CALIFORNIA DEPARTMENT OF
Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 653-6453

June 2, 1999

DMH INFORMATION NOTICE NO.: 99-09

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: THERAPEUTIC BEHAVIORAL SERVICES

The United States District Court for the Central District of California has issued a preliminary injunction in the case of Emily Q. et al vs. Belshe. (See Enclosure.) The plaintiffs in this case requested to have therapeutic behavioral services included under the Medi-Cal program as an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) supplemental service for full-scope Medi-Cal beneficiaries under age 21 years and that the lawsuit be certified as a class action. The court agreed and ordered the state to:

1. "Acknowledge that therapeutic behavioral services are a Medi-Cal EPSDT supplement service" as described in the enclosure Part B, Attachment A.

2. "Implement procedures to request and access therapeutic behavioral services as a Medi-Cal EPSDT service."

3. "Inform the members of the ... class about the procedures available for them to request and access therapeutic behavioral services."

Pursuant to the court order, effective immediately and until further notice, therapeutic behavioral services are a benefit of the Medi-Cal program as an EPSDT supplemental service. The Mental Health Plan will be responsible for providing therapeutic behavioral services when the beneficiary is full-scope Medi-Cal, under 21 years, meets medical necessity standards under Title 9, Chapter 11 entitled "Medi-Cal Specialty Mental Health Services" and also meets the criteria for needing this service as outlined on pages o and p of the enclosure.

When the court certified this lawsuit as a class action, it approved a definition of the class who must be notified of the availability of the service. Notification of this group of beneficiaries does not constitute eligibility for the service. The approved definition of the class is included on page b of the enclosure. As mentioned previously, the criteria for qualifying for the service is included on pages o and p of the enclosure.

In the next few weeks, the Department will issue a policy letter which specifies the notification processes for informing beneficiaries of the availability of this new service, the standards for determining need and appropriateness of the service, service delivery requirements, including provider qualifications and documentation, and mechanisms for claiming reimbursement from the state and federal government. Since this is an EPSDT service, the reimbursement to Mental Health Plans will be consistent with other EPSDT services. The notice will also provide information about departmental efforts to assist Mental Health Plans in the implementation of this new service.

Part B; Attachment A of the enclosure provides the basic framework for negotiation with the plaintiffs regarding the design and implementation of this program. It may be helpful to you in your preliminary planning. Please note that our follow-up policy letter, which was previously discussed, may include changes from the enclosed documents.

The Department is available for individual case consultation to support your efforts in implementing this service. Please call Nancy Mengebier at (916) 654-3486 if you want such assistance. If you have other questions about policy or implementation of this new service, please feel free to call Nancy Mengebier at the above number, Carol Hood at (916) 653-6453, or FAX your questions to (916) 653-9194.

Carol Hood for

GARY M. PETTIGREW
Deputy Director
Systems of Care

Enclosures

cc: California Mental Health Planning Council
Chief, Technical Assistance and Training

Enclosure

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Attachment C, DMH Description of Proposed Changes in EPSDT Reimbursement to Mental Health Plans (These changes have been Implemented.)	u

RECEIVED
MAY 07 1999

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Attorneys for Plaintiffs

FILED
CLERK, U.S. DISTRICT COURT
MAY - 5 1999
CENTRAL DISTRICT OF CALIFORNIA
BY

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EMILY Q., by her friend and guardian ad litem, Kay R.; et al.,

Plaintiffs,

vs.

S. KIMBERLY BELSHE, Director, California Department of Health Services, sued in her official capacity; and MARVIN SOUTHARD, Director, Los Angeles County Department of Mental Health, sued in his official capacity

Defendants.

