UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

C.A. through their next friend P.A., C.B. through his next friend P.B., and C.C. through his next friend P.C., for themselves and those similarly situated, Plaintiffs, v. Kelly Garcia, in her official capacity as Director of the Department of Health and Human Services, Defendant.	Case No. 4:23-cv-00009-SHL-HCA **DEFENDANT'S PARTIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

COMES NOW Defendant Kelly Garcia, in her official capacity as Director of the Department of Health and Human Services, by and through counsel, and submits her Partial Motion to Dismiss Plaintiffs' Complaint. Fed. R. Civ. P. 12(b)(6). In support of her motion, Defendant states as follows:

1. Plaintiffs filed their Complaint on January 6, 2023. *See* Doc. 1.

2. Plaintiffs' Complaint alleges various violations of the Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") and "reasonable promptness" provisions of the Medicaid Act (Counts I and II), the Americans with Disabilities Act (Count III), and Section 504 of the Rehabilitation Act (Count IV). *See* Doc. 1, at ¶¶ 163-196.

3. Plaintiffs' claims regarding violations of the "EPSDT" and "reasonable promptness" provisions of the Medicaid Act should be dismissed, because Plaintiffs

have failed to plausibly allege sufficient facts to state a claim for relief. Fed. R. Civ. P. 12(b)(6).

4. Additionally, portions of Plaintiffs' claims rely on an untimely factual basis and should therefore be dismissed as outside the applicable statute of limitations.

5. Defendant has set forth her arguments in detail in the attached Brief in Support of Defendant's Partial Motion to Dismiss Plaintiffs' Complaint.

WHEREFORE, Defendant respectfully requests that Counts I and II of Plaintiffs' Complaint be dismissed. Defendant further requests that the Court dismiss any claim which relies on an untimely factual basis.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on February 13, 2023:

- ☐ U.S. Mail
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- ☐ Federal Express
- ☐ Other
- ☒ ECF System Participant (Electronic Service)

Signature: *<u>/s/Audra Jobst</u>*

UNITED STATES DISTRICT COURT
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C.A. through their next friend P.A., C.B. through his next friend P.B., and C.C. through his next friend P.C., for themselves and those similarly situated, Plaintiffs, v. Kelly Garcia, in her official capacity as Director of the Department of Health and Human Services, Defendant.	Case No. 4:23-cv-00009-SHL-HCA **BRIEF IN SUPPORT OF DEFENDANT'S PARTIAL MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

COMES NOW Defendant Kelly Garcia, in her official capacity as Director of the Department of Health and Human Services ("DHHS" or "Department"), by and through her undersigned counsel, and submits this Brief in Support of Defendant's Partial Motion to Dismiss.

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I. INTRODUCTION

Plaintiffs come before this Court with sweeping allegations that the Iowa Department of Health and Human Services has failed to provide mental health services to children in violation of federal law. *See* Doc. 1. Since her appointment as Director of DHHS[1] in 2019, Director Kelly Garcia[2] and her staff have worked tirelessly to improve Iowa's health and human services infrastructure through varied and substantial efforts to expand access to mental health services for Iowa's children. Though not the subject of her Partial Motion to Dismiss, Defendant Garcia categorically rejects Plaintiffs' accusations as lacking nuance and understanding of the complex challenges of administering programs for the State's largest agency.

In their Complaint, Plaintiffs outline claims for violations of the Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") provisions of the Medicaid Act (Count I), violations of the reasonable promptness provision of the Medicaid Act (Count II), violations of the Americans with Disabilities Act (Count III), and Violations of Section 504 of the Rehabilitation Act (Count IV). Plaintiffs bring their claims via a 42 U.S.C. § 1983 action against Defendant Garcia in her official capacity. Doc. 1, at ¶ 62. For all the reasons discussed below, Defendant Garcia moves the Court to dismiss Counts I

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[1] The Iowa Department of Health and Human Services was formerly two separate agencies: the Iowa Department of Human Services and the Iowa Department of Public Health. *See* 2022 Iowa Acts ch. 1131 § 51. The merger of these agencies has begun and is expected to be complete by July 1, 2023. *See* Iowa Department of Health and Human Services, *Iowa Health and Human Services Alignment*, https://hhsalignment.iowa.gov/ (last accessed February 4, 2023).

