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JUL 29 2004  
CENTRAL DISTRICT OF CALIFORNIA  
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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

12 EMILY Q. et al.,  
13 )  
14 ) Plaintiffs,  
15 )  
16 ) v.  
17 ) DIANA BONTÁ,  
18 ) Defendant.

CASE NO. CV 98-4181 AHM (AJWx)  
[Signature] ORDER RE: PLAN TO  
INCREASE TBS UTILIZATION  
AND JOINT STIPULATION IN  
SUPPORT THEREOF.  
Honorable A. Howard Matz  
Ctroom: 14

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JUL 30 2004  
BY [Signature] 007

19 Following the hearing on this matter on December 22, 2003 and as required  
20 by the Interim Order Clarifying Implementation of the Judgment entered in this  
21 matter on January 29, 2004, the parties submit the following proposed Order and  
22 Joint Stipulation regarding a plan to increase utilization of Therapeutic Behavioral  
23 Services (TBS).

**JOINT STATEMENT OF THE PARTIES.**

25 On May 11, 2001, this Court entered a final judgment in the case, ordering the  
26 State Defendant to provide TBS to children and youth under the age of 21 through  
27 the Medi-Cal Early and Periodic Screening, Diagnosis and Treatment (EPSDT)  
28 program. In late 2003, the Plaintiffs went back to court seeking a modification of

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CENTRAL DISTRICT OF CALIFORNIA  
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1 the judgment on the primary ground that TBS approval rates are too low statewide.  
2 Although the State disagreed with the Plaintiffs, on January 29, 2004, this Court  
3 issued an Interim Order requiring Plaintiffs to “provide Defendant with a proposed  
4 plan to increase TBS utilization significantly on a statewide basis and in  
5 underserved counties.”<sup>1</sup>

6 The Interim Order set forth a process that required Plaintiffs to develop a  
7 proposed plan and required the State to provide a written response to Plaintiffs’ plan  
8 and, if desired, a plan with counter-proposals. Thereafter, the parties were required  
9 to meet regarding the proposals and, following that first meeting, convene a second,  
10 public meeting at which individual stakeholders, agreed upon in advance by the  
11 parties, were to be invited. The Order required the parties to provide the  
12 stakeholders with copies of their respective plans for discussion at the stakeholders’  
13 meeting.

14 Since the entry of the Interim Order, the parties have worked collaboratively  
15 to meet the terms and spirit of the Interim Order. The parties exchanged plans and,  
16 thereafter, met and conferred extensively either in person or by telephone to discuss  
17 and debate the plans and to arrive at a consensus on the list of stakeholders, the  
18 logistics, format, and specific topics to be discussed at the stakeholders meeting and  
19 the written materials to be sent to the stakeholders in advance of the meeting. Much  
20 give and take ensued between the parties. As a result of this collaboration,  
21 stakeholders composed of TBS providers, Mental Health Plan (MHP)  
22 representatives, representatives from advocacy organizations, representatives from  
23 advisory groups to the State Department of Mental Health (DMH), State  
24 representatives, and Plaintiffs’ counsel met at the stakeholders’ meeting on April 12,  
25 2004. The stakeholders’ meeting was successful judging by the amount of

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27 <sup>1</sup> The Interim Order contained other directives addressed to the State related to the  
28 availability of TBS after favorable results have been achieved, TBS certifications at

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1 discussion that occurred and volume of information that the stakeholders gave to the  
2 parties.

3 After the stakeholders' meeting the parties continued to meet to discuss  
4 elements of a plan to increase the utilization of TBS. On May 6, 2004, this Court  
5 approved a stipulation extending the time up to and through June 1, 2004, for the  
6 parties to complete their negotiations and to submit a joint stipulation to the Court  
7 and/or proposed orders for the Court's consideration.

8 One important area of agreement was on DMH's position that direct behavior  
9 support services like TBS are best delivered in the context of a comprehensive,  
10 individualized treatment plan, based on family-centered mental health services  
11 where the child and family make their own decisions about the child's service plan.  
12 DMH also proposed that the State should measure the effectiveness of a MHP's  
13 delivery system for TBS and other specialty mental health services in relation to  
14 whether the delivery system enables children and their families to remain together  
15 and enables children to succeed at home, at school and in the community. Plaintiffs  
16 agree with both positions. Plaintiffs also agree with DMH's efforts to support and  
17 encourage a system of care approach, wraparound and other best and promising  
18 practices in delivering services to children with serious emotional disturbance.

