

Early and Periodic Screening, Diagnosis, and Treatment (EPSDT)

Introduction

Federal law requires state Medicaid programs to offer Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) to all Medicaid-eligible children under age 21. EPSDT is Medicaid's comprehensive and preventive child health program. EPSDT requires states to provide Medicaid-eligible children with periodic screening, vision, dental, and hearing services. It also requires states to provide any medically necessary health care that falls within the scope of services listed at 42 U.S.C. § 1396d (e) to a child, even if the service is not available for adults under the State's Medicaid plan. The determination that a service is medically necessary lies primarily with the child's treating physician or other health care provider.

EPSDT is made up of the following screening, diagnostic, and treatment services:

- Screenings must include the following components listed at 42 U.S.C. § 1396d (r)(1-4):
 - Comprehensive health and developmental history, including assessment of both physical and mental health development;
 - Comprehensive physical exam;
 - Appropriate immunizations according to age and health history;
 - Laboratory tests including a lead toxicity screening;
 - Health education, including anticipatory guidance;
 - Vision and hearing screenings; and
 - Dental screenings.
- Diagnosis and Treatment – 42 U.S.C. § 1396d (r)(5):
 - Health care must be made available to treat, correct, or ameliorate defects and physical and mental illnesses or conditions discovered by screening services. All conditions must be treated.

EPSDT requires states to do more than merely offer to cover services. States are obligated to actively arrange for treatment, either by providing the service itself or through referral to appropriate agencies, organizations, or individuals. 42 U.S.C. § 1396a (a)(43)(C). States must also offer assistance in scheduling appointments prior to each due date of a child's periodic examination, as well as transportation services to get children to and from health providers.

States must ensure timely EPSDT treatment, generally within an outer limit of six months after the request for screening services. 42 C.F.R. § 441.56 (e).

Applicable Law: Introduction

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Medicaid’s Early and Periodic Screening, Diagnosis, and Treatment (“EPSDT”) mandate is a broad requirement that Medicaid-eligible children receive all medically necessary health care, services, and treatment. This mandate can be used to secure necessary mental health evaluations and services for a child in the District of Columbia. When a Medicaid-eligible child needs mental health services and is not receiving them, there may be a violation of EPSDT. Attorneys who represent children and families can help to enforce the EPSDT mandate and ensure that children are receiving appropriate mental health treatment. If a physician or other licensed health practitioner recommends a mental health evaluation or service for a Medicaid-eligible child as medically necessary and it is not provided, an attorney representing the child or his or her parent(s) can advocate for the recommended evaluation or treatment using EPSDT and may pursue an administrative hearing when appropriate. For many children, the actual enforcement of EPSDT by attorneys in DC can help to secure needed community-based mental health services, which may prevent a child’s placement in a restrictive and costly residential treatment facility. Below is an adaptation of an excerpt also written by Yael Cannon in a law textbook called Special Education Advocacy² that provides an overview of rights under Medicaid EPSDT, last updated in June 2015.

The Early and Periodic Screening, Diagnosis and Treatment (EPSDT) mandate may provide an alternative source for securing services and equipment that a child requires. Children who are under twenty-one years old and who meet the income requirements for Medicaid are entitled to EPSDT services. These children must receive any medically “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.” 42 U.S.C. § 1396d(r)(5). Courts have interpreted “medically necessary” very broadly, as prescribed by the EPSDT section of the code, to include everything listed in the Medicaid definition of “medical assistance,” 42 U.S.C. § 1396d(a), which includes most care prescribed by a physician or medical professional. Id.

The EPSDT directive is limited to Medicaid recipients under the age of twenty-one. 42 U.S.C. § 1396d(a)(i). States may further limit this age maximum to twenty, nineteen, or eighteen. 42 U.S.C. § 1396d(a)(i). In general, only U.S. citizens are entitled to EPSDT benefits. 42 C.F.R. § 435.406(a)(1)(ii). However, there are some exceptions for qualified aliens. 8 U.S.C. §§ 1612(a)(2)(A)-(B), 1611(b)(1)(A)-(C).

¹ Professor Cannon thanks her research assistants, Taylor Smith and Alexandra Bochte, for their contributions to this document.

