

## **Overview of the Case and Summary of the Trial in *Rosie D. v. Romney***

### **I. Overview**

*Rosie D. v. Romney* is a class action lawsuit brought to compel Massachusetts to provide intensive home-based mental health services that will enable children with severe psychiatric disabilities to receive treatment and support in their homes and home communities. The plaintiffs include eight named children and a class of over 15,000 children throughout the Commonwealth with serious psychiatric and emotional disabilities.

Federal Judge Michael A. Ponsor presided over a six-week trial last spring in the Western Division of the U.S. District Court in Springfield. The plaintiffs maintained that the Commonwealth violated the federal Medicaid Act by failing to provide home-based services to children, and by failing to inform children and their families about the services to which they are entitled. The plaintiffs presented more than thirty witnesses who testified about the effectiveness of intensive home-based services, the state's failure to provide these services, the thousands of children who need these services, and the harm to the children who are denied this treatment.

The defendants are Governor Mitt Romney; the Secretary of the Executive Office of Health and Human Services; the Secretary of the Executive Office of Administration and Finance; and the director of the Massachusetts Office of Medicaid. Attorneys from the Center for Public Representation, Wilmer Cutler Pickering Hale and Dorr, LLP, and the Mental Health Legal Advisors Committee represent the plaintiffs.

### **II. Legal Claims**

The federal Medicaid Act entitles eligible children to medically necessary treatment, including mental health care. Under Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) mandate, all states must screen eligible children, diagnose conditions found through a screen, and furnish appropriate treatment to correct or ameliorate physical and mental illnesses. (42 U.S.C. §1396d(a)(4)). In a nutshell, Medicaid-eligible individuals under the age of 21 who are screened and diagnosed with behavioral, emotional or psychiatric disabilities must receive preventative and rehabilitative treatment.

Attorneys for the plaintiff class contended that state officials are violating the Medicaid Act by failing to comply with its EPSDT mandate. Plaintiffs' attorneys maintain that state officials have failed to inform children and their families about covered mental health services and have failed to provide those services promptly.

### **III. The Children**

The *Rosie D.* lawsuit was brought in October 2001 by nine plaintiffs aged 5 to 16 who had been hospitalized or at risk of hospitalization due to the lack of intensive home-based mental health services. In March 2002, Judge Ponsor allowed the case to proceed as a class action.

*Children – including the named plaintiffs – cited in court documents are covered under a protective order, and their names may not be published.*

The *Rosie D.* class includes an estimated 15,000 children across the Commonwealth who are eligible for Medicaid (MassHealth) and who suffer from emotional, behavioral and psychiatric disorders. Many of these children have been hospitalized in locked psychiatric wards or detained in residential facilities because the state has failed to develop and fund intensive home-based services that would allow them to be treated at home and in their communities.

Guardians of three of the named plaintiffs testified about their decade-long struggles to secure appropriate mental health services. One parent pointed out that the state will provide for her son's psychiatric hospitalization, but will not provide less costly services that can prevent hospitalization.

Her son's psychiatrist, Dr. Janet Wozniak of Massachusetts General Hospital, testified that these seriously ill children need more than medication to address their behavioral health needs. "They also need behavior modification therapy and crisis intervention that includes working with the family to determine ways to best defuse a situation without necessarily moving the child."

According to records and documents produced by the state during the lengthy discovery process, hundreds of *Rosie D.* class members have been detained inappropriately in institutions, psychiatric facilities, congregate care settings, or totally denied access to services. In addition, children in crisis have been "boarded" in hospital emergency rooms and pediatric wards. Not only were there no open beds for children in crisis, but there were no home-based programs available to prevent hospitalization or other out of home placements. Current statistics indicate that up to 100 children are "stuck" in hospitals and hundreds more stuck in residential facilities – children who are clinically stable and ready to move to less restrictive settings, but are forced to remain institutionalized due to a lack of available home-based services.

### **IV. The Experts**

During the years leading up to trial, plaintiffs' attorneys retained sixteen nationally renowned experts to undertake three separate studies and prepare eighteen reports. They conducted a comprehensive analysis of the need for intensive home-based services for children with psychiatric disabilities in Massachusetts, and then devised a plan to address that need. The experts testified at trial about: (1) the effectiveness of

intensive home-based services and the dramatic benefits to children in many other states that provide this treatment; (2) the lack of home-based services in Massachusetts and the consequences to children who cannot obtain them; (3) the need for these services in Massachusetts, based upon a random sample of children with serious emotional disabilities; and (4) the cost of providing intensive home-based services as part of the state's Medicaid program.

Based on visits to a dozen programs throughout the Commonwealth, interviews with 43 randomly selected children and their families, review of hundreds of medical records, and meetings with parents, guardians, and providers, the clinical experts concluded that the vast majority of children they assessed needed, but were not provided, home-based services.

The fiscal expert, who analyzed data and financial models, testified that Massachusetts was wasting over \$22 million dollars a year on unnecessary hospitalization, and that simply by redirecting available funding, it could serve more than 1,000 children annually in home-based programs.

In extensive reports filed in the fall of 2004, the experts found the current behavioral health system for children and adolescents is fragmented and disjointed, and that intensive home-based services are not being provided to children with serious emotional disturbance in Massachusetts.

The experts recommended that Massachusetts adopt a statewide initiative for intensive home-based services, through a program financed with Medicaid funds under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) mandate. *The experts' individual reports have been synthesized into one document that is available in hard copy or in electronic format.*

## **V. Intensive Home-Based Services**

Intensive home-based services constitute a well-established mental health treatment that is designed to meet children's needs in their birth, foster or adoptive homes, or in the communities where they live. Studies demonstrate that intensive home-based services are cost-effective, because it is cheaper to provide services in the community than in residential facilities and hospitals.

Other states, including Arizona, California, Delaware, Maine, New Jersey, North Carolina, Pennsylvania, Rhode Island, and Vermont fund intensive home-based services as part of their Medicaid programs. These services are based upon a single treatment plan, designed by a single treatment team that includes the family, a case manager responsible for arranging and overseeing the services, and relevant professionals. The services include trained behavioral staff to support a child at home, in school, and in the community; crisis intervention in the home; and other clinical supports. Intensive home-based services are based upon a comprehensive assessment to determine the treatment and supports a child needs.

Massachusetts officials acknowledge the effectiveness of these services. In fact, the state offers two pilot programs that have been highly successful in treating children, reducing hospitalization, and saving money. However, both programs have significant limitations. Coordinated Family Focused Care (CFFC) is designed to serve only 50 children in each of five cities: Springfield, New Bedford, Brockton, Lawrence and Worcester. The other pilot project, Mental Health Special Program for Youth (MHSPY), only can serve 70 children in five communities: Cambridge, Somerville, Medford, Malden and Everett.

In the remaining 341 communities, Medicaid-eligible children with serious emotional disturbance cannot get intensive home-based services. Instead, they must rely on short-term, inpatient hospitalization, acute care, medication and brief counseling sessions.

Major providers from Bristol County, Essex County and Berkshire County testified that they cannot “patch” together these short term interventions into intensive home-based services. The providers also pointed out the inequity in offering intensive services under CFFC to children in one community, and denying them to children in the next town.

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