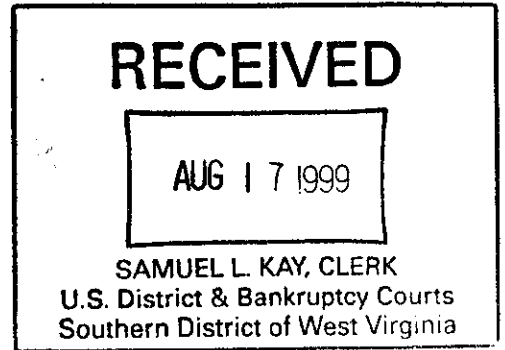


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

BENJAMIN H., by his next friend, Georgann H.; DAVID F., by his guardian, Carolyn B.; LORI BETH S., by her next friend, Janie J.; THOMAS V., by his next friend, Patricia V.; JUSTIN E., by his next friend, Sherry E.,

Plaintiffs,



v.

CIVIL ACTION NO. 3:99-0338

JOAN OHL, Secretary of the Department of Health and Human Resources,

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

This case involves Medicaid beneficiaries in West Virginia who are eligible for intermediate care level services through the Medicaid program because they are mentally retarded or developmentally disabled. Rather than cover the comprehensive range of services that these plaintiffs need, the defendant has placed plaintiffs on waiting lists for its home and community based waiver (HCBW) program. This Court has issued a preliminary injunction ordering the defendant to comply with provisions of the federal Medicaid Act which require it to offer plaintiffs a choice of institutional or home-based services and to provide services with reasonable promptness and consistent with

requirements for due process. Memorandum Opinion and order (July 15, 1999).

Plaintiffs have moved for certification of this case as a class action, as follows:

All current and future West Virginia residents with developmental disabilities or mental retardation who are Medicaid beneficiaries and who are eligible for the level of services funded under the Intermediate Care Facility for the Mentally Retarded (ICF/MR) service and/or the Mentally Retarded/Developmentally Disabled Home and Community Based Waiver (MR/DD HCBW) service.

II. ARGUMENT

To maintain this action as a class action, the named plaintiffs must satisfy all four of the provisions of Rule 23(a) and one of the subdivisions of Rule 23(b). See, e.g., Lukenas v. Bryce's Mountain Resort, Inc., 538 F.2d 594, 595 (4th Cir. 1976). "The party seeking certification under Rule 23 bears the burden of demonstrating the requirements of the Rule." Black v. Rhone-Poulenc, Inc., 173 F.R.D. 156, 159 (S.D.W.Va. 1996)(Haden, CJ). "The recent trend in class certification decisions is to interpret Rule 23 flexibly and give it a liberal construction." Id. (citing Kidwell v. Transp. Communications Int'l Union, 946 F.2d 283, 305 (4th Cir. 1991), cert. denied, 503 U.S. 1005 (1992)).

A. Requirements of Rule 23(a)

The prerequisites to a class action set forth in Rule 23(a) are: (1) the class is so numerous that joinder of members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the class representative parties are typical of those of the class; and (4) the representative parties will fairly and adequately protect the interest of the class. Fed. R. Civ. P. 23(a).

1. Numerosity

Rule 23(a)(1) requires the class to be so numerous that joinder of all parties is impracticable. "No specified number is needed to maintain a class action." Brady v. Thurston Motor Lines, 726 F.2d 136, 145 (4th Cir.), cert. denied, 469 U.S. 827 (1984). The Court of Appeals has said that classes of 18 and 74 persons can meet the numerosity requirement. Id. this Court has certified a class when the estimated size numbered 2,000 to 5,000 individuals. See Rhone-Poulenc, 173 F.R.D. at 160. See also 1 H. Newberg, Class Actions ¶ 3.05 (2d ed. 1985) (noting that when putative class members as few as 40 members, there is a presumption that joinder is impracticable).

