

THE HONORABLE THOMAS S. ZILLY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T.R., by and through his guardian and next friend, R.R.; S.P., by and through her mother and next friend, D.H.; C.A., by and through her mother and next friend, A.A.; T.F., by and through her father and next friend, D.F.; P.S., by and through his mother and next friend, W.S.; T.V., by and through his guardian and next friend, C.D.; G.B., by and through her mother and next friend, L.B.; E.H. by and through his mother and next friend, C.H.; E.D., by and through his mother and next friend, A.D.; and L.F.S., by and through his mother and next friend, B.S.,

Plaintiffs,

v.

SUSAN N. DREYFUS, not individually, but solely in her official capacity as Secretary of the Washington State Department of Social and Health Services,

Defendant.

No. 2:09-cv-01677-TSZ

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

NOTE FOR MOTION CALENDAR:
Friday, July 9, 2010

I. INTRODUCTION

1
2
3 Plaintiffs, on behalf of themselves and a proposed class of Medicaid-eligible children,
4 filed a class action complaint on November 24, 2009 asserting that Defendant has failed to
5 ensure that Washington's Medicaid eligible children under the age of 21 receive intensive home
6 and community-based mental health services necessary to correct or ameliorate their health
7 condition. The Action was brought under the Early Periodic Screening, Diagnosis and
8 Treatment ("EPSDT") and comparability and due process requirements of the Medicaid Act, the
9 American with Disabilities Act, the Rehabilitation Act and the United States Constitution.
10 Defendant is the Secretary of the Washington State Department of Social and Health Services
11 ("DSHS"), the department responsible for providing medically necessary mental health services
12 to children.¹
13
14
15
16
17
18
19
20
21

22 Federal courts have routinely certified this type of class in similar lawsuits filed on behalf
23 of Medicaid-eligible children seeking the Early and Periodic Screening, Diagnostic and
24 Treatment ("EPSDT") services mandated by the federal Medicaid Act and Defendant has
25 stipulated to the certification of the proposed Class in this case, and a copy of the Stipulation
26 Regarding Plaintiffs' Motion for Class Certification is attached hereto as Exhibit 1.²
27
28
29
30
31

32 In light of Rule 23(c)(1)'s requirement that the Court determine whether to certify this
33 lawsuit as a class action "[a]t an early practicable time after a person files suit as a class
34 representative," Plaintiffs submit this Memorandum and the Stipulation in support of their
35 accompanying Motion for Class Certification.
36
37
38
39
40
41
42
43
44
45

46 ¹ Secretary Dreyfus is the designated State Mental Health Authority under Washington's Community
47 Mental Health Services Act, RCW 71.24. RCW 71.24.035. Here duties include assuring access to mental health
48 treatment services for children, RCW 71.24.035.

49 ² Defendant has reserved the right to challenge class certification, including class definition and other class
50 issues, as the issues and facts in the case are further identified and developed. *See* Stipulation re Class Certification
51 at ¶¶ 1, 3 and 4.

II. STATEMENT OF FACTS

A. The Proposed Plaintiff Class

Plaintiffs request that the court certify a class consisting of all persons under the age of 21 who now or in the future:

- (1) meet or would meet the State of Washington's Title XIX Medicaid financial eligibility criteria;
- (2) are determined and documented by a licensed practitioner of the healing arts operating within the scope of their practice as defined by Washington state law, to have a mental illness or condition, or had a screen or an assessment been conducted by such practitioner, would have been determined and documented to have a mental illness or condition;
- (3) have a functional impairment, which substantially interferes with or substantially limits the ability to function in the family, school or community setting; and
- (4) for whom intensive home and community based services coverable under Title XIX Medicaid and eligible for Federal Financial Participation, have been, or would have been recommended by a licensed practitioner in order to correct or ameliorate a mental illness or condition.

The proposed class is quite numerous. For example, DSHS data reveals that there are more than 75,000 children between the ages of zero and 17 in Washington that live in low income households with a mental health diagnosis in the moderate to severe range (and thus likely to have a functional impairment). Such individuals would most likely benefit from intensive home and community-based mental health services. Complaint ¶ 32. The class is perhaps larger, consisting of individuals under the age of 21 and is also fluid in that new members are regularly created.

B. The Class Representatives

As set forth in the Complaint, the named Plaintiffs in this action are ten children between the ages of nine and 18 who suffer from a mental illness or condition and require but have not been provided requested intensive home and community based services. Each child currently resides, or is being treated, in a county within Washington State and receives services through Washington's Medicaid program.

1 As members of the proposed plaintiff class, the named Plaintiffs are in need of medically
2 necessary intensive home and community-based mental health services available under the
3 EPSDT provisions of the federal Medicaid Act. The Defendant's systematic failure to ensure
4 that Washington's Medicaid-eligible children are provided these services has caused the named
5 Plaintiffs and the members of the proposed plaintiff class to endure harms such as homelessness,
6 repeated and avoidable hospitalizations, unnecessary juvenile detention, prolonged
7 institutionalization, foster care and out-of-state placement, and deteriorating physical and mental
8 health conditions. *See, e.g.* Complaint ¶¶5-8, 19-28, 71-192, 198-212.
9
10
11
12
13
14
15