[2] Iowa Department of Health and Human Services, *Office of the Director*, https://hhs.iowa.gov/office-of-the-director (last accessed February 4, 2023).

and II of Plaintiffs' Complaint as failing to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). Defendant further moves to dismiss any claims which are barred by the applicable statute of limitations. *Id.*

II. STATEMENT OF FACTS AND LEGAL BACKGROUND

Defendant Kelly Garcia is the Director of the Iowa Department of Health and Human Services. The Department was established for the purpose of "improv[ing] the well-being and productivity of the people of the State of Iowa" and is charged with addressing an array of social problems through implementation of various programs. *See* Iowa Code § 217.1. As DHHS Director, Garcia must formulate Department policy, establish standards of performance, work to develop legislative programs to support and improve agency efforts, and serve as the principal agent in all legal matters. IAC § 441-1.1(17A). Iowa Medicaid, the subject of this lawsuit, is one of the important programs that Director Garcia oversees. *See* Iowa Code 249A ("Iowa Medicaid").

Medicaid is a cooperative state and federal aid program that helps states provide medical assistance to the poor. *Lankford v. Sherman*, 451 F.3d 496, 504 (8th Cir. 2006). States that choose to "opt in" to the Medicaid program must fulfill certain requirements to draw down federal funds to furnish medical assistance to their most vulnerable populations. See *Lankford*, 451 F.3d at 504 ("Participation is voluntary, but if a state decides to participate, it must comply with all federal statutory and regulatory requirements."), citing *Schweiker v. Gray Panthers*, 453 U.S. 34, 37, 101 S. Ct. 2633, 2636 (1981). Each participating state must enter into an agreement with the federal government—the "State Plan"—which describes how the state will administer its Medicaid program. 42 U.S.C. § 1396a(a). The State Plan outlines the implementation, administration, and provision of medical assistance to eligible residents. *Id.* The State

Plan must also identify a single state agency which will be responsible for administering or supervising the plan. *Id.*

Iowa participates in the Medicaid program and DHHS is the "single state agency" responsible for supervising and administering the program pursuant to Iowa Code chapter 249A.[3] 42 U.S.C. § 1396a(a)(5); 42 CFR § 431.10; *Baker v. G&G Living Centers, Inc.*, No. C 04-2041 EJM, 2006 WL 839254 at *1 (N.D. Iowa Mar. 27, 2006). In compliance with federal requirements, Iowa's State Plan outlines eligibility standards, covered services, program administration, and cost sharing.[4] Since 2016, the State has operated with a "managed care" model, in which the Department contracts with private entities to deliver Medicaid services to eligible Iowans. Iowa Code § 249A.4(4); IAC 441—73.2(249A). As of January 2023, the Department has contracts with three managed care organizations ("MCOs"): Iowa Total Care, Amerigroup Iowa, Inc., and Molina Healthcare of Iowa, Inc.[5] The majority of Iowa Medicaid members are enrolled with an MCO; a small percentage remain in fee-for-service programs.[6] Iowa Medicaid provides medical assistance to hundreds of thousands of low-income Iowans. *See* Iowa Code §§ 249A.3, 249A.3A. During fiscal year 2021, 798,041 Iowans were enrolled in

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[3] *See* Centers for Medicare & Medicaid Services Administration, *Iowa State Plan Administration Designation and Authority*, https://hhs.iowa.gov/sites/default/files/A1-A3%20as%20of%20010114.pdf (certified August 24, 1983).
[4] *See* Iowa Department of Health and Human Services, *Iowa Medicaid State Plan Documents*, https://hhs.iowa.gov/ime/about/stateplan/medicaid (last accessed February 3, 2023).
[5] DHHS has published these contracts and amendments on its website. *See* Iowa Department of Health and Human Services, *Contracts and Rates Information*, https://hhs.iowa.gov/Managed_Care_Plan_Contracts (last accessed February 1, 2023). The Molina Healthcare of Iowa, Inc. contract has been executed but has not yet been posted on DHHS's website. A copy of that contract is attached as [Attachment A].
[6] Iowa Department of Health and Human Services, *2022 Medicaid Reference Guide*, at p. 32, https://hhs.iowa.gov/sites/default/files/Comm580.pdf?040620211416 (last accessed Feb. 3, 2023).

