



1 Exhibits 1 and 2, respectively, and incorporated herein by reference), as well as  
2 the declaration of Linda Huff Redman, Ph.D. which responds to these documents  
3 (a true copy of which is attached as Exhibit 3 and incorporated herein by  
4 reference). I agree with Dr. Redman's responses, and these documents do not  
5 change my opinion that when properly described, the components of wraparound  
6 services and therapeutic foster care are coverable by Medicaid.

7 **B. My Qualifications**

8 4. I have spent the majority of the last twenty-eight years working in the  
9 administrative or legislative branches of the United States Government on health  
10 care issues, and over the last decade in particular, on issues related to Medicaid.

11 5. From 1999 to 2001, I was the Director of the Center for Medicaid and  
12 State Operations at CMS (then named HCFA). In this position, I served as the  
13 chief federal officer for the Medicaid program and the State Children's Health  
14 Insurance Program (SCHIP). I directed activities providing health coverage to  
15 approximately 35 million people, with annual program spending of over \$120  
16 billion in federal funds. I was responsible for operations and policy on all issues,  
17 including eligibility, services, quality and financing. I developed regulations and  
18 administrative guidance on a range of issues, including guidance on allowable and  
19 covered case management activities under Medicaid. I also was responsible for  
20 the final substantive review and recommendations to the Secretary of HHS  
21 regarding states' proposals for covering services using Medicaid through the State  
22 Plan Amendment process.

23 6. I am currently a Visiting Professor of Law, Research Professor of  
24 Public Policy, and Senior Scholar in Health Law at Georgetown University. I  
25 teach, research and write about legislation and statutory interpretation, health law

1 and policy, and the federal budget process. I also am a consulting counsel to the  
2 U.S. House of Representatives' Committee on Oversight and Government  
3 Reform, where I work on issues of health and budget policy, including issues  
4 related to Medicaid.

5 7. I have held a variety of other legislative and policy positions,  
6 including Counsel to the Office of Congressman Henry A. Waxman, Counsel to  
7 the Advisory Committee on Tobacco Policy and Public Health, Counsel to the  
8 U.S. House of Representative's Subcommittee on Health and the Environment,  
9 Senior Advisor to the Henry J. Kaiser Family Foundation, Federal Affairs  
10 Representative to the Elizabeth Glaser Pediatric AIDS Foundation, and Public  
11 Health Policy Advisor to the Clinton-Gore Transition Team. I also was a Senior  
12 Policy Fellow at Georgetown Law Center's Federal Legislation Clinic.

13 8. I have published approximately fifteen articles on health care and  
14 federal budget issues and have done more than 100 presentations on these issues.  
15 I am a member of a number of professional organizations and have received  
16 several awards for my work, including the Secretary's Award for Distinguished  
17 Service from the Department of Health and Human Services and the  
18 Administrator's Award for Achievement from HCFA.

19 9. My curriculum vitae details my educational, professional experience,  
20 and organizational affiliations, a true copy of which is attached as Exhibit 4 and  
21 incorporated herein by reference.

22 **C. Medicaid Covers the Components of Wraparound Services**  
23 **and Therapeutic Foster Care**

24 10. I have reviewed the components of wraparound services, as described  
25 in Appendix A, and of therapeutic foster care, as described in Appendix B. It is

1 my expert opinion that when properly described, the components of wraparound  
2 services and therapeutic foster care are covered by Medicaid.

3 11. For a service to be covered by Medicaid, it must fit within at least one  
4 of the categories of services listed in 42 U.S.C. § 1396d(a). These categories of  
5 services are very broad, and many individual services fall within each service  
6 category. A covered service can often fit within more than one service category,  
7 and states have flexibility in deciding how to cover services. An individual  
8 service need not be listed in the statute to be covered by Medicaid. Many  
9 commonly covered services, such as assessments, crisis services, and therapy, are  
10 covered by Medicaid but not expressly listed in the statute.

11 12. All of the components of wraparound services and therapeutic foster  
12 care fit within one or more of the categories of services listed in 42 U.S.C. §  
13 1396d(a). While states have flexibility and could cover the components under the  
14 variety of service categories listed in Appendices A and B, in my understanding,  
15 most states generally cover the activities that are the components of wraparound  
16 services and therapeutic foster care under the categories of rehabilitative services,  
17 § 1396d(a)(13)<sup>2</sup>, case management services, § 1396d(a)(19), and/or clinic  
18 services, § 1396d(a)(9).

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20 <sup>2</sup> 42 U.S.C. § 1396d(a)(13) lists as a category of services “other diagnostic,  
21 screening, preventative, and rehabilitative services . . . for the maximum reduction  
22 of physical and mental disability and restoration of an individual to the best  
23 possible functional level.” This category of services is commonly known as  
24 rehabilitative services.  
25

1           13. During my tenure as Director of the Center for Medicaid and State  
2 Operations, I reviewed and recommended approval of State Plan Amendments  
3 that contained the activities that are the components of wraparound services and  
4 therapeutic foster care, which were ultimately approved by the Secretary of HHS.

5           14. My understanding is that states are continuing to use Medicaid to  
6 cover the activities that are the components of wraparound services and  
7 therapeutic foster care and that CMS is continuing to pay states for these activities.