19 Plaintiffs' position is that TBS utilization is disproportionately low and that  
20 the State's plan, which fails to set a minimum benchmark for utilization, does not  
21 fully address this problem. The State's position is that it is facing an unprecedented  
22 fiscal crisis. Accordingly, the State's plan to increase TBS utilization is premised  
23 upon activities which may be accomplished within existing resources. Nevertheless,  
24 the State reserves its right to maintain, as it did in opposing Plaintiffs' modification  
25 of the judgment, that no basis exists for a finding that TBS utilization is low.

26 The parties set forth below for the Court areas upon which they agree

27  
28 a state hospital, and expedited authorization procedures. All of the other directives  
have been implemented.

1 regarding elements of a plan to increase TBS utilization.

2 **A. AGREEMENTS RE: TBS DATA AND MONITORING.**

3 1. **Definition of Utilization Rate:** A TBS utilization rate is determined as  
4 follows: the number of children who receive TBS within the prior one-  
5 year period divided by the average monthly number of EPSDT-eligible  
6 children covered by a MHP during that same period.

7 2. **Data Collection:** DMH shall continue to obtain and analyze baseline data  
8 and data on TBS utilization and the other mental health services. DMH  
9 shall determine annual TBS utilization rates by MHP based upon paid  
10 claims data. DMH shall separately display information on TBS usage and  
11 other services for transition-age youth ages 18 to 20 available through its  
12 claims data.

13 3. **Monitoring TBS Rates and Performance Indicators.** DMH shall  
14 prepare comparative data on TBS utilization, as defined above, for each  
15 MHP, in combination with other performance indicators: rates of state  
16 hospital placements, psychiatric hospitalizations, and group home  
17 placements at Rate Classification Levels 12, 13, and 14. DMH shall also  
18 consider as an indicator, to the extent such data are available, rates at  
19 which youth with mental health needs or prescribed psychotropic  
20 medication are placed in juvenile halls by county and juvenile arrest rates  
21 by county and the numbers of children and youth placed at the California  
22 Youth Authority by county. DMH shall provide this data to Plaintiffs and  
23 make it available publicly by posting on its website. DMH agrees to  
24 compile and analyze the data by July 31, 2004 and to post the data on its  
25 website by August 30, 2004, unless the parties mutually agree to a  
26 different date.

27  
28 4. **Focused Reviews.** DMH agrees that it shall perform focused reviews of  
the mental health services provided to class members by MHPs. The

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1 focused reviews will examine quality of care and adequacy of services  
2 provided. The MHPs shall be selected for focused reviews by analyzing  
3 the MHP's rate of state hospital and/or out-of-home placements and/or  
4 rehospitalizations along with the TBS utilization rate and/or the other  
5 indicators listed above. SCANNED

6 **5. Protocol for Focused Reviews:** DMH shall consult with the Plaintiffs in  
7 the development of the protocol for the focused reviews.

8 **6. Corrective actions and technical assistance:** For those MHPs with the  
9 lowest, current TBS utilization rates in conjunction with stagnant or  
10 increasing state hospital and/or out-of-home placement rates, DMH will  
11 work with the MHPs through the existing contract between DMH and the  
12 California Institute for Mental Health (CIMH) to address TBS utilization.

13 a. To the extent that DMH, after a focused review, identifies an MHP  
14 which exhibits difficulty coordinating services for children and youth  
15 who may be eligible for TBS, DMH shall require, as part of a  
16 corrective action plan, the MHP to implement the Protocol for  
17 Coordinated Service Delivery System for Children and Youth, attached  
18 as exhibit A to this joint stipulation. *See* B.1, below.

19 **7. MHP Plan to Increase TBS utilization:** DMH shall consider the  
20 following areas and any issues specific to the individual MHP subject to  
21 focused review in assisting the MHP to develop its plan to improve  
22 utilization of TBS: 1) Increasing knowledge about TBS among major  
23 potential referral sources; 2) Assisting them in developing provider  
24 capacity; 3) Monitoring TBS requests, approvals and denials 4) Auditing  
25 for appropriate use of TBS; 5) Identifying Performance Improvement  
26 Projects or other quality improvement activities that could assist in  
27 establishing effective methods of increasing TBS utilization.