CASE NO. CV-98-4181-WDK (AIJx)

CLASS ACTION

~~[PROPOSED]~~ ORDER RE CLASS CERTIFICATION; PRELIMINARY INJUNCTIVE RELIEF; DEFENDANT'S TIME TO RESPOND TO THE AMENDED COMPLAINT; AND THE PARTIES' DRAFTING OF A PROPOSED PERMANENT INJUNCTION OR ALTERNATIVELY A JOINT STATUS REPORT

a)

Plaintiffs' Motion for Class Certification and defendant's report on compliance with regard to the Court's order dated February 23, 1999, came on regularly for hearing on April 26, 1999, in the United States District Court, the Honorable William D. Keller District Judge Presiding. Melinda R. Bird and Robert D. Newman appeared for plaintiffs and James F. Ahern appeared for defendant S. Kimberly Belshé, Director of the California Department of Health Services. Arguments from counsel for the parties were heard and upon consideration of these arguments and the record it is

ORDERED that since the Court finds that this action meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(2), this matter should be and is hereby certified as a class action on behalf of all current and future beneficiaries of the Medi-Cal Medicaid program below the age of 21 in California who: (a) are placed in Rate Classification Level facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs; (b) are being considered for placement in these facilities; or (c) have undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months. Members of the plaintiff class shall not be eligible to receive therapeutic behavioral services during their residency in Institutions for Mental Disease which disqualify them from receiving Medi-Cal services. However, while in such facilities, members of the plaintiff class will be able to establish their eligibility for therapeutic behavioral services immediately upon leaving the Institution for Mental Disease.

IT IS FURTHER ORDERED that plaintiffs need not give notice of this class action to absent class members prior to judgment or settlement

IT IS FURTHER ORDERED that in accordance with the parties' stipulation the order granting a preliminary injunction in this case which was entered on February 23, 1999, shall apply in all respects to each member of the above-mentioned statewide class. A true copy of the February 23, 1999 order granting a preliminary injunction in this case is attached hereto as Attachment A and incorporated herein by reference. A true copy of the plan which was

b)

developed by the California Department of Mental Health, which is entitled "Establishing Therapeutic Behavior Services as a Mental Health Plan EPSDT Supplemental Service Benefit, Draft Discussion," with cover memorandum of September 30, 1998 from Carol Hood, Assistant Deputy Director, Department of Mental Health, and which is referred to in the February 23, 1999 order granting a preliminary injunction in this case, is attached hereto as Attachment B and incorporated herein by reference.

IT IS FURTHER ORDERED that defendant S. Kimberly Belshé or her successor in office shall have until May 16, 1999, to file a responsive pleading to the amended complaint in this case.

IT IS FURTHER ORDERED that no later than Friday, June 25, 1999 (or 60 days after the hearing on April 26, 1999), the parties shall jointly file either a proposed permanent injunction in this case for entry by the Court or, alternatively, a joint status report which sets forth: (a) the reasons why the parties could not agree on the terms of a proposed permanent injunction; (b) the parties' views or the issues in the case that still need to be decided; and (c) the parties' proposals on the procedures for resolving their outstanding differences in this case.

Dated: May 5, 1999

Honorable WILLIAM D. KELLER
United States District Judge

APPROVED AS TO FORM:

JAMES F. AHERN
Attorney for State Defendant

d)

A

Melinda Bird, State Bar No. 102236
Marilyn Holle, State Bar No. 61530
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FILED
CLERK, U.S. DISTRICT COURT
FEB 23 1999

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EMILY Q., by her friend and guardian ad litem, Kay R.; et al.,

Plaintiffs,

vs.

S. KIMBERLY BELSHÉ, Director, California Department of Health Services, sued in her official capacity; and MARVIN SOUTHARD, Director, Los Angeles County Department of Mental Health, sued in his official capacity,

Defendants.

Case No.: CV-98-4181-WDK (AIJx)

CLASS ACTION

[PROPOSED] ORDER FOR PRELIMINARY INJUNCTION

Date: February 22, 1999
Time: 3:00 p.m.
Place: *United States District Court*
312 N. Spring St., Ctrm. 1600
Los Angeles, CA 90012

/ / /

/ / /

[PROPOSED] ORDER FOR PRELIMINARY INJUNCTION

The Court having considered the evidence and argument of counsel, and it appearing that this is a proper case for issuance of a preliminary injunction, issues the following order:

IT IS HEREBY ORDERED THAT, pending trial on the merits, defendant Kimberly Belshé in her official capacity as Director, California Department of Health Services and her successors, agents, officers, servants, employees, attorneys and representatives and all persons in active concert or participating with them are hereby preliminarily enjoined as follows from failing to:

1. Acknowledge that therapeutic behavior services are a Medi-Cal EPSDT supplemental service as described in Plaintiffs' Exhibit #49, "Establishing Therapeutic Behavior Services as a Mental Health Plan EPSDT Supplemental Service Benefit, Draft Discussion," with cover memorandum of September 30, 1998 from Carol Hood, Assistant Deputy Director, Department of Mental Health, at p. 2 of Attachment A.