16 Several of the named Plaintiffs have experienced multiple hospitalizations or
17 institutionalization as a result of their mental health condition or illness and have a functional
18 impairment which interferes with or substantially limits the ability to function in family, school
19 or community settings. *Id.* For example, as of the date of filing C.A. had been hospitalized three
20 times due to depression, suicide attempts and self-harming behaviors (e.g. cutting herself and
21 jumping out of a second-story window). Complaint ¶ 95. And, at the time of the filing three of
22 the named Plaintiffs were institutionalized. Complaint ¶ 8. Unless the named Plaintiffs and the
23 proposed plaintiff class receive the medically necessary intensive home and community-based
24 mental health services for which they are eligible, they will continue to be harmed by the
25 repeated pattern of hospitalization and institutionalization that will decrease their chance of
26 becoming independent and productive adults.
27
28
29
30
31
32
33
34
35
36
37

38 **C. The Plaintiffs' Class Action**

39 This action asserts claims under the Medicaid Act, the ADA, the Rehabilitation Act and
40 the United States Constitution. Each of these claims relate directly to the Defendant's failure to
41 establish policies, procedures and practices to ensure that Washington's Medicaid-eligible
42 children receive necessary intensive home and community-based services and notice of their
43 right to such services under Medicaid.
44
45
46
47
48
49
50
51

1 Following the Court's direction at the Scheduling Conference, the parties met on several
 2 occasions to discuss the class definition and a proposed stipulation with respect to class
 3 certification. Ultimately those discussions were successful and as modified, the stipulated class
 4 definition clarifies and adds additional detail to the Class Certification language contained at
 5 Paragraph 33 of the Complaint.
 6
 7
 8
 9

10 III. ARGUMENT

11 A. This Requirements Under Rule 23 for the Maintenance of a Class Action

12
 13 In determining whether an action warrants class treatment, "the question is not whether
 14 the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather
 15 whether the requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178
 16 (1974) (quotations and citations omitted); *see Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475,
 17 480 (9th Cir. 1983) (stating that "it is improper to advance a decision on the merits [at] the class
 18 certification stage"). When deciding a class certification motion, the Court should therefore
 19 "take the substantive allegations of the complaint as true." *Blackie v. Barrack*, 524 F.2d 891,
 20 901 n.17 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976); *Burkhalter Travel Agency v.*
 21 *MacFarms Int'l, Inc.*, 141 F.R.D. 144, 152 (N.D. Cal. 1991).³ But, the court must also engage in
 22 a rigorous analyze to determine if certification is appropriate. *LaCasse v. Washington Mutual,*
 23 *Inc.*, 198 F. Supp.2d 1255, 1260-61 (W.D. Wa. 2002).
 24
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36

37 For a lawsuit to be maintained as a class action, it must satisfy the four threshold
 38 requirements of Rule 23(a) and at least one of the class action grounds of Rule 23(b). *Amchem*
 39 *Prod., Inc. v. Windsor*, 521 U.S. 591, 613-14, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). Under
 40 Rule 23(a), a district court must find that:
 41
 42
 43
 44
 45
 46

47 ³ In addition to the Complaint, Plaintiffs' have submitted declarations from the next friend for each of the
 48 named plaintiffs confirming the accuracy of the factual allegations relating to each child were accurate as of the date
 49 of filing of the Complaint. *See* Declarations of R.R., D.H., A.A., D.F., W.S., C.D., L.B., C.H., A.D., and B.S. in
 50 Support of Plaintiffs' Motion for Class Certification. Additionally, the Court may take judicial notice of the
 51 multitude of reports and other publicly available materials referenced in the Complaint.

1 (1) the class is so numerous that joinder of all members is
2 impracticable; (2) there are questions of law and fact common to
3 the class; (3) the claims or defenses of the representative parties
4 are typical of the claims or defenses of the class; and (4) the
5 representative parties will fairly and adequately protect the
6 interests of the class.

7
8 Fed. R. Civ. P. 23(a); *Rodriguez v. Hayes*, --- F.3d ---, 2010 WL 6394, *11 (9th Cir. Jan. 4,
9 2010). The requirements of "Rule 23(a) must be read liberally in the context of civil rights suits .
10
11 .. [t]his is especially true when the class action falls under Rule 23(b)(2) . . ." *Jones v.*
12
13 *Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975); *see also Gay v. Waiters' & Dairy Lunchmen's*
14 *Union*, 549 F.2d 1330, 1334 (9th Cir. 1977) (holding that a trial court must "liberally interpret
15 and apply Rule 23" in the context of Title VII discrimination lawsuits). Additionally, the court
16 must determine that the putative class satisfies one of three class type requirements provided in
17 Rule 23(b). Because the named Plaintiffs in this case seek certification of a 23(b)(2) class, this
18 Court must conclude that "(2) the party opposing the class has acted or refused to act on grounds
19 that apply generally to the class, so that final injunctive relief or corresponding declaratory relief
20 is appropriate respective the class as a whole . . ." Fed. R. Civ. P. 23(b)(2).
21
22
23
24
25
26
27
28

