



May 21, 2001

To: Interested people

From: Melinda Bird, Marilyn Holle

Re: **Summary of the Final Permanent Injunction in Emily Q. v. Bontá Concerning EPSDT and Therapeutic Behavioral Services**

Since June 1999, a new Medi-Cal mental health service known as Therapeutic Behavioral Services (TBS) has been available to children and youth under age 21. TBS involves having a trained, experienced staff person available on a one-on-one basis to work with a child with severe emotional or mental disabilities in his or her home and community. TBS is a short-term service intended to prevent a young person from having to go into a more restrictive placement, or to support the transition of a young person from an institutional placement back to the child's home or community.

California was required to provide TBS as a result of a class action lawsuit in federal court in Los Angeles, Emily Q. v. Bontá. In the two years since then, more than 1000 children and young people have been able to receive this important new service. On May 11, 2001, the federal judge in the Emily Q. case issued a permanent injunction and final judgment. (The District Court order will be available on the Disability Rights California website after June 1, 2001.) The District Court ordered the following:

### **1. County Mental Health Plans will Continue to Provide TBS**

California will continue to ensure that TBS is provided to eligible class members. Young people are members of the class if they are under 21, receive Medi-Cal and:

- (a) are placed in a Rate Classification Level ("RCL") facility level 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.

Not all class members will qualify to actually receive TBS. The most important additional requirements are that the young person must be at risk of being placed in a higher level of residential care if they do not receive TBS or they must need TBS to transition to a less restrictive setting. Other requirements are described in the TBS flyer attached to this memo.

In California, Medi-Cal mental health services are provided through a managed care system run by the county mental health department (known as a mental health plan or MHP). Each county MHP has its own plan for providing TBS and its own TBS providers. All TBS must be approved and authorized by the local MHP. In addition, the state Department of Mental Health (DMH) has issued detailed instructions about TBS and what the counties must do in providing it. These are available by calling the county MHP or from the DMH website:

[http://www.dmh.cahwnet.gov/Dmh\\_Docs/DMHLetters/99-03.pdf](http://www.dmh.cahwnet.gov/Dmh_Docs/DMHLetters/99-03.pdf)

[http://www.dmh.cahwnet.gov/Dmh\\_Docs/DMHLetters/99-04.pdf](http://www.dmh.cahwnet.gov/Dmh_Docs/DMHLetters/99-04.pdf)

[http://www.dmh.cahwnet.gov/Dmh\\_Docs/DMHNotices/99-09.pdf](http://www.dmh.cahwnet.gov/Dmh_Docs/DMHNotices/99-09.pdf)

[http://www.dmh.cahwnet.gov/Dmh\\_Docs/DMHNotices/00-03.pdf](http://www.dmh.cahwnet.gov/Dmh_Docs/DMHNotices/00-03.pdf)

## **2. New information and notices explaining the EPSDT mental health services for children and young people available through Medi-Cal.**

The final order from the Court includes new notice provisions to make sure that children and their families know about the mental health services available. Under the Medi-Cal Early and Periodic Screening, Diagnosis and Treatment (“EPSDT”) program, the Department of Health Services (DHS) and DMH developed a general informational notice describing the mental health services (including TBS) available from county mental health departments. This notice will be mailed to every Medi-Cal family in California in June, 2001. Within a year, DHS will modify its general brochure about the Medi-Cal program, the Child Health and Disability Prevention (“CHDP”) brochure and the brochures prepared by each MHP to describe the available EPSDT mental health services and how to get them.

Within the next three months, DMH will issue a directive listing the mental health services which have been or may be covered as EPSDT supplemental mental health services and provide information about how to obtain additional EPSDT mental health services which are not currently listed.

Within six months, DHS and DMH will also develop a special, more detailed notice about TBS. At the same time, the DMH and the county MHPs will begin sending both the general EPSDT notice and the TBS notice to children on Medi-Cal who are being considered for admission to Metropolitan State Hospital, Napa State Hospital, a psychiatric nursing home (known as an Institution for Mental Disease or “IMD”), RCL group home facilities of 13 and 14 and some RCL 12 facilities. Children who are currently in these facilities will also be given the new notices. These notices will be sent not just to the child, but also the child’s authorized representative (e.g., the parent, legal guardian, conservator, etc.). If a child has a court-appointed dependency attorney, he or she will also get these notices. The county MHP will arrange for the notices to be stapled into the dependency court file for new foster care cases.

**3. New TBS Certification Procedures for Children Going into Residential Placement**

The federal Court ordered that a new certification form be completed to ensure that TBS is considered as an alternative before children and young people are placed in out-of-home residential placements. Within 3 months, county MHPs will adopt procedures for a qualified mental health practitioner to certify that TBS is not appropriate or available for class members before they are placed in Metropolitan State Hospital, Napa State Hospital, Institutions for Mental Disease, RCL group home facilities of 13 and 14, and some RCL 12 facilities. However, the failure to complete this certification form will not prevent an otherwise appropriate placement.

