

Fact Sheet
Medicaid EPSDT Litigation

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The Early and Periodic Screening, Diagnostic and Treatment (EPSDT) provisions are among the most specific in the Medicaid Act. See 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r). Over the years, states have not adhered to these clearly articulated responsibilities, and litigation has resulted. This issue brief discusses case trends and summarizes recent cases in an annotated case docket.

Case Trends

Individuals with developmental and behavioral health needs are enforcing EPSDT to gain access to community-based and evidence-based services and therapies. EPSDT establishes a broad scope of benefits—all the services listed within the Medicaid Act at 42 U.S.C. § 1396d(a)—and a uniform medical necessity definition—services needed to “correct or ameliorate” the child’s physical or mental conditions. 42 U.S.C. § 1396d(r)(5).

Advocates are citing these broad treatment requirements to obtain coverage for a range of services that children need to live at home and in the community, including rehabilitative services, case management, home health care, and personal care services. Successful litigation involves clear facts establishing the need for the service and that the service has been denied by the state Medicaid agency or a managed care organization contracting with the state Medicaid program.

A child’s treating providers may not prescribe services using Medicaid terms. The provider is making a clinical decision, not a legal one. While the prescribed service may not be mentioned by name as a covered service in the Medicaid Act, case law establishes that the service must nevertheless be covered if it can be fit into a Medicaid box—that is, the service can properly be *described* as one of the Medicaid services listed in the Act, 42 U.S.C. § 1396d(a). For example, incontinence supplies may be covered as a home health, rehabilitative, or preventive service. Applied behavioral analysis for a child with autism may

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OTHER OFFICES

be covered as a rehabilitative service. A cochlear implant may be covered as a prosthetic device.

The courts are consistently rejecting states' arguments that the EPSDT provisions cannot be privately enforced. Medicaid beneficiaries have traditionally enforced the EPSDT and other federal Medicaid Act provisions through a civil rights statute, 42 U.S.C. § 1983. In *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002), the Supreme Court clarified the requirements for enforcing federal statutes under § 1983. Since 2002, state attorneys have frequently cited *Gonzaga* as the basis for dismissing Medicaid cases, including cases seeking to enforce the federal EPSDT requirements.²

All federal circuit courts of appeal to have ruled either before or after *Gonzaga* have held that the EPSDT provisions create private rights that are enforceable under § 1983. In *S.D. v. Hood*, for example, the Fifth Circuit Court of Appeals held that the EPSDT provisions require that “health care and services must be provided to all eligible recipients under the age of twenty-one” and have “precisely the sort of ‘rights-creating’ language identified in *Gonzaga*.” *S.D.*, 391 F.3d 581, 603-04 (5th Cir. 2004). See also *Westside Mothers v. Haveman*, 454 F.3d 532 (6th Cir. 2006) (holding EPSDT plaintiffs could enforce § 1396a(a)(10)(A) through § 1983), *same case*, 289 F.3d 852, 863-64 (6th Cir. 2002) (allowing EPSDT beneficiaries to enforce § 1396a(a)(43)); *Pediatric Specialty Care, Inc. v. Ark. Dep’t of Human Servs.*, 293 F.3d 472, 477-79 (8th Cir. 2002) (allowing enforcement of the EPSDT provisions), *same case*, 443 F.3d 1005, 1008 (8th Cir. 2006) (noting that children have enforceable rights to EPSDT), *vacated on other grounds sub nom. Selig v. Pediatric Specialty Care*, 551 U.S. 1142 (2007); *Miller v. Whitburn*, 10 F.3d 1315, 1319-20 (7th Cir. 1993). As evidenced in the case docket below, the federal district courts are also consistently recognizing that the EPSDT provisions create privately enforceable rights under § 1983.³

On the other hand, the circuit courts are continuing to limit the scope of what Medicaid means. In *Oklahoma Academy of Pediatrics*, the Tenth Circuit Court of Appeals found that Medicaid is defined as “medical assistance,” which is “payment for all or part of” the care and services listed in the Medicaid Act. *Oklahoma Chap. of the Am. Acad. of Pediatrics v. Fogerty*, 472 F.3d 1208 (10th Cir. 2007) (discussing 42 U.S.C. § 1396d(a)). According to the court, the only obligation on the state Medicaid program is to make prompt payment of claims for care and services when (and if) they are submitted, and there is no obligation to see that the care and services are actually provided promptly. See also *Equal Access for El Paso v. Hawkins*, 562 F.3d 724 (5th Cir. 2009); *Mandy R. v. Owens*, 464 F.2d 1139 (10th Cir. 2006); *Westside Mothers v. Olszewski*, 454 F.3d 532 (6th Cir. 2006) (remanding to allow plaintiffs to re-plead their complaint); see also *Bruggeman v. Blagojevich*, 324 F.3d 906 (7th Cir. 2003) (dicta).