29
30 Federal courts have routinely certified Rule 23(b)(2) plaintiff classes, similar to that
31 sought here, that challenge a state system of mental health care for Medicaid-eligible children.
32
33 *See, e.g., Rosie D. v. Romney*, 410 F. Supp. 2d 18, 22 (D.Mass. 2006) ("[T]he court . . . certified
34 a class of all current and future Medicaid-eligible children in Massachusetts under twenty-one
35 years of age, who were (or might become) eligible to receive, but were not receiving, what
36 Plaintiffs described as 'intensive home-based services.'"); *Katie A., et al. v. Diana Bonta*, 433 F.
37 Supp. 2d 1065, 1067 (C.D. Cal. 2006) ("[T]he Court certified the following class: [C]hildren in
38 California who (a) are in foster care or are at imminent risk of foster care placement; and (b)
39 have a mental illness or condition that has been documented or, had an assessment already been
40 conducted, would have been documented; and (c) who need individualized mental health
41 services, including but not limited to professionally acceptable assessments, behavioral support
42
43
44
45
46
47
48
49
50
51

1 and case management services, family support, crisis support, therapeutic foster care and other
 2 necessary services in the home or in a home-like setting, to treat or ameliorate their illness or
 3 condition."), *overruled on other grounds*, 481 F.3d 1150 (9th Cir. 2007); *Risinger*, 201 F.R.D. at
 4 23 ("Plaintiffs seek a permanent injunction against Defendants' general policies, practices, and
 5 procedures, which, Plaintiffs allege, fail to provide for prompt, reliable, and adequate in-home
 6 mental health services. Such allegations make this case an appropriate candidate for Rule
 7 23(b)(2) class certification."); *see also* List of Selected EPSDT Class Action Cases, attached as
 8 Exhibit 2. Like these cases, the present case should proceed as a class action.

9
 10
 11
 12
 13
 14
 15
 16
 17 **B. The Proposed Plaintiff Class Satisfies the Rule 23(a) Requirements**

18
 19 **1. All Parties Agree that the Proposed Class Is so Numerous that Joinder of All**
 20 **Members Is Impracticable**

21
 22 A class action may be maintained only if "the class is so numerous that joinder of all
 23 members is impracticable." Fed. R. Civ. P. 23(a)(1). Impracticability addresses the expense and
 24 burden, to the parties and the court, of litigating each claim individually, rendering the case
 25 difficult or inconvenient without joining all members of the class. *Harris v. Palm Springs Alpine*
 26 *Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964). The party seeking class certification need
 27 not identify the exact size of the proposed class in order to establish that joinder of all of its
 28 members would be impracticable. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 953 (9th Cir. 2003)
 29 (certifying class of "approximately" 15,000 individuals).

30
 31 Defendant has conceded that the proposed plaintiff class is so numerous as to make
 32 joinder impracticable. *See Defendant's Answer and Affirmative Defenses to Class Action*
 33 *Complaint*, dkt. 13 at ¶ 31-33. Indeed, courts in the Ninth Circuit have certified classes
 34 containing far fewer members than the proposed class in this case. *See, e.g., Rodriguez v.*
 35 *Carlson*, 166 F.R.D. 465, 472 (W.D. Wa. 1996) (class comprised of monolingual Spanish-
 36 speaking workers and estimated at over 100 individuals satisfied the numerosity requirement); *In*
 37 *re Badger Mountain Irrigation Dist. Sec. Litig.*, 143 F.R.D. 693, 696-97 (W.D. Wash. 1992)

1 (reasonable estimate of 324 plaintiffs satisfied the numerosity requirement). The fluid nature of
 2 the proposed plaintiff class also makes the joinder of all its members impracticable. *See Jordan*
 3 *v. L.A. County*, 669 F.2d 1311, 1320 (9th Cir. 1982) (holding that the district court erred in
 4 denying class certification for failure to establish numerosity because "the class is composed of
 5 unnamed and unknown future black applicants who may be discriminated against . . . [and] [t]he
 6 joinder of unknown individuals is inherently impracticable"), *vacated on other grounds by* 459
 7 U.S. 810 (1982). Because the proposed plaintiff class is estimated at more than 75,000 children
 8 across the state and will continue to add new, but currently unknown, members, it satisfies Rule
 9 23(a)(1).
 10
 11
 12
 13
 14
 15
 16
 17

18
 19 **2. There are Questions of Law or Fact Common to All Members of the**
 20 **Proposed Class**

21 Rule 23(a)(2) requires that there be either "questions of law or fact common to the class."
 22 Fed. R. Civ. P. 23(a)(2). In the Ninth Circuit, "Rule 23(a)(2) has been construed permissively."
 23 *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007) (quoting *Hanlon v. Chrysler*
 24 *Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)).⁴ Thus, "[a]ll questions of fact and law need not be
 25 common to satisfy the rule. The existence of shared legal issues with divergent factual predicates
 26 is sufficient, as is a common core of salient facts coupled with disparate legal remedies within
 27 the class." *Id.*; *Staton v. Boeing*, 327 F.3d 938, 953 (9th Cir. 2003) (quoting *Hanlon*, 150 F.3d at
 28 1019). The commonality requirement is satisfied in a civil rights suit "where the lawsuit
 29 challenges a system-wide practice or policy that affects all of the putative class members."
 30 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40

41 "Commonality focuses on the relationship of common facts and legal issues among class
 42 members." *Dukes*, 509 F.3d at 1177. A class action "is 'peculiarly appropriate' when the 'issues
 43
 44
 45
 46

47
 48 ⁴ Courts apply the commonality requirement liberally where, as here, the named plaintiffs seek certification
 49 of a 23(b)(2) class because a proposed class seeking declaratory or injunctive relief generally challenges policies
 50 and/or practices affecting an identifiable group in a similar way. *See Von Colln v. County of Ventura*, 189 F.R.D.
 51 583, 591 (C.D. Cal. 1999) ("[W]hen addressing commonality of class members proposed under Rule 23(b)(2), a
 court may employ a liberal definition of commonality.")

