



VIA FIRST CLASS MAIL AND ELECTRONIC MAIL

May 19, 2015

Jennifer Kent, Director
California Dept. Health Care Services
1501 Capitol Avenue
Sacramento, CA 95814
916 440-7400/FAX 916 440-7404

Re: Denial of Access to Medi-Cal Mental Health Crisis
Services for Children and Youth

Dear Ms. Kent,

We are writing to you because California children and youth face great difficulties accessing Medi-Cal mental health crisis services. All too frequently, children are needlessly forced into hospital emergency rooms or inpatient psychiatric facilities for lack of meaningful access to community-based crisis services.

Attached please find a “white paper” released in January 2015 by the California Council of Mental Health Agencies and other agencies, documenting these difficulties. The circumstances described in the white paper, which echo complaints that we and other advocacy groups have received from clients, appear to violate mandatory protections in federal Medicaid law. These include the EPSDT mandate (42 U.S.C. § 1396d(r)(5)) and the requirement for comparability between Medicaid recipients. 42 U.S.C. §1396a(a)(10)(B)(ii).

Federal and state law also requires that the Medi-Cal program offer children and youth services in the most integrated setting appropriate to

their needs. Americans with Disabilities Act, 42 U.S.C. § 12312 et seq.; Section 504 of the Rehabilitation Act of 1963, 29 U.S.C. § 794, et seq.; Government Code § 11135(a) and (b). Most children in a mental health crisis are best served through mobile crisis intervention and crisis stabilization services rather than an inpatient setting. These services are available in some counties in California, but in other counties, they are limited or nonexistent.

As a result, children and youth experiencing a mental health crisis are brought to hospital emergency rooms by police, paramedics or psychiatric emergency response teams in many counties because of the absence of these more effective, less restrictive alternatives. In emergency rooms, children receive no mental health treatment, and instead face daunting delays of many hours just to be evaluated, only to be followed by a long, costly transport by ambulance to an inpatient psychiatric facility, often in another county. Many of these delays and hospitalizations would be avoided if DHCS would require every county to provide the full array of children's crisis care services that are covered and are legally required to be provided under federal Medicaid law.

We recognize that crisis intervention and crisis stabilization are covered by Medi-Cal under existing regulations. Cal. Code of Regs., Tit. 9, §§ 1810.209, 1810.210. However, DHCS has failed to ensure that counties actually provide children's crisis care, including mobile crisis intervention, and that the care that they do provide is adequate to meet the need of children in the county. Many counties have no mobile crisis services, while others have mobile crisis services that are effectively unavailable to children because their capacity is disproportionately small, given the size of the county and the demands of its adult mental health consumers.¹

Mental health crisis services for children are part of the mandatory array of Medicaid EPSDT services. In states such Washington and Massachusetts,

¹ In 2012, Disability Rights California conducted a survey of county mental health crisis programs. Of the 17 counties that responded, 6 reported that they had no mobile crisis service for adults or children.

mobile crisis intervention was an express part of the remedial plan adopted following litigation to ensure access to intensive, coordinated, home-based mental health services for children. See, *Rosie D. v. Romney*, 410 F.Supp. 18 (D. Mass. 2006), see www.rosied.org; *T.R. v. Quigley and Teeter*, No. C09-1677-TSZ, U.S. District Court, Western District of Washington, see Final Settlement agreement at page 39, https://www.dshs.wa.gov/sites/default/files/BHSIA/dbh/documents/cbhtfulla_greement.pdf.

“Under the EPSDT provisions, states have an obligation to cover every type of health care or service necessary for EPSDT corrective or ameliorative purposes that is allowable under § 1396d(a). The states also have an obligation to see that the services are provided when screening reveals that they are medically necessary for a child.” *Katie A. ex rel. Ludin v. Los Angeles County*, 481 F.3d 1150, 1158 (9th Cir. 2007). “Even if a state delegates the responsibility to provide treatment to other entities such as local agencies or managed care organizations, the ultimate responsibility to ensure treatment remains with the state.” *Id.* at 1159.

We ask that the Department review its existing policies and take action to ensure that children and youth in every county have community-based crisis intervention services available as an effective alternative to psychiatric hospitalization. Specifically, we ask that the Department immediately issue a Mental Health Information Notice to all Behavioral Health Directors and Mental Health Plans (MHPs) instructing them that the full array of medically necessary crisis services for youth under age 21 must be available in sufficient amount, duration and scope to meet the needs of beneficiaries. *This means that crisis intervention and crisis stabilization, including mobile crisis services, must be available as needed in every county.* The Department must take this step in a timely manner in light of its application to the federal Centers for Medicare and Medicaid Services (CMS) to renew the California's 1915(b) waiver for specialty mental health services, which expires on June 30, 2015.

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We welcome the opportunity to meet with you and your staff at your earliest convenience regarding steps that the Department may take to ensure that children have access to Medi-Cal mental health crisis services they need.

Thank you for your consideration of our request.

Sincerely,



Kimberly Lewis
National Health Law Program

Robert Newman
Western Center on Law and Poverty

Melinda Bird,
Disability Rights California

Ira Burnim
Bazelon Center for Mental Health Law

Leecia Welch
National Center for Youth Law

Jim Preis
Mental Health Advocacy Services

Enclosure

cc: Victoria Wachino, Director, Center for Medicaid and CHIP Services
(CMCS)