Notably, "[i]mpracticality of joinder is not determined by a numerical test alone." Christman v. American Cyanamid Co., 92 F.R.D. 441, 451 (N.D.W.Va. 1981)(citing Ballard v. Blue Shield of Southern West Virginia, 543 F.2d 1980 (4th Cir. 1976), cert. denied, 430 U.S. 922 (1977)). "Factors relevant to the evaluation of numerosity include . . . the geographic diversity of the class, the difficulty of identifying class members, and the negative impact on judicial economy if individual suits were required." Rhone-Poulenc, 173 F.R.D. at 160 (quoting United Brotherhood of Carpenters & Joiners of America, Local 899 v. Phoenix Assocs., Inc., 152 F.R.D. 518, 522 (S.D.W.Va. 1994). See also 1 H. Newberg, Class Actions ¶ 3.05 (2d ed. 1985) (discussing pertinent factors to establishing numerosity).

The putative class in this case numbers from several hundred to over a thousand individuals. The named plaintiffs seek to represent a class of medicaid beneficiaries who, because of mental retardation or developmental disability, need intermediate care level services but are being placed on waiting lists for these services. Evidence submitted at a

preliminary injunction hearing on Jun 30, 1999 showed that, as of January 28, 1999, between 270 and 300 individuals were on waiting lists for MR/DD HCBW services and that about twice that number were eligible for these services but had not been fully evaluated by the regional behavioral health centers because their addition to the waiver list would be futile. Memorandum Opinion and Order at 12 (July 15, 1999). In addition, data from the West Virginia Department of Education show there are 4,502 children with mental retardation or developmental disability who are currently being served, to some extent, by the school system. In the next five years, it is estimated that 1,875 children will age-out of the school system and require behavioral health care at an ICR/MR level. West Virginia Department of Education, Exception Students in West Virginia's County School Districts at 63 (FY 1998)(Submitted as Complaint, Exhibit 4). Thus, the number of children who are members of the class potentially exceed 1,000. with respect to both children and adults, the vast majority of these beneficiaries are classified as "categorically needy," 42 U.S.C. §1396(a)(10)(A), because they are receiving cash benefits or qualify for Medicaid through a poverty related program. See Care Financing Administration, Medicaid Recipients by Maintenance Assistance Status and by State (FY 1997) (Attached hereto as Class Certification Exhibit A).

In addition, the plaintiffs seek to represent classes that include future Medicaid beneficiaries who will need intermediate care level services. Testimony at the June 30th hearing showed that the number of eligible persons is likely to increase over the next five years by several hundred. Memorandum Opinion and Order at 13 (July 15, 1999).

While sheer numbers alone should meet the numerosity requirement, the prerequisite is met in other respects, as well. The named plaintiffs and members of the

class are disbursed geographically all over the state. The composition of the class is fluid and growing, thus, it is impracticable to identify and join each new individual. See generally, Bruce v. Christian, 113 F.R.D. 554, 557 (S.D.N.Y. 1986) ("fluid composition of public housing population is particularly well-suited for status as class because while identity of individuals involved may change, the nature of the harm and the basic parameters of the group affected remain constant"); In re: Whittaker, 84 Bankr. 934 (Bankr. E.D. Pa. 1988) (class of past and future debtors certified because potential members satisfied the joinder impracticability requirement). Finally, certification of this case as a class action will ensure that the defendant is not subjected to various rulings by differing courts in individual cases, thus enhancing judicial economy. The requirements of Rule 23(a)(1) are met in this case.

2. Commonality

Fed. R. Civ. P. rule 23(a)(2) requires that there be common questions of law or fact with respect to the class. "This factor is stated in the disjunctive." Rhone-Poulenc, 173 F.R.D. at 161. Moreover, the Rule "does not require that all questions of fact and law be common, but only demands that a question of law or fact be presented which is shared in the grievances of the prospective class as defined." 3B James W. Moore, et al., Moore's Federal Practice ¶ 23.06-1 (2nd ed. ...1987). See also, e.g., Kennedy v. Sullivan, 138 F.R.D. 484, 488 (N.D.W.Va. 1991) (certifying class where there "may be factual variations in the exact manner in which the individuals within the class are affected by the existing policy"). The United States Supreme Court has said that class relief is particularly appropriate when the "issues involved are common to the class as a whole" and when they turn on questions of law applicable in the same manner to each member of

the class." General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 155 (1982), remanded 686 F.2d 216 (5th Cir. 1982) (quoting Califano v. Yamasaki, 442 U.S. 682, 700-01 (1979)).