Iowa's Medicaid and Hawki programs.[7]

A wide range of healthcare services and programs are available through Medicaid. Though the State has some discretion in determining which services it will provide, the Medicaid Act requires all states that accept federal Medicaid dollars to offer certain services. One such required set of services are the Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") suite of services. 42 U.S.C. §§ 1396a(a)(10)(A); 1396d(a)(4)(B). Medicaid's EPSDT provisions outline the covered healthcare services for eligible children, including: a comprehensive mental, physical, and developmental history; a comprehensive physical exam; appropriate immunizations; laboratory tests; health education; vision services; dental services; hearing services; and "such other necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the state plan." 42 U.S.C. §§ 1396d(r)(1)-(5); *see also* 42 C.F.R. §§ 441.56(b)-(c). Iowa Medicaid covers EPSDT services.[8] Iowa Code § 249A.2(6) (defining "mandatory medical assistance"); Iowa State Plan §3.1(a).

Plaintiffs are three unnamed youths filing on behalf of a putative class of similarly situated children.[9] Among other claims not relevant to this motion, Plaintiffs assert that the Medicaid Act's EPSDT provisions entitle them to three categories of services that are allegedly not provided by the State of Iowa through its Medicaid program: 1) intensive care coordination, 2) intensive in-home therapeutic services, and

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[7] *Id.*
[8] DHHS's contracts with the MCOs explicitly outline provision of EPSDT services.
[9] As of the date of this filing, Defendant is unaware of the identities of the named Plaintiffs or their particular circumstances. The parties are negotiating a stipulated confidentiality protective order, which would allow Plaintiffs' counsel to reveal their identities to Defendant.

3) crisis response services. Doc. 1, at ¶ 5. Because Plaintiffs have failed to plausibly assert violations under the Medicaid Act, and because some of Plaintiffs' claims are barred by the applicable statute of limitations, Defendant asks the Court to grant her motion in its entirety.

III. MOTION TO DISMISS STANDARD

A complaint that fails to state a claim upon which relief can be granted must be dismissed. Fed. R. Civ. P. 12(b)(6). While a complaint need not contain "detailed factual allegations," a plaintiff must provide more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]". *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also* Fed. R. Civ. P. 8(a)(1)-(3). Complaints which offer nothing more than "labels or conclusions" or "formulaic recitation of the elements of a cause of action" are not sufficient. *Id.* "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.,* quoting *Twombly*, 550 U.S. at 557. To survive a motion to dismiss, the complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* at 678, quoting *Twombly*, 550 U.S. at 570. Facial plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* This "plausibility" standard is not the equivalent of a "probability requirement," but requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.,* quoting *Twombly*, 550 U.S. at 557.

In evaluating the sufficiency of a complaint upon receipt of a 12(b)(6) motion, a court must accept the factual allegations as true. *Id.* There is no similar requirement that the Court accept the legal conclusions set forth in a complaint as true. *Id.* Courts

evaluate plausibility under *Iqbal* and *Twombly* by "draw[ing] on [their own] judicial experience and common sense" and will consider "only the materials that are 'necessarily embraced by the pleadings and exhibits attached to the complaint.'" *Whitney v. Franklin General Hosp.*, 995 F. Supp. 2d 917, 925 (N.D. Iowa 2014), citing *Whitney v. Guys*, 700 F. 3d 1118, 1127 (8th Cir. 2012); *Mattes v. ABC Plastics, Inc.*, 323 F.3d 695, 697 n. 4 (8th Cir. 2003). When deciding a motion to dismiss, "a court may consider the complaint and documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." *Kushner v. Beverly Enters., Inc.*, 317 F.3d 820, 831 (8th Cir. 2003).