2. Implement procedures for plaintiffs and [putative] class members to ~~easily~~ request and access therapeutic behavior services as a Medi-Cal EPSDT service.

3. Inform the members of the [putative] class about the procedures available for them to request and access therapeutic behavior services.

Defendant DHS is further ordered to appear in ~~four~~ eight weeks on April 19, 1999 at 3:10 P.m. to report on compliance with the Court's order with respect to each of the named plaintiffs.

Dated: February 23, 1999

The Honorable William Keller
United States District Court Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 98-4181-WDK

Date: February 24, 1999

Title: Emily Q., et al. v. S. Kimberly Belshe

DOCKET ENTRY

PRESENT:

The Honorable William D. Keller, Judge

Amalia Carrillo
Courtroom Deputy Clerk

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

PROCEEDINGS:

Before the Court are plaintiffs' motions for: (1) a preliminary injunction; and (2) class certification. The Court will discuss these motions in turn.

I. Plaintiffs' Motion for a Preliminary Injunction

The Court finds that plaintiffs have demonstrated both a high probability of success on the merits and the possibility of irreparable harm. Pursuant to 42 U.S.C. § 1396 et seq., defendant is required to provide "preventive and rehabilitative" services to children under the age of 21, when such services are necessary. The Court finds that therapeutic behavior services could be considered both preventive and rehabilitative as contemplated by the statute, and, therefore, when necessary should be a covered Medi-Cal benefit. The Court's perception of the legalities is buttressed by the HCFA State Medicaid Manual, which states: "Additionally, the Act [Social Security Act] requires that any service which you are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen must be provided to EPSDT participants regardless of whether the service or item is otherwise included in your Medicaid plan." Mot., Ex. 22 at 90.

The Court recognizes that in cases involving mandatory injunctions, a higher standard is imposed. See Anderson v. United States, 612 F.2d 1112, 1114 (9th Cir. 1979). Yet, it is the Court's perception that the patent harm facing these plaintiffs, as attested to by plaintiffs' experts Drs. Willis and Morone, combined with plaintiffs' probability of success on the merits, render a preliminary injunction in this case proper.

g)

The Court is further aware that in cases where injunctive relief is directed at State agencies, the Court must be sensitive to concerns of equity, federalism and comity. See Cupolo v. Bay Area Rapid Transit, 5 F.Supp.2d 1078, 1084 (9th Cir. 1997). The Court does not minimize the importance of these concerns. However, under the circumstances of this case, where the State has opted into a federal program, the Court views injunctive relief as an appropriate mechanism for enforcing the State's compliance with the mandates of this federal program.

II. Plaintiffs' Motion for Class Certification

Plaintiffs' motion for class certification will be addressed at the hearing set forth in the injunction.

CONCLUSION

Plaintiffs' motion for a preliminary injunction is granted.

IT IS SO ORDERED.

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CALIFORNIA DEPARTMENT OF
Mental Health

State of California
Pete Wilson
Governor
Health and Welfare Agency

September 30, 1998

TO: DISTRIBUTION LIST

The Department of Mental Health (DMH), invites you or your representatives to a meeting on October 7, 1998 from 10:00 a.m. 3:00 p.m. at the Host Hotel, Sacramento International Airport. We request input from you on the enclosed draft discussion documents regarding therapeutic behavioral services. DMH proposes that this service be added as a benefit under the Mental Health Plans for full-scope, Medi-Cal beneficiaries under age 21. This proposal is under review by the California Department of Health Services and the federal Health Care Financing Administration.

The purpose of the meeting is to obtain input from stakeholders regarding the clarity of the document and the feasibility of the design proposed in the draft discussion documents. It is anticipated that there may be new issues raised at this meeting that will need to be taken under consideration. Although part of the impetus for proposing to establish this service as a Medi-Cal benefit was a lawsuit, the lawsuit itself won't be discussed at this meeting.

Participation in this meeting is limited to those on the distribution list. Observers are welcome up to the capacity of the room.