28 **8. DMH Monitoring Plan:** For those identified MHPs, DMH will develop a

1 monitoring plan based on the MHP's plan to improve utilization. DMH  
2 will require MHPs not making progress in improving their utilization to  
3 provide further information about how they will change their activities to  
4 be more successful in the future.

5 9. **TBS Audits:** Based upon the Governor's proposed budget, over the next  
6 3 years, DMH shall no longer conduct audits of TBS alone.

7 10. **TBS Notifications.** The Judgment requires MHPs to provide notifications  
8 to DMH when TBS is first approved and then every quarter thereafter.  
9 The parties agree to maintain the requirement for notifications of initial  
10 approvals. To simplify compliance and data collection, the parties agree to  
11 eliminate the requirement for quarterly notifications.

12 11. **TBS certifications:** DMH shall provide Plaintiffs with copies of all TBS  
13 certifications with non-discloseable information redacted, and not merely  
14 those in which TBS was found to be inappropriate.

15 **B. AGREEMENTS RE: STRATEGIES TO INCREASE TBS**  
16 **UTILIZATION.**

17 1. **Protocol for Coordinated Service Delivery System for Children and**  
18 **Youth:** The parties agree that a strategy to improve care and appropriate  
19 TBS utilization is to encourage MHPs to have a treating practitioner or  
20 treatment team as the single point of responsibility for all mental health  
21 services to class members. This strategy may include, but is not limited to  
22 the Protocol for Coordinated Service Delivery System for Children and  
23 Youth, a Child and Family Team approach and/or a wraparound approach.  
24 DMH further agrees to develop information for all MHPs on the  
25 components of the Child and Family Team approach.

26 2. **Continuous Quality Improvement:** DMH shall, to the extent priorities  
27 and resources allow, use its existing contract with CIMH to identify MHPs  
28 in counties in which rates of state hospital and/or out of home placement

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and/or rehospitalization rates for class members are declining. DMH will look at how these MHPs are using TBS, in combination with other factors, to support these outcomes and will work with these MHPs to disseminate policies, procedures and practices that may be helpful to other MHPs.

- 3. **MHP Quality Improvement Plans:** DMH supports the use of qualitative studies of effective services to children, including TBS. DMH and Plaintiffs will continue to discuss opportunities to use existing MHP Quality Improvement Program requirements/resources, which include a requirement that the MHPs conduct at least 2 quality improvement activities that meet the federal standards for Performance Improvement Projects, to require MHPs to conduct quality improvement activities that address effective services to children, including TBS.
- 4. **Fiscal Incentives:** DMH shall continue to research the availability of fiscal strategies within existing resources as a mechanism to encourage MHPs to further increase the use of TBS where appropriate.
- 5. **Outreach and Additional Informing.** DMH shall provide notice of TBS benefits on an annual basis to county social service and probation departments.

**C. AGREEMENTS RE: PRE-AUTHORIZATION REQUIREMENTS.**

- 1. **Availability of TBS for Class Members Who Are At Risk of Admission for Acute Psychiatric Inpatient Hospital Services:** Within 30 days of entry of this Order, DMH shall develop a DMH Letter clarifying for MHPs that TBS is available to class members who are at risk of admission for acute psychiatric inpatient hospital services and that the MHP may rely on documentation of the risk from a qualified TBS provider to verify this requirement for TBS eligibility. DMH shall transmit the letter to the Department of Health Services (DHS) for approval. DMH shall distribute the letter within 15 days of receipt of the approved letter

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from DHS.

**2. Additional Verification Standards:** DMH shall solicit input from stakeholders regarding the kinds of information that should be included in requests for MHP payment authorizations for TBS in order to assist MHPs to make appropriate authorization decisions more quickly and reliably and will work with Plaintiffs to develop a mutually agreeable list of the minimum elements for an initial authorization request and subsequent reauthorizations. Within 30 days of agreement with the Plaintiffs, DMH shall develop a DMH Letter informing MHPs of the minimum elements and shall transmit the letter to the Department of Health Services (DHS) for approval. DMH shall distribute the letter within 15 days of receipt of the approved letter from DHS.