Here, plaintiffs and the putative class members share numerous common facts. All of the class members have chronic medical problems, as a result developmental disabilities or mental retardation. All of them have been found eligible for the Medicaid program and for intermediate care level services through that program. The plaintiffs need a similar range of treatment services, including home health care, speech and physical therapy, rehabilitation and habilitation services, case managements services, personal care services, respite care, and transportation. All of the plaintiffs have expressed a preference to receive these services in home or community based settings. However, the plaintiffs have not and are not receiving the amount or scope of intermediate care level services that they need. In so doing, the defendant has not provided plaintiffs with written notices that explain the defendant's decisions or that offer them an opportunity to challenge the decisions. Testimony at the preliminary injunction hearing illustrated how, without care, the plaintiffs' conditions are fluctuating and deteriorating, and their families are experiencing great emotional and financial strain.

While their individual fact patterns may show some variance, plaintiffs and the putative class members also share common issues of law. "When the [class] claim arises out of the same legal or remedial theory, the presence of factual variation is normally not sufficient to preclude class action treatment." Christman v. American Cynamid Co., 92 F.R.D. 441 (N.D.W.Va. 1981). Se also Hosey v. Armour & Co., 743 F.2d 199, 217 (4th

Cir. 1984), cert. denied, 470 U.S. 1028 (1985) ("Despite the presence of individual factual questions, the commonality criterion of Rule 23(a) is satisfied by the common questions of law presented."). Here, the plaintiffs' claims arise from the same legal theories. The plaintiffs are alleging that the defendant is engaging in practices and policies that violate five mandatory provisions of the Medicaid Act: the freedom of choice requirement, 42 U.S.C. § 1396n(c)(2); the comparability provisions, 42 U.S.C. § 1396a(a)(10)(B); requirements for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) for plaintiffs under age 21, 42 U.S.C. § 1396a(a)(4)(B), and 1396d(r); due process rights, 42 U.S.C. § 1396a(a)(3); and the opportunity to apply for and receive assistance with reasonable promptness requirements, 42 U.S.C. § 1396a(a)(8). The plaintiffs allege that the failure of the Department to provide them with notices of the actions being taken also violates the Due Process Clause of the U.S. Constitution. Finally, the plaintiffs allege that the defendant's practices and policies violate the American with Disabilities Act, 42 U.S.C. §§ 12101-12213, which prohibits discrimination on the basis of disability in access to public services, including Medicaid. Finally, the named plaintiffs seek the same remedy — injunctive and declaratory relief that will benefit the class as a whole. Plaintiffs have satisfied the commonality factor.

3. Typicality

Rule 23(a)(3) requires typicality of claims between the named plaintiffs and the putative class. "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiffs and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims." Rhone-Poulenc, 173 F.R.D. at 162 (quoting 1 H. Newberg, Class Actions ¶ 3.13

(3rd ed. 1992)). In other words, "precise, mirror-image identity" of injuries is not required. Kennedy, 138 F.R.D. at 488 (quoting International Woodworkers of America, AFL-CIO v. Chesapeake Bay Plywood Corp., 659 F.2d 1259, 1270 (4th Cir. 1981)). See also, e.g., Phoenix Assocs., Inc., 152 F.R.D. at 522 (typicality "requires that the representatives' claims be typical of other class members' claims, not that the claims be identical.").