Travel reimbursement is available for participants who represent parents of children/youth with serious emotional disturbance. Parents who need airline or other prepaid travel arrangement, please call Jeanette Vegas at (916) 654-5691 by Friday, October 2, 1998.

If you have any questions, please call me at (916) 654-5691.

Carol Hood

CAROL HOOD
Assistant Deputy

Enclosure

1600 9th Street
Sacramento, CA 95814
(916) 654-5691

j)

9/30/98

ATTACHMENT A

ESTABLISHING THERAPEUTIC BEHAVIORAL SERVICES AS A MENTAL HEALTH PLAN EPSDT SUPPLEMENTAL SERVICE BENEFIT

Draft Discussion Document

This document describes the state's requirements and processes for providing Therapeutic Behavioral Services under the state's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit to children/youth who are Medi-Cal beneficiaries and who meet medical necessity criteria for Mental Health Plan (MHP) services.

Mission

The purpose of this paper is to describe an interim plan to include therapeutic behavioral services as an EPSDT supplemental service benefit for children/youth with serious emotional problems who are experiencing a stressful transition or life crisis which, without adequate short-term support, puts them at risk of placement in an institution or group home Rate Classification Level (RCL) 12-14 or of being unable to transition from that level to a lower level of residential care.

The therapeutic behavioral service:

1. Provides critical, short-term support services for full scope Medi-Cal children/youth for whom other specialty mental health Medi-Cal reimbursable interventions have not been, or are not expected to be, effective without additional supportive services.
2. Is targeted towards children/youth who, without this service, would require a more restrictive level of residential care.
3. Involves the MHP as the manager of this service.
4. Is consistent with system of care and wraparound principles
5. Meets Medicaid, ESPDT regulations and lawsuit settlement requirements of T.L. v. Belshe.

This interim plan calls for the state to collect data on types of children and families served, therapeutic behavioral services provided, cost of those services, specific clinical interventions and their effectiveness. Based on a thorough analysis of this information and practical experience with the implementation of this program, the Department of Mental Health (DMH) will develop more permanent policies or regulations after approximately 2 years.

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DESCRIPTION OF SERVICE

Definition

Therapeutic behavioral service is an extended contact with a child/youth by a trained, experienced staff person in response to or to prevent an imminent life crisis, or to facilitate a transition in residential placement from an institution or RCL 12-14 group home to a lower level of residential care. The staff person is available on-site to 1) provide structure and support, 2) assist the child/youth in engaging in appropriate activities, 3) minimize impulsivity, and 4) increase social and community competencies by building or reinstating those daily living skills that will assist the child to live successfully in the community. The therapeutic behavioral staff person also serves as a positive role model and assists in developing the child/youth's ability to sustain self-directed appropriate behavior, internalize a sense of social responsibility, and/or enable participation proactively in community activities.

The service involves a qualified provider/staff person being immediately available during designated time periods to provide individualized behavioral interventions as needed at home, school or other community-based setting when the child/youth without this intervention, would require a more restrictive level of residential care.

Individualized behavioral interventions that might be provided include but are not limited to: immediate behavioral reinforcements, time-structuring activities, inappropriate response prevention, positive reinforcement, appropriate time out strategies and cognitive behavioral approaches such as cognitive restructuring, use of hierarchies and graduated exposure. The interventions also may include support for the family's (or foster family/support system) efforts to provide a positive environment for the child or adolescent and collaboration with other members of the treatment team. "Shadowing" is another term that is often used to describe this service. It has also been described as a "life coach".

Therapeutic behavioral service may not be provided primarily to meet the needs of the parent, teacher or other caregiver. It may not be used to primarily provide supervision or to assure compliance with terms and conditions of probation. Services must be focused on meeting the mental health treatment goals of the child/youth who is the Medi-Cal beneficiary. This service is not separately reimbursable by Medi-Cal for children/youth while in an acute inpatient psychiatric hospital program.

The critical distinction between therapeutic behavioral service and mental health services which are currently covered under the state Medicaid plan as a component of rehabilitative mental health services is that a significant component of the service is having the staff person providing this service on-site and immediately available to intervene. The entire time that the therapeutic behavioral staff person is with the child providing this service is reimbursable by Medi-Cal.