² For further discussion, see, e.g., Jane Perkins, *Fact Sheet: Developments Affecting Medicaid Cases Filed Under 42 U.S.C. § 1983* (Dec. 31, 2008) (available from TASC or NHELP).

³ *But see Charlie H. v. Whitman*, 83 F. Supp. 2d 476, 499 (D. N.J. 2000) (a pre-*Gonzaga* case finding an EPSDT provision, 42 U.S.C. § 1396d(r), was too vague for the court to enforce and, citing 42 U.S.C. § 1396c, holding that the state needed only to “comply substantially” with the Medicaid Act). The Third Circuit overruled that portion of *Charlie H.* that relied on the “comply substantially” language. See *Sabree v. Richman*, 367 F.3d 180, 192-93 (3d Cir. 2004) (holding that the “comply substantially” language does not “preclude a coherent and coexisting intent to create an enforceable right in individual beneficiaries” and that such language does not neutralize the rights-creating language of 42 U.S.C. §§ 1396a(a)(10)(A) and 1396d(a)(15)).

Substantive relief is being delayed. State attorneys' legal arguments challenging private enforcement and questioning the meaning of Medicaid are typically raised in motions to dismiss under Fed. R. Civ. P. 12(b)(6), often filed before the defendant even submits an Answer. Until the court rules on the motion, the child plaintiffs' substantive claims are often left in limbo. These decisions can take months. Moreover, in some states, children are experiencing difficulty obtaining substantive relief even after a ruling in their favor. Courts in some jurisdictions are proving hesitant to order the state Medicaid agency to comply with court orders and/or consent decrees.

Case Annotations

The following annotations summarize the significant EPSDT cases decided in the last five years. For information on cases pre-dating 2004, see Jane Perkins, Manju Kulkarni, & Scott Strickland, *Early and Periodic Screening, Diagnosis and Treatment Case Docket* (July 7, 2004) (summarizing published, reported, and unreported federal and state court cases) (on file with NHeLP).

Federal court cases:

Parents' League for Effective Autism Servs. v. Jones-Kelley, No. 08-3931, 2009 WL 2251310 (6th Cir. July 29, 2009) (not for publication, see Fed. R. App. P. 32.1) (holding district court did not abuse its discretion when preliminarily enjoining the implementation of two state administrative rules restricting EPSDT coverage of **rehabilitative services**), *aff'g*, 565 F. Supp. 2d 905 (S.D. Ohio 2008) (granting preliminary injunction enjoining implementation of two state administrative rules and finding that plaintiffs have a strong likelihood of success in proving that the EPSDT laws require the coverage of **Applied Behavioral Analysis (ABA)** as a rehabilitative service; "plaintiffs would suffer irreparable injury ... because they would experience severe regression in their symptoms" and the injunction would not harm Ohio because "complying with federal Medicaid law is not a harm"), *same case*, No. 2:08-cv-421, 2008 WL 2796744 (S.D. Ohio July 17, 2008) (denying defendant's motion to stay), *same case*, 565 F.Supp.2d 895 (S.D. Ohio 2008) (holding that parents and families of autistic children have a **private right of action** to EPSDT provisions through § 1983).

Moore v. Medows, No. 08-13926, 2009 WL 1099133 (11th Cir. Apr. 24, 2009) (not for publication, see Fed. R. App. P. 32.1) (finding both state and treating physician have role in determining what measures are needed to "**correct or ameliorate**" medical conditions and private physician's word is "not dispositive"), *rev'g and remanding*, 563 F. Supp. 2d 1354 (N.D. Ga. 2008) (holding that under EPSDT the "state must provide for the amount of private duty nursing services which the child's **treating physician** deems necessary to correct or ameliorate her condition"), *same case*, No. 1:07-CV-631, 2007 WL 1876017 (N.D. Ga. June 28, 2007) (rejecting state's **abstention** request and plaintiff's **preemption** claim).