8           15. CMS has proposed new regulations regarding the category of services  
9 known as “rehabilitative services,” 42 U.S.C. § 1396d(a)(13). Proposed rules,  
10 Department of Health and Human Services, Centers for Medicare & Medicaid  
11 Services, Medicaid Program: Coverage for Rehabilitative Services, 72 FR 45201  
12 (Aug. 13, 2007). In part, these regulations are a continuation of prior CMS policy  
13 and make clear that this category of services can be used for such activities as:  
14 team-based treatment planning that includes the covered individual’s family and  
15 other people important to the individual, education of the covered individual’s  
16 family regarding the individual’s disorder and how to manage it, and  
17 comprehensive assessments. The proposed regulations, however, depart  
18 significantly from prior CMS policy in that they propose to prohibit a state from  
19 covering certain packages of services, including therapeutic foster care, and  
20 instead require states to bill separately for the components of the service package.  
21 If these proposed regulations were enacted, they would require many states to alter  
22 the payment methodology for many services that had previously been approved by  
23 CMS for payment as single package, including therapeutic foster care, multi-  
24 systemic therapy, and Assertive Community Treatment. States could still,  
25 however, cover the individual components of these services. Further, the

1 proposed regulations include language prohibiting coverage of services that are  
2 “intrinsic elements of programs other than Medicaid,” including foster care and  
3 child welfare. This language in the regulation is not well- defined, and it is  
4 unclear how this language might affect coverage of rehabilitative services.  
5 Medicaid does not covered services that are the clear financial responsibility of  
6 another system, such as the direct delivery of foster care services. But Medicaid  
7 has always covered mental health services for eligible adults and children, even if  
8 they are involved in another system. The preamble of the regulation is consistent  
9 with this and specifically states that “Medicaid rehabilitation services must be  
10 available for all participants based on an identified medical need and [that]  
11 otherwise would have been provided to the individual outside of the foster care . . .  
12 and other non-Medicaid systems.” 72 FR 45201, 45205. Because wraparound  
13 services and therapeutic foster care are mental health interventions available to all  
14 children (regardless of whether or not they are involved in the foster care system),  
15 the activities that comprise the components of these services should continue to be  
16 coverable, even if the new regulations are enacted.

17 16. I have reviewed the August 16, 2006 letter from Gale P. Arden,  
18 Director of CMS’ Center for Medicaid and State Operations Disabled and Elderly  
19 Programs to Stan Rosenstein, Deputy Director of California’s Department of  
20 Health Services, Medical Care Services and the May 28, 2004 declaration of Mary  
21 Jean Duckett, then Acting Deputy Director, CMS’ Center for Medicaid and State  
22 Operations Disabled and Elderly Programs, as well as the declaration of Linda  
23 Huff Redman, Ph.D. which responds to these documents. I agree with Dr.  
24 Redman’s responses, and these documents do not change my opinion that when  
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1 properly described, the components of wraparound services and therapeutic foster  
2 care are coverable by Medicaid.

3 17. As I mentioned above, part of my responsibility as Director of the  
4 Medicaid program was to review and make recommendations to the Secretary of  
5 HHS to approve or disapprove State Plan Amendments. The CMS letter from  
6 Gale Arden makes clear that California did not submit a formal State Plan  
7 Amendment to CMS. The essence of much of the letter is that CMS would need  
8 more information (specifically, the type of information typically included in a  
9 State Plan Amendment) to determine whether the proposed services are coverable  
10 by Medicaid.

11 18. Throughout the letter and declaration, Ms. Arden and Ms. Duckett  
12 repeatedly state that wraparound services, therapeutic foster care, and their  
13 components are not services listed in the Medicaid Act and that they are not  
14 independently covered. I agree with Dr. Redman's responses to these concerns,  
15 see Exh. 3 at ¶ 18-19. Services need not be expressly listed in the statute to be  
16 covered; they need only fit within a category of services listed in the statute.  
17 Likewise, whether a service is independently billable or is billed as a component  
18 of another service is a billing issue, not a coverage issue.

19 19. In several places in the letter, Ms. Arden questions Medicaid coverage  
20 of services that involve the covered individual's family. I agree with Dr. Redman  
21 that while Medicaid does not cover services solely benefiting non-covered family  
22 members, it does cover services provided to family members that directly support  
23 and are for the benefit of the covered individual. See Exh. 3 at ¶ 21; see also  
24 Proposed Rehabilitative Rules, 72 FR at 45207 (stating that "contacts with family  
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1 members for the purpose of treating the Medicaid eligible individual may be  
2 covered by Medicaid”).

3 20. Finally, Ms. Arden and Ms. Duckett question whether several  
4 components involve the direct delivery of foster care services, as prohibited by the  
5 Deficit Reduction Act of 2005, which codified prior guidance on case  
6 management services that I authored. As Dr. Redman discussed, the DRA and the  
7 case management guidance that I authored provides the following as examples of  
8 covered case management activities: assessment, development of a specific care  
9 plan/care planning, referral and related activities/linkage, and monitoring and  
10 follow-up activities to ensure plan implementation. See Exh. 3 at ¶ 22. I agree  
11 with her that these allowable activities are, in essence, the precise activities that  
12 comprise the components of wraparound services and therapeutic foster care in  
13 Appendices A and B. The components do not involve the types of direct delivery  
14 of foster care services that are prohibited by the DRA and by my guidance.

15 21. In sum, it is my expert opinion that the components of wraparound  
16 services in Appendix A and of therapeutic foster care in Appendix B are coverable  
17 by Medicaid.

18  
19 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of  
20 the United States of America and the State of California that the foregoing is true  
21 and correct. Executed this \_\_\_day of \_\_\_\_\_, 2007 in \_\_\_\_\_.

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Timothy Westmoreland