Thus, the typicality rule merely assures that the class representatives' interests are "aligned" with those of the class. Kennedy, 138 F.R.D. at 488. "This [tpicality] factor and the commonality requirement often merge." Rhone-Poulenc, 173 F.R.D. at 161. As recently noted by the Supreme Court, these two prerequisites "serve as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." Amchem Prods., Inc. v. Windsor, ___ U.S. ___, 117 S.Ct. 2231, 2251 n. 20, 138 L.Ed.2d 689 (1997) (quoting General Telephone Co. of Southwest v. Falcon, 457 U.S. 147, 157 n. 13 (1982)). Compare 3B James W. Moore, et al., Moore's Federal Practice ¶ 23.06-2 (2nd ed. 1987) ("[T]here appears to be little or no need for this [typicality] clause, since all meanings attributable to it duplicate requirements prescribed by other provisions un Rule 23").

In this case, the named plaintiffs' interests are clearly aligned with those of the class. As set forth above, in the discussion of commonality, the named plaintiffs and putative class members share numerous common facts. The named plaintiffs and each class member rely on the same legal and remedial theories based on the same alleged

course of conduct by the defendant. The requested declaratory and injunctive relief, if granted, will benefit all class members. Thus, Rule 23(a)(3) has been met.

4. Adequacy of Representation

Finally, Rule 23(a) provides that the named plaintiffs must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "When assessing the class representatives' ability to adequately represent the interests of the class, the Court must consider the abilities of both the attorneys who represent the class representatives, and the class representatives themselves." Rhone-Poulenc, 173 F.R.D. at 162 (quoting Phoenix Assocs., Inc., 152 F.R.D. at 523)). "[T]he two factors that are now predominantly recognized as the basic guidelines for the Rule 23(a)(4) prerequisite [as to representative plaintiffs] are (1) absence of conflict and (2) assurance of vigorous prosecution." Id. (quoting 1 H. Newberg, Class Actions ¶ 3.22 (3rd ed. 1992)). Regarding adequacy of class counsel, "courts consider the competence and experience of class counsel, attributes which will most often be presumed in the absence of proof to the contrary." Id. (quoting 1 H. Newberg, Class Actions ¶ 3.24 (3rd ed. 1992)).

The class representatives in this case do not have interests which are antagonistic to the interests of the class as a whole. Rather, the named representatives and the other class members have a common interest in seeing that intermediate care level services are available to Medicaid beneficiaries throughout the state within reasonably prompt time frames. The named representatives' knowledge of and involvement in this case, along with their desire to vigorously pursue this action, was illustrated during the June 30th hearing when they obtained child care and otherwise arranged their difficult lives to appear in person at the hearing. During the second day of the hearing mothers returned to

monitor the proceedings. The named plaintiffs will fairly and adequately protect the interests of the class.

Plaintiffs' counsel are qualified, experienced, and capable of pursuing this litigation. Plaintiffs' attorneys are employed by non-profit law firms which exclusively represent low income persons and/or individuals with disabilities. These attorneys have experience in class actions and public entitlement laws. They have acted as lead counsel or co-counsel in numerous class actions brought in federal and state court. See Declaration of Jane Perkins (attached hereto as Exhibit B; other counsel known to the court). Plaintiffs' attorneys are qualified to conduct this litigation. The requirements of Rule 23(a)(4) are met.

B. Requirements of Rule 23(b)(2)

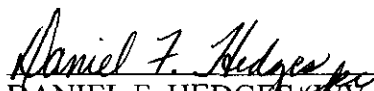
In addition to meeting the prerequisites of Fed. R. Civ. P. Rule 23(a), plaintiffs must demonstrate that this action is maintainable under one of the three provisions of Fed. R. Civ. P. Rule 23(b). In this case, the plaintiffs reply on Rule 23(b)(2), which provides that class certification is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole."

The present action is well-suited to certification pursuant to Rule 23(b)(2), since the defendant's conduct has or has the potential to affect the entire class in similar ways – namely, to affect their ability to obtain timely and comprehensive intermediate care level services. The plaintiffs have requested injunctive and declaratory relief for the class as a whole. The defendant's challenged conduct is "generally applicable" to the class which plaintiffs seek to represent, and the requirement of Rule 23(b)(2) is met in this case.

III. CONCLUSION

The four factors of Rule 23(a) and the requirements of Rule 23(b)(2) are satisfied in this case. Plaintiffs respectfully request this class be certified as requested by the plaintiffs.