John B. v. Goetz, No. 3:98-0168, 2009 WL 3055281 (M.D. Tenn. Sept. 18, 2009) (finding ongoing violations of EPSDT law and **consent decree** provisions and denying defendants' motion to vacate consent decree), *same case*, 176 F. Supp. 2d 786 (M.D. Tenn. 2001) (holding **managed care** system did not adequately meet EPSDT mandates and ordering state to remedy the violations), *enforcing*, No. 3-98-0168 (M.D. Tenn. Feb. 25, 1998) (consent decree) (state agreed to implement a multi-year remedial plan that included requirements for: (1) updating and implementing statewide **periodic screening** requirements

to identify both medical and mental health problems; (2) developmental screening to include the use of culturally sensitive developmental assessments and avoidance of premature diagnosis labeling; (3) improving access to needed treatments, with particular attention to children who are medically fragile; and (4) better integration of health care and custodial services for children in foster care).

Rosie D. v. Patrick, 599 F.Supp.2d 80 (D. Mass 2009) (allowing defendant a short delay in providing In-Home Behavioral Services and Therapeutic Mentoring Services for children with serious emotional disturbances, citing the Commonwealth's **financial crisis**), *same case*, 593 F. Supp. 2d 325 (D. Mass. 2009) (granting attorney fees and costs), *same case*, 497 F.Supp.2d 76 (D. Mass. 2007) (judgment entered adopting defendant's proposed remedial plan with provisos), *earlier decision*, 474 F. Supp. 2d 238 (D. Mass. 2007) (adopting state's proposed plan to remedy Medicaid violations with provisos), *same case*, 410 F.Supp.2d 18 (D. Mass. 2006) (holding that State failed to provide **service coordination, crisis services and adequate in-home supports** for children with serious emotional disturbances in violation of EPSDT and reasonable promptness provisions of the Medicaid Act), *same case*, 256 F.Supp.2d 115 (D. Mass. 2003) (regarding discoverable documents), *same case*, 310 F.3d 230 (1st Cir. 2002) (denying state's motion to dismiss on 11th Amendment grounds).

D.W. v. Walker, No. 2:09-cv-00060, 2009 WL 1393818 (S.D.W.Va. May 15, 2009) (finding that "Medicaid-eligible children who suffer from asthma, attention deficit hyperactivity disorder, depression and other health and developmental problems" have a **private right of action** under § 1983 for denial of EPSDT).

Summer H. v. Fukino, No. 09-00047 SOM/BMK, 2009 WL 455340 (D. Haw. Feb. 23, 2009) (denying motion for temporary restraining order as **moot**, as the defendant agreed not to cut plaintiffs' EPSDT home care services by 15 percent pending their administrative appeals), *same case*, 2009 WL 1249306 (D. Haw. May 6, 2009) (dismissing the claims of three of the six plaintiffs, finding that they did not show a cognizable injury and lacked standing), *same case*, 2009 WL 1649910 (D. Haw. June 9, 2009) (denying plaintiff-intervener's motion to file complaint in intervention).

Bland v. Selig, No. 4:07CV00844 JMM, 2008 WL 2852337 (E.D. Ark. July 21, 2008) (finding EPSDT recipient had no standing to pursue claim that Arkansas Department of Human Services violated § 1396a(a)(30)(A) by enacting rules before conducting an impact study to determine whether they would violate medical necessity by improperly restricting **physical therapy, occupational therapy, and speech therapy** services).

Salazar v. District of Columbia, 596 F. Supp. 2d 67 (D.D.C. 2009) (citing 42 C.F.R. § 438.10 and ordering District to comply with discovery request to disclose the **copyrighted clinical guidelines** being used by District's managed care contractor to deny plaintiff's request for EPSDT in-home services), *same case*, 570 F. Supp. 2d 105 (D.D.C. 2008) (assessing financial **sanctions** for the District's failure to meet deadlines for dental corrective action plan and notifying providers of reimbursement procedures), *same case*, 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*, (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), *earlier case history*, 954 F. Supp. 278 (D.D.C. 1996), *same case*, *Wellington*

v. District of Columbia, 851 F. Supp. 1 (D.D.C. 1994) (EPSDT creates **private right of action** under § 1983).

See generally, e.g., *Grooms v. Maram*, 563 F. Supp. 2d 840 (N.D. Ill. 2008) (holding that under the **Americans with Disabilities Act**, Defendant could reasonably accommodate plaintiff's request to maintain in-home services after he reached age 21 and lost EPSDT coverage of those services).