This service is focused on resolution of target behaviors and completion of specific treatment goals. A plan for transition to other services shall be addressed in each treatment plan that includes therapeutic behavioral services.

As with community care licensing requirements, a staff person providing this service is not authorized to provide restraint or seclusion.

Note: This service is one type of a broad variety of individualized services that may be used in a "wraparound" process. The wraparound process is not a program or a type of service. It represents a fundamental change in the way services are designed and delivered. The wraparound process can include any combination of services and supports that may or may not be a Medi-Cal benefit under EPSDT. Health care, diagnostic services, treatment and other measures, which are identified as eligible under federal Medicaid regulations, are services that are EPSDT benefits. Under a Mental Health Plan, the service must be necessary to correct or ameliorate mental illnesses and conditions to qualify as an EPSDT benefit. Intensive in-home treatment, crisis intervention, and family counseling to meet the child's treatment goals can be components of a wraparound process that would be eligible as EPSDT benefits. Examples of services that are not Medi-Cal benefits but may be provided in a wraparound process are respite care (i.e., supervision for the child/youth in the absence of the caregiver), purchasing goods such as a pet, campership for the beneficiary's siblings, paying the first month's rent for the family, paying to remove a youth's tattoos, etc. The guiding principle of the wraparound process is to do what you need to do when you need to do it to achieve the child/youth's treatment goals.

Purpose of Service

Therapeutic behavioral service is a short-term supplement to a treatment plan that also includes intensive mental health services and, potentially, other human services: 1) to prevent placement of the child in a more restrictive residential level of care for children/youth at imminent risk or expected to be at imminent risk of removal from the home or residential placement; OR 2) to enable placement of the child/youth in a less restrictive residential level, such as enabling a discharge from acute care, a step down from a group home to a foster home or return to natural home, etc.

The service is indicated:

1. When a child or adolescent, who is already in specialty mental health treatment, is
   a) in a life crisis, or
   b) a life crisis is imminent, or
   c) needs additional short-term support to transition from placement in a group home level RCL 12-14 or an institution to a lower level of care, or
   d) needs additional short-term support to prevent placement in a group home level RCL 12-14 or an institution.

   AND
2. Specific target behaviors or symptoms have been identified, e.g., tantrums, property

m)

destruction, assaultive behavior in school,
AND

3. Specific interventions have been developed to resolve the behaviors or symptoms, such as anger management techniques,
AND
4. Specific outcome measures that can be used to demonstrate that the frequency of behaviors has declined have been identified.

This service is not indicated in the following circumstances

1. The child/youth can sustain non-impulsive/self-directed behaviors, can handle themselves appropriately in social situations with their peers, who are able to appropriately handle transitions during the days such as to and from school, etc.
2. The child/youth needs supervision at school to help the teacher or at home to help the caregiver
3. The child/youth needs supervision solely to achieve compliance with the terms of their probation or to keep them from engaging in criminal behavior
4. The child/youth will never be able to sustain non-impulsive self-directed behavior and engage in appropriate community activities without full-time supervision.

The treatment plan that includes therapeutic behavioral services:

1. Is based on a comprehensive assessment of child/youth and family strengths and needs,
2. Is developed with the family, if available, and appropriate,
3. Is consistent with the child/youth's diagnoses and target symptoms
4. Is an interagency treatment plan, including the other primary child serving public agencies involved with that child
5. Includes specific interventions and outcome measures focused on identified target behaviors.
6. Provides a transition plan to other services when the time-limited therapeutic behavioral services are discontinued,
7. Addresses a plan for transition to adult services when the beneficiary is expected to receive these services up to their 21st birthday. (Note: Therapeutic behavioral services are not a benefit for Medi-Cal beneficiaries 21 years and older.)
8. Is reviewed monthly by the treatment team to ensure that the therapeutic behavioral service continues to be effective in meeting the measurable outcomes specified in the treatment plan. The treatment plan may be adjusted to identify new target behaviors, interventions and/or outcomes as necessary and appropriate.