**BENJAMIN H., by his next friend, Georgann H.; DAVID F., by his guardian, Carolyn B.; LORI BETH S., by her next friend, Janie J.; THOMAS V., by his next friend, Patricia V.; JUSTIN E., by his next friend, Sherry E. and all other similarly situated,
By Counsel.**



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 Medicare Medicaid CHIP Customer Service FAQs

**PLAINTIFF'S
EXHIBIT**

A

TABLE 1.

**MEDICAID RECIPIENTS BY MAINTENANCE ASSISTANCE STATUS AND BY
STATE**

FISCAL YEAR 1997

STATE	TOTAL RECIPIENTS	RECEIVING CASH PAYMENTS	MEDICALLY NEEDY	POVERTY RELATED	OTHER	MAS UNKNOW
2/ ALL JURISDICTIONS	33,578,980	16,038,098	3,533,298	7,568,643	5,534,682	904,25
1/ ALABAMA	546,152	275,061	-	203,308	65,371	2,41
1/ ALASKA	73,050	49,290	-	11,281	9,320	3,15
ARIZONA	540,785	205,196	-	146,408	189,181	
1/ ARKANSAS	370,386	181,216	24,396	106,462	54,633	3,67
1/ CALIFORNIA	4,854,546	2,772,406	1,057,460	120,413	560,642	343,62
1/ COLORADO	251,423	127,758	-	55,110	66,933	1,62
CONNECTICUT	201,779	68,603	49,841	19,069	64,266	
1/ DELAWARE	83,956	35,712	-	33,263	13,520	1,46
DISTRICT OF COLUMBIA	128,008	90,265	29,357	6,827	1,559	
1/ FLORIDA	1,597,461	858,061	45,028	407,303	269,029	18,04
1/ GEORGIA	1,208,445	560,794	816	449,852	182,243	14,74
1/ HAWAII	-	-	-	-	-	
1/ IDAHO	115,087	25,785	1	31,018	53,207	5,07
ILLINOIS	1,399,960	680,401	279,934	179,054	260,571	
1/ INDIANA	514,683	267,572	-	110,189	118,097	18,82
1/ IOWA	293,596	145,106	17,257	50,508	79,259	1,46
1/ KANSAS	232,888	105,991	30,858	59,054	32,678	4,30
1/ KENTUCKY	664,454	369,361	55,066	158,048	62,039	19,94
LOUISIANA	746,461	282,186	2,333	113,058	348,884	
1/ MAINE	167,221	83,977	18,214	26,507	36,030	2,49
MARYLAND	402,002	208,404	65,639	108,549	19,410	
MASSACHUSETTS	723,472	414,047	2,957	200,018	106,450	
1/ MICHIGAN	1,132,783	570,564	240,784	178,891	62,391	80.15
1/ MINNESOTA	371,483	155,476	15,084	22,979	173,212	4,73
1/ MISSISSIPPI	504,017	250,448	13,640	78,159	153,935	7,83
1/ MISSOURI	540,487	141,306	-	159,990	235,977	3.21