Illinois Dep't of Health-Care & Family Services v. United States Dep't of Health & Human Services, No. 06-C-6402/6412, 2008 WL 877976 (N.D. Ill. Mar.28, 2008) (affirming Departmental Appeals Board decision to disallow school-based administrative costs under the Medicaid program in part because the costs were properly associated with "child find" activities under the **Individuals with Disabilities Education Act**).

Katie A., ex rel. Ludin v. L.A. County, 481 F.3d 1150 (9th Cir. 2007) (holding that **wraparound services and therapeutic foster care** are within the State's EPSDT obligations under federal law, but that if all EPSDT-mandated components of these services are being provided through existing State programs, then the State does not need to take additional steps to repackage these services as wraparound and therapeutic foster care), *rev'g & remanding, Katie A. v. Bonta*, 433 F.Supp.2d 1065 (C.D. Cal. 2006).

Okla. Chapter of Am. Acad. of Pediatrics v. Fogarty, 472 F.3d 1208 (10th Cir. 2007) (holding that "**medical assistance**" as used in § 1396a(a)(8) refers only to payment for services, not provision of services, and defendants did not violate (a)(8) "by allowing system-wide delays in treatment of Medicaid beneficiaries or by paying providers insufficient rates for services;" court also held that § 1396a(a)(30) does not create a **private right of action** enforceable by plaintiffs), *rev'g, Okla. Chapter of Am. Academy of Pediatrics v. Fogarty*, 366 F. Supp. 2d 1050 (N.D. Okla. 2005).

G.D. v. Jones-Kelly, No. 2:05-CV-980 (S.D. Ohio Oct. 22, 2007) (on file with NHeLP) (finding EPSDT provision, (a)(43), **privately enforceable** under § 1983), *same case*, 2007 WL 2206559 (S.D. Ohio July 30, 2007) (finding neither Medicaid Act nor Health Insurance Portability and Accountability Act precluded disclosure of information and granting plaintiffs' motion to compel **discovery** in case alleging failure of state to provide for EPSDT).

Carson P. ex rel. Foreman v. Heineman, 240 F.R.D. 456 (D. Neb. 2007) (finding EPSDT provisions **privately enforceable**; granting state's motion to dismiss based on *Younger abstention*).

J.D. v. Sherman, No. 06-4153-CV, 2006 WL 3163053 (W.D. Mo. Oct. 27, 2006) (finding **liver transplant** for child with genetic disorder was medically necessary and, while noting EPSDT requirements, entering preliminary injunction based on Medicaid "reasonable standards" provision, § 1396a(a)(17)).

Westside Mothers v. Haveman, 454 F.3d 532 (6th Cir. 2006) (remanding for plaintiffs to re-plead their complaint after holding that "**medical assistance**" in § 1396a(a)(8) refers only to payment for services, not provision of services; finding § 1396a(a)(30) does not create a **private right of action**; reversing dismissal of plaintiff's § 1396a(a)(43) EPSDT claim that defendants "refused or failed to **effectively inform** Plaintiffs

and their caretakers of the existence of the Medical Assistance children's healthcare program”), *aff’g in part & rev’g in part*, 368 F. Supp. 2d 740 (E.D. Mich. 2005), *same case*, 289 F.3d 852 (6th Cir. 2002) (denying motion to dismiss), *rev’g in part and aff’g in part*, 133 F. Supp. 2d 549 (E.D. Mich. 2001).

Frazar v. Ladd, 457 F.3d 432 (5th Cir. 2006) (finding that “the object of the **consent decree** is not mere compliance with federal law,” but rather to “implement the Medicaid statute ‘in a highly detailed way;” court held that defendants had not attained the EPSDT objectives of the consent decree and affirmed denial of the defendant’s motion to dissolve the consent decree), *aff’g*, 401 F.Supp.2d 619 (E.D. Tex. 2005), *cert denied*, 549 U.S. 1118 (2007), *later decision*, No. 3:93CVO65WWJ (E.D. Tex. July 9, 2007) (settlement), No. 3:93-CA-065 WWJ, 2007 WL 2667985 (E.D. Tex. Sept. 5, 2007) (final approval of a consent class action settlement), *same case*, *Frew v. Hawkins*, 540 U.S. 431 (2004) (enforcement of consent decree does not violate the 11th Amendment), *rev’g and remanding*, *Frazar v. Gilbert*, 300 F.3d 530 (5th Cir. 2002) (refusing to enforce consent decree that required state officials to take specific actions in administering Medicaid EPSDT program), *vacating*, *Frew v. Gilbert*, 109 F. Supp. 2d 579 (E.D. Tex. 2000) (finding defendant had violated certain provisions of EPSDT consent decree and ordering corrective action; re-affirming enforceability of EPSDT under **§ 1983**), *earlier case*, *Frew v. Friedholm*, No. 3:93CV65 (E.D. Tex., Jan 25, 1996) (consent decree) (**EPSDT informing and screening** case; previous order finds EPSDT provisions enforceable through § 1983).