Procedures and Requirements for Medi-Cal Federal Financial Participation

Therapeutic behavioral services must be provided under the direction of a licensed practitioner of the healing arts which includes physicians, psychologists, licensed clinical social workers, marriage family and child counselors and registered nurses with a master's degree. In general, provider standards, billing procedures and data collection requirements for Mental Health Services also described in California Code of Regulations

(CCR), Title 9, Chapter 11, will be applicable to this service. Consistent with other rehabilitation option services, the provider must meet the statewide provider selection criteria specified in CCR, Title 9, Chapter 11. The qualifications of the staff delivering this service will be determined by the MHP. In addition, these services must meet the requirements of the EPSDT supplemental services regulations and the requirements of the settlement of the EPSDT lawsuit, T.L. v. Belshe.

Clinical documentation is required once each day that the therapeutic behavioral service is provided. All specific interventions must be documented. Interventions may decrease in frequency as the child/youth internalizes appropriate responses and makes progress in achieving the goals the service is addressing. As improvement occurs and the need for interventions decrease, the treatment team shall identify criteria for reducing or discontinuing the service. The absence of any documented interventions over a significant period of time may be an indicator that therapeutic behavioral services should be reduced or may no longer be needed. The progress note does not have to justify staff intervention or activities for all billed minutes.

This service will be claimed through the SD/MC claiming system as a mental health service using a specific required code within the existing service function range. Although mental health services must be claimed by the minute, therapeutic behavioral services may be tracked by hourly increments and hours converted to minutes for claiming.

As EPSDT supplemental services, therapeutic behavioral services are not available under the Medi-Cal program for persons 21 years or older.

ROLES AND RESPONSIBILITIES

The responsibility for implementing therapeutic behavioral services is shared among the state Department of Health Services (DHS), the state DMH and the local MHP. As presently conceived, the roles and responsibilities of these three agencies are outlined below:

The Department of Health Services

1. The single state agency responsible for the administration of Medi-Cal, including the EPSDT benefit.
2. Approves the design of service delivery including EPSDT supplemental services.
3. Provides state general funds as the state match for the EPSDT specialty mental health services, including therapeutic behavioral services, which exceed the MHP's baseline.
4. Monitors delegated authority through the Interagency Agreement.

The Department of Mental Health

1. Is the designated agency that designs and implements EPSDT specialty mental health

o)

services to treat children/youth that are eligible for Mental Health Plan services.
2. Provides policy direction, support and oversight to MHPs providing EPSDT specialty mental health services
3. Helps to obtain necessary resources for MHPs to implement such services, including but not limited to mechanisms for payment for services, and training. Consistent with the request from MHPs, DMH should make resources available to assist counties with the implementation of this service including "best practices" from existing programs and staff training to the extent resources are available.
4. Amends policy, the MHP contracts, and/or regulations, as necessary, to add responsibility for this service.

The Mental Health Plan

For those children/youth who are Medi-Cal eligible and meet the medical necessity criteria for MHP services, the responsibility of the MHP is to:

1. Provide assessment for children who may need this service.
2. Develop a comprehensive mental health treatment plan in collaboration with families and interagency partners which considers the appropriateness/necessity of therapeutic behavioral services
3. Provide medically necessary EPSDT specialty mental health services including therapeutic behavioral services directly or through other providers.
4. Implement the required complaint and grievance process.

PROCESS FOR ACCESSING SERVICES

Children/youth will access this service in a manner similar to other MHP services. The MHP may receive referrals directly from families or beneficiaries, from other child caring organizations, providers, or any other source. The MHP will determine if there is medical necessity then develop a treatment plan and provide services. Ideally the treatment plan would be developed as a team effort which includes the beneficiary/family, the MHP, social services, probation, special education and others as applicable.

All beneficiary protections under CCR, Title 9, Chapter 11 are applicable to this service. This includes the complaint, grievance and fair hearing processes. In addition, with implementation of the DMH ombudsman office, there will be additional resources for the beneficiary to understand his/her rights, if they do not get the therapeutic behavioral services they believe are needed.

FINANCING

Payment of State Matching Funding

DHS will continue to provide funding for EPSDT supplemental services that exceed the MHP's baseline. The current payment methodology will be modified to simplify the

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process and provide more timely state matching funds. Final payment of the state match will continue to be through the cost report process. (A more thorough discussion of the payment methodology is included as Attachment C.)

Claiming of Federal Financial Participation

Claims for these services will be submitted by the MHP through the SD/MC claims processing system as Mental Health Services. The federal financial participation (FFP) will be provided to MHPs based on approved claims. The FFP will be adjusted preliminarily based on the cost report settlement. Any necessary final adjustments to FFP will be made as a result of the DMH financial audit.