IV. LEGAL ARGUMENT

Plaintiffs frame their complaints about the lack of or insufficient children's mental health services in Iowa as violations of the EPSDT provisions of the Medicaid Act. *See* Doc. 1, at ¶¶ 163-168, citing 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(8); 1396a(a)(43)(C), 1396d(a)(4)(B), 1396d(r). However, the EPSDT provisions of the Medicaid Act require a state to pay for screening services and ameliorating treatments for children under a specific set of circumstances. *See* § 1396a(a)(43). Plaintiffs seek to expand the State's EPSDT responsibilities beyond what is required by law.

Plaintiffs support their claims with fact allegations which are stated in general terms, void of any detail regarding whether their treating providers' "recommendations" were ordered in the context of an EPSDT diagnostic screening. *See* § 1396a(a)(43). Several of their claims rely on events which purportedly occurred five to seven years ago and are therefore barred by the statute of limitations in this case. *See, e.g.,* Doc. 1, at ¶¶ 33, 36-38, 45, 47, 50-54. Further, Plaintiffs make no claims that that the State failed to notify them of their eligibility for EPSDT services within a reasonable period, that they

requested EPSDT screening services, that they were denied EPSDT screening services, or that the State refused to pay for services recommended in the context of an EPSDT screening. *See* 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(8), 1396a(a)(43)(C), 1396d(a)(4)(B), 1396d(r).

Because Plaintiffs fail to plausibly allege that Defendant has violated any EPSDT provision, this Court should dismiss Counts I and II of their Complaint. Further, because many of the allegations outlined in the Complaint fall outside the applicable statute of limitations, this Court should dismiss any claim which relies on an untimely factual basis.

A. Plaintiffs do not plausibly allege a violation of the Medicaid Act under 42 U.S.C. § 1396a(a)(10)(A).

Plaintiffs cite 42 U.S.C. § 1396a(a)(10)(A) in support of their claim that Defendant has violated their statutory rights under the Medicaid Act by allegedly failing to "provide or arrange for" medically necessary intensive home and community-based services for Plaintiffs and similarly situated children. Doc. 1, at ¶ 164. That statute instructs that a State Plan for medical assistance must "*provide for making medical assistance available*" to eligible individuals. 42 U.S.C. § 1396a(a)(10)(A) (emphasis added). "Medical assistance" is defined as

> *payment of part or all of the cost of the following care and services or the care and services themselves, or both*. . .
>
> [including for]…
>
> (4)(B) early and periodic screening, diagnostic, and treatment services . . . for individuals who are eligible under the plan and are under the age of 21.

42 U.S.C. §§ 1396d(a)(4)(B) (emphasis added). Notably, Plaintiffs do not allege that Defendant has failed to "make medical assistance available" by neglecting or refusing to

pay for EPSDT services. Rather, Plaintiffs complain broadly about the services available to Iowa children and that the desired services are either insufficient, inaccessible, or that medical providers are poorly staffed in some parts of the state. *See* Doc. 1, at ¶¶ 15-58, 88-162.

A State has three options to comply with § 1396a(a)(10)(A) by virtue of the definition of "medical assistance" in § 1396d(a). The plain language of these statutes makes clear that a state may fulfill its statutory obligations under § 1396a(a)(10)(A) by: 1) providing the required services directly, 2) paying for the required services, or 3) both providing and paying for services. 42 USC § 1396d(a). The Sixth Circuit Court of Appeals has adopted this reasoning. *Westside Mothers v. Olszewski*, 454 F.3d 532, 539-41 (6th Cir. 2006) ("*Westside Mothers II*") ("After examining the text and structure of the statute, we do not believe §§ 1396a(a)(8), 1396(a)(10) require the State to provide medical services directly.... The most reasonable interpretation of § 1396a(a)(10) is that medical assistance, i.e., financial assistance, must be provided for at least the care and services listed in paragraphs (1) through (5), (17) and (21) of § 1396d(a)."); *John B. v. Goetz*, 626 F.3d 356, fn 2 (6th Cir. 2010) (noting that Congress's amendment to the definition of "medical assistance" did not impact the holding in *Westside Mothers II* because a "state may still fulfill its Medicaid obligations by paying for services"); *see also K.B. by Next Friend T.B. v. Michigan Department of Health and Human Services*, 367 F. Supp. 3d 647 (E.D. Mich. 2019)[10].