² Yael Zakai Cannon, *Remedies*, in *Special Education Advocacy*, Ruth Colker and Julie Waterstone, eds., at 392-395 (Lexis 2011).

Each state's plan creates the income eligibility requirements, but they must meet minimum federal standards. 42 U.S.C. § 1396u-7. For children ages one to five years old, the statute requires states to cover individuals whose family "income level . . . is equal to 133 percent of the income poverty level . . . applicable to a family of the size involved." 42 U.S.C. § 1396a(l)(2)(B). Under the Affordable Care Act, for States that elected to expand Medicaid, minimum coverage must be provided to those with incomes at or below 133% of the Federal Poverty Line. 42 U.S.C. § 1396a (k). For children ages six to eighteen years old, the statute requires states to cover individuals whose family "income level . . . is equal to 100 percent of the income poverty level . . . applicable to a family of the size involved." 42 U.S.C. § 1396a(l)(2)(C). The Office of Management and Budget revises the income poverty level annually. 42 U.S.C. § 1396a(l)(2)(A)(i). Note that as a result of the major healthcare reform legislation passed in March 2010, as of 2014, Medicaid eligibility was expanded to all individuals, regardless of age, whose income does not exceed 133 percent of the poverty line, meaning that more children ages six to eighteen have recently become eligible for EPSDT services. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 271, 271 (2010) (amending 42 U.S.C. § 1396a(a)(10)(A)(ii)(VII)).

Medicaid provides for "payment of part or all of the cost of the . . . care and services." 42 U.S.C. § 1396d(a). Services covered under EPSDT include screening, vision, dental, hearing, and other necessary medical assistance. 42 U.S.C. § 1396d(r). This coverage is specifically available for medically "necessary health care, diagnostic services, treatment, and other measures . . . to correct or ameliorate the defects and physical and mental illnesses and conditions discovered by the screening services." 42 U.S.C. § 1396d(r)(5). As a result of this language, the EPSDT mandate is known in shorthand as coverage of those services that are "medically necessary." States must provide EPSDT recipients with regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth upon request by the recipient. 42 C.F.R. § 441.56(b). These screenings, provided at regular intervals determined by the state and whenever medically necessary, include:

- (i) a comprehensive health and developmental history (including assessment of both physical and mental health development),
- (ii) a comprehensive unclothed physical exam,
- (iii) appropriate immunizations according to age and health history,
- (iv) laboratory tests (including lead blood level assessment appropriate for age, risk), and

(v) health education (including anticipatory guidance).

42 U.S.C. § 1396d(r)(1)(B). The results of an EPSDT screening can provide information that can be useful not only in securing diagnostic and treatment services and equipment through Medicaid or managed care organizations with which a Medicaid state agency contracts to carry out its EPSDT mandate, but also in securing special education services from a school. An attorney handling a special education matter may want to request all medical records from a child's physician and other health care providers, including any physicals or other screening exams that were carried out pursuant to EPSDT requirements. These records might provide diagnoses or treatment recommendations and therefore could serve as useful advocacy tools in the special education process.

The Code of Federal Regulations is specific in requiring diagnosis of and treatment for defects in vision and hearing, including eyeglasses and hearing aids, dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental care, and appropriate immunizations. 42 C.F.R. § 441.56(c). However, both the U.S. Code and Code of Federal Regulations are much less explicit on all other issues requiring care. The U.S. Code provides that the services covered by EPSDT include “[s]uch 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)(5). Courts have interpreted “medically necessary” very broadly, as prescribed by the EPSDT section of the code, to include everything listed in the Medicaid definition of “Medical assistance,” which includes most physician or medical professional prescribed care. 42 U.S.C. § 1396d(a); see, e.g., Collins v. Hamilton, 349 F.3d 371, 374 (7th Cir. 2003); Pittman by Pope v. Sec’y, Fla. Dep’t of Health & Rehab. Servs., 998 F.2d 887, 891-92 (11th Cir. 1993) (“The language of § 1396d(r)(5) expressly requires Medicaid participating states to provide necessary treatment ‘to correct or ameliorate defects and physical . . . illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.’ ”); Pediatric Specialty Care, Inc. v. Ark. Dep’t of Human Services, 293 F.3d 472, 480 (8th Cir. 2002), rev’d 364 F.3d 925 (8th Cir. 2002) (“The State Plan, however, must pay part or all of the cost of treatments to ameliorate conditions discovered by the screening process when those treatments meet the definitions set forth in § 1396a.”).