MEDICAID RECIPIENTS BY MAINTENANCE ASSISTANCE STATUS AND BY ST.. Page 2 of 3

I/ MONTANA	95,562	45,947	6,874	11,637	22,207	8,89
NEBRASKA	203,340	95,089	31,099	65,729	11,423	
I/ NEVADA	105,588	52,902	-	27,249	20,511	4,92
I/ NEW HAMPSHIRE	95,215	31,778	9,501	29,090	23,429	1,41
I/ NEW JERSEY	537,890	281,557	6,938	95,594	147,922	5,87
NEW MEXICO	320,223	161,240	-	136,128	20,864	1,99
NEW YORK	3,151,837	1,933,070	1,020,067	119,360	79,340	
NORTH CAROLINA	1,112,931	599,481	117,574	337,930	57,946	
I/ NORTH DAKOTA	61,117	25,000	15,687	10,315	8,352	1,76
OHIO	1,395,540	584,261	-	761,103	50,176	
OKLAHOMA	315,801	-	-	-	-	315,80
OREGON	531,242	118,658	3,674	314,107	94,803	
I/ PENNSYLVANIA	1,024,993	455,257	88,256	247,487	228,454	5,53
I/ RHODE ISLAND	116,766	68,299	10,400	9,051	21,889	7,12
SOUTH CAROLINA	519,875	197,281	-	194,689	127,905	
SOUTH DAKOTA	75,444	31,055	-	26,190	18,199	
TENNESSEE	1,415,612	358,682	139,644	724,771	192,515	
TEXAS	2,538,655	1,090,058	45,282	907,434	495,881	
I/ UTAH	144,749	47,565	3,612	44,518	44,577	4,47
I/ VERMONT	109,283	38,168	11,212	39,893	18,326	1,68
VIRGINIA	595,234	267,331	21,667	219,194	87,042	
I/ WASHINGTON	630,165	232,327	11,186	121,806	262,851	1,99
WEST VIRGINIA	359,091	200,616	9,701	38,971	109,803	
I/ WISCONSIN	392,223	174,508	22,024	36,502	156,214	2,97
I/ WYOMING	48,865	17,247	-	14,577	15,216	1,82
PUERTO RICO	-	-	-	-	-	
VIRGIN ISLANDS	17,154	5,735	10,235	-	-	1,18

1/ MEDICAID STATISTICAL INFORMATION SYSTEM (MSIS).

2/ HAWAII AND PUERTO RICO ARE NOT INCLUDED IN ALL JURISDICTIONS TOTALS.

MAS = MAINTENANCE ASSISTANCE STATUS.

SOURCE: HCFA, CMSO, HCFA-2082 REPORT

JANUARY 12, 1999



Return to Professional/Technical Information

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

BENJAMIN H., by his next friend, Georgian H.,
DAVID F., by his guardian, Carolyn B.,
LORI BETH S., by her next friend, Janie J.,
THOMAS V., by his next friend, Patricia V., and
JUSTIN E., by his next friend, Sherry,
individually and on behalf of all others
similarly situated,

Plaintiffs,

CIVIL ACTION NO. 3:99-0338

JOAN OHL, Secretary of the Department
of Health and Human Resources,

Defendant.

Declaration of Jane Perkins
in Support of Plaintiffs' Motion for Class Certification

I, Jane Perkins, J.D., M.P.H., declare as follows:

1. The following matters stated in this declaration are true of my own personal knowledge.

If called as witness in this action, I would truthfully and competently testify consistent with the following.

2. I am one of the counsel for the plaintiffs in Benjamin H v. Ohl. This declaration is submitted in support of plaintiffs' motion for class certification. It describes my educational and professional background.

Professional and Educational Experience



3. I have worked as an attorney at the National Health Law Program for approximately fifteen years. I am the Director of Legal Affairs at the Program. The National Health Law Program is a non-profit law firm specializing in health issues affecting low-income people and individuals with disabilities. My substantive areas of concentration are Medicaid, civil rights, and children's health.

4. Prior to employment with the National Health Law Program, I was an Assistant Attorney General in the State of Maryland from 1983-84. I was assigned to the Department of Health and Mental Hygiene. While there, I was engaged almost exclusively in litigation and maintained an extensive docket of federal, state and administrative law cases. Prior to that, I was an associate with Carpenter, Higgins and Simons, a law firm in Burlingame, California which specialized in planning and litigation for health care facilities.

5. I received my J.D. from the University of North Carolina, Chapel Hill, and a Masters in Public Health from the University of California, Berkeley.

6. I was admitted to the State Bar of California in 1982. I am also admitted to practice before the United States Supreme Court, Courts of Appeals for the Ninth and Tenth Circuits, the Central, Northern and Eastern Districts of California, and the State Bars of North Carolina and Maryland.