[10] The definition of "medical assistance" was amended in 2010 and the substance of that amendment has become a source of discord among federal courts. Some courts have found that the plain language of the statute reveals that a state may fulfill its obligations under the EPSDT provisions by providing services, paying for services, or both. *K.B. by Next Friend T.B. v. Michigan Department of Health and Human Services*, 367 F. Supp. 3d 647 (E.D. Mich. 2019), *John B. v. Goetz*, 626 F.3d 356, at fn 2 (6th Cir. 2010). Other courts have found that the amended definition may go beyond payment for services and require states to either provide or

Though the Eighth Circuit Court of Appeals has not opined on this question directly, it has articulated its understanding of a state's obligations under the EPSDT provisions of the Medicaid Act as requiring the state to provide financial assistance rather than direct services or arrangement for services. In *Pediatric Specialty Care, Inc. v. Arkansas Dept. of Human Services*, the Court discussed the EPSDT provisions in a case which dealt with: 1) the question of whether plaintiffs had a right to EPSDT services enforceable in a § 1983 action and 2) whether the State of Arkansas was required to pay for early intervention day treatment services which had been ordered by a physician. In deciding these questions, the Court held:

> The State Plan . . . must *pay part or all of the cost of treatments to ameliorate concerns discovered by the screening process* when those treatments meet the definitions set forth in § 1396a.
>
> ***
>
> [A]fter . . . clinic staff perform a diagnostic evaluation of an eligible child, if the CHMS physician prescribes early intervention day treatment as a service that would lead to the maximum reduction of medical and physical disabilities and restoration of the child to his or her best possible functional level, the Arkansas Plan must reimburse the treatment.

293 F.3d 472, 480-81 (8th Cir. 2002) (emphasis added).[11]

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ensure the provision of such services. *See Leonard v. Mackereth*, No. 11-7418, 2014 WL 512456, at *7-8 (E.D. Penn. Feb. 10, 2014) (holding, in a ruling on the parties' summary judgment motions, that although the state's responsibility remains "unclear," the statute requires more than payment); *see also Nored as next friends of Nored v. Tennessee Department of Intellectual & Developmental Disabilities*, No. 21-5826, 2022 WL 4115962 (6th Cir. Sept. 9, 2022) (petition for cert filed) (discussing the split within district courts in the Sixth Circuit but declining to decide whether a state may comply with §§ 1396a(8) and 1396a(a)(10)(A) by being willing to pay for services).

[11] The court also held that "plaintiffs have a federal right to EPSDT services that is enforceable in a § 1983 action." *Pediatric Specialty Care, Inc.*, 293 F.3d at 479. The United States Supreme Court is currently considering a case that may impact Plaintiffs' ability to bring their claims by way of 42 U.S.C. § 1983. *Health and Hospital Corporation of Marion County v. Talevski* presents the question of whether Spending Clause legislation gives rise to privately enforceable rights under of § 1983. *See* 142 S. Ct. 2673 (2022) (granting certiorari); Petition for Writ of Certiorari, No. 21-806, 2021 WL 5702312, at *ii (U.S. Nov. 23, 2021). Should the Supreme Court