The services relevant to children include services furnished directly by a physician, inpatient hospital services, inpatient psychiatric hospital services, services in an intermediate care facility for individuals with intellectual disabilities, outpatient hospital services, laboratory and X-ray services, family

planning services and supplies, dental services including medical and surgical services furnished by a dentist, home health care services, private duty nursing services, clinic services furnished by or under the direction of a physician, physical therapy and related services, prescribed drugs, dentures, prosthetic devices, eyeglasses, services furnished by a nurse-midwife, hospice care, case management services, TB-related services, respiratory care services, services furnished by a certified pediatric nurse practitioner or certified nurse practitioner, community supported living arrangements, personal care services that are authorized by a physician as part of a treatment plan (or, if required by the state, a plan authorized by the state) and performed by a non-family member in a non-medical location such as the individual's home, medical care, or any other type of remedial care by licensed practitioners, as well as other diagnostic, screening, preventative and rehabilitative services. This includes any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level, and any other medical care recognized under state law. 42 U.S.C. § 1396d(a); see Parents' League for Effective Autism Serv. v. Jones-Kelley, 339 Fed. App'x 542, 549 (6th Cir. 2009) ("It is true that this provision can be read to mandate only services recommended by a physician that provide both a 'maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.' However, this provision can also be read to mandate both services recommended by a physician 'for the maximum reduction of physical or mental disability,' and services recommended by a physician for the 'restoration of an individual to the best possible functional level.'"). The Department of Health and Human Services Centers for Medicaid and Medicare Services' State Medicaid Manual more explicitly describes the services provided through EPSDT. The State Medicaid Manual, <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html> (follow "Chapter 5--EPSDT" hyperlink). The provision of "home health care services," which can greatly assist some children with disabilities, can potentially include medical supplies for the home. See S.D. v. Hood, 391 F.3d 581, 595 (5th Cir. 2004) ("[T]he agency's interpretation of 'home health care services' as referenced at § 1396d(a)(7), including 'medical supplies,' when used under the circumstances specified in its regulation, is clearly a permissible statutory construction."), aff'g No. 02-2164, 2002 U.S. Dist. LEXIS 23535 (E.D. La. 2002). One U.S. District Court found that EPSDT's mandate that "home health care services" be made available means that states must offer service alternatives to those provided by the educational agency for any services that overlap both special education requirements and EPSDT requirements. Chisholm v. Hood, 110 F. Supp. 2d 499, 506 (E.D. La. 2000), aff'd, 133 F. Supp. 2d 894

(E.D. La. 2001). When the state agency provides EPSDT services only through school districts, it violates EPSDT by not providing a home service option for those who need it and by failing to provide a requisite variety in service providers to give consumers a choice. Chisholm, 110 F. Supp. 2d at 506, findings of fact/conclusions of law at 133 F. Supp. 2d 894 (E.D. La. 2001). When a child is denied any medically necessary service or when the request for that service is not acted upon with reasonable promptness, that child must be afforded an opportunity for an administrative hearing. 42 U.S.C. § 1396a(a)(3). An attorney representing a child who has been denied necessary services under Medicaid EPSDT or that child's parent should consider whether to pursue an administrative hearing to remedy the situation.