1 involved are common to the class as a whole' and when they 'turn on questions of law applicable
2 in the same manner to each member of the class.'" *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147,
3 155, 102 S. Ct. 2364, 72 L.Ed.2d 740 (1982) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-
4 01, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979)). Rule 23 "does not require the named plaintiffs to be
5 identically situated with all other class members. It is enough if their situations share a common
6 issue of law or fact and are sufficiently parallel to insure a vigorous and full presentation of all
7 claims for relief." *Cal. Rural Legal Assistance v. Legal Serv. Corp.*, 917 F.2d 1171, 1175 (9th
8 Cir. 1990) (quotation marks and citations omitted). Thus, Plaintiffs are not required to show that
9 members of the proposed class "share every fact in common or completely identical legal
10 issues," rather plaintiffs must present only "some shared legal issue or a common core of facts."
11 *Rodriguez*, 2010 WL 6394 at *12; *see Dukes*, 509 F.3d at 1177 (observing that the "commonality
12 test is qualitative rather than quantitative—one significant issue common to the class may be
13 sufficient to warrant certification"); *Hanlon*, 150 F.3d at 1019 (same).

14
15
16
17
18
19
20
21
22
23
24
25
26
27 A common allegation that a governmental defendant's general or systematic policy,
28 procedure, or practice is discriminatory or illegal suffices to establish commonality – even where
29 the effect of that policy, procedure, or practice on each class member may differ. *See Walters v.*
30 *Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding that class-wide allegation of insufficient
31 notice by Immigration and Naturalization Services is sufficient to establish commonality despite
32 alleged factual distinctions in each class members' underlying document fraud claims); *Arnold v.*
33 *United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994) (stating that
34 commonality is "met by the alleged existence of common discriminatory practices. The actions
35 of the defendant need not affect each member of the class in the same manner"). The Ninth
36 Circuit has held, specifically in the civil rights context, that "individual factual differences
37 among the individual litigants or groups of litigants will not preclude a finding of commonality."
38 *Armstrong*, 275 at 868 (affirming certification of a class of prisoners with disabilities despite
39
40
41
42
43
44
45
46
47
48
49
50
51

1 evidence showing different disabilities and accommodation needs because the entire class had a
2 common issue related to systemic policies and implementation).
3

4
5 Common questions of law and fact abound in this action, including:
6

- 7 • Whether the Department of Social Health and Services' ("DSHS") failed (1) to establish
8 policies, procedures, and practices to ensure Plaintiffs and members of the proposed
9 plaintiff class receive adequate notice of the intensive home and community based mental
10 health services available under the EPSDT provisions of the Medicaid Act; (2) to provide
11 or arrange for Plaintiffs and members of the proposed plaintiff class to receive EPSDT
12 screening and assessment services that would otherwise determine the existence of any
13 physical or mental illnesses or conditions; and (3) to provide or arrange for Plaintiffs and
14 members of the proposed plaintiff class to receive the medically necessary intensive
15 home and community-based mental health services to treat or ameliorate their physical or
16 mental illnesses or conditions and whether such failures violate the EPSDT mandate of
17 the Medicaid Act;
18
- 19 • Whether DSHS' failure to establish or maintain policies, procedures, or practices that
20 would prohibit improper reductions, terminations, or denials of medically necessary
21 intensive home and community-based mental health services to Medicaid-eligible
22 children on the basis of their diagnoses, geographic location, eligibility and/or
23 qualifications for child welfare Division of Children and Family Services violates the
24 Comparability provisions of the Medicaid Act;
25
- 26 • Whether DSHS' failure to establish or maintain customs, policies, or practices that would
27 provide Plaintiffs and members of the proposed plaintiff class with adequate written
28 notice of reductions, terminations, and denials of Medicaid-funded intensive home and
29 community-based mental health services and their rights to a pre-termination or reduction
30 fair hearing violates the Due Process provisions of the Medicaid Act and/or the Due
31 Process Clause of the Fourteenth Amendment of the United States Constitution;
32
- 33 • Whether DSHS' failure (1) to administer services, programs, and activities in the most
34 integrated setting appropriate to the needs of children who need intensive mental health
35 services; (2) to make reasonable modifications in its policies, procedures, or practices that
36 would not fundamentally alter the nature of its services programs, or activities; (3) to
37 provide reasonable accommodations to allow Plaintiffs and members of the proposed
38 plaintiff class to participate fully in DSHS' programs and receive adequate services; and
39 (4) provide and support appropriate community-based placements in favor of requiring
40 Plaintiffs and members of the proposed plaintiff class to be confined in restrictive,
41 institutional settings in order to access necessary mental health services violates the
42 Americans with Disabilities Act and Section 504 of the Rehabilitation Act; and,
43
- 44 • Whether such claims are subject to any of Defendant's defenses including: a) whether
45 intensive home and community based mental health services are required services under
46
47
48
49
50
51

1 the EPSDT mandate; b) whether Defendant is required to arrange for or provide such
 2 services or is only required to pay for covered services; c) whether such services are
 3 subject to other State identified requirements such as the Access to Care standards and
 4 whether plaintiffs' have or must exhaust all administrative remedies even if the subject
 5 services are not otherwise available or made known to plaintiffs or their practitioners; d)
 6 whether alleged failures of third parties beyond the alleged control of Defendant obviate
 7 Defendant's responsibilities; and e) whether the court has the ability to order the
 8 requested relief or whether such relief must be denied because it would constitute illegal
 9 spending in violation of RCW 43.135 or would otherwise usurp the rights of the
 10 Washington State Legislature.
 11
 12