Iowa law reflects these requirements. Iowa Code § 249A.3(1) specifies that "mandatory medical assistance shall be provided to, or on behalf of" individuals or families who meet certain eligibility requirements. The statute defines "mandatory medical assistance" to mean "payment of all or part of the costs of the care and services required to provided by . . . 42 U.S.C. § 1396d(a), paragraphs (1) through (5), (17), (21), and (28)" which includes EPSDT services. The Department has committed to paying for the required EPSDT services and has arranged for the provision of such services through its contracts with the MCOs. State Plan § 3.1; MCO Contracts at Molina F.6.25, Amerigroup & Iowa Total Care 3.2.7. Because Plaintiffs do not allege that DHS has failed to pay for the desired services, and because a state may fulfill its obligations under §§ 1396a(a)(10)(A) and 1396d(a) by paying for services, Count I of the Complaint must be dismissed. Fed. R. Civ. P. 12(b)(6).

B. Plaintiffs do not plausibly allege a violation of the Medicaid Act under 42 U.S.C. § 1396a(a)(43)(C).

Plaintiffs allege that Defendant has violated their statutory rights under the Medicaid Act by failing to comply with 42 U.S.C. § 1396a(a)(43)(C).[12] That provision requires participating states to "provid[e] or arrang[e] for (directly or through referral to appropriate agencies organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services[.]" In support of their allegation, Plaintiffs detail their negative experiences interacting with healthcare providers and presumably other parts of Iowa's social safety net. Doc. 1, at ¶¶ 15-59.

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hold that § 1983 is not a proper vehicle for Plaintiffs' claims during the pendency of this motion or case, that decision would require dismissal of Plaintiffs' claims.

[12] Plaintiffs also cite 42 U.S.C. §§ 1396d(a)(4)(B) and 1396d(r) as a basis for their claims under Count I. However, those sections merely provide definitions and do not impose independent requirements beyond the operative language in §§ 1396a(a)(10)(A) and 1396a(a)(43)(C).

Plaintiffs' allegations are insufficient to state a claim under 42 U.S.C. § 1396a(a)(43)(C). An analysis of this claim requires review of the other parts of this paragraph, which instruct that:

> (a) A State plan for medical assistance must --
>
> ***
>
> (43) provide for --
>
> (A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance[13] including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section § 1396d(r) of this title and the need for age-appropriate immunizations against vaccine-preventable diseases,
>
> (B) providing or arranging for the provision of such screening services in all cases where they are requested, [and]
>
> (C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services. . . .

42 U.S.C. § 1396a(a)(43)(C). Per the plain language of the statute, DHHS must: 1) provide notice of eligibility and the availability of EPSDT services, 2) provide for EPSDT *screening services where they are requested*, and 3) arrange for treatment of conditions *which are disclosed during the screening services.*[14] *See id.* (emphasis added). To find that Plaintiffs have stated a claim for violation of 42 U.S.C. § 1396a(a)(43)(C), this Court must determine whether Plaintiffs have plausibly alleged that they met the prerequisites for provision of services and were denied the desired services. *Troupe v. Barbour*, No. 3:10-CV-153-HTW-MTP, 2013 WL 12303126, at *4 (S.D. Miss. Aug. 23, 2013).[15] That is,

[13] "Medical assistance" is defined by 42 U.S.C. § 1396d(a).

[14] The State of Iowa's written plan incontrovertibly requires the provision of these services. *See* State of Iowa Medicaid Plan, Section 3.1(a)(1)(i);Section 3.1(a)(9).

[15] The cited decision was drafted by a U.S. magistrate judge, who recommended that the U.S. District Court grant the defendants' motion to dismiss. The district court adopted the magistrate judge's recommendation and granted the motion to dismiss. *Troupe v. Bryant*, No. 3:10-CV-153-HTW-LRA, 2016 WL 6585299 (S.D. Miss. Nov. 7, 2016). In its decision, the district court

"whether they alleged that a screening was requested and provided under Subsection (43)(B). . . . If Plaintiffs never requested and received a screening under Subsection (43)(B), then Subsection (43)(C) imposes no requirements on Defendants." *Id.*

