**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**
**JACKSON DIVISION**

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| MARY TROUPE, *et al.*<br><br>Plaintiffs,<br><br>v.<br><br>GOVERNOR HALEY BARBOUR, *et al.*<br><br>Defendants. | CASE NO. 3:10cv153HTW-LRA |

**STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA**

The United States respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517[1] because this litigation implicates the proper interpretation and application of the Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") provisions of Title XIX of the Social Security Act ("Medicaid Act"), 42 U.S.C. § 1396 *et seq.*, and Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*. Plaintiff Medicaid-eligible children allege that they have experienced unnecessary institutionalization and other serious harms as a result of defendants' failure to provide or arrange for medically necessary, mental health services required under the EPSDT provisions of the Medicaid Act. (*See, e.g.*, Compl. ¶¶ 1-3, 40, 43,50, 57, 58-62.)

[1] Under 28 U.S.C. § 517, "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

The denial of EPSDT services results in significant harm to children with behavioral or emotional disorders, including exacerbation of their conditions, deterioration to the point of crisis, and unnecessary institutionalization in violation of the ADA. Accordingly, the United States has a strong interest in the resolution of this matter and respectfully requests that this Court deny Defendants' Motion to Dismiss or for Judgment on the Pleadings as to Count I of Plaintiffs' Complaint. Plaintiffs have alleged concrete and actual injuries caused by the defendants' policies and practices, such that they have standing to assert their Medicaid Act claim. They seek prospective, injunctive relief to correct defendants' alleged ongoing violation of federal law. Accordingly, their claim is not barred by Eleventh Amendment immunity. Finally, under well-settled law, plaintiffs' Medicaid Act claim is privately enforceable under 42 U.S.C. § 1983.

## FACTUAL ALLEGATIONS

Plaintiffs are Medicaid-eligible children with behavioral or emotional disorders who need intensive mental health services to correct or ameliorate their conditions. (Compl.¶ 4.) Defendants are the Governor of the State of Mississippi, the Director of the Mississippi Division of Medicaid, the Chair of the Mississippi Board of Mental Health and the Executive Director of the Mississippi Department of Mental Health (collectively, "defendants" or "the State"). (Compl. ¶¶ 11-14.) They are responsible for, respectively, ensuring that all Mississippi agencies comply with applicable federal law, administering the Mississippi Medicaid program, and administering, coordinating and planning the State's mental health service system. (Compl. ¶¶ 11-14.)

Plaintiffs allege that defendants fail to ensure that medically necessary, intensive mental health services are provided to Medicaid-eligible individuals under the age of twenty-one who

have been diagnosed with significant behavioral or emotional disorders. (Compl. ¶¶ 2, 4). Such services include "comprehensive assessment[s], typically by a child and family team, intensive case management services, mobile crisis services, in-home therapy, behavioral support services, family education and training, and therapeutic foster care" to treat or ameliorate their disorders. (Compl. ¶ 36.) For members of the plaintiff class, these services are medically necessary to treat and ameliorate their disorders. (Compl. ¶ 27.)

Plaintiffs allege that as a result of defendants' failure to ensure provision of these medically necessary, mental health services, they have cycled through hospitals, emergency rooms, acute care facilities and other institutional settings that do not provide adequate care or long-term relief. (Id. ¶¶ 2-3). They further allege that the State's "system of mental health care is so weak and uncoordinated that most children are released from facilities with little or no follow-up community mental health care." (Id. ¶ 3.) Plaintiffs typically wait months for an appointment at a community mental health center, and when services are finally provided, "they consist of little more than minimal medication management and outpatient counseling two times a month." (Id. ¶ 3.) Such limited services are inadequate for children with chronic and significant, behavioral and emotional disorders. (Id. ¶ 3.) As a result of these inadequate and ineffective services, plaintiffs deteriorate to the point of crisis, face further cycles of isolation and institutionalization, and experience "serious, long term and irreversible harm." (Id. ¶ 3-4.) Institutional care not only fails to meet the needs of children with serious emotional disorders, but is also harmful because it "deprives children of normalizing experiences, isolates them with other children who have behavioral problems, and exacerbates feelings of anxiety and concern." (Id. ¶ 37.)

Plaintiffs seek an order from this Court "requiring [d]efendants to provide intensive home- and community-based services to the named [p]laintiffs and other Medicaid-eligible children for whom such services are medically necessary." (Pls.' Opp. to Defs.' Mot. to Dismiss or for Judgment on the Pleadings, ECF No. 24 ("Pls.' Mem.") at 23.) Two of the four defendants have moved to dismiss, or, in the alternative, for judgment on the pleadings on, Count I of the Complaint. (Motion to Dismiss or for Judgment on the Pleadings, ECF No. 15, May 27, 2010.)

**STATUTORY AND REGULATORY BACKGROUND**

Congress enacted the Medicaid Act in 1965, thereby establishing a medical assistance program ("Medicaid") cooperatively funded by the federal and state governments. State participation in Medicaid is voluntary, but once a state elects to participate, it is required to provide certain minimum mandatory services, including EPSDT services. *See* 42 U.S.C. § 1396 *et seq..; Frew v. Hawkins*, 540 U.S. 431, 433 (2004). Under the EPSDT provisions of the Medicaid Act, participating states must provide coverage to Medicaid-eligible individuals under the age of twenty-one for all medically necessary treatment services described in the Medicaid Act at 42 U.S.C. § 1396d(a), which sets out the scope of the traditional Medicaid benefits package. 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4); 42 U.S.C. § 1396d(r)(1)-(5). Such treatment services must be covered for Medicaid-eligible children even if the State has not otherwise elected to provide such coverage for other populations. 42 U.S.C. § 1396d(r)(5).

In adding the EPSDT requirements to the Medicaid Act in 1967, Congress "intended to require States to take aggressive steps to screen, diagnose and treat children with health problems." *Stanton v. Bond*, 504 F.2d 1246, 1249 (7th Cir. 1974). A fundamental purpose of the EPSDT mandate is thus to "[a]ssure that health problems found are diagnosed and treated

early, before they become more complex and their treatment more costly." U.S. Dep't of Health and Human Servs., Centers for Medicare and Medicaid Servs., Pub. No. 45, State Medicaid Manual (hereinafter "State Medicaid Manual") § 5010.B. The EPSDT mandate also addressed Congress' concern about "the variations from State to State in the rates of children treated for handicapping conditions and health problems that could lead to chronic illness and disability." *Stanton*, 504 F.2d at 1249. As originally drafted, the EPSDT provisions of the Medicaid Act entitled all Medicaid-eligible individuals under the age of twenty-one to screening and diagnosis, but Congress directed the Secretary of Health and Human Services to promulgate regulations defining the specific services that would be used for treatment of conditions identified during a health screen. *See* Pub. L. No. 90-248, 81 Stat. 821 §§ 224, 302 (1967).

In 1989, Congress amended the Medicaid Act to clarify that states must ensure that comprehensive treatment services are available under the EPSDT program. Omnibus Budget and Reconciliation Act of 1989, Pub. L. No. 101-239, 103 Stat. 2219 § 6403 (1989); *see also* Senate Finance Committee Report, read into Congressional Record at 135 Cong. Rec. S13057-03 at *S13233, 1989 WL 195142 (Oct. 12, 1989) (noting that the 1989 amendments were intended to "require that states provide to children *all treatment items and services that are allowed under federal law* and that are determined to be necessary . . . even if such services are not otherwise included in the State's plan") (emphasis added); H.R. Rep. No. 101-386, at 453 (1989) (Conf. Rep.); *S.D. ex rel. Dickson v. Hood*, 391 F.3d 581, 589-90 (5th Cir. 2004) ("Congress in the 1989 amendment imposed a mandatory duty upon participating states to provide EPSDT-eligible children with all the health care, services, treatments and other measures described in § 1396d(a) of the Act, when necessary to correct or ameliorate health problems discovered by screening, regardless of whether the applicable state plan covers such services.").

In its current form, the EPSDT mandate requires states to effectively inform EPSDT-eligible individuals "of the availability of [EPSDT] services," 42 U.S.C. § 1396a(a)(43)(A), and provide or arrange for "screening services in all cases where they are requested," 42 U.S.C. § 1396a(a)(43)(B). Thus, a state must provide comprehensive assessments of children with serious emotional or behavioral disorders. 42 U.S.C. § 1396a(a)(43)(B); *see also Rosie D. v. Patrick*, 410 F. Supp. 2d 18, 52-53 (D. Mass. 2009) ("[T]he EPSDT provisions of the Medicaid statute require, by their very language, comprehensive assessments of children with [serious emotional disturbance].").

State must also arrange for (either directly or through referral to other agencies) corrective treatment, the need for which is discovered by the screening. 42 U.S.C. § 1396a(a)(43)(C). The scope of the treatment to be provided for is defined by 42 U.S.C. § 1396d(r) and includes dental, hearing and vision services, and "[s]uch other necessary health care, diagnostic services, treatment, and other measures described in [42 U.S.C. § 1396d(a)] . . . to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are [otherwise] covered under the state plan . . . ." 42 U.S.C. § 1396d(r)(1)-(5); *see also* 42 C.F.R. § 440.130.

Under § 1396d(r)(5), states must "cover every type of health care or service necessary for EPSDT corrective or ameliorative purposes that is allowable under § 1396d(a)." *Dickson*, 391 F.3d at 590. Thus, a service must be covered by the EPSDT program if it can properly be described as one of the services listed in the Medicaid Act, 42 U.S.C. § 1396d(a). *See, e.g.*, *Dickson*, 391 F.3d at 594-97 (finding that incontinence supplies were within the scope of home health services described in § 1396d(a) and that the state violated EPSDT provisions by denying Medicaid-eligible child such services); *Parents' League for Eff. Autism Serv. v. Jones-Kelley*,

339 Fed. Appx. 542 (6th Cir. 2009) (affirming preliminary injunction enjoining state from restricting rehabilitative services for Medicaid-eligible children with autism).