13 Because these issues are common to all proposed class members, the commonality
 14 requirement has been satisfied. As discussed above, any differences that may exist in the way
 15 that DSHS' policies, procedures, and practices affect the individual class members do not
 16 undermine the finding of commonality. *See Jordan v. L.A. County*, 669 F.2d 1311, 1320 (9th
 17 Cir.) ("[T]he legality of defendant's practices or policies will usually be a question common to
 18 the class, and the existence of different factual questions with respect to various employees will
 19 not defeat satisfaction of the commonality requirement."), *vacated on other grounds*, 459 U.S.
 20 810, 103 S.Ct. 35, 74 L.Ed.2d 48 (1982).⁵ A common inquiry is the most efficient and
 21 appropriate way to resolve the common factual and legal questions posed in this case; otherwise,
 22 the prosecution of separate actions by individuals within the proposed class would risk
 23 inconsistent or varying adjudications, establishing incompatible rules of law for the provision of
 24 medically necessary mental health services to Medicaid-eligible children in Washington.
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36

37 **3. The Named Plaintiffs' Claims Are Typical of the Claims of the Proposed** 38 **Class**

39 Under Rule 23, the claims of the class representatives must be typical of the claims of the
 40 class. Fed. R. Civ. P. 23(a)(3); *see Dukes*, 509 F.3d at 1184. The purpose of this requirement is
 41 to "assure that the interest of the named representative[s] aligns with the interests of the class."
 42
 43
 44
 45
 46
 47 *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). To

48 ⁵ Like other EPSDT cases, this action does not require the Court to engage in individualized determinations
 49 of eligibility or service prescription. The lack of notice of EPSDT benefits, the absence of adequate screening and
 50 assessment procedures, and the wholesale lack of accessible, ongoing, and intensive home-based services for
 51 children in need can be determined without resort to individual treatment determinations by the Court.

1 demonstrate "typicality," the named plaintiffs' claims must arise from a course of conduct "not
2 unique to the named plaintiffs' that has resulted in similar injury to other class members. *Id*
3

4
5 Similar to commonality, typicality does not require that each class member share the
6 same factual situation. The Supreme Court has recognized that "[t]he commonality and
7 typicality requirements of Rule 23(a) tend to merge." *Id.* Typicality exists where "each class
8 member's claim arises from the same course of events, and each class member makes similar
9 arguments to prove the defendant's liability." *Rodriguez*, 2010 WL 6394 at *13 (quoting
10 *Armstrong*, 275 F.3d at 868); *see Winkler v. DTE, Inc.*, 205 F.R.D. 235, 241 (D. Ariz. 2001)
11 (noting that "a claim is typical if it is based on the same event or course of conduct giving rise to
12 the claims of other class members and based on the same legal theory.") In such a situation,
13 "varying factual differences between the claims or defenses of the class and the class
14 representatives will not render the named representative's claim atypical." *Jordan*, 669 F.2d at
15 1321; *see Dukes*, 509 F.3d at 1843 ("Some degree of individuality is to be expected in all cases,
16 but that specificity does not necessarily defeat typicality.") "Like the commonality requirement,
17 the typicality requirement is 'permissive' and requires only that the representative's claims are
18 'reasonably co-extensive with those of absent class members; they need not be substantially
19 identical.'" *Rodriguez*, 2010 WL 6394 at *13 (quoting *Hanlon*, 150 F.3d at 1020); *see*
20 *Lightbourn v. County of El Paso*, 118 F.3d 421, 425 (5th Cir. 1997) ("The test for typicality, like
21 the test for commonality, is not demanding.")
22

23
24 Here, the claims of the named Plaintiffs are typical of the class and arise from the same
25 course of events as the claims of the proposed class and are based on the same or similar liability
26 arguments. Each of the named Plaintiffs is a member of the class, is under the age of 21 and (1)
27 meets the State of Washington's Title XIX Medicaid financial eligibility criteria, (2) suffers from
28 a mental illness or condition, (3) has a functional impairment that substantially interferes with or
29 limits his/her ability to function in the family, school or community setting, and (4) has been
30 recommended or would have been recommended medically necessary intensive home and
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1 community-based mental health services to correct or ameliorate his/her mental illness or
2 condition. *See, e.g.* Complaint ¶¶ 19-28, 71-192, 203-212. The individual Plaintiffs, like the
3 proposed class as a whole, charge DSHS with violations of federal law due to its unlawful and
4 discriminatory policies, procedures, and practices and seek the same injunctive and declaratory
5 relief. Their claims therefore typify the claims of the class. *See Risinger ex rel. Risinger v.*
6 *Concannon*, 201 F.R.D. 16, 22 (D.Me. 2001) (holding that Rule 23(b)(2) class challenging
7 failure to provide adequate in-home mental health services to Medicaid-eligible children met the
8 typicality requirement as "Plaintiffs invoke the same Medicaid Act provisions that are invoked
9 on behalf of all class members, allege that they face the same systemic deficiencies that all class
10 members face, and seek to benefit from the same injunction sought on behalf of all class
11 members"); *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 63 (3d Cir. 1994) (holding that
12 district court abused its discretion in finding that proposed class challenging the provision of
13 child welfare services did not possess typicality; "because this suit seeks only declaratory and
14 injunctive relief, the named plaintiffs are simply not asserting any claims that are not also
15 applicable to the absentees").