In 2006, a class action entitled Rosie D. v. Patrick Romney was brought against Massachusetts officials and agencies by all Medicaid-eligible children in the state with a serious emotional disturbance not receiving their entitled "intensive home-based services." Rosie D. v. Romney, 410 F. Supp. 2d 18, 22 (D. Mass. 2006), rev'g 256 F. Supp. 2d 115 (D. Mass. 2003), rev'd, 474 F. Supp. 2d 238 (D. Mass. 2007). The Plaintiffs claimed that Massachusetts violated EPSDT by not providing services to children suffering from "serious emotional disturbances such as autism, bi-polar disorder, or post-traumatic stress disorder." Id. The District Court found the State's Medicaid plan out of compliance with EPSDT. Id. at 23. The court found that the state did not provide the proper assessments or services for children with emotional disturbances. Id. Both of these problems stemmed from the lack of any single state entity authorized to oversee the program. The court found this authority necessary to "(a) identify promptly a child suffering from a serious emotional disturbance, (b) assess comprehensively the nature of the child's disability, (c) develop an overarching treatment plan for the child, and (d) oversee implementation of this plan" Id. Without an entity to take these steps, the court found that the state could not meet the EPSDT requirement that children with serious emotional disturbance be provided with "reasonably comprehensive medical assessments and ongoing clinical oversight of the services being provided." Id. The court also found that the state did not provide appropriate in-home behavioral services for children with emotional disturbances. Id. By failing to provide these services, the state forced many of these children to live in residential treatment facilities, which are known to exacerbate these symptoms. Id. at 23-24. The court found in-home services options medically necessary in addition to residential treatment services for children with serious emotional disturbances. The lack of this medically necessary option violates EPSDT. As a result of this decision, the court created a remedial plan. Rosie D. v. Romney, 474 F. Supp. 2d 238 (D. Mass. 2007). The Rosie D. case highlights the fact that states are not always in compliance with EPSDT requirements, and serves as a reminder of the strong entitlements that EPSDT provides to eligible children.

Federal Statutes and Regulations

[42 U.S.C. § 1396a](#) (State Plans For Medical Assistance)

[42 U.S.C. § 1396d](#) (Definitions, including EPSDT)

[42 C.F.R. Pt. 441, Subpt. B](#) (Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals under Age 21)

EPSDT Guides and Fact Sheets

Federal Government EPSDT Website:

<https://www.medicaid.gov/medicaid/benefits/epsdt/index.html>

What You Need to Know about EPSDT:

<https://www.medicaid.gov/medicaid/benefits/downloads/what-you-need-to-know-about-epsdt.pdf>

EPSDT: A Guide for States:

https://www.medicaid.gov/medicaid/benefits/downloads/epsdt_coverage_guide.pdf

NHeLP EPSDT Litigation Trends:

<http://www.healthlaw.org/publications/browse-all-publications/medicaid-epsdt-litigation-trends#.Wuzoy5opBpg>

DC-Specific EPSDT Resources

DC Medicaid HealthCheck: <http://www.dchealthcheck.net>

DC Medicaid HealthCheck Periodicity Schedules:
<https://www.dchealthcheck.net/resources/healthcheck/periodicity.html>

DC Medicaid HealthCheck Brochure for Families:
https://www.dchealthcheck.net/documents/HealthCheck_Brochure.pdf

A Guide to Dental Coverage for Children in DC Medicaid:
<https://www.dchealthcheck.net/documents/Dental-Brochure.pdf>

Salazar v. District of Columbia

Salazar v. District of Columbia is a federal class-action lawsuit that alleged numerous violations of EPSDT on the part of the District. The plaintiff class prevailed following a trial. See 954 F. Supp. 278 (D.D.C. 1996). The parties then entered into the original Settlement Order in January 1999; this has been the subject of modification proceedings and enforcement litigation since that time. For more information, see <http://www.tpmlaw.com/salazar-v-district-of-columbia/>.

Under the Settlement Order, the lawyers for the *Salazar* plaintiff class can provide free legal help to people whose Medicaid problems fall within the lawsuit. Some common problems that the plaintiffs' lawyers can help with are: recertification problems, getting reimbursed for out-of-pocket expenses that should have been covered by Medicaid, and advocating with the District of Columbia or a managed care organization (MCO) to provide medical and/or behavioral health services for a child that a doctor has prescribed.

For more information, or to obtain free advice and/or free legal help, contact counsel for the plaintiff class, Terris, Pravlik & Millian, LLP, (202) 682-0578, www.tpmlaw.com. Contact person: Zenia Sanchez Fuentes, zsanchez@tpmlaw.com.