Under 42 U.S.C. § 1396d(a)(13), a state is permitted to cover intensive case management services, mobile crisis services, in-home therapy, in-home behavioral support services, family support and training, and therapeutic foster care as "diagnostic, screening, preventative, and rehabilitative services . . . ."[2] *See, e.g.,* Massachusetts State Plan for Medical Assistance, State Plan Amendment # 08-004, effective Apr. 1, 2009 (relevant excerpts attached as Exhibit A) (covering services under Rehabilitation services); Oregon State Plan for Medical Assistance § 3.1a, pp. 6-f—6-f.2 (relevant excerpts attached as Exhibit B) (covering services as Behavioral Rehabilitation Services). Accordingly, the State must cover such services if necessary to correct or ameliorate a mental health condition. *Dickson*, 391 F.3d at 595-96 ("CMS's approval of state plans affording coverage for [the services sought by plaintiff] demonstrates that the agency construes [the Medicaid Act] as encompassing that type of medical care or service" and therefore required to be covered under EPSDT); *Rosie D.*, 410 F. Supp. 2d at 52-53 (state violated EPSDT provisions by failing to provide to children with serious emotional disorders adequate and effective mobile crisis services, comprehensive assessments, ongoing case management and monitoring, and in-home behavioral support services); *see also Katie A. v. L.A. County*, 481 F.3d 1150, 1160 (9th Cir. 2007) (holding that states have an obligation under the EPSDT mandate to provide effective in-home behavioral support services to children with mental illness).

States must provide all component services required under § 1396d(a), and they must provide them effectively. *Katie A.*, 481 F.3d at 1159 ("States also must ensure that the EPSDT services provided are reasonably effective.") Thus, where necessary to meet the needs of

[2] Section 1396d(a)(13) defines as covered medical services any "diagnostic, screening, preventative, and rehabilitative services, including any medical or remedial services . . . for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level." 42 U.S.C. § 1396d(a)(13).

children with serious emotional or behavioral disorders, the services must be provided in a coordinated fashion. *Id*. at 1161. Many children will need all services for the effective treatment of their condition, and the delivery of all services in a coordinated fashion will be necessary to avoid unnecessary and harmful institutionalization.

## ARGUMENT

### I. Standard of Review

The Court should deny defendants' motion to dismiss. On a motion to dismiss, the court accepts as true the well-pleaded factual allegations in the complaint and construes the complaint in favor of the plaintiff. *Assoc. of American Phys. & Surg, Inc.. v. Texas Med. Bd.*, 627 F.3d 547, 550 (5th Cir. 2010). A complaint should be dismissed only where it appears that the facts alleged fail to state a plausible claim for relief. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). Defendants purport to move to dismiss for lack of subject matter jurisdiction. However, because their challenge to standing and ripeness is based on an assertion that the Medicaid Act contains a different meaning than the one put forth by plaintiffs, it is a merits-based determination, and subject matter jurisdiction exists to resolve it. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998) ("Subject matter exists if the right to recover "will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another.") Whether addressed as a merits-based or jurisdictional issue, however, plaintiffs have stated a valid claim for violation of the Medicaid Act, and this Court has jurisdiction to adjudicate it.

The Complaint sets forth numerous factual allegations concerning defendants' failure to ensure that medically necessary, mental health treatment services are provided to Medicaid-eligible children, causing them to suffer ongoing harm. (Compl. ¶¶ 1-4, 6-10, 36-62.) Thus,

plaintiffs have alleged concrete, actual injuries-in-fact as a result of defendants' administration of the Mississippi EPSDT program, and their injuries would be remedied by a favorable court decision. Moreover, because they seek only prospective, injunctive relief to remedy an ongoing violation of federal law, plaintiffs' claims fall within the *ex parte Young* exception to Eleventh Amendment immunity. Finally, because the EPSDT provisions are privately enforceable under 42 U.S.C. § 1983, plaintiffs' claim is properly brought under that statute. Accordingly, this Court should deny defendants' motion to dismiss or for judgment on the pleadings as to Count I of the Complaint.

## II. This Court Has Subject Matter Jurisdiction With Respect To Plaintiffs' Claims

Defendants contend that plaintiffs cannot establish standing or ripeness to assert a claim for violation of the Medicaid Act because they have not submitted a claim for, and been denied, payment for services. (Defs.' Mem. of Auth. in Support of Mot. to Dismiss or for Judgment on the Pleadings, ECF No. 17 ("Defs. Mem.") at 7-8.) They further maintain that plaintiffs' claim for medically necessary services, as opposed to payment for such services, "seek[s] to compel Medicaid to act beyond its clear obligations" and thus the *ex parte Young* exception to Eleventh Amendment Immunity does not apply. (Defs. Mem. at 17.) Defendants' jurisdictional arguments are based on a fundamental misreading of the requirements of the Medicaid Act. The EPSDT provisions of the Medicaid Act require states to ensure that medically necessary services are provided—not just paid for. *See supra*, pp. 5-6. By virtue of defendants' alleged failure to provide adequate mental health services, plaintiffs are experiencing ongoing injury that could be remedied by a favorable decision from this Court. Thus, plaintiffs have stated a ripe and cognizable claim—which they have standing to assert—under the Medicaid Act, and defendants are not immune from suit.

**A. Plaintiffs Have Standing to Assert their Medicaid Act Claim**

To demonstrate standing, a plaintiff must: (1) have suffered injury in fact – defined as an "invasion of a legally protected interest which is (a) concrete and (b) "actual or imminent, not 'conjectural' or 'hypothetical;" (2) demonstrate a causal connection that is "fairly trace[able]" to the conduct complained of; and (3) show that a favorable decision will "likely" address plaintiff's injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The allegations in the Complaint clearly meet each of these requirements. Specifically, plaintiffs' complaint demonstrates their concrete and particularized injury – the unavailability of statutorily mandated services – that is caused by defendants' failure to ensure that these services are available.

Defendants assert that plaintiffs have not suffered an injury sufficient to confer standing because they have not alleged that they applied for, and were denied, payment for services. (Defs' Mem. at 7-8.) Defendants' view of their obligation under the EPSDT provisions is incorrect and their reliance on *Equal Access for El Paso, Inc. v. Hawkins*, 562 F.3d 724, 727 (5th Cir. 2009) in support of their interpretation is misplaced. *Equal Access* did not involve the EPSDT provisions of the Medicaid Act. Rather, it involved a provision of the Medicaid Act not at issue here, namely § 1396a(a)(8) (requiring "medical assistance" to be delivered with 'reasonable promptness'). *Equal Access*, 562 F.3d at 727.

In contrast, the EPSDT provisions at issue here, by their plain language, require states to provide or arrange for the provision of covered EPSDT services. Subsection (B) of 42 U.S.C. § 1396a(a)(43) states that a state plan must "provide for . . . providing or arranging for the provision of such screening services in all cases where they are requested[.]" 42 U.S.C. § 1396a(a)(43)(B). Similarly, Subsection (C) states that a state plan for medical assistance must "provide for . . . arranging for (directly or through referral to appropriate agencies, organizations,

or individuals) corrective treatment the need for which is disclosed by such child health screening services." 42 U.S.C. § 1396a(a)(43)(C). Thus, as is evidenced by the plain language of the statutory provisions and their implementing regulations, the EPSDT provisions obligate states to ensure that medically necessary services are available, accessible and provided, either by providing them directly or by arranging for them through "appropriate agencies, organizations, or individuals[.]" 42 U.S.C. § 1396a(a)(43).

Defendants' interpretation of what is required of states under the EPSDT provisions is not only inconsistent with the provisions' plain language, but it also flies in the face of the legislative history of those provisions. Prompting the enactment of and amendments to these provisions was Congress' concern that Medicaid-eligible children were not *actually receiving* the screening, diagnosis and treatment services to which they were entitled, despite the availability of funding. *See* Senate Finance Committee Report, read into Congressional Record at 135 Cong. Rec. S13057-03 at S13233, 1989 WL 195142; *see also Stanton*, 504 F.2d 1250 ("Senate and House Committee reports emphasized the need for extending outreach efforts to create awareness of existing health care services, to stimulate the use of these services, and to make services available so that young people can receive medical care before health problems become chronic and irreversible damage occurs.") Thus, the EPSDT provisions require participating states to ensure that Medicaid-eligible children receive the "screening" services and "corrective treatment" to which they are entitled. Requiring only payment for services already "rendered" would not have addressed Congress' concerns and would run counter to the legislative purpose of the EPSDT provisions.

Consistent with this clear Congressional intent, numerous courts have recognized that the EPSDT provisions of the Medicaid Act mandate states to ensure that Medicaid-eligible

individuals under the age of twenty-one actually receive the care and services they need. *See e.g., Katie A.*, 481 F.3d at 1161 (state has obligation to ensure that all services required by the EPSDT provisions are being provided to Medicaid-eligible children effectively); *Pediatric Specialty Care, Inc. v. Ark. Dep't of Human Servs.*, 293 F.3d 472, 480 (8th Cir. 2002) (state must provide coverage for early intervention day treatment); *Rosie D.*, 410 F. Supp. 2d at 26 ("Congress' firm intent to ensure that Medicaid-eligible children actually receive services is powerfully underlined by provisions in the statute that place explicit duties on states to: (a) inform eligible children of the availability of [EPSDT] services, (b) provide or arrange for screening services . . . and (c) arrange for whatever corrective treatments are discovered to be needed."); *Disability Rights New Jersey v. Davey*, No. 3:05-cv-04723, ECF No. 90, Opinion and Order at 2 (D.N.J. Dec. 12, 2010) (holding that plaintiffs were entitled to access to specific, covered medical services, not merely payment for such services); *Parents' League for Effective Autism Servs. v. Jones-Kelley*, 339 F. App'x 542, 547-50 (6th Cir. 2009) (Applied Behavioral Analysis treatment for EPSDT-eligible children with autism).

Decades of regulatory interpretations of the Medicaid Act also demonstrate states' responsibility for ensuring the provision of medically necessary EPSDT services to eligible individuals under the Medicaid Act. The Centers for Medicare and Medicaid Services ("CMS"), the federal agency charged with administering the Medicaid Act, outlines this mandate in its State Medicaid Manual. In guidance to State Medicaid Agencies, CMS explains that:

> You must *provide for* screening, vision, hearing and dental services at intervals which meet reasonable standards of medical and dental practice established after consultation with recognized medical and dental organizations involved in child health care. You must also *provide for* medically necessary screening, vision, hearing and dental services regardless of whether such services coincide with your established periodicity schedules for these services.

> Additionally, the 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.

State Medicaid Manual, § 5110 (emphasis added). Accordingly, defendants' assertion that a request for services and subsequent denial of funding is a precondition to standing is wrong. Plaintiffs' injury and their standing arises from the State's alleged failure to act in accordance with their obligations under the EPSDT provisions – to identify and arrange for the provision of medically necessary services.