31 **4. The Named Plaintiffs and Their Attorneys Will Fairly and Adequately** 32 **Protect the Interests of the Class**

33 Rule 23(a)(4) permits certification of a class only where "the representative parties will
34 fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This
35 requirement has two elements: (1) the named plaintiffs do not have any conflicts of interest with
36 the proposed class and (2) the named plaintiffs must be represented by qualified and competent
37 counsel. *Dukes*, 509 F.3d at 1185.

38 As discussed above, the named Plaintiffs and putative class members share an obvious
39 and strong interest in pursuing their claims to address the deficiencies in DSHS' provision of
40 those mental health services mandated under the Medicaid Act. That the named Plaintiffs seek
41 statewide injunctive and declaratory relief against a single entity, DSHS, as opposed to personal
42
43
44
45
46
47
48
49
50
51

1 damages or other individualized relief, there is no risk that they possess any unique interests that
2 might cause them to litigate this matter in a way that would prejudice the absent class members.
3
4 *See Baby Neal*, 43 F.3d at 63 ("[P]laintiffs here seek only injunctive and declaratory relief; there
5 are no other claims that could compromise the named Plaintiffs' pursuit of the class claims. . . .
6
7 There is no danger here that the named Plaintiffs have unique interests that might motivate them
8 to litigate against or settle with the defendants in a way that prejudices the absentees."). The
9 named Plaintiffs will fairly and adequately represent the interests of the class in the pursuit of
10 this relief.. See also, Declarations of the Named Plaintiffs and Guardians at ¶3.
11
12
13
14
15

16
17 Moreover, proposed class counsel are competent and qualified. Courts have recognized
18 that public interest attorneys with experience in protecting the interests of the poor adequately
19 represent class interests. *See, e.g., Lopez v. Heckler*, 572 F. Supp. 26, 31 (C.D. 1983), *modified*
20 *on other grounds*, 725 F.2d 1489 (9th Cir.), *vacated and remanded on other grounds*, 469 U.S.
21 1082 (1984). Co-counsel Disability Rights Washington is a federally-mandated non-profit
22 organization established to protect the rights and interests of people with disabilities and has
23 extensive experiences with Children's mental health issues in Washington state and extensive
24 experience litigation federal and state class action cases. Bailey Decl. ¶ 2-3, 5; *see, e.g.*, 42
25 U.S.C. §§ 10801 *et seq.*; 42 U.S.C. § 15041; 29 U.S.C. § 794e; RCW 71A.10.080. Co-counsel
26 National Health Law Program and National Center for Youth Law are intimately familiar with
27 state and federal child welfare laws and have considerable experience representing plaintiffs in
28 child welfare class actions. Gardner Decl. ¶ 2-3, 5, and Perkins Decl. ¶ 2-3, 5. Co-counsel
29 Perkins Coie LLP is a large private law firm with substantial experience litigating a broad range
30 of complex and sophisticated civil matters in federal court, including class actions and social
31 justice cases. Foster Decl. ¶ 2-3, 6. Jointly, the defense team includes class counsel from *Katie*
32 *A. v. Bonita*, a pending lawsuit seeking intensive home and community based services in
33 California and *Braam v. State of Washington*, a class action challenging the foster care system in
34 Washington. By any measure Plaintiff's counsel will more than adequately represent the class.
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1 **C. The Proposed Class Satisfies Rule 23(b)(2) Because Defendant Has Acted on**
2 **Grounds Generally Applicable to the Class Making Final Injunctive and**
3 **Declaratory Relief Appropriate**

4 Rule 23(b)(2) provides that a class action may be maintained if: "the party opposing the
5 class has acted or refused to act on grounds that apply generally to the class, so that final
6 injunctive relief or corresponding declaratory relief is appropriate respective the class as a whole
7 . . ." In interpreting this requirement, courts have held that where the primary purpose in
8 bringing the action is to seek injunctive pr declaratory relief, the action is property certifiable
9 under Rule 23(b)(2). *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001).
10 The United States Supreme Court has recognized that civil rights cases against parties charged
11 with class-based discrimination are "prime examples" of actions under Rule 23(b)(2). *Amchem*
12 *Prod.*, 521 U.S. at 614; *see Walters*, 145 F.3d at 1047 ("[T]he claims raised by the plaintiffs in
13 this action are precisely the sorts of claims that Rule 23(b)(2) was designed to facilitate. As the
14 Advisory Committee Notes explain, 23(b)(2) was adopted in order to permit the prosecution of
15 civil rights actions.") For example, the Ninth Circuit has held that class certification under Rule
16 23(b)(2) is appropriate where "class members complain of a pattern or practice that is generally
17 applicable to the class as a whole." *Rodriguez*, 2010 WL 6394 at *14 (quoting *Walters*, 145 F.3d
18 at 1047). "The fact that some class members may have suffered no injury or different injuries
19 from the challenged practice does not prevent the class from meeting the requirements of Rule
20 23(b)(2)." *Id.*