Ekloff v. Rodgers, 443 F. Supp. 2d 1173 (D. Ariz. 2006) (holding that the state is obligated under 42 U.S.C. § 1396d(r)(5) to cover **incontinence briefs** for children with bowel and/or bladder incontinence to avoid skin breakdown and infection and permanently enjoining state from denying briefs for preventive purposes).

Carr v. Wilson-Coker, No. 3:00CV1050 (D. Conn. Jan. 31, 2006) (on file with NHeLP) (finding genuine issue of fact as to whether defendant was failing to provide EPSDT **dental services** and denying plaintiffs’ motion for summary judgment), *same case*, 203 F.R.D. 66 (D. Conn. Mar. 30, 2001) (granting class certification).

Health Care for All v. Romney, No. Civ.A. 00-10833RWZ, 2005 WL 1660677 (D. Mass. July 14, 2005) (finding that defendants set Medicaid reimbursements for dental services so low as to “effectively frustrate[] the reasonable promptness provision by foreclosing the opportunity for enrollees to receive **medical assistance** at all, much less in a timely manner;” court also found that the lack of Medicaid providers caused by the defendant’s reimbursement made enrollees unable to find participating providers and therefore unable to obtain **dental treatment** at reasonable intervals), *same case*, No. 00-10833-RWZ, 2004 WL 3088654 (D. Mass. Oct. 1, 2004) (finding **private cause of action** to enforce § 1396a(a)(43) but that § 1396d(r)(5) is definitional and, thus, not enforceable and that the obligation to provide and meet standards for delivery of EPSDT derives from § 1396a(a)(10)(A); allowing plaintiff to amend complaint).

S.D. ex rel. Dickson v. Hood, 391 F.3d 581 (5th Cir. 2004) (holding that the Medicaid provisions created **private right of action** under § 1983 and that **incontinence underwear** fit within the § 1396d(a) listing of coverable EPSDT services), *aff’g*, No. 02-2164, 2002 WL 31741240 (E.D. La Dec. 3, 2002) (state’s policy of refusing to provide incontinence underwear for Medicaid recipient for whom such medical assistance was found medically necessary by EPSDT screenings violated Medicaid Act).

Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Servs., 364 F.3d 925 (8th Cir. 2004) (on remand, the district court had found that ADHS violated the “equal access provision” (§ 1396a(a)(30)(A)) of Medicaid Act and enjoined ADHS from changing the program until impact study was completed. The Eighth Circuit affirmed in part, ordering Arkansas to continue **Child Health Management Services (CHMS) program** until impact study on terminating program was completed. The Court of Appeals reversed the injunction as it extended to the federal Centers for Medicare & Medicaid Services, which was not a party to the underlying action and did not actively participate in decision to terminate CHMS program), *earlier case*, 293 F.3d 472 (8th Cir. 2002) (where state agency planned cutbacks in CHMS services, plaintiffs had standing and state plan was required to reimburse certain physician-approved services, but federal law did not require state to provide for CHMS services), *subsequent rulings*, No. 4:01CV00830, 2005 WL 5660038 (E.D. Ark. Feb. 7, 2005) (denying defendants’ motion for summary judgment and finding individually named defendants were not entitled to **qualified immunity** because they violated clearly established EPSDT rights), *aff’d in part and reversed in part*, 443 F.3d 1005 (8th Cir. 2006) (holding that EPSDT provisions created **privately enforceable rights**, that ADHS could not be sued because of **sovereign immunity**), *cert. granted, judgment vacated in part, remanded with instructions to dismiss appeal as moot sub nom. Selig v. Pediatric Specialty Care*, 551 U.S. 1142 (2007), *subsequent appeal*, 444 F.3d 991 (8th Cir. 2006) (reversing district court decision ordering defendants to disclose names of **peer review physicians** who make determinations for Medicaid recipients), *cert. denied*, 549 U.S. 1205 (2007).