**3. Notices of Action for Untimely Responses to Authorization Requests.** As required under the final judgment in the case, as part of its quarterly reports, DMH shall provide Plaintiffs with copies of all notices of action issued pursuant to 42 C.F.R. § 438.404 (c )(5) that deny TBS because the MHP did not make an MHP payment authorization within the time frames required by 42 C.F.R. § 438.210 (d).

**D. JURISDICTION AND RELATED MATTERS.** Plaintiffs reserve the right to request that the Court retain jurisdiction for an additional period of time depending on the extent of the improvements during the next 18 months. By entering into this stipulation pursuant to this Court’s Interim Order of January 29, 2004, the State does not waive its argument that the existing TBS utilization rate is appropriate and that nothing under the

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federal Medicaid Act or state law requires the State to ensure that a certain number of eligible Medi-Cal recipients each year receive a mental health benefit.

**IT IS SO STIPULATED.**

Dated: July 23, 2004

Respectfully Submitted  
Protection & Advocacy, Inc.

By: Melinda Bird  
Melinda Bird  
Attorney for Plaintiffs

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Irene Tamura  
Deputy Attorney General

**IT IS SO ORDERED:**

Dated: July 28, 2004

A. Howard Matz  
HONORABLE A. HOWARD MATZ  
UNITED STATES DISTRICT JUDGE

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**IT IS SO STIPULATED.**

Dated: \_\_\_\_\_

Respectfully Submitted  
Protection & Advocacy, Inc.

By: \_\_\_\_\_  
Melinda Bird  
Attorney for Plaintiffs

Dated: 7/26/04

By: Irene K. Tamura  
Irene Tamura  
Deputy Attorney General

**IT IS SO ORDERED:**

Dated: July 28, 2004

A. Howard Matz  
HONORABLE A. HOWARD MATZ  
UNITED STATE DISTRICT JUDGE

PROOF OF SERVICE

1 STATE OF CALIFORNIA ) ss.  
2 COUNTY OF LOS ANGELES )

3 I am over the age of eighteen years and not a party to the within action. I am employed in the  
4 office of a member of the Bar of this Court in the County of Los Angeles, State of California.  
My business address is 3580 Wilshire Boulevard, Suite 902, Los Angeles, California 90010.

5 On *July 26, 2004* I served the foregoing document(s) described as:

6 **[PROPOSED] ORDER RE: PLAN TO INCREASE TBS UTILIZATION AND JOINT  
STIPULATION IN SUPPORT THEREOF**

7 on the interested party(ies) in this action by /placing the true copies thereof enclosed in sealed  
8 envelopes addressed as stated on the attached mailing list /placing the original **XX**/placing a  
true copy thereof, enclosed in sealed envelope(s) addressed as follows:

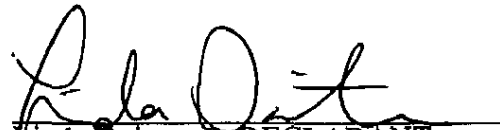
9 Irene K. Tamura  
10 Deputy Attorney General  
1300 I Street  
11 Sacramento, CA 98514

12 XX BY MAIL) I deposited such envelope(s) in the mail at Los Angeles, California. The  
13 envelope(s) was mailed with postage thereon fully prepaid. I am "readily familiar" with the  
14 firm's practice of collection and processing correspondence for mailing. It is deposited with the  
U.S. Postal Service on that same date in the ordinary course of business. I am aware that on  
15 motion of party served, service is presumed invalid if postal cancellation date or postage meter  
date is more than one day after date of deposit for mailing in affidavit.

16        (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the  
addressee as addressed above.

17        BY ELECTRONIC TRANSFER) I caused all of the pages of the above-entitled document  
18 to be sent to the recipient(s) /noted above, /on the attached service list, via electronic transfer  
(FAX) at the respective FAX number(s) /indicated above, /on the attached service list.

19 Executed on this *26th* day of *July, 2004*, at Los Angeles, California. I declare under penalty of  
20 perjury under the laws of the State of California and the United States that the above is true and  
correct.

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23 Linda Daitsman, DECLARANT

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