21 This case exemplifies a Rule 23(b)(2) class action because DSHS' policies, practices, and
22 procedures affect the proposed class generally. Indeed, DSHS' failure to satisfy its obligation to
23 provide or arrange for medically necessary intensive home and community-based mental health
24 services to all Medicaid-eligible children within the State has both created and defined the scope
25 of the proposed class. Moreover, as discussed above, Rule 23(b)(2) is specifically designed to
26 permit class actions seeking declaratory and injunctive relief in civil rights cases and federal
27 courts have repeatedly certified 23(b)(2) plaintiff classes that challenge a state's provision of
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

1 mental health services for Medicaid-eligible children. *See, e.g., Rosie D.*, 410 F. Supp. 2d at 22;
 2 *Katie A.*, 433 F. Supp. 2d at 1067; *Risinger*, 201 F.R.D. at 23. Since the named Plaintiffs seek
 3 only declaratory and injunctive relief to ameliorate the deficient provision of statewide services,
 4 and the granting of such relief is appropriate for the proposed class as a whole, the Court should
 5 certify this class pursuant to Rule 23(b)(2).
 6
 7
 8
 9

10
 11 **D. The Court Should Designate Plaintiffs' Counsel as Class Counsel**

12 When a class is certified, the court must appoint class counsel. Fed. R. Civ. P. 23(g)(1).
 13 The class certification order must also list these counsel. Fed. R. Civ. P. 23(c)(1)(B). The
 14 Federal Rules provide four factors for the court to consider in appointing class counsel:
 15
 16
 17

18 (i) the work counsel has done in identifying or investigating
 19 potential claims in the action; (ii) counsel's experience in handling
 20 class actions, other complex litigation, and the types of claims
 21 asserted in the action; (iii) counsel's knowledge of the applicable
 22 law; and (iv) the resources that counsel will commit to
 23 representing the class.
 24

25 Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).
 26

27 Counsel for the named Plaintiffs qualify for appointment as class counsel under these
 28 factors. Disability Rights Washington, the National Health Law Program, the National Center
 29 for Youth Law, and Perkins Coie have committed extensive time and resources to investigating
 30 and analyzing the claims of the named Plaintiffs and the proposed class. Bailey Decl. ¶ 6, 8,
 31 Gardner Decl. ¶ 6, Foster Decl. ¶ 10 and Perkins Decl. ¶ 8. As discussed above, counsel
 32 possesses extensive experience in class actions and complex civil litigation and has substantial
 33 knowledge of state and federal child welfare laws. The Court should therefore appoint counsel
 34 for the named Plaintiffs as class counsel in its class certification order.
 35
 36
 37
 38
 39
 40
 41
 42

43
 44 **E. Precertification Class Notice is not Required**

45 Because the named Plaintiffs seek to certify a class under Rule 23(b)(2), notice to the
 46 class is not required. Fed. R. Civ. P. 23(c)(2)(A); *see Elliott v. Weinberger*, 564 F.2d 1219, (9th
 47 Cir. 1977), *aff'd in relevant part, rev'd in part sub nom, California v. Yamasaki*, 442 U.S. 682, 99
 48
 49
 50
 51

1 S.Ct. 2545, 61 L.Ed.2d 176 (1979). The need for notice is significantly reduced in a 23(b)(2)
2 class – as opposed to a 23(b)(3) class seeking individual damages – because only members of a
3 23(b)(3) class may request exclusion and the cost of providing notice "could easily cripple
4 actions that do not seek damages." Advisory Committee Notes to 2003 Amendments to Rule 23.
5
6

7
8
9 The Ninth Circuit has recognized that due process requires notice to absent class
10 members only when it is necessary to provide class members an opportunity to signify whether
11 representation by the named plaintiffs is fair and adequate or to otherwise intervene. *Elliot*, 564
12 F.2d at 1229. In a Rule 23(b)(2) class action seeking only injunctive or declaratory relief, "the
13 due process rights of absent class members generally are satisfied by adequate representation
14 alone." *Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994); see *Besinga v. U.S.*, 923 F.2d
15 133, 137 n.7 (9th Cir. 1991) (stating that while due process requires that absent members of a
16 23(b)(2) class seeking monetary relief be notified that their damage claims may be adjudicated,
17 "[w]hen only equitable relief is sought . . . the due process interests of absent members will
18 usually be safeguarded by adequate representation alone").
19
20
21
22
23
24
25
26
27

28
29 Notice is not necessary in this case, because the named Plaintiffs' claims are typical of
30 those of the class as a whole, the named Plaintiffs are adequate representatives of the class, the
31 class is represented by experienced counsel, and this case involves only claims for declaratory
32 and injunctive relief. See *Elliot*, 564 F.2d at 1229 (finding that notice is not required for a
33 nationwide 23(b)(2) class where the named Plaintiffs are adequate representatives with
34 experienced counsel); *Stolz v. United Bhd. Of Carpenters & Joiners of Am., Local Union No.*
35 *971*, 620 F. Supp. 396, 408 (D. Nev. 1985) (holding that notice is unnecessary for a 23(b)(2)
36 class where the named plaintiffs are adequate representatives of the class). Accordingly,
37 Plaintiffs request that the Court exercise its discretion to certify the class without requiring notice
38 to the unnamed class members, at least at this stage of the litigation.
39
40
41
42
43
44
45
46
47
48
49
50
51

IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court certify the class described above, designate counsel for the named Plaintiffs as class counsel and certify the proposed class without requiring notice to the unnamed class members.