Here, Plaintiffs have not alleged that they requested EPSDT screening services, that they were denied screening services, or that any of the medical conditions listed in the Complaint were disclosed or diagnosed during a 42 U.S.C. § 1396a(a)(43) screening visit. *See* Doc. 1, at ¶¶ 15-59. Plaintiffs make various allegations about providers "recommending" treatments or services, but it is unclear what interactions those providers had with Iowa Medicaid, whether and how the treatments were ordered by medical providers, and under what circumstances conditions were diagnosed or services rendered. *See, e.g,* Doc. 1, at ¶¶ 15, 17-28 (detailing C.A.'s difficulties accessing care for their mental health conditions over the course of years, but failing to allege that C.A. requested EPSDT screening services and was denied the requested services or that the State failed to provide or arrange for ameliorating treatment recommended in the EPSDT context); 35-36 (stating that C.B.'s "treating providers" have recommended services for C.B., but providing no nexus to a claim for failure to provide EPSDT services, such as detail regarding the type of provider, whether C.B. requested additional screening services or treatments for the conditions at issue, or whether the diagnosis or recommendations were disclosed during the screening services); 50-57 (detailing C.C.'s difficulties in accessing intensive home and community-based services, but failing to allege that C.C. requested EPSDT screening services, was denied those services, or that the State failed to provide or arrange for ameliorating treatment for a condition

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recognized contrary cases, but determined that the magistrate judge's "sounder reasoning" compelled the dismissal of plaintiffs' claims. *See id.*, citing *Stanton v. Bond*, 504 F.2d 1246, 1250-51 (7th Cir. 1974); *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass. 2006).

discovered during an EPSDT screening service). The State is not required to become a direct medical provider for all Medicaid-eligible children, but rather, must ensure that children receive screening services and corrective treatment under certain circumstances. Where screening services were not requested, or where conditions were diagnosed or treatments ordered outside the context of EPSDT visits—without any request for additional screening services—DHHS has no obligation under § 1396a(a)(43)(C) to "arrange for" corrective treatment. *See* 42 U.S.C. § 1396a(a)(43); *Troupe*, 2013 WL 12303126, at *4-5 ("[I]f Plaintiffs never requested and received a Subsection (43)(B) screening, then there can be no "need for [corrective treatment] disclosed by such child health screening….").

Because Plaintiffs have failed to allege that they complied with the prerequisites outlined in 42 U.S.C. § 1396a(a)(43), this Court should dismiss the portion of Count I which asserts violation of 42 U.S.C. § 1396a(a)(43)(C).

C. Plaintiffs do not plausibly allege a violation of the Medicaid Act under 42 U.S.C. §§ 1396a(a)(8).

Plaintiffs cite 42 U.S.C. § 1396a(a)(8), the "reasonable promptness" provision, in support of their allegation that Defendant has violated their statutory rights under the Medicaid Act. In their Complaint, Plaintiffs allege that the "Medicaid Act requires Defendant to arrange for [mental and behavioral health services] to be provided with reasonable promptness." Doc. 1, at ¶ 4; *see also id.,* at ¶¶ 6, 71, 155(c), 157(b), 167. That section states:

> (a) A State plan for medical assistance must --
>
> ***
>
> (8) Provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such

> assistance shall be furnished with reasonable promptness to all eligible individuals.

42 U.S.C. § 1396a(a)(8).

Here, Plaintiffs do not allege that they requested screening services pursuant to 42 U.S.C. § 1396a(a)(43)(B), that their diagnoses were made or "discovered" through those screening services, or that the Department failed to employ processes for initiating treatment within six months after the request for screening services. *See* Doc. 1, at ¶¶ 15-59; *see supra* Section II. As noted above, Plaintiffs' complaints about timeliness are rooted in claims that the State took too long to provide specific services. *See* Doc. 1, at ¶ 4; *see also id.,* at ¶ 6, 71, 155(c), 157(b), 167. Contrary to Plaintiffs' assertions, § 1396a(a)(8) does not require a participating state to provide services within a particular timeframe. Per the implementing regulation,

> the agency must set standards for the timely provision of EPSDT services which meet reasonable standards of medical and dental practice, as determined by the agency after consultation with recognized medical and dental organizations involved in child health care, and must employ processes to ensure timely initiation of treatment, if required, generally within an outer limit of 6 months after the request for screening services.