Other Revenue Sources

To develop a comprehensive program for children with emotional disturbance, a variety of interventions should be available as tools to meet the goals of an interagency, family focused treatment plan. Medi-Cal is one potential revenue source for medical interventions, including rehabilitation, case management and EPSDT supplemental services. Not all services needed to meet the treatment plan goals will be the responsibility of Medi-Cal or the local MHP. MHPs/county mental health programs should review all potential sources of revenues to determine the appropriate funding for services needed. The primary sources of funding for services needed in the wraparound process are: children's system of care funding, SB 163 wraparound funds, Title IV-E waiver funding and realignment funds.

TRAINING AND EVALUATION

Data Collection and Policy Development

As this service is implemented statewide, it is essential that we learn from our experience. DMH will establish three tracks for improving our knowledge. The first is to obtain a basic profile of the children/youth receiving the services and the amount and cost of services provided. We also need to evaluate the most effective ways to use the service for specific types of conditions, often called best practices. Thirdly, it's important to know the outcomes of the mental health treatment, i.e., are children/youth improving, were the parents and children/youth satisfied with the services. Following is a description of the efforts on these three fronts.

BASIC PROFILE--Since this is a new service for the Medi-Cal program and since it is being provided to children with very complex service delivery issues, we must collect and analyze data that can be used for program planning and management. DMH will collect a basic core data set on each child receiving these services to track who is getting the service, what combination of services the child is receiving, at what cost, in what settings, and for how long.

MHPs will be required to submit basic information during the first month of providing therapeutic behavioral service to a child/youth. Information will include name, beneficiary identification number, legal status, 5 axis diagnosis, type of residence prior to receiving and while receiving this service, other treatment services being provided, specific goal that the service is intended to address, a description of the behaviors that require this type of intervention, the number of expected service hours per week, the estimated duration of the service, and the provider. Updates on any changes in the initial information will be required every quarter after the initial month that the child/youth is receiving this service. The data provided by the MHPs will be compared against paid claims to ensure information is submitted for every child receiving therapeutic behavioral services. If the required data is not submitted for a case where the services are claimed, DMH will follow up with the county to ensure the data are submitted or the claim will be disallowed.

DMH will use the data collected from the MHP along with data available through Medi-Cal eligibility and the paid claims systems for management and budgeting of the program. It will also be used to profile the demographics of the children/youth who are receiving the service, as well as the treatment goals and targeted behaviors. In addition, this information will help ensure statewide implementation.

BEST PRACTICES—A program evaluation is being designed to determine which therapeutic behavioral service practices are most successful for which populations. Counties where current programming includes this service may be helpful in developing a baseline for this information. On-site visits, interviews with families and youth, input from providers, chart reviews, information from grievance and incident logs, and clinical observation may methods for gathering the necessary information. The purpose of this evaluation is to specify the critical factors for successful implementation of this service with a child/youth and to ensure that it continues to be available to children/youth who can benefit from the service. Consultation on a possible research design has begun.

Families of children/youth, services providers, advocates, MHPs and other stakeholders will be involved in the design of this evaluation.

OUTCOMES—DMH will continue its extensive effort with regards to evaluating outcomes for children's services through the statewide children's performance outcome initiative and the children's system of care evaluation. The children/youth receiving therapeutic behavioral service also will be receiving other intensive treatment services. The outcomes achieved will be as a result of the comprehensive treatment not a single service.

Training

To effectively implement this service statewide, training is needed. The Cathie Wright Technical Assistance Center will have the lead for training and technical assistance. This Center will work with the Department of Social Services to ensure implementation of

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compatible training strategies on therapeutic behavioral services and the wraparound process.

Prior to the statewide implementation of this service, training will be provided which includes the following:

- Explaining how therapeutic behavioral services fit into a context of the wraparound process
- Defining the requirements for EPSDT therapeutic behavioral services
- Describing the processes for claiming, provider requirements, data reporting, clinical documentation, etc.
- Providing an overview of implementation and further training opportunities.
- Developing a treatment plan for therapeutic behavioral services.