The Complaint alleges numerous, specific instances of defendants' failure to provide the intensive mental health services sought by the plaintiffs. (*See* Compl. ¶¶ 42-62.) Plaintiffs allege that most children with significant behavioral or emotional disorders living in the community are able to receive at most "infrequent office-based therapy or counseling and medication" through their regional mental health centers after a lengthy wait. (Id. ¶ 39.) These services are plainly inadequate and ineffective for children with chronic and long term mental health needs. Because of the inadequacy of these minimal services, plaintiffs undergo cycles of institutionalization, which "deprive [them] of normalizing experiences, isolate them with other children who have behavior problems, and exacerbate feelings of anxiety and concern." (Id. ¶ 37.) Ameliorative effects of institutionalization—if any—quickly dissipate upon discharge due to the lack of available and effective community-based treatment. (Id. ¶¶ 37, 41.) For example, Plaintiff L.M. has been repeatedly hospitalized and committed to the state's juvenile training school as a result of defendants' failure to ensure provision of adequate community-based mental health services. (Id. ¶ 57). Upon discharge from these facilities, L.M. has been unable to access effective services to treat or ameliorate his mental health conditions. (Id.)

Similarly, Plaintiff L.P.'s community mental health center does not offer adequate mental health services. (Id. ¶¶ 50, 52.) Without these services, L.P.'s emotional and behavioral conditions have worsened, and she has been hospitalized five times as a result. (Id.) Plaintiff J.B. has also not received treatment adequate to ameliorate or treat his mental health condition, leading to repeated hospitalizations and entry into a detention facility on at least twelve instances. (Id. at ¶ 43). The Complaint is thus replete with factual allegations concerning defendants' failure to provide medically necessary mental health services and the profound harm it has caused named plaintiffs and other members of the plaintiff class. (Compl. ¶¶ 1-5, 36-62.) Plaintiffs have therefore set forth sufficient allegations to establish standing to assert their Medicaid Act claim.

Indeed, defendants concede that they offer only a limited program of home- and community-based services. They point to a Medicaid-funded program called Mississippi Youth Programs Around the Clock (MYPAC), which provides certain home-based services to children with serious emotional disturbance. (Defs. Mem. at 8-9.) But, as plaintiffs allege, the program limits the number of children it serves each year, and only 180 children are enrolled – a mere fraction of the Medicaid-eligible children who are in need of such services. (Compl. ¶ 29.) Thus, the existence of that service does not invalidate plaintiffs' standing or cure defendants' alleged violations of federal law. *See, e.g.*, *Chisholm v. Hood*, 133 F. Supp. 2d 894, 901 (E.D. La. 2001) (state violated EPSDT provisions where medically necessary services were provided to only a limited number of Medicaid-eligible children); *Memisovski v. Maram*, No. 92-1982, 2004 WL 1878332, *56 (N.D. Ill. 2004) (state violated EPSDT requirements despite provision of services to some children).

### B. Defendants Are Not Immune From Suit

Under the *ex parte Young* doctrine, suits against state officials seeking prospective, injunctive relief for ongoing violations of federal law are not barred by the Eleventh Amendment. *Frew*, 540 U.S. at 437 (holding that consent decree remedying EPSDT violations was enforceable under *ex parte Young*); *U.S. ex rel. Barron v. Deloitte & Touche LLP*, 381 F.3d 438, 442 n.27 (5th Cir. 2004) ("[T]he Eleventh Amendment does not bar suits seeking to compel state officers to comply prospectively with the requirements of federal law."); *Memisovski v. Patla*, No. 98-1982, 2001 WL 1249615, 2-4 (N.D. Ill. 2001) (holding that suit fell within the *ex parte Young* exception where plaintiffs sought to enjoin state officials from violating EPSDT provisions of the Medicaid Act). Here, the Complaint seeks prospective, injunctive relief against state officials for alleged ongoing violations of federal law. (Compl. at 20.) Thus, it falls squarely within the *ex parte Young* exception to Eleventh Amendment immunity.

Defendants argue that *ex parte Young* does not apply here because plaintiffs' request for EPSDT services seeks to compel defendants to act beyond their payment-only obligations under the Medicaid Act. (Defs.' Mem. at 17.) As explained above, however, the EPSDT provisions require more than mere payment. *See supra*, pp. 5-6, 10-13. States must provide or ensure provision of medically necessary services under the EPSDT provisions of the Medicaid Act. Thus, given that plaintiffs seek only to compel state officials to act in accordance with federal law, there can be no serious dispute that their claim falls within the *ex parte Young* exception to Eleventh Amendment immunity.

## III. The EPSDT Provisions of the Medicaid Act Are Privately Enforceable Through 42 U.S.C. § 1983

In *S.D. ex rel. Dickson v. Hood*, the U.S. Court of Appeals for the Fifth Circuit found that there is a private right of action to enforce the EPSDT provisions of the Medicaid Act through 42

U.S.C. § 1983. *Dickson*, 391 F.3d at 604-05. Applying the Supreme Court's framework for determining the existence of a private right of action, the Fifth Circuit concluded that:

> [T]he [EPSDT] provisions of the Medicaid Act satisfy the first *Blessing* factor, as clarified by *Gonzaga*, in that the Act evidences a congressional intent to confer a right to the health care, services, treatments and other measures described in § 1396d(a), when necessary for EPSDT ameliorative purposes.

*Dickson*, 391 F.3d at 604 (citing *Blessing v. Freestone*, 520 U.S. 329, 340-41 (1997) and *Gonzaga University v. Doe*, 536 U.S. 273, 283 (2002).). The Fifth Circuit further found that the EPSDT provisions satisfy the second prong of the *Blessing* framework because the right to EPSDT services asserted by the plaintiff was "not so 'vague and amorphous' that its enforcement would 'strain judicial competence.'" *Id.* at 605 (citing *Blessing*, 520 U.S. at 340). Here too, the right asserted by plaintiffs is not so "vague or amorphous" that its enforcement would "strain judicial competence." The plaintiffs seek the Court's interpretation of the EPSDT provisions to determine whether they require Mississippi to provide them with specific benefits, namely intensive home- and community-based mental health services. It is clearly within the Court's capacity to conduct such a statutory analysis.

Finally, the Fifth Circuit in *Dickson* found that the third *Blessing* factor was satisfied "because the Medicaid statute unambiguously imposes EPSDT obligations on the participating states." *Id*. at 605. Thus, defendants' assertion that plaintiffs do not have a private right of action under 42 U.S.C. § 1983 to assert their Medicaid Act claim is unavailing.

Moreover, every other court to address the issue post-*Gonzaga* has held that the EPSDT provisions create privately enforceable rights. *See Westside Mothers v. Olszewski*, 454 F.3d 532, 543 (6th Cir. 2006); *Salazar v. District of Columbia*, 729 F. Supp. 2d 257, 268-71 (D.D.C. 2010) (holding that "§ 1396a(a)(43) does 'unambiguously' confer a private right of action[,]" the "right is not too vague and amorphous to be enforced[,]" and the "Defendants' obligation is both clear

and enforceable[.]"); *Parents' League for Effective Autism Servs.*, 565 F. Supp. 2d at 903-04 (holding that various EPSDT provisions, including § 1396a(a)(10) and (43), and § 1396d(a)(4)(B) and (r), "confer an unambiguous right on Plaintiffs that is enforceable through a § 1983 claim" that is "not so 'vague and amorphous' as to defeat judicial enforcement[,]" and that "imposes EPSDT obligations on the participating states."); *Clark v. Richman*, 339 F. Supp. 2d 631, 640 (M.D. Pa. 2004) (finding that "§ 1396a(a)(43) affords plaintiffs vindicable private rights."); *Kenny A. v. Perdue*, 218 F.R.D. 277, 293-94 (N.D. Ga. 2003) (holding that, *inter alia*, § 1396a(a)(43) confers privately enforceable rights); *Hunter ex rel. Lynah v. Medows*, No. 1:08-CV-2930, 2009 WL 5062451, at *2-3 (N.D. Ga. Dec. 16, 2009) (holding that § 1396a(a)(43) "satisf[ies] the three-factor test . . . in *Blessing* and *Gonzaga*."); *Memisovski v. Maram*, No. 92-C-1982, 2004 WL 1878332, at *10-11 (N.D. Ill. Aug. 23, 2004) (concluding that "the EPSDT provisions[ of § 1396a(a)(43)] also confer individual rights on plaintiffs which may be enforced pursuant to 42 U.S.C. § 1983.").

Given the above, this Court should reject defendants' argument that plaintiffs do not have a private right of action under § 1983 to enforce § 1396a(a)(43) and its subsections.

## CONCLUSION

For the foregoing reasons, we respectfully request that the Court deny defendants' motion to dismiss or for judgment on the pleadings.

DATED: April 8, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Anne S. Raish, certify that on April 8, 2011, using the ECF system, a copy of the foregoing document was sent to the following:

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/s/ *Anne Raish*

# EXHIBIT A

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
JFK Federal Building, Government Center
Room 2275
Boston, Massachusetts 02203

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

Division of Medicaid and Children's Health Operations / Boston Regional Office

June 4, 2009

JudyAnn Bigby, M.D., Secretary
Executive Office of Health and Human Services
1 Ashburton Place, Room 1109
Boston, Massachusetts 02108

Dear Dr. Bigby:

We have reviewed Massachusetts State Plan Amendment (SPA) No. 08-004, received in the Boston Regional Office on March 25, 2008. This amendment adds Early Periodic Screening, Diagnosis, and Treatment services for individuals under age 21 with severe emotional disturbance and implements the judgment of the Federal District Court in Rosie D. v. Romney. Based on the information provided, we are pleased to inform you that Massachusetts SPA 08-004 is approved, with an overall effective date of April 1, 2009, but with the following effective dates for the individual services contained in the SPA:

- Mobile Crisis Intervention – July 1, 2009
- In-Home Behavioral Services – October 1, 2009
- In-Home Therapy Services – November 1, 2009
- Therapeutic Mentoring Services – October 1, 2009
- Family Support and Training – July 1, 2009

Enclosed is a copy of the CMS-179 form, as well as the approved pages for incorporation in the Massachusetts Medicaid State Plan. The Remarks section of the CMS-179 indicates the changes that were mutually agreed to during the processing of this SPA.

Please contact Aaron Wesolowski of my staff if you have any question. Aaron Wesolowski can be reached at 617-565-1325 or by email at aaron.wesolowski@cms.hhs.gov.

Sincerely,

Richard R McGreal

Richard R. McGreal
Associate Regional Administrator

cc: Thomas Dehner, Medicaid Director
Michael Coleman, State Plan Coordinator

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**Item 2.a: Outpatient Hospital Services**

See **Supplement to Attachment 3.1-A**, page 1, Item 1, #1 and #4.