**4. Assessments for 135 young people in Napa and Metropolitan State Hospital to determine if TBS will enable them to transition to a less restrictive setting.**

The Court ordered that each class member who has been placed in Metropolitan State Hospital or Napa State Hospital for three months or more is entitled to a special assessment to determine whether TBS would benefit the young person and would enable him or her to transition into the community. Within 30 days of entry of the Court Order, both sides in the lawsuit will agree on qualified mental health practitioner(s) to conduct the assessments. The attorneys for the plaintiffs will also be able to review all the assessments. The state estimates that 135 young people are included in this group.

**5. Compensatory TBS for Young People Over Age 21.**

The Court ordered that the state must provide compensatory TBS to all class members who were entitled to receive TBS, but did not receive this mental health service between May 27, 1997 and the entry of the judgment in the case. These class members will be eligible to receive compensatory TBS beyond their 21<sup>st</sup> birthday. Young people over age 21 would start by documenting that they would have benefited from TBS earlier but that it was never available. Their TBS provider should submit this information to their county MHP and request an approval for compensatory TBS.

## **6. Ensuring Access to Qualified Providers**

The Court ordered that each county MHP must ensure that it enrolls “a sufficient number of [TBS] providers to assess eligibility for TBS and/or to provide TBS to class members in its jurisdiction.” If the county fails to do so, DMH must ensure that the MHP adds providers and may also compile a list of outside TBS providers who can assist by providing services within the county. The Court also ordered DMH to adopt minimum qualifications for mental health providers to assess and/or provide TBS to class members. At least once per year, the defendants must meet with the attorneys for the plaintiffs to review data on TBS and how the program has been implemented. The Court has retained jurisdiction for monitoring purposes for the next three years.

# **TIMETABLE FOR *EMILY Q.* IMPLEMENTATION**

(Permanent Injunction Entered on May 11, 2001)

*30 days after entry of Permanent Injunction* B *June 10, 2001 (Saturday)*

- *Parties identify mutually agreeable mental health practitioners to conduct assessment of all children and youth at Metropolitan and Napa State Hospitals* B (Paragraph 17)

*90 Days after entry of Permanent Injunction* B *August 9, 2001*

- *Defendant begins providing general EPSDT notice to all new Medi-Cal applicants and annually to all existing recipients* B (Paragraph 9)
- *Defendant will issue a directive to the MHPs listing covered EPSDT services and how to cover additional services* B (Paragraph 15)
- *Procedures must be in effect for TBS certification forms prior to placement at Metropolitan and Napa State Hospitals, IMDs, RCL 12-14 group homes* B (Paragraph 16)

*120 Days after entry of Permanent Injunction* B *September 8, 2001*

- *Defendant will develop TBS notice with mutually agreeable text and begin providing TBS notice to children and youth being considered for admission to at Metropolitan and Napa State Hospitals* B (Paragraph 11)
- *Defendant makes arrangements for TBS notice and general EPSDT notice to be given to children at time of emergency psychiatric hospitalization at hospitals with which MHPs have contracts* B (Paragraph 12)
- *Defendant shall make arrangements for TBS and EPSDT notice to be provided to children at time of admission to an IMD, RCL 12-14 group homes* B (Paragraph 13)
- *Defendant shall provide TBS and EPSDT notice to children presently in RCL 12-14 homes -* (Paragraph 13)

*180 Days after entry of Permanent Injunction* B *November 7, 2001*

- *Assessments of children at Napa and Metropolitan State Hospital must be completed unless parties stipulate to longer time* B (Paragraph 17)

*One year after Entry of Permanent Injunction* B *May 11, 2002*

- *Defendant completes modification of CHDP, Medi-Cal and MHP brochures* B(Paragraph 10)
- *Parties cooperate to review TBS statistics* B (Paragraph 21)

*No Date Specified for Completion*

- *DMH requires MHPs to attempt to develop MOU so that TBS and EPSDT notices are included in initial court documents for children in foster care* B (Paragraph 14)
- *Defendant will ensure that a sample of TBS certification forms is reviewed at annual on-site MHP reviews* B (Paragraph 16)
- *Defendant determines whether state procedures could be modified to permit federal reimbursement for transitional TBS* B (Paragraph 18)
- *Defendant provides compensatory TBS* B (Paragraph 19)
- *Defendant adopts minimum standards for TBS providers* B (Paragraph 20)
- *Defendant informs providers of procedures to contract with MHPs for TBS* B (Paragraph 20)

*Defendant requires MHPs to provide a list of TBS providers B (Paragraph 23)*