Following the overview training, there will be opportunities for specific assistance. Target audiences will provide input on priorities and methods for providing the training and consultation. Topics are expected to focus on practical aspects of developing therapeutic behavioral service capacity, including:

- Recruitment and training of personnel
- Integrating this service into a comprehensive treatment plan
- Effective treatment team approaches
- Role of families and family advocates
- Determining for whom the service would be effective and appropriate
- Best practices for delivery of therapeutic behavioral services.

The department will develop resources to provide additional technical assistance as needed.

EFFECTIVE DATE

This program will be effective statewide on January 1, 1999. Upon final approval from the Health Care Financing Administration, DHS and DMH, on a case by case basis, MHPs may work directly with the state DMH to implement this service prior to that date.

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9/30/98

ATTACHMENT B

INQUIRY PROCESS FOR DETERMINATION IF OTHER SERVICES REQUESTED FROM THE MENTAL HEALTH PLAN QUALIFY FOR MEDI-CAL REIMBURSEMENT AS EPSDT SUPPLEMENTAL SERVICES

Draft Discussion Document

Mental health service providers and treatment teams are becoming increasingly creative in their attempts to meet the individualized needs of the children/youth and families they serve. The philosophy of "wraparound" services relies on this "do whatever it takes" commitment. Funding for the needed services can come from a variety of sources.

Current approved EPSDT supplemental mental services which are the responsibility of the Mental Health Plans (MHPs) include 1) outpatient therapy from licensed clinical social workers or marriage, family and child counselors, 2) psychology services in excess of two per month, and 3) effective January 1, 1999, therapeutic behavioral services (approval pending). We are unaware of any other requests submitted for approval of other types of MHP EPSDT supplemental mental health services. However, it is critical that the state develops an expedited process for determining if a new type of service qualifies as a Mental Health Plan EPSDT supplemental service. Following is a description of that inquiry process.

Requests for approval of new EPSDT supplemental service should be submitted to Deputy Director, Systems of Care, Department of Mental Health (DMH). The request should include enough specific information to determine what services are requested, to meet what need, and to achieve what outcome. Another other descriptive information available about the type of service being reviewed should also be submitted.

DMH will review this request in consultation with the state Department of Health Services and the Health Care Financing Administration, as needed, to determine if the requested service qualifies for Medi-Cal reimbursement as an MHP EPSDT supplemental service. If it appears that the request is not for a specialty mental health service for children/youth who meet MHP medical necessity criteria, DMH will refer the request to DHS. DMH will provide a response to the requestor indicating whether the service qualifies as an MHP service within 30 days. * The response may 1) request additional, specific information needed to make a determination or 2) approve or deny the request. If a new service is determined to be an MHP EPSDT supplemental service, the state may need up to 6 months to implement statewide. (There will be an immediate process established to handle individual cases.) If additional information is needed, the state will again need 30 days to evaluate the request in light of the new information that was submitted.

*If the EPSDT supplemental service is a specialty mental health service that will be the responsibility of the Mental Health Plans, the state must approve it as an EPSDT supplemental service before the Mental Health Plan will be responsible for providing that service or will receive reimbursement for provision of that service.

9/30/98

ATTACHMENT C

State General Fund Payments* To Mental Health Plans for EPSDT Services

Draft Discussion Document

The current processes for providing interim payments of state general funds to Mental Health Plans for EPSDT services needs streamlining. Changes in that payment system are being considered to accomplish the following goals:

1) Increase predictability
2) Decease complexity
3) Increase timeliness of payments
4) Reduce overpayments

The following process will be implemented during Fiscal Year 1998/9.

Interim Funding

Interim funding would be based on an estimate of the state/local portion of the prior year claims less the baseline. It would be provided in an annual advance payment to the Mental Health Plans. (Note: under this methodology, based on prior year experience, overpayments will be reduced to under 1%.)

> Counties with significant expansion (i.e., >20%) over prior year can propose alternate interim payment amount that will not exceed approximately 80% of estimated claims/expenditures.

Adjustment made based on actual claims and the initial cost settlement will be made 12-15 months) after end of fiscal year. The final cost settlement will be made no later than 24 months after the end of the fiscal year.

*Federal financial participation for EPSDT services will continue to be provided to Mental Health Plans through the claiming and cost settlement processes consistent with other Medicaid services.