**Item 4.a: Nursing Facilities Services**

If a utilization review team recommends that a recipient in a multi-level long-term-care facility be changed to a lower level of care, the facility is responsible for relocating a recipient to the recommended level of care within the facility. The recipient has the right to appeal the recommendation.

**Item 4b: Early and Periodic Screening, Diagnostic and Treatment services for individuals under 21 years of age, and treatment of conditions found.**

In addition to all other medically necessary services covered for individuals under age 21, the following services are covered as Rehabilitation services as defined in 42 USC 1396d (a) (13). These services are provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual:

**a. Mobile Crisis Intervention** (Services described in this section are effective July 1, 2009.)
Mobile Crisis Intervention provides a short term service that is mobile, on-site, face-to-face therapeutic response to a youth experiencing a behavioral health (mental health or substance abuse) crisis for the purpose of identifying, assessing, treating, and stabilizing the situation and reducing the immediate risk of danger to the youth or others consistent with the youth's risk management/safety plan, if any. Services are available 24 hours a day, 7 days a week. Phone contact and consultation may be provided as part of the intervention. Mobile crisis services may be provided by a single crisis worker or by a team of professionals that are qualified providers who are trained in crisis intervention.

Mobile Crisis Intervention includes the following activities when performed to resolve the immediate crisis:

- Assessment;
- Crisis counseling including individual and family counseling;
- Clinical consultation and coordination with other health care providers;
- Psychopharmacological management, including availability of on-site prescriber;
- Identification and inclusion of professional and natural supports (e.g., therapist, neighbors, relatives) who can assist in stabilizing the situation and offer ongoing support;
- Development of a risk management/safety plan. In cases where the youth does not already have such a plan, Mobile Crisis Intervention creates a risk management/safety plan in concert with the parent(s)/guardian(s)/caregiver(s) and any existing service providers (e.g., ICC, In-Home Therapy Services, outpatient therapist); and
- Referral to other services as needed.

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Settings: Mobile Crisis Intervention is provided where the child is located.

Providers: Components of Mobile Crises Crisis Intervention are provided by practitioners, as described below. Practitioners must be working under an employment or contractual arrangement with one of the following: outpatient hospitals, community health centers, mental health centers and other clinics.

- **Assessment** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns

- **Crisis counseling including individual and family counseling** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, bachelor-level counselors/paraprofessionals, LADC Is

- **Clinical consultation and coordination with other health care providers** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, bachelor-level counselors/paraprofessionals, LADC Is

- **Psychopharmacological management** - Psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, board-certified or board-eligible child psychiatrists, psychiatry residents.

- **Identification and inclusion of professional and natural supports (e.g., therapist, neighbors, relatives) who can assist in stabilizing the situation and offer ongoing support** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, associate-level counselors/paraprofessionals, bachelor-level counselors/paraprofessionals, LADC Is, LADC IIs, LADC IIIs, LSWs, and LSWAs.

- **Development of a risk management/safety plan** -LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns

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- **Referral to other services as needed:** LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, associate-level counselors/paraprofessionals, bachelor-level counselors/paraprofessionals, CADACs, CADAC IIs, LADC Is, LADC IIs, LADC IIIs, LSWs, and LSWAs.

**b. In-Home Behavioral Services:** (Services described in this section are effective October 1, 2009.)

This service provides for the development of a highly specific behavior plan; supervision and coordination of interventions; and training other interveners to address specific behavioral objectives or performance goals in order to treat challenging behaviors that interfere with the youth's successful functioning. An In-Home Behavioral service includes two components: behavior management therapy and behavior management monitoring. It is delivered by one or more members of a team of qualified providers consisting of professional and paraprofessional staff.

1. Behavior management therapy: Behavior management therapy includes activities that are required to develop, implement, monitor and update a behavior plan, including overseeing activities of the behavior management monitor. Behavior management therapy is performed by a licensed clinician who meets the qualifications of a Behavior management therapist as described in the provider qualifications section below.

   Behavior management therapy includes the following:

   - Functional behavioral assessment;
   - Development of a focused behavior plan that identifies specific behavioral and measurable objectives or performance goals and interventions that are designed to diminish, extinguish, or improve specific behaviors related to a youth's behavioral health (mental health or substance abuse) condition(s);
   - Development or revision of a youth's risk management/safety plan to address the specific behavioral needs of the youth;
   - Counseling the parent(s)/guardian(s)/caregiver(s) on how to implement strategies identified in the behavior plan;
   - Working closely with the behavior management monitor to ensure the behavior plans and risk management/safety plan are implemented as developed, and to make any necessary adjustments to the plans;
   - Clinical consultation and coordination with other behavioral health (mental health or substance abuse) care providers; and
   - Referral to other services as needed.

2. Behavior management monitoring. This service includes activities related to the implementation of the behavior plan and a risk management/safety plan as needed. Behavioral management monitoring also includes monitoring the youth's behavior, reinforcing implementation of the behavior plan by the parent(s)/guardian(s)/caregiver(s), and reporting to the behavior management therapist on implementation of the behavior plan and progress toward behavioral objectives or performance goals.

   Behavioral management monitoring is performed by a paraprofessional who meets the qualifications of a behavior management monitor as described in the definitions section below.

   Behavior management monitoring includes the following:

   - Monitoring the youth's progress on implementation of the goals of the behavior plan developed by the behavior management therapist;
   - Assisting the youth in implementing the goals of the behavior plan developed by the behavioral management therapist;
   - Providing guidance to the parent(s)/guardian(s)/caregiver(s) in implementing the plan; and
   - Working closely with the behavior management therapist to ensure the behavior plans and risk management/safety plan are implemented as developed.

Settings: In-Home Behavioral Services may be provided in any setting where the child is naturally located including, but not limited to, the home (including foster homes and therapeutic foster homes), schools, child care centers, and other community settings.

Providers The following practitioners may provide any component of behavior management therapy as described above: Developmental-behavioral pediatricians, developmental-behavioral pediatric fellows, LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns and social work interns. Behavior management monitors may provide any component of behavior management monitoring as described above.

Qualified Practitioners of behavior management therapy also must have two years relevant experience providing direct services to youth and families who require behavior management to address behavioral health (mental health or substance abuse) needs; course work and training in conducting functional behavioral assessments, and selecting, implementing and evaluating intervention strategies; supervised experience conducting functional behavioral assessments and designing, implementing, and monitoring behavior analysis programs for clients and other qualifications established by the state. Practitioners must be working under an employment or contractual agreement with one of the following: outpatient hospitals, community health centers, mental health centers, other clinics, and private agencies certified by the Commonwealth.

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c. **In-Home Therapy Services**: (Services described in this section are effective November 1, 2009.)

This service provides for the development of an individualized treatment plan; supervision and coordination of interventions for the purpose of treating the youth's mental health and substance abuse needs. The intervention is designed to enhance and improve the family's capacity to improve the youth's functioning in the home and community and may prevent the need for the youth's admission to an inpatient hospital, psychiatric residential treatment facility or other treatment setting. This service is delivered by one or more members of a team of qualified providers consisting of professional and paraprofessional staff, offering a combination of medically necessary in home therapy and therapeutic training and support.

1.

In Home Therapy: In-home therapy is a structured, consistent, strength-based therapeutic relationship between a licensed clinician and the youth and family. The licensed clinician, in collaboration with the family and youth, develops an individualized treatment plan and, using established psychotherapeutic techniques, and intensive family therapy works with the entire family or a subset of the family to implement focused structural or strategic interventions to advance therapeutic goals. In addition, the clinician assists in identifying and utilizing community resources and develops and maintains natural supports for the youth and parent(s)/guardian(s)/caregiver(s) in order to promote sustainability of treatment gains. Phone contact and consultation are provided as part of the intervention. In-Home therapy is performed by a licensed clinician who meets the qualifications of an in-home therapist as described section below.

In-Home Therapy includes the following:

- Assessments;
- Development of an individualized treatment plan by the qualified practitioner in partnership with the youth and parent(s)/guardian(s)/caregiver(s) and, with required consent, in consultation with other providers that is designed to address the youth's mental health or substance abuse condition;
- Ongoing monitoring and modification of the individualized treatment plan as indicated;
- Review/development of a risk management/safety plan;
- Phone and face-to-face consultation with other providers, individuals and entities who may impact the youth's treatment plan;
- Family counseling through which the licensed clinician works with the entire family, or a subset of the family, to advance therapeutic goals; and
- Referral to other services as needed.

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2. Therapeutic training and support is a service provided by an associate-level or bachelor-level paraprofessional working under the supervision of a clinician to support implementation of the in-home therapists treatment plan in order to achieve the goals of the that plan. The paraprofessional assists a licensed clinician in implementing the therapeutic objectives of the individualized treatment plan. Phone contact and consultation may be provided as part of the intervention.

Therapeutic training and support includes the following:

- Providing guidance to the youth and parent(s)/guardian(s)/caregiver(s) in implementing the treatment plan;
- Providing skills training for youth and parent(s)/guardian(s)/caregiver(s) in support of the treatment plan goals; and
- Monitoring the youth's and parent(s)/guardian(s)/caregiver(s) progress on achieving treatment plan goals and communicating regularly with the clinician so that the treatment plan can be modified and necessary.

Settings: In home therapy services may be provided in any setting where the child is naturally located including, but not limited to, the home (including foster homes and therapeutic foster homes), schools, child care centers, and other community settings.

Providers: The following practitioners may provide any component of in-home therapy as described above: In-home therapy services are delivered by the following practitioners: LICSW, LCSW, LMFT, LMHC, Licensed psychologist, Master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinic specialists trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns. The following practitioners may provide any component of therapeutic training and support as described above: Associate-level counselors / paraprofessionals, bachelor-level counselors / paraprofessionals. Practitioners must be working under an employment or contractual arrangement with one of the following outpatient hospitals, community health centers, mental health centers, other clinics and private agencies certified by the Commonwealth.

**d. Therapeutic Mentoring Services**: (Services described in this section are effective October 1, 2009.)

Therapeutic mentoring services are structured, one-to-one, strength-based services that are designed to help ameliorate behavioral health (mental health or substance abuse) related conditions which prevent the youth from appropriate social functioning. These services must be delivered according to an individualized treatment plan developed by either an outpatient clinician, an in-home therapy clinician or, for youth enrolled in Intensive Care Coordination, a care planning team. Progress toward meeting the identified goal(s) must be documented and reported regularly to the provider responsible for the youth's treatment plan.