Clark v. Richman, 339 F.Supp.2d 631 (M.D. Pa. 2004) (in case challenging inadequate access to dental care by children with disabilities, the court upheld **private enforcement** of the EPSDT provisions, but the claim was dismissed to the extent it argued that § 1396a(a)(10)(A) required the state to provide services (as opposed to “**medical assistance**” payments); court did find triable issues regarding enforcement of EPSDT claim under § 1396a(a)(43), regarding provisions for **screening services** in cases where they are requested; finding also that timeliness standard regulation, 42 C.F.R. § 441.56(e), while setting a six month **outer limit for initiating treatment**, does not supplant the need for additional timeliness standards).

A.M.H. v. Hayes, No. C2-03-778, 2004 U.S. Dist. LEXIS 27387 (S.D. Ohio, Sept. 30, 2004) (allowing **private cause of action** to enforce EPSDT provision, § 1396a(a)(43), but finding § 1396d(r)(5) is definitional and, thus, not enforceable; also finds EPSDT does not require coverage of **community based services** addressed in § 1396n waiver provision).

Memisovski v. Maram, No. 92 C 1982, 2004 WL 1878332 (N.D. Ill. Aug. 24, 2004) (following trial, court held that the **EPSDT and equal access payment** provisions of the Medicaid Act are **privately enforceable** and that Illinois EPSDT program and pediatric payment rates violated the Medicaid Act), *same case*, 2001 WL 1249615 (N.D. Ill. Oct. 17, 2001) (rejecting state’s **sovereign immunity** claims, finding plaintiffs were seeking injunctive under Ex parte Young and reaffirming that Medicaid-eligible children under 21 were intended beneficiaries of the EPSDT provisions).

Hawkins v. Comm’r, No. 99-cv-143-JD, 2008 WL 2741120 (D.N.H. July 10, 2008) (denying plaintiff’s motion for a contempt order), *same case*, No. 99-cv-143-JD, 2007 WL 2325216 (D.N.H. Aug. 13, 2007) (denying Plaintiff’s motion to enforce **consent decree**), *same case*, 2004 WL 166722 (D.N.H. Jan. 23, 2004) (approving settlement, certifying class, and

requiring defendant to take enumerated steps to assure the availability **dental services** through EPSDT).

State court cases:

Comprehensive Advocacy v. Idaho Dep't of Health & Welf., No. CV OC 0815034 (Idaho Dist. Ct. 4th Dist., May 13, 2009) (on file with NHeLP) (finding Department's **school based health service rules** impermissibly restricted necessary and mandatory services for children who are eligible for EPSDT services provided by their public school districts).

Cook ex rel. Cook v. Agency for Persons with Disabilities Dist., 967 So.2d 1002 (Fla. Dist. Ct. App. 2007) (holding that a more restrictive state Medicaid definition of medical necessity than the federal "**correct or ameliorate**" definition is impermissible for Medicaid services listed in § 1396d(a), but affirming hearing officer's decision to approve only six hours of **personal care assistance** rather than the requested nine hours).

Urban v. Meconi, 930 A.2d 860 (Del. Super. Ct. 2007) (reversing Department decision denying plaintiff's request for **breast reduction surgery**, holding that DHSS's decision was not supported by substantial evidence).

In re Erena, No. 2007-162, 2007 WL 5313358 (Vt. Nov. Term 2007) (affirming order of Health Services Board denying the parents' request for reimbursement for a **wheelchair lift** for their van and denying them reimbursement as "personal choice drivers" for their disabled son).

S.A.H. ex rel. S.J.H. v. Dep't of Soc. & Health Servs., ^{149 P.3d 410} (Wash. Ct. App. 2006) (holding mother was no longer entitled to state-funded **transportation services** for her autistic child to receive Applied Behavioral Analysis therapy outside her geographic area, once equivalent services became available locally).

A.G. v. Arnold, 2006 WL 334218 (M.D. Fla. Feb. 13, 2006) (holding Medicaid provisions cited by EPSDT recipient, 42 U.S.C. § 1396 (stating purpose of the Medicaid Act), § 1396d(r) (defining EPSDT); § 1396a(a)(10)(B) (regarding amount, duration and scope) and 42 C.F.R. § 440.220 (same) were not privately enforceable under § 1983 because they did not provide evidence of Congressional intent to impose a binding obligation on the defendant to provide the plaintiff with a power wheelchair).

