

January 25, 2006

Prepared by Melinda Bird, PAI
melinda.bird@pai-ca.org

Update on Therapeutic Behavioral Services (TBS) and the Emily Q. lawsuit

1. Special Master Issues Final Report Concluding that Children Do Not Have Timely and Consistent Access to TBS.

A year ago, the federal court in the *Emily Q.* case appointed a special master to review access to TBS and try to resolve a series of problems and disputes between the children's attorneys and the state about TBS implementation. On October 14, 2005, the special master issued a final report in which he concluded that "[c]hildren who are eligible for and in need of TBS are not having timely and consistent access to TBS services in all counties." *Emily Q. v. Bontá*, CV 98-4181 AHM (AJWx) (C.D.Cal.), Special Master's Report Regarding Disputed Issues and Implementation, ¶ 18, p. 13.

The master explained that in recommending TBS, clinicians were "constrained by lack of capacity, a time consuming and complicated approval process which varies significantly across counties, limitations in use by the mandated eligibility criteria, management concerns with regard to risk of audit liability and mixed messages regarding priority for use of the service." ¶ 36, page 24. The master also found that the 2900 children and youth who were receiving TBS each year represented about 1.6% of all EPSDT recipients, and that the rate reflected under-utilization of TBS.

The master issued a series of recommendations to improve access to TBS but before the federal court could take action, the special master resigned due to time commitments in another children's mental health lawsuit in which he serves as court monitor. PAI and other attorneys for the children have proposed appointment of a new master. The special master's last three reports are available on PAI's website, <http://www.pai-ca.org>, under "What's Hot/What's new": <http://www.pai-ca.org/BulletinBoard>.

2. County “Focused Reviews” of Services To Class Members Offer a New Way To Evaluate Mental Health Services.

As part of an earlier agreement in the *Emily Q.* lawsuit, the state Department of Mental Health (DMH) has been conducting “focused reviews” of services to *Emily Q.* class members in five counties: Yolo, San Bernardino, Los Angeles, Napa and Contra Costa. These incorporate a unique case review approach which has not been used previously in California. Of the children who meet the class definition (psychiatric hospitalization within the past year, or in or at risk of placement in a group home level 12 and above), from 10 to 20 are selected for a review of quality and appropriateness of the services provided, as well as outcomes. Children who did not receive TBS as well as some who did are included. The review team members interview the family, child case workers and other key informants and write up their findings. In addition, the reviewers conduct focus groups and interview county staff in preparing their report. Following each review, the county Mental Health Plan prepares a plan of correction to address problems identified during the review. The focused review process is not aimed at recoupment or penalties, but rather on improving front-line practice. DMH plans to conduct focused reviews of five more counties by July 1, 2006.

More than 20 states are moving towards a similar case review approach focused on quality and outcomes for their mental health, child welfare and special education programs. This quality review approach has also been used increasingly to resolve contested litigation involving children’s services nationwide. All five focused reviews are available on PAI’s website, <http://www.pai-ca.org>, under “What’s Hot/What’s new”: <http://www.pai-ca.org/BulletinBoard>.

3. State Seeks to Dissolve Court Orders in Emily Q.

On January 18, 2006, the state filed a new motion to set aside the judgment in the *Emily Q.* case and end any further court supervision. The state argues that as long as TBS is listed as Medi-Cal service, the court has no authority to consider access to TBS, that is, whether children actually receive it. The state also contends that regardless, TBS utilization is adequate, the special master’s findings were erroneous and that all children who need the service receive it. Most recently, the federal court has ordered the children’s attorney’s to submit evidence that that TBS “made a difference” in childrens’ lives through declarations from providers and families. Submissions are due to the court on February 13, 2006. For further information, contact melinda.bird@pai-ca.org or maggie.roberts@pai-ca.org.