The therapeutic mentor does not provide social, educational, artistic, athletic, recreational or vocational services.

Settings: Therapeutic mentoring services are provided to youth in any setting where the youth resides, such as the home (including foster homes and therapeutic foster homes), school, child care centers and other community settings.

Providers: Therapeutic mentoring services are delivered by therapeutic mentors. Practitioners must be working under an employment or contractual arrangement with on of the following: outpatient hospitals, community health centers, mental health centers, other clinics, and private agencies certified by the Commonwealth. Providers of therapeutic mentoring utilize therapeutic mentors to provide these services.

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e **Family Support and Training:** (Services described in this section are effective July 1, 2009.)

A family support and training partner addresses goals established in an individualized treatment plan in order to resolve or ameliorate the youth's mental health, behavioral and emotional needs through enhancing the capacity of the parent(s)/guardians/caregivers) to implement activities required to meet the goals of the plan. Family support and training is a skill-building support and not a form of therapy or counseling. The individualized treatment plan must be developed by either an outpatient clinician, an In-home therapy clinician or, for youth enrolled in Intensive Care Coordination, a care planning team. These services include the following when they are relevant to the goals in the youth's individualized care plan:

- providing guidance to parent(s)/guardians(s)/caregiver(s) on navigating systems that support youth with mental health, behavioral and emotional needs, such as working effectively with state agency case managers, school system officials, provider agency staff and clinicians;
- fostering empowerment of parent(s)/guardian(s)/caregiver(s) by offering supportive guidance for parents of youth with mental health needs and encouraging participation in peer/parent support and self-help groups;
- providing guidance to the parent(s)/guardian(s)/caregiver(s) how to find, access and use formal and informal community-based resources (e.g., after-school programs, food assistance, housing resources, youth-serving systems, etc.); and
- modeling these skills for parent(s)/guardians(s)/caregiver(s).

Family support and training services do not include respite care or child care services.

Settings: Family support and training services are provided in any setting where the youth resides, such as the home (including foster homes and therapeutic foster homes), and other community settings.

Providers: Family support and training services are delivered by a family support and training partner. A family support and training partner must be working under an employment or contractual arrangement with one of the following: outpatient hospitals, community health centers, mental health centers, other clinics and private agencies certified by the Commonwealth.

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**Definitions:**

**Associate-level counselors/paraprofessional**
Associate-level counselors/paraprofessionals must have an associate's degree in a human services field from an accredited academic institution and one (1) year of relevant experience working with families or youth. If the associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Associate-level counselors/paraprofessionals are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Bachelor-level counselors/paraprofessional**
Bachelor-level counselors/paraprofessionals must have a bachelor's degree in a human services field from an accredited academic institution and one year of relevant experience working with families or youth. If the bachelor's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Bachelor-level counselors/paraprofessionals are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Behavior Management Monitor**
Behavioral management monitors must have a bachelor's degree in a human services field from an accredited university and one (1) year of relevant experience working with families, children or adolescents who require behavior management, or an associate's degree and a minimum of two (2) years of relevant experience working with families, children or adolescents who require behavior management. Behavior management monitors are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist..

**Certified Alcoholism/Drug Abuse Counselor (CADAC)**
Certified by the private Massachusetts Board of Substance Abuse Counselor Certification (MBSACC). CADAC certification requires a combination of either a Master's degree in a "behavioral science area" and 2,000 hours of supervised experience or a Bachelor's degree in a behavioral science area and 4,000 hours of supervised experience or an Associates' degree in a behavioral science area and 6,000 hours of supervised experience. Certification also requires documentation of having received a minimum of 270 clock hours of continuing education related to the five domains for alcohol and other drug abuse. Consistent with applicable state licensure requirements, certified alcoholism/drug abuse counselors are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Certified Alcoholism/Drug Abuse Counselor II (CADAC II)**
Certified by the private Massachusetts Board of Substance Abuse Counselor Certification (MBSACC). CADAC II certification requires a master's degree (or higher) from a regionally accredited academic institution in a human services behavioral sciences field with a clinical application (i.e., practicum); 2,000 hours of supervised experience and documentation of completion of 300-hour practicum. Consistent with applicable State licensure requirements, certified alcoholism/drug abuse counselor IIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist..

**Developmental-Behavioral Pediatrician**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is board-certified in Pediatrics and either board-eligible or board-certified in Developmental-Behavioral Pediatrics

**Developmental-Behavioral Pediatric Fellow**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is board-certified in Pediatrics and enrolled in a training program in Developmental-Behavioral Pediatrics accredited by the Accreditation Council for Graduate Medical Education (ACGME). Services provided by the Developmental-Behavioral Pediatric Fellow must be provided in a setting approved for training by the sponsoring training institution, under supervision of a board certified or eligible Developmental-Behavioral Pediatrician, consistent with applicable state licensure requirements.

**Family Support and Training Partner**
A family support and training worker must have experience as a caregiver of a youth with special needs, preferably youth with behavioral health needs, experience in navigating any of the youth and family-serving systems and teaching family members who are involved with the youth and family serving systems, and either: a bachelor's degree in a human services field from an accredited academic institution, or an associate's degree in a human services field from an accredited academic institution and one (1) year of experience working with children/adolescents/transition-age youth and families, or a high school diploma or General Education Development (GED) and a minimum of two (2) years of experience working with children/adolescents/transition age youth and families. If the bachelor's or associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Family partners are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Alcohol and Drug Counselor I – LADC I**
A person licensed by the Department of Public Health to conduct an independent practice of alcohol and drug counseling, and to provide supervision to other alcohol and drug counselors, as defined in 105 CMR 168.000. These requirements include: a master's or doctoral degree in behavioral sciences, a minimum of 270 hours of training in substance abuse counseling, 300 hours of supervised practical training and 6,000 hours of supervised alcohol and drug counseling work experience.

**Licensed Alcohol and Drug Counselor II – LADC II**
A person licensed by the Department of Public Health to practice alcohol and drug counseling under clinical supervision, as defined in 105 CMR 168.000. These requirements include: a high school diploma or equivalent, a minimum of 270 hours of training in substance abuse counseling, 300 hours of supervised practical training and 6,000 hours of supervised alcohol and drug counseling work experience (4,000 if applicant holds a bachelor's degree). Consistent with applicable state licensure requirements, LADC IIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

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**Licensed Alcohol and Drug Counselor Assistant – LADC III**
A person licensed by the Department of Public Health to provide recovery based services under direct clinical and administrative supervision, as defined in 105 CMR 168.000. These requirements include a high school diploma or equivalent, 2,000 hours of work experience in the alcohol or drug abuse field and a minimum of 50 hours of training in substance abuse counseling. Consistent with applicable state licensure requirements LACD IIIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Independent Clinical Social Worker (LICSW)**
A person with a current, valid, unrestricted license to practice as an LICSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: master's or doctoral degree in Social Work from a program accredited by the Council on Social Work Education and two years supervised experience.

**Licensed Clinical Social Worker (LCSW)**
A person with a current, valid, unrestricted license to practice as an LCSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: master's or doctoral degree in Social Work from a program accredited by the Council on Social Work Education. Consistent with applicable state licensure requirements, LCSWs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Social Worker (LSW)**
A person with a current, valid, unrestricted license to practice as an LSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: a bachelor's degree in Social Work from a program accredited by the Council on Social Work Education or a bachelor's degree in any subject and 3500 hours of supervised experience providing social work services. Consistent with applicable state licensure requirements, LSWs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Social Work Associate (LSWA)**
A person with a current, valid, unrestricted license to practice as an LSWA, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: an associate degree, or at least sixty credit hours of college education, in the fields of social work, psychology, counseling or other similar human services field, from an accredited college or university; or a baccalaureate degree in any field from an accredited college or university; or a minimum of one thousand (1000) hours of education in social work theory and methods in courses or programs approved by the Board of Registration of Social Workers. Consistent with applicable state licensure requirements, LSWAs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Marriage and Family Therapist (LMFT)**
A person with a current, valid, unrestricted license to practice as a LMFT, issued by the Massachusetts Board of Registration of Allied Mental Health Professionals. These requirements include: a master's degree in the mental health field (including, but not restricted to, counseling, family therapy, psychology, etc.) from an accredited college or university and two years supervised experience.

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**Licensed Mental Health Counselor (LMHC)**
A person with a current, valid, unrestricted license to practice as a LMHC, issued by the Massachusetts Board of Registration of Allied Mental Health Professionals. These requirements include: a master's degree in the mental health field (including, but not restricted to, counseling, family therapy, psychology, etc.) from an accredited college or university and two years supervised experience.

**Licensed Psychologist**
A person with current, valid, unrestricted license to practice psychology issued by the Massachusetts Board of Registration in Psychology. These requirements include a doctoral degree from a program accredited by the American Psychological Association and two years supervised experience

**Marriage and Family Therapy Intern**
The marriage and family therapy intern must be a second-year, clinical-track student in a structured field placement that is a component of a master's in marriage and family therapy or a master's in a counseling program that is fully accepted by the Board of Allied Mental Health and Human Services Profession. The marriage and family therapy intern must provide services under the direct supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse, or Nurse Clinical Specialist consistent with applicable state licensure requirements.

**Master's Level Counselor**
A person with a master's or doctoral degree in a mental health field (including, but not restricted to, counseling, family therapy, social work, psychology, etc.) from an accredited college or university who is supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse, or Nurse Clinical Specialist.

**Mental Health Counselor Intern**
The Mental Health Counselor Intern must be a second-year, clinical-track student in a structured field placement that is a component of a master's in mental health counseling or a master's in a counseling psychology program that is fully accepted by the Board of Allied Mental Health and Human Services Profession Consistent with applicable state licensure requirements, the Mental Heath Counselor Intern provides services under the supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Psychiatric Nurse**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Board of Registration in Nursing, a master's degree in the mental health fields and one (1) year of experience delivering mental health services to families and youth. Consistent with applicable state licensure requirements, the Psychiatric Nurse provides services under the supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Psychiatric Nurse Mental Health Clinical Specialist**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Massachusetts Board of Registration in Nursing and current, valid, unrestricted authorization by the Massachusetts Board of Registration in Nursing to practice as a Psychiatric Nurse Mental Health Clinical Specialist.