7. My Medicaid class action cases include: French v. Concannon, No. 97-CV-24-P-C (D. Me. 1998) (settlement) (EPSDT for children needing home and community based services for mental health and mental illness), Salazar v. District of Columbia, 1996 WL 768038 (D.D.C., Oct. 16, 1996)(amended findings of fact and conclusions of law), same case, 938 F. Supp. 926 (D.D.C. 1996), same case, Wellington v. District of Columbia, 861 F. Supp. 1 (D.D.C. 1994)(enforcement

of Medicaid Act and EPSDT/Section 1983); Sanders v. Lewis, No. 2:92-0353 (S.D.W.Va.) (Order and Compliance Plan, March 1, 1995) and (Summary Judgment, Aug. 16, 1993), reprinted at CCH, Medicare & Medicaid Guide ¶ 43,120 (preventive care for children in out of home placement); Wolford v. Lewis, 860 F. Supp. 1123 (S.D.W.Va. 1994) (quality in residential and board and care homes, Medicaid transportation); Thompson v. Raiford, No. 3:92-CV-1539-R (N.D.Tex. Sept. 23, 1993), reprinted at CCH, Medicare & Medicaid Guide ¶ 41,776 (Medicaid EPSDT coverage); Coleman v. Glynn, 983 F.2d 737 (6th Cir. 1993)(Medicaid eligibility); Clark v. Coye, 967 F.2d 585 (9th Cir. 1992), aff'g and remanding 758 F. Supp. 572 (E.D. Cal. 1990)(Medicaid provider participation); Sneede v. Kizer, 728 F. Supp. 1003 (N.D. Cal. 1990)(Medicaid eligibility), 856 F. Supp. 526 (1994)(attorney fees); Citizens Action League v. Kizer, 670 F. Supp. 874 (N.D. Cal. 1987), rev'd, 887 F.2d 1003 (9th Cir. 1989), cert. denied, 110 S.Ct. 1524 (1990)(Medicaid estate recovery).

8. I am an adjunct associate professor at the University of North Carolina at Chapel Hill, where I teach health policy at the School of Social Work. I was a visiting lecturer on Health Policy and Law at the University of North Carolina School of Law from 1993-1996.

9. I have published a number of manuals and articles on Medicaid and health care poverty law topics, including:

Perkins, "Maintaining Health Services for Children Amid Welfare Confusion: The Importance of Early and Periodic Screening, Diagnosis and Treatment," 32 Clearinghouse Rev. 450 (Jan./Feb. 1999).

Olson, Perkins, and Pate, Children's Health Under Medicaid: A National Review of Early and Periodic Screening, Diagnosis and Treatment (Aug. 1998).

Perkins, et al., A Guide to Complaints, Grievances and Hearings Under Medicaid Managed Care (Jan. 1998) (available from Families, USA, Washington, DC).

English, Kapphahn, Perkins & Wibbelsman, "Meeting the Health Care Needs of Adolescents in Managed Care: A Position Paper of the Society for Adolescent Medicine," 22 J. Adol. Health 271 (1998).

Perkins, "Resolving Complaints in Medicaid Managed Care: The 'Brutal Need' for Consumer Protections," 34 National Institute for Dispute Resolution Forum 25 (Dec. 1997).

Perkins and Olson, "An Advocate's Primer on Medicaid Managed Care Contracting," 31 Clearinghouse Rev. 19 (May-June 1997).

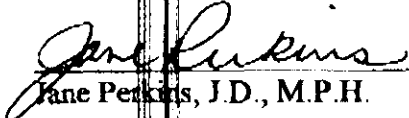
Perkins and Zinn, Toward a Healthy Future -- Early and Periodic Screening, Diagnosis and Treatment for Poor Children (April 1995).

Perkins and Rivera, "EPSDT and Managed Care: Do Plans Know What They are Getting Into?" 28 Clearinghouse Rev. 1248-1260 (March 1995).

Perkins, An Advocate's Medicaid EPSDT Reference Manual (Nov. 1993).

Perkins and Melden, An Advocate's Guide to the Medicaid Program (November 1993; July 1991).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of August, 1999 in Chapel Hill, North Carolina.


Jane Perkins, J.D., M.P.H.