42 C.F.R. § 441.56(e).

In evaluating the requirements in § 1396a(a)(8), the Sixth Circuit has held that "a state's obligation is only to pay for services actually rendered, not ensure the reasonably prompt provision of services." *John B. v. Goetz*, 636 F.3d at 360, citing *Westside Mothers II*¸ 454 F.3d at 540. Per the definition of "medical assistance" as payment for services, provision of services, *or* both, states are merely required to allow application for Medicaid services and to "determine eligibility and provide payment for services with reasonable promptness. *It does not require the State to provide the particular*

services with reasonable promptness." *K.B. by Next Friend T.B.*, 367 F. Supp. at 657 (emphasis added); *see also supra* Section II.

Plaintiffs do not allege that they requested EPSDT screening services pursuant to 42 U.S.C. § 1396a(a)(43), that the desired services were ordered in the context of those screening services, that Defendant failed to promptly determine whether Plaintiffs were eligible for payment of services, or that Defendant failed to pay for services with reasonable promptness. Because Plaintiffs have failed to plausibly allege a violation of 42 U.S.C. § 1396a(a)(8), Count II must be dismissed.

D. Plaintiffs' claims are barred to the extent that they rely on events which occurred prior to January 6, 2021.

None of the federal laws under which Plaintiffs' claims arise contain a statute of limitations. When no statute of limitations is explicitly stated, federal courts apply a four-year "catch all" statute of limitations to claims which arise under an Act of Congress enacted after December 1, 1990. 28 U.S.C. § 1658; *Williams v. Hawkeye Community College*, 494 F. Supp. 2d 1032 (N.D. Iowa 2007), citing *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 125 S. Ct. 1453 (2005). However, claims which do not "arise under" a federal statute enacted after December 1, 1990 are subject to the "most appropriate or analogous state statute of limitations[.]" *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 371 (2004). In Iowa, such actions are subject to the State's two-year personal injury statute of limitations. *See Williams*, 494 F. Supp. 2d at 1032; *Wycoff v. Menke*, 773 F.2d 983, 984 (8th Cir. 1985) (citing Iowa Code § 614.1(2)); *Jones,* 541 U.S. at 371.

None of Plaintiffs' claims are subject to the four-year statute of limitations set forth in 28 U.S.C. § 1658, as each claim "arises from" a statute which was enacted prior

to December 1, 1990. The Medicaid Act (Counts I and II) was enacted under the Social Security Act on July 30, 1965. PL 89-97. The Americans with Disabilities Act of 1990 (Count III) was enacted on July 26, 1990. 42 U.S.C. §§ 12101-12213. Section 504 of the Rehabilitation Act (Count IV) was enacted on September 26, 1973.[16] PL 93-112 (September 26, 1973). As a result, any of Plaintiff's claims which are dependent on events occurring prior to January 6, 2021, are barred by the statute of limitations and should be dismissed. *See, e.g.,* Doc. 1, at ¶¶ 33, 36-38, 45, 47, 50-54.

V. CONCLUSION

DHHS respectfully requests that the Court dismiss Counts I and II of Plaintiffs' Complaint for failure to state a claim upon which relief can be granted. Additionally, Defendant requests that the Court and dismiss any claim which relies on events taking place prior to January 6, 2021, as they are barred by the statute of limitations.

Respectfully submitted,

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[16] Though it has been amended many times since then, the original language prohibiting disability discrimination in programs receiving federal financial assistance was included in the original version. PL 93-112 (September 26, 1973).

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ATTORNEYS FOR DEFENDANT

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on February 13, 2023:

☐ U.S. Mail ☐ FAX
☐ Hand Delivery ☐ Overnight Courier
☐ Federal Express ☐ Other
☒ ECF System Participant (Electronic Service)

Signature: *_/s/Audra Jobst_________*