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**Psychiatric Nurse Mental Health Clinical Specialist Trainee**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Massachusetts Board of Registration in Nursing who is enrolled in a Psychiatric Nurse Mental Health Clinical Specialist training program recognized by the Massachusetts Board of Registration in Nursing. Consistent with applicable state licensure requirements, services provided by the Psychiatric Nurse Mental Health Clinical Specialist trainee are provided under supervision of a Psychiatric Nurse Mental Health Clinical Specialist.

**Psychiatric Resident**
A person with a current, valid, full or limited license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is enrolled in an Accreditation Council for Graduate Medical Education (ACGME)-accredited residency training program in either adult psychiatry or child and adolescent psychiatry. Services provided by the Psychiatric intern are provided in a setting approved for residency training by the sponsoring training institution, under supervision of a board certified or eligible child psychiatrist, consistent with applicable state licensure requirements.

**Psychiatrist**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine. Psychiatrists treating youth ages 0 to 19 shall be board-certified or board-eligible in child and adolescent psychiatry. Psychiatrists treating youth ages 19 to 21 shall be trained in adult psychiatry.

**Psychology Intern**
The psychology intern must be admitted to doctoral candidacy in a structured clinical, or counseling, American Psychological Association (APA)-approved doctoral program. Consistent with state licensure requirements, services provided by a psychology intern are provided under the direct supervision of a licensed psychologist.

**Social Work Intern**
The Social Work Intern must be a second-year, clinical-track student in a structured field practicum that is a component of an MSW program that is fully accredited by the Council on Social Work Education. Consistent with applicable state licensure requirements, services are provided under the direct supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Therapeutic Mentors**
Therapeutic mentors must be 21 years of age or older and have either: a bachelor's degree in a human service field from an accredited academic institution and one (1) year of relevant experience working with children/adolescents/transition age youth; or, an associate's degree in a human services field from an accredited academic institution and one (1) year of relevant experience working with children/adolescents/transition age youth; or, a high school diploma or General Educational Development (GED) and a minimum of two (2) years of experience working with children/adolescents/transition age youth. If the bachelor's or associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Therapeutic mentors must be supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist. .

**Item 5: Physician's Services**

See Supplement to Attachment 3.1-A, P.1, Item 1, #1.

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**Item 2.a: Outpatient Hospital Services**

See **Supplement to Attachment 3.1-A**, page 1, Item 1, #1 and #4.

**Item 4.a: Nursing Facilities Services**

If a utilization review team recommends that a recipient in a multi-level long-term-care facility be changed to a lower level of care, the facility is responsible for relocating a recipient to the recommended level of care within the facility. The recipient has the right to appeal the recommendation.

**Item 4b: Early and Periodic Screening, Diagnostic and Treatment services for individuals under 21 years of age, and treatment of conditions found.**

In addition to all other medically necessary services covered for individuals under age 21, the following services are covered as Rehabilitation services as defined in 42 USC 1396d (a) (13). These services are provided to, or directed exclusively toward the treatment of, the Medicaid eligible individual:

**a. Mobile Crisis Intervention** (Services described in this section are effective July 1, 2009.)
Mobile Crisis Intervention provides a short term service that is mobile, on-site, face-to-face therapeutic response to a youth experiencing a behavioral health (mental health or substance abuse) crisis for the purpose of identifying, assessing, treating, and stabilizing the situation and reducing the immediate risk of danger to the youth or others consistent with the youth's risk management/safety plan, if any. Services are available 24 hours a day, 7 days a week. Phone contact and consultation may be provided as part of the intervention. Mobile crisis services may be provided by a single crisis worker or by a team of professionals that are qualified providers who are trained in crisis intervention.

Mobile Crisis Intervention includes the following activities when performed to resolve the immediate crisis:

- Assessment;
- Crisis counseling including individual and family counseling;
- Clinical consultation and coordination with other health care providers;
- Psychopharmacological management, including availability of on-site prescriber;
- Identification and inclusion of professional and natural supports (e.g., therapist, neighbors, relatives) who can assist in stabilizing the situation and offer ongoing support;
- Development of a risk management/safety plan. In cases where the youth does not already have such a plan, Mobile Crisis Intervention creates a risk management/safety plan in concert with the parent(s)/guardian(s)/caregiver(s) and any existing service providers (e.g., ICC, In-Home Therapy Services, outpatient therapist); and
- Referral to other services as needed.

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Settings: Mobile Crisis Intervention is provided where the child is located.

Providers: Components of Mobile Crises Crisis Intervention are provided by practitioners, as described below. Practitioners must be working under an employment or contractual arrangement with one of the following: outpatient hospitals, community health centers, mental health centers and other clinics.

- **Assessment** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns

- **Crisis counseling including individual and family counseling** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, bachelor-level counselors/paraprofessionals, LADC Is

- **Clinical consultation and coordination with other health care providers** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, bachelor-level counselors/paraprofessionals, LADC Is

- **Psychopharmacological management** - Psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, board-certified or board-eligible child psychiatrists, psychiatry residents.

- **Identification and inclusion of professional and natural supports (e.g., therapist, neighbors, relatives) who can assist in stabilizing the situation and offer ongoing support** - LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, associate-level counselors/paraprofessionals, bachelor-level counselors/paraprofessionals, LADC Is, LADC IIs, LADC IIIs, LSWs, and LSWAs.

- **Development of a risk management/safety plan** -LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns

- **Referral to other services as needed:** LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns, social work interns, associate-level counselors/paraprofessionals, bachelor-level counselors/paraprofessionals, CADACs, CADAC IIs, LADC Is, LADC IIs, LADC IIIs, LSWs, and LSWAs.

**b. In-Home Behavioral Services:** (Services described in this section are effective October 1, 2009.)

This service provides for the development of a highly specific behavior plan; supervision and coordination of interventions; and training other interveners to address specific behavioral objectives or performance goals in order to treat challenging behaviors that interfere with the youth's successful functioning. An In-Home Behavioral service includes two components: behavior management therapy and behavior management monitoring. It is delivered by one or more members of a team of qualified providers consisting of professional and paraprofessional staff.

1. Behavior management therapy: Behavior management therapy includes activities that are required to develop, implement, monitor and update a behavior plan, including overseeing activities of the behavior management monitor. Behavior management therapy is performed by a licensed clinician who meets the qualifications of a Behavior management therapist as described in the provider qualifications section below.

   Behavior management therapy includes the following:

   - Functional behavioral assessment;
   - Development of a focused behavior plan that identifies specific behavioral and measurable objectives or performance goals and interventions that are designed to diminish, extinguish, or improve specific behaviors related to a youth's behavioral health (mental health or substance abuse) condition(s);
   - Development or revision of a youth's risk management/safety plan to address the specific behavioral needs of the youth;
   - Counseling the parent(s)/guardian(s)/caregiver(s) on how to implement strategies identified in the behavior plan;
   - Working closely with the behavior management monitor to ensure the behavior plans and risk management/safety plan are implemented as developed, and to make any necessary adjustments to the plans;
   - Clinical consultation and coordination with other behavioral health (mental health or substance abuse) care providers; and
   - Referral to other services as needed.

2. Behavior management monitoring. This service includes activities related to the implementation of the behavior plan and a risk management/safety plan as needed. Behavioral management monitoring also includes monitoring the youth's behavior, reinforcing implementation of the behavior plan by the parent(s)/guardian(s)/caregiver(s), and reporting to the behavior management therapist on implementation of the behavior plan and progress toward behavioral objectives or performance goals.

   Behavioral management monitoring is performed by a paraprofessional who meets the qualifications of a behavior management monitor as described in the definitions section below.

   Behavior management monitoring includes the following:

   - Monitoring the youth's progress on implementation of the goals of the behavior plan developed by the behavior management therapist;
   - Assisting the youth in implementing the goals of the behavior plan developed by the behavioral management therapist;
   - Providing guidance to the parent(s)/guardian(s)/caregiver(s) in implementing the plan; and
   - Working closely with the behavior management therapist to ensure the behavior plans and risk management/safety plan are implemented as developed.

Settings: In-Home Behavioral Services may be provided in any setting where the child is naturally located including, but not limited to, the home (including foster homes and therapeutic foster homes), schools, child care centers, and other community settings.

Providers The following practitioners may provide any component of behavior management therapy as described above: Developmental-behavioral pediatricians, developmental-behavioral pediatric fellows, LICSWs, LCSWs, LMFTs, LMHCs, licensed psychologists, master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinical specialist trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns and social work interns. Behavior management monitors may provide any component of behavior management monitoring as described above.

Qualified Practitioners of behavior management therapy also must have two years relevant experience providing direct services to youth and families who require behavior management to address behavioral health (mental health or substance abuse) needs; course work and training in conducting functional behavioral assessments, and selecting, implementing and evaluating intervention strategies; supervised experience conducting functional behavioral assessments and designing, implementing, and monitoring behavior analysis programs for clients and other qualifications established by the state. Practitioners must be working under an employment or contractual agreement with one of the following: outpatient hospitals, community health centers, mental health centers, other clinics, and private agencies certified by the Commonwealth.

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c. **In-Home Therapy Services:** (Services described in this section are effective November 1, 2009.)

This service provides for the development of an individualized treatment plan; supervision and coordination of interventions for the purpose of treating the youth's mental health and substance abuse needs. The intervention is designed to enhance and improve the family's capacity to improve the youth's functioning in the home and community and may prevent the need for the youth's admission to an inpatient hospital, psychiatric residential treatment facility or other treatment setting. This service is delivered by one or more members of a team of qualified providers consisting of professional and paraprofessional staff, offering a combination of medically necessary in home therapy and therapeutic training and support.

1.

In-Home Therapy: In-home therapy is a structured, consistent, strength-based therapeutic relationship between a licensed clinician and the youth and family. The licensed clinician, in collaboration with the family and youth, develops an individualized treatment plan and, using established psychotherapeutic techniques, and intensive family therapy works with the entire family or a subset of the family to implement focused structural or strategic interventions to advance therapeutic goals. In addition, the clinician assists in identifying and utilizing community resources and develops and maintains natural supports for the youth and parent(s)/guardian(s)/caregiver(s) in order to promote sustainability of treatment gains. Phone contact and consultation are provided as part of the intervention. In-Home therapy is performed by a licensed clinician who meets the qualifications of an in-home therapist as described section below.

In-Home Therapy includes the following:

- Assessments;
- Development of an individualized treatment plan by the qualified practitioner in partnership with the youth and parent(s)/guardian(s)/caregiver(s) and, with required consent, in consultation with other providers that is designed to address the youth's mental health or substance abuse condition;
- Ongoing monitoring and modification of the individualized treatment plan as indicated;
- Review/development of a risk management/safety plan;
- Phone and face-to-face consultation with other providers, individuals and entities who may impact the youth's treatment plan;
- Family counseling through which the licensed clinician works with the entire family, or a subset of the family, to advance therapeutic goals; and
- Referral to other services as needed.

