coverage of **children in foster care placement**, notice requirements)

McLaughlin v. Williams, 801 F. Supp. 633 (S.D. Fla. 1992) (preliminary injunction) (compelling coverage of **organ transplant**)

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

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, *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 (E.D.Cal., Dec. 13, 1994) (regarding legislation affecting adult eligibility), 60 F.3d 600 (9th Cir. 1995), *rev'g*, 1993 WL 720217 (E.D. Cal. Dec. 17, 1993), *related reference*, 1989 WL 265478 (E.D. Cal. Nov. 3, 1989) (adequate availability of **obstetrical and dental care providers**), 1988 WL 235548 (E.D.Cal. May 9, 1988)

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), *same case*, *G.L. v. Zumwalt*, 564 F. Supp. 1030 (W.D. Mo. 1983) (consent decree) (initial and follow-up examinations for children in **out-of-home placement**)

Mitchell v. Johnston, 701 F.2d 337 (5th Cir. 1983) (requiring **dental** services for qualified recipients and notice when services are eliminated)

Philadelphia Welf. Rights Org. v. O'Bannon, 517 F. Supp. 501 (E.D. Pa. 1981), *aff'd without opin.* 681 F. 2d 808 (3rd Cir. 1982) (requiring **notice** of denial of EPSDT services)

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

Bond v. Stanton, 630 F.2d 1231 (7th Cir. 1980) (regarding EPSDT **screening**, identification of providers, and follow up), *cert. denied*, 454 U.S. 1063 (1981), *same case*, 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 EPSDT outreach)

Doe v. Pickett, 480 F. Supp. 1218 (S.D.W.Va. 1979) (holding State could not impose **parental consent**/notice to receive family planning services)

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

Becker v. Toia, 439 F. Supp. 324 (S.D.N.Y. 1977) (preliminary injunction) (excluding children from **co-payment** options), *same case*, *Becker v. Blum*, 464 F. Supp. 152 (S.D.N.Y. 1978)

Wis. Welf. Rights Org. v. Newgent, 433 F. Supp. 204 (E.D. Wis. 1977) (class certification in

case involving adequacy of **outreach** and EPSDT implementation)

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) (permanent injunction) (enjoining state from commencing Medicaid **copayment** project)

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)

Reported state decisions:

Manglass v. R.I. Dep't of Human Services, 2003 R.I. Super. LEXIS 122 (Oct. 6, 2003) (remanding to department for a determination of the number of hours of necessary **home-based therapeutic services** under EPSDT; court accepted agency finding that 40 hours were not needed but found no probative evidence to support its reduction to 15 hours)

Jackson v. Millstone, 801 A. 2d 1034 (Md. 2002) (holding requirement that services be both “**necessary**” and “**appropriate**” conflicted with EPSDT because the “appropriateness” is not required under federal provisions)

Ga. Dep't of Community. Health v. Freels, 576 S. E. 2d (Ct. App. 2002) (finding EPSDT statute required only that treatment be “**necessary to correct or ameliorate**” conditions, not that a treatment be an acceptable standard of medical practice)

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)

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**), *cert. denied*, 513 U.S. 1151 (1995)

Tomorrow's Hope v. State Dep't of Health and Welf., 864 P.2d 1130 (Idaho 1993) (reversing district court ruling that policy could not be enforced against facility for intellectual disability, discussing EPSDT as reimbursement for **ICF/IID**)

E.H. v. Matin, 432 S.E. 2d 207 (W. Va. 1993), *same case*, (Temporary Restraining Order June 4, 1992) (requiring continued **rehabilitative services** for children with mental illness even though state was ending coverage of off-site clinic services)

Common Cause of W. Va. v. Tomblin, 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 (N.Y.S. 1987) (**lead blood** level assessment), *aff'd*, 139 A.D. 2d 404 (N.Y. App. Div. 1988), *appeal dismissed*, 170 A.D. 2d 419 (N.Y. App. Div. 1991), *same case*, 216 A.D. 2d 219 (N.Y. App. Div. 1995)

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

State v. McMahon, No. 810728, 1983 WL 5375 (Ohio Ct. 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 **diabetic supplies** not otherwise covered by state Medicaid plan)

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

Unreported federal decisions:

Guerrero v. Idaho, No. CIV 00-578-S-MHW (Idaho, Jan. 14, 2003), *reproduced at* <http://www.healthlaw.org/children> (consent decree) (finding state violated Medicaid requirements to ensure that eligible children receive EPSDT **lead screening**)

Metts v. Houstoun, No. 97-CV-4123 (E.D. Pa. Mar. 27, 1998) (settlement agreement) (coverage and due process protections for EPSDT **in-home services in managed care** settings, including nursing, home health aid, personal care, and case management services)

French v. Concannon, No. 97-CV-24-B-C (D. Me. July 16, 1998) (Settlement and Dismissal) (implementing policy and regulatory changes regarding outreach, informing, and treatment to improve availability of 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 to 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. 1997) (class certification of persons eligible for EPSDT but not **informed** of the program or have not received the full range of

needed services; order denying motion to dismiss based on sovereign immunity and finding EPSDT provisions enforceable under § 1983)

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)

Trusler v. Blouke, No. DC-95-106 (Mont. Jud. Dist. Sept. 25, 1995) (preliminary injunction) (requiring **expandable prosthetic titanium rib** to treat scoliosis, rejecting argument that the service was experimental.)

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

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

Ellis v. Wetherbee, No. 592-0529 (S.D. Miss. May 1994) (consent decree) (**lead blood** level assessments; prior authorization for **inter-periodic screens**)

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

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

Matthews v. Coye, No. C-90-3620-EFL (N.D. Cal. Oct. 17, 1992) (stipulation and dismissal) (**lead blood** level assessment; outreach and informing)

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

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

DR. v. Concannon, No. 90-483-DA (D. Or. 1990) (stipulation) (timely and adequate **mental health services**)

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

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

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**)

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

Unreported state decisions:

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

California Welf. Rights Org. v. Brian, No. 428960 (Cal. Super. Ct. 1972) (state ordered to **implement** EPSDT program)