C.F. v. Dep't Children and Families, 934 So.2d 1 (Fl. Dist. Ct. App. 2005) (reversing the decision of an administrative hearing officer which upheld the reduction of **personal care services** hours for a nine-year-old Medicaid EPSDT recipient with severe disabilities; holding that the administrative hearing officer improperly applied a narrower definition of "medical necessity" and "personal care services" than that contained in the federal EPSDT statute, and that the officer failed to give appropriate deference to the opinion of plaintiff's treating physician).

Semerzakis v. Wilson-Coker, 873 A.2d 911 (Conn. 2005) (holding because EPSDT coverage of **dental services** is explicitly addressed in § 1396d(r)(3), the "correct or ameliorate" standard of § 1396d(r)(5) does not apply), *rev'g*, No. CV030520876S, 2003 WL 23177501 (Conn. Super. Ct. Dec 24, 2003) (recognizing EPSDT treatment mandate to provide such

necessary orthodontic services to correct or ameliorate problems whether or not such services are covered under the state plan).

Jacobus v. Dep't of PATH, 857 A.2d 785 (Vt. 2004) (requiring coverage of “**interceptive**” **orthodontic treatment** to prevent a developing malocclusion and rejecting state’s attempt to limit coverage to orthodontic treatment which targets already existing “handicapping malocclusions.” Citing EPSDT but also focusing on amount, duration and scope requirements and prohibitions on differing treatment based on condition; finding coverage cannot be limited to predefined list of criteria, as individualized review and deference to **treating physician** are required).

Lawson v. Dep't. of Health & Soc. Servs., No. Civ. A. 02A09002HDR, 2004 WL 440405 (Del. Super. Ct. Feb. 25, 2004) (hearing officer’s decision to deny coverage of child’s **orthodontic treatment** under Medicaid invalid because federal and state Medicaid requirements for a **fair hearing** not followed).

Annotated EPSDT Cases by Topic Area

Screening:

Westside Mothers v. Haveman, 454 F.3d 532 (6th Cir. 2006)

Clark v. Richman, 339 F.Supp.2d 631 (M.D. Pa. 2004)

Diagnosis and Treatment:

Parents’ League for Effective Autism Servs. v. Jones-Kelley, No. 08-3931, 2009 WL 2251310 (6th Cir. July 29, 2009)

Katie A., ex rel. Ludin v. L.A. County, 481 F.3d 1150 (9th Cir. 2007)

Rosie D. v. Romney, 410 F.Supp.2d 18 (D. Mass. 2006)

Okla. Chapter of Am. Acad. of Pediatrics v. Fogarty, 472 F.3d 1208 (10th Cir. 2007)

Ekloff v. Rodgers, 443 F. Supp. 2d 1173 (D. Ariz. 2006)

S.D. v. Hood, No. 02-2164, 2002 U.S. Dist. LEXIS 23535 (E.D. La Dec. 3, 2002)

Clark v. Richman, 339 F.Supp.2d 631 (M.D. Pa. 2004)

Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Servs., 364 F.3d 925 (8th Cir. 2004)

Summer H. v. Fukino, No. 09-00047 SOM/BMK, 2009 WL 455340 (D. Haw. Feb. 23, 2009)

Bland v. Selig, No. 4:07CV00844 JMM, 2008 WL 2852337 (E.D. Ark. July 21, 2008)

Moore v. Medows, 2009 WL 1099133 (11th Cir. Apr. 24, 2009)

A.M.H. v. Hayes, No. C2-03-778 (S.D. Ohio, Sept. 2004)

Health Care for All v. Romney, No. Civ.A. 00-10833RWZ 2005 WL 1660677 (D. Mass. July 14, 2005)

Hawkins v. Comm’r, 2004 D.N.H. 23, 2004 WL 166722 (D.N.H. 2004)

Cook ex rel. Cook v. Agency for Persons with Disabilities Dist., 967 So.2d 1002 (Fla. Dist. Ct. App. 2007)

Urban v. Meconi, 930 A.2d 860 (Del. Super. Ct. 2007)

S.A.H. ex rel. S.J.H. v. Dep’t of Soc. & Health Servs., 149 P.3d 410 (Wash. Ct. App. 2006)

C.F. v. Dep’t Children and Families, 934 So.2d 1 (Fl. Dist. Ct. App. 2005)

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