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2. Therapeutic training and support is a service provided by an associate-level or bachelor-level paraprofessional working under the supervision of a clinician to support implementation of the in-home therapists treatment plan in order to achieve the goals of the that plan. The paraprofessional assists a licensed clinician in implementing the therapeutic objectives of the individualized treatment plan. Phone contact and consultation may be provided as part of the intervention.

Therapeutic training and support includes the following:

- Providing guidance to the youth and parent(s)/guardian(s)/caregiver(s) in implementing the treatment plan;
- Providing skills training for youth and parent(s)/guardian(s)/caregiver(s) in support of the treatment plan goals; and
- Monitoring the youth's and parent(s)/guardian(s)/caregiver(s) progress on achieving treatment plan goals and communicating regularly with the clinician so that the treatment plan can be modified and necessary.

Settings: In home therapy services may be provided in any setting where the child is naturally located including, but not limited to, the home (including foster homes and therapeutic foster homes), schools, child care centers, and other community settings.

Providers: The following practitioners may provide any component of in-home therapy as described above: In-home therapy services are delivered by the following practitioners: LICSW, LCSW, LMFT, LMHC, Licensed psychologist, Master's level counselors, marriage and family therapy interns, mental health counselor interns, psychiatric nurse mental health clinical specialists, psychiatric nurse mental health clinic specialists trainee, psychiatric nurses, psychiatrists, psychiatry residents, psychology interns. The following practitioners may provide any component of therapeutic training and support as described above: Associate-level counselors / paraprofessionals, bachelor-level counselors / paraprofessionals. Practitioners must be working under an employment or contractual arrangement with one of the following outpatient hospitals, community health centers, mental health centers, other clinics and private agencies certified by the Commonwealth.

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d. **Therapeutic Mentoring Services**: (Services described in this section are effective October 1, 2009.)

Therapeutic mentoring services are structured, one-to-one, strength-based services that are designed to help ameliorate behavioral health (mental health or substance abuse) related conditions which prevent the youth from appropriate social functioning. These services must be delivered according to an individualized treatment plan developed by either an outpatient clinician, an in-home therapy clinician or, for youth enrolled in Intensive Care Coordination, a care planning team. Progress toward meeting the identified goal(s) must be documented and reported regularly to the provider responsible for the youth's treatment plan.

The therapeutic mentor does not provide social, educational, artistic, athletic, recreational or vocational services.

Settings: Therapeutic mentoring services are provided to youth in any setting where the youth resides, such as the home (including foster homes and therapeutic foster homes), school, child care centers and other community settings.

Providers: Therapeutic mentoring services are delivered by therapeutic mentors. Practitioners must be working under an employment or contractual arrangement with on of the following: outpatient hospitals, community health centers, mental health centers, other clinics, and private agencies certified by the Commonwealth. Providers of therapeutic mentoring utilize therapeutic mentors to provide these services.

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e **Family Support and Training:** (Services described in this section are effective July 1, 2009.)

A family support and training partner addresses goals established in an individualized treatment plan in order to resolve or ameliorate the youth's mental health, behavioral and emotional needs through enhancing the capacity of the parent(s)/guardians/caregivers) to implement activities required to meet the goals of the plan. Family support and training is a skill-building support and not a form of therapy or counseling. The individualized treatment plan must be developed by either an outpatient clinician, an In-home therapy clinician or, for youth enrolled in Intensive Care Coordination, a care planning team. These services include the following when they are relevant to the goals in the youth's individualized care plan:

- providing guidance to parent(s)/guardians(s)/caregiver(s) on navigating systems that support youth with mental health, behavioral and emotional needs, such as working effectively with state agency case managers, school system officials, provider agency staff and clinicians;
- fostering empowerment of parent(s)/guardian(s)/caregiver(s) by offering supportive guidance for parents of youth with mental health needs and encouraging participation in peer/parent support and self-help groups;
- providing guidance to the parent(s)/guardian(s)/caregiver(s) how to find, access and use formal and informal community-based resources (e.g., after-school programs, food assistance, housing resources, youth-serving systems, etc.); and
- modeling these skills for parent(s)/guardians(s)/caregiver(s).

Family support and training services do not include respite care or child care services.

Settings: Family support and training services are provided in any setting where the youth resides, such as the home (including foster homes and therapeutic foster homes), and other community settings.

Providers: Family support and training services are delivered by a family support and training partner. A family support and training partner must be working under an employment or contractual arrangement with one of the following: outpatient hospitals, community health centers, mental health centers, other clinics and private agencies certified by the Commonwealth.

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**Definitions:**

**Associate-level counselors/paraprofessional**
Associate-level counselors/paraprofessionals must have an associate's degree in a human services field from an accredited academic institution and one (1) year of relevant experience working with families or youth. If the associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Associate-level counselors/paraprofessionals are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Bachelor-level counselors/paraprofessional**
Bachelor-level counselors/paraprofessionals must have a bachelor's degree in a human services field from an accredited academic institution and one year of relevant experience working with families or youth. If the bachelor's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Bachelor-level counselors/paraprofessionals are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Behavior Management Monitor**
Behavioral management monitors must have a bachelor's degree in a human services field from an accredited university and one (1) year of relevant experience working with families, children or adolescents who require behavior management, or an associate's degree and a minimum of two (2) years of relevant experience working with families, children or adolescents who require behavior management. Behavior management monitors are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist..

**Certified Alcoholism/Drug Abuse Counselor (CADAC)**
Certified by the private Massachusetts Board of Substance Abuse Counselor Certification (MBSACC). CADAC certification requires a combination of either a Master's degree in a "behavioral science area" and 2,000 hours of supervised experience or a Bachelor's degree in a behavioral science area and 4,000 hours of supervised experience or an Associates' degree in a behavioral science area and 6,000 hours of supervised experience. Certification also requires documentation of having received a minimum of 270 clock hours of continuing education related to the five domains for alcohol and other drug abuse. Consistent with applicable state licensure requirements, certified alcoholism/drug abuse counselors are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Certified Alcoholism/Drug Abuse Counselor II (CADAC II)**
Certified by the private Massachusetts Board of Substance Abuse Counselor Certification (MBSACC). CADAC II certification requires a master's degree (or higher) from a regionally accredited academic institution in a human services behavioral sciences field with a clinical application (i.e., practicum); 2,000 hours of supervised experience and documentation of completion of 300-hour practicum. Consistent with applicable State licensure requirements, certified alcoholism/drug abuse counselor IIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist..

**Developmental-Behavioral Pediatrician**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is board-certified in Pediatrics and either board-eligible or board-certified in Developmental-Behavioral Pediatrics

**Developmental-Behavioral Pediatric Fellow**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is board-certified in Pediatrics and enrolled in a training program in Developmental-Behavioral Pediatrics accredited by the Accreditation Council for Graduate Medical Education (ACGME). Services provided by the Developmental-Behavioral Pediatric Fellow must be provided in a setting approved for training by the sponsoring training institution, under supervision of a board certified or eligible Developmental-Behavioral Pediatrician, consistent with applicable state licensure requirements.

**Family Support and Training Partner**
A family support and training worker must have experience as a caregiver of a youth with special needs, preferably youth with behavioral health needs, experience in navigating any of the youth and family-serving systems and teaching family members who are involved with the youth and family serving systems, and either: a bachelor's degree in a human services field from an accredited academic institution, or an associate's degree in a human services field from an accredited academic institution and one (1) year of experience working with children/adolescents/transition-age youth and families, or a high school diploma or General Education Development (GED) and a minimum of two (2) years of experience working with children/adolescents/transition age youth and families. If the bachelor's or associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Family partners are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Alcohol and Drug Counselor I – LADC I**
A person licensed by the Department of Public Health to conduct an independent practice of alcohol and drug counseling, and to provide supervision to other alcohol and drug counselors, as defined in 105 CMR 168.000. These requirements include: a master's or doctoral degree in behavioral sciences, a minimum of 270 hours of training in substance abuse counseling, 300 hours of supervised practical training and 6,000 hours of supervised alcohol and drug counseling work experience.

**Licensed Alcohol and Drug Counselor II – LADC II**
A person licensed by the Department of Public Health to practice alcohol and drug counseling under clinical supervision, as defined in 105 CMR 168.000. These requirements include: a high school diploma or equivalent, a minimum of 270 hours of training in substance abuse counseling, 300 hours of supervised practical training and 6,000 hours of supervised alcohol and drug counseling work experience (4,000 if applicant holds a bachelor's degree). Consistent with applicable state licensure requirements, LADC IIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

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**Licensed Alcohol and Drug Counselor Assistant – LADC III**
A person licensed by the Department of Public Health to provide recovery based services under direct clinical and administrative supervision, as defined in 105 CMR 168.000. These requirements include a high school diploma or equivalent, 2,000 hours of work experience in the alcohol or drug abuse field and a minimum of 50 hours of training in substance abuse counseling. Consistent with applicable state licensure requirements LACD IIIs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Independent Clinical Social Worker (LICSW)**
A person with a current, valid, unrestricted license to practice as an LICSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: master's or doctoral degree in Social Work from a program accredited by the Council on Social Work Education and two years supervised experience.

**Licensed Clinical Social Worker (LCSW)**
A person with a current, valid, unrestricted license to practice as an LCSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: master's or doctoral degree in Social Work from a program accredited by the Council on Social Work Education. Consistent with applicable state licensure requirements, LCSWs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Social Worker (LSW)**
A person with a current, valid, unrestricted license to practice as an LSW, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: a bachelor's degree in Social Work from a program accredited by the Council on Social Work Education or a bachelor's degree in any subject and 3500 hours of supervised experience providing social work services. Consistent with applicable state licensure requirements, LSWs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Social Work Associate (LSWA)**
A person with a current, valid, unrestricted license to practice as an LSWA, issued by the Massachusetts Board of Registration of Social Workers. These requirements include: an associate degree, or at least sixty credit hours of college education, in the fields of social work, psychology, counseling or other similar human services field, from an accredited college or university; or a baccalaureate degree in any field from an accredited college or university; or a minimum of one thousand (1000) hours of education in social work theory and methods in courses or programs approved by the Board of Registration of Social Workers. Consistent with applicable state licensure requirements, LSWAs are supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Licensed Marriage and Family Therapist (LMFT)**
A person with a current, valid, unrestricted license to practice as a LMFT, issued by the Massachusetts Board of Registration of Allied Mental Health Professionals. These requirements include: a master's degree in the mental health field (including, but not restricted to, counseling, family therapy, psychology, etc.) from an accredited college or university and two years supervised experience.

**Licensed Mental Health Counselor (LMHC)**
A person with a current, valid, unrestricted license to practice as a LMHC, issued by the Massachusetts Board of Registration of Allied Mental Health Professionals. These requirements include: a master's degree in the mental health field (including, but not restricted to, counseling, family therapy, psychology, etc.) from an accredited college or university and two years supervised experience.

**Licensed Psychologist**
A person with current, valid, unrestricted license to practice psychology issued by the Massachusetts Board of Registration in Psychology. These requirements include a doctoral degree from a program accredited by the American Psychological Association and two years supervised experience

**Marriage and Family Therapy Intern**
The marriage and family therapy intern must be a second-year, clinical-track student in a structured field placement that is a component of a master's in marriage and family therapy or a master's in a counseling program that is fully accepted by the Board of Allied Mental Health and Human Services Profession. The marriage and family therapy intern must provide services under the direct supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse, or Nurse Clinical Specialist consistent with applicable state licensure requirements.

**Master's Level Counselor**
A person with a master's or doctoral degree in a mental health field (including, but not restricted to, counseling, family therapy, social work, psychology, etc.) from an accredited college or university who is supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse, or Nurse Clinical Specialist.

**Mental Health Counselor Intern**
The Mental Health Counselor Intern must be a second-year, clinical-track student in a structured field placement that is a component of a master's in mental health counseling or a master's in a counseling psychology program that is fully accepted by the Board of Allied Mental Health and Human Services Profession Consistent with applicable state licensure requirements, the Mental Heath Counselor Intern provides services under the supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Psychiatric Nurse**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Board of Registration in Nursing, a master's degree in the mental health fields and one (1) year of experience delivering mental health services to families and youth. Consistent with applicable state licensure requirements, the Psychiatric Nurse provides services under the supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Psychiatric Nurse Mental Health Clinical Specialist**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Massachusetts Board of Registration in Nursing and current, valid, unrestricted authorization by the Massachusetts Board of Registration in Nursing to practice as a Psychiatric Nurse Mental Health Clinical Specialist.

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**Psychiatric Nurse Mental Health Clinical Specialist Trainee**
A person with a current, valid, unrestricted license to practice as a registered nurse issued by the Massachusetts Board of Registration in Nursing who is enrolled in a Psychiatric Nurse Mental Health Clinical Specialist training program recognized by the Massachusetts Board of Registration in Nursing. Consistent with applicable state licensure requirements, services provided by the Psychiatric Nurse Mental Health Clinical Specialist trainee are provided under supervision of a Psychiatric Nurse Mental Health Clinical Specialist.

**Psychiatric Resident**
A person with a current, valid, full or limited license to practice medicine issued by the Massachusetts Board of Registration in Medicine, who is enrolled in an Accreditation Council for Graduate Medical Education (ACGME)-accredited residency training program in either adult psychiatry or child and adolescent psychiatry. Services provided by the Psychiatric intern are provided in a setting approved for residency training by the sponsoring training institution, under supervision of a board certified or eligible child psychiatrist, consistent with applicable state licensure requirements.

**Psychiatrist**
A person with a current, valid, unrestricted license to practice medicine issued by the Massachusetts Board of Registration in Medicine. Psychiatrists treating youth ages 0 to 19 shall be board-certified or board-eligible in child and adolescent psychiatry. Psychiatrists treating youth ages 19 to 21 shall be trained in adult psychiatry.

**Psychology Intern**
The psychology intern must be admitted to doctoral candidacy in a structured clinical, or counseling, American Psychological Association (APA)-approved doctoral program. Consistent with state licensure requirements, services provided by a psychology intern are provided under the direct supervision of a licensed psychologist.

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**Social Work Intern**
The Social Work Intern must be a second-year, clinical-track student in a structured field practicum that is a component of an MSW program that is fully accredited by the Council on Social Work Education. Consistent with applicable state licensure requirements, services are provided under the direct supervision of a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist.

**Therapeutic Mentors**
Therapeutic mentors must be 21 years of age or older and have either: a bachelor's degree in a human service field from an accredited academic institution and one (1) year of relevant experience working with children/adolescents/transition age youth; or, an associate's degree in a human services field from an accredited academic institution and one (1) year of relevant experience working with children/adolescents/transition age youth; or, a high school diploma or General Educational Development (GED) and a minimum of two (2) years of experience working with children/adolescents/transition age youth. If the bachelor's or associate's degree is not in a human services field, additional life or work experience may be considered in place of the human services degree. Therapeutic mentors must be supervised by a LICSW, LMFT, LMHC, LCSW, LADC I, Psychologist, Psychiatric Nurse or Nurse Clinical Specialist. .

**Item 5: Physician's Services**

See Supplement to Attachment 3.1-A, P.1, Item 1, #1.

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t. Early and Periodic Screening, Diagnostic and Treatment services for individuals under 21 years of age, and treatment of conditions found.

The rate methodology used to create the following fee schedules for are based on a model budget that accounts for program costs (direct and indirect) and maximum productive time specific for the provision of each service. The data sources for program costs include cost reports from providers of similar behavioral health services and budget data from other purchasers of similar services. Maximum productive time for each service was derived by assessing the time available for direct billable contacts by eligible direct care staff.

Mobile Crisis Intervention – fee schedule established by the Division of Health Care Finance and Policy. The fee-for-service rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

Behavioral Management Therapy – fee schedule established by the Division of Health Care Finance and Policy.. The fee-for-service rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

Behavioral Management Monitoring - fee schedule established by the Division of Health Care Finance and Policy. The rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

In-Home Therapy – fee schedule established by the Division of Health Care Finance and Policy.. The fee-for-service rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

Therapeutic training and support – fee schedule established by the Division of Health Care Finance and Policy. The fee-for-service rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers

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Therapeutic Mentoring Services – fee schedule established by the Division of Health Care Finance and Policy. The fee-for-service rates were set as of December, 15 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

Family Counseling Support Services - fee schedule established by the Division of Health Care Finance and Policy. The fee-for-service rates were set as of November 1, 2008. These fixed rates are effective for service provided on or after July 1, 2009. All rates are published on www.mass.gov/dhcfp. Except as otherwise noted in the plan, state developed fee schedule rates are the same for both governmental and private providers.

# EXHIBIT B

13.e. Behavior Rehabilitation Services

Behavior Rehabilitation Services are provided to children/youth to remediate debilitating psycho-social, emotional and behavioral disorders. To provide early intervention, stabilization and development of appropriate coping skills upon the recommendation of a licensed practitioner of the healing arts within the scope of their practice within the law. Prior approval is required.

Service Description

Behavior Rehabilitation Services may be provided in a variety of settings and consist of interventions to help children/youth acquire essential coping skills. Specific services include milieu therapy, crisis counseling, regular scheduled counseling and skills training. The purpose of this service is to remediate specific dysfunctions which have been explicitly identified in an individualized written treatment plan that is regularly

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reviewed and updated. Client centered treatment services may be provided individually or in groups and may include the child's/youth's biological, adoptive or foster family. Treatment is focused upon the needs of the child/youth, not the family unit. These services may be in conjunction with or in support of any other professional treatment services the child/youth may be receiving as required by the diagnosed condition.

The services will include crisis intervention and counseling on a 24-hour basis to stabilize the child's/youth's behavior until resolution of the problem is reached, or until the child/youth can be assessed and treated by a qualified Mental Health Professional or licensed Medical Practitioner.

Regular scheduled counseling and therapy is provided to remediate specific dysfunctions which have been explicitly identified in the treatment plan.

Skill training is provided to assist the child/youth in the development of appropriate responses to social and emotional behaviors, peer and family relationships, self-care, conflict resolution, aggression reduction, anger control, and to reduce or eliminate impulse and conduct disorders.

Milieu therapy refers to those activities performed with children/youth to normalize their psycho-social development and promote the safety of the child/youth and stabilize their environment. The child/youth is monitored in structured activities which may be developmental, recreational, academic, rehabilitative, or a variety of productive work activities. As the child/youth is monitored, planned interventions are provided to remediate the identified dysfunctional or maladaptive behaviors and promote their replacement with more developmentally appropriate responses.

Population To Be Served.

The population serviced will be EPSDT eligible children/youth who have primary mental, emotional and behavioral disorders and/or developmental disabilities that prevent them from functioning at developmentally appropriate levels in their home, school, or community. They exhibit such symptoms as drug and alcohol abuse, anti-social behaviors that require close supervision and intervention and structure, sexual behavior problems, victims of severe family conflict, behavioral disturbances often resulting from psychiatric disorders of the parents, medically compromised and developmentally disabled children/youth who are not otherwise served by the State Mental Health Developmental Disability Services Division.

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Provider Qualifications.

Program Coordinator: Responsibilities include supervision of staff, providing overall direction to the program, planning and coordinating program activities and delivery of services, and assure the safety and protection of children/youth and staff.

The Minimum Qualifications- A Bachelor's Degree, preferably with major study in psychology, Sociology, Social Work, Social Sciences, or a closely allied field, and two years experience in the supervision and management of a residential facility for care and treatment of children/youth.

Social Service Staff: Responsibilities include Case Management and the development of service plans; individual, group and family counseling; individual and group skills training; assist the Child Care Staff in providing appropriate treatment to children/youth, coordinate services with other agencies; document treatment progress.

The Minimum Qualifications- A Masters Degree with major study in Social Work or a closely allied field and one year of experience in the care and treatment of children/youth, or a Bachelor's Degree with major study in Social Work, psychology, Sociology, or a closely allied field and two years experience in the care and treatment of children/youth.

Child Care Staff: Responsibilities include direct supervision and control of the daily living activities of children/youth, assisting social service staff in providing individual, group and family counseling, skills training, provide therapeutic interventions to children/youth as directed by the individual treatment plans to address behavioral and emotional problems as they arise, monitor and manage the children's/youth's behavior to provide a safe, structured living environment that is conducive to treatment.

Minimum Qualifications- Require that no less than 50% of the Child Care Staff in a facility have a Bachelor's Degree. Combination of formal education and experience working with children/youth may be substituted for a Bachelor's Degree. Child Care are members of the treatment team and work under the direction of a qualified Social Service staff or a Program Coordinator.