DATED this 24th day of June, 2010.

/s/Regan Bailey
Regan Bailey, WSBA No. 39142
reganb@dr-wa.org
Susan Kas, WSBA No. 36592
susank@dr-wa.org
DISABILITY RIGHTS WASHINGTON
315 5th Avenue South, Suite 850
Seattle, WA 98104
Telephone: (206) 324-1521
Facsimile: (206) 957-0729

/s/Patrick Gardner
Patrick Gardner, CB No. 208199
pgardner@youthlaw.org
Bryn Martyna, CB No. 239852
bmartyna@youthlaw.org
Fiza Quraishi, CB No. 252033
fquraishi@youthlaw.org
NATIONAL CENTER FOR YOUTH LAW
405 14th Street, 15th Floor
Oakland, CA 94612
(510) 835-8098

/s/Susan E. Foster
Susan E. Foster, WSBA No. 18030
SFoster@perkinscoie.com
Frederick B. Rivera, WSBA No. 23008
FRivera@perkinscoie.com
Travis A. Exstrom, WSBA No. 39309
TExstrom@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: (206) 359.8000
Facsimile: (206) 359.9000

/s/Jane Perkins
Jane Perkins, SBN 104784
perkins@healthlaw.org
NATIONAL HEALTH LAW PROGRAM
211 N. Columbia Street
Chapel Hill, NC 27514
Telephone: (919) 968-6308

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of same to the following: Carrie Bashaw (CarrieB@atg.wa.gov), Sarah Coats (SarahC@atg.wa.gov), Bill G. Clark (BillC2@atg.wa.gov), Eric Nelson (EricN1@atg.wa.gov), and Scott T. Middleton (ScottM6@atg.wa.gov).

Legal /s/Cathi Schleh
Secretary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

EXHIBIT 1

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

T.R., by and through his guardian and next friend,
R.R.; S.P., by and through her mother and next
friend, D.H.; C.A., by and through her mother and
next friend, A.A.; T.F., by and through her father
and next friend, D.F.; P.S., by and through his
mother and next friend, W.S.; T.V., by and through
his guardian and next friend. C.D.; G.B., by and
through her mother and next friend, L.B.; E.H. by
and through his mother and next friend, C.H.; E.D.,
by and through his mother and next friend, A.D.;
and L.F.S., by and through his mother and next
friend, B.S.,

Plaintiffs,

v.

SUSAN N. DREYFUS, not individually, but solely
in her official capacity as Secretary of the
Washington State Department of Social and Health
Services,

Defendant.

No. 2:09-cv-01677-TSZ

**STIPULATION REGARDING
PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

STIPULATION

Whereas, Plaintiffs filed a Class Action Complaint for Injunctive and Declaratory relief on
November 24, 2009 ("the "Class Action Complaint");

WHEREAS, the Class Action Complaint asserts claims that Defendant has failed to ensure
that appropriate mental health services (specifically, home and community-based mental health
services) and due process rights are made available to Washington's Medicaid eligible children as
required by the EPSDT, comparability and due process requirements of the Medicaid Act, the
Americans with Disabilities Act and the United States Constitution.

STIPULATION REGARDING PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION (No. 2:09-cv-01677-TSZ) - 1

70787-0001/LEGAL18489676.1

DISABILITY RIGHTS
WASHINGTON
315 5th Avenue South, Suite 850
Seattle, Washington 98104

1
2
3 WHEREAS, Defendant denies such claims; and,
4

5 WHEREAS, the Class Action Complaint sought certification under Fed. R. Civ. P. 23 (a)
6 and 23(b)(2).
7
8

9 Plaintiffs and Defendant, by and through their respective undersigned counsel, hereby
10 STIPULATE AND AGREE that:
11

12
13 1. With respect to each of the Plaintiffs' claims and requests for relief as alleged in the
14 Complaint, as well as Defendant's defenses, the Class may be certified under Fed. R. Civ. P. 23 (a)
15 and 23(b)(2). The Defendant reserves the right to challenge class certification as the issues or facts
16
17 in the case are further identified or developed...
18
19

20
21 2. The Class shall be defined as: All persons under the age of 21 who now or in the
22 future:
23

- 24
25 i. meet or would meet the State of Washington's Title XIX Medicaid financial
26 eligibility criteria;
27
28 ii. are determined and documented by a licensed practitioner of the healing arts
29 operating within the scope of their practice as defined by Washington state
30 law, to have a mental illness or condition, or had a screen or an assessment
31 been conducted by such practitioner, would have been determined and
32 documented to have a mental illness or condition;
33
34 iii. have a functional impairment, which substantially interferes with or
35 substantially limits the ability to function in the family, school or community
36 setting; and
37
38 iv. for whom intensive home and community based services coverable under
39 Title XIX Medicaid and eligible for Federal Financial Participation, have
40 been, or would have been recommended by a licensed practitioner in order to
41 correct or ameliorate a mental illness or condition.
42
43
44

45 3. The representative named plaintiffs shall be T.R., by and through his guardian and
46 next friend, R.R.; S.P., by and through her mother and next friend, D.H.; C.A., by and through her
47 mother and next friend, A.A.; T.F., by and through her father and next friend, D.F.; P.S., by and
48
49 through his mother and next friend, W.S.; T.V., by and through his guardian and next friend. C.D.;
50
51

1
2
3 G.B., by and through her mother and next friend, L.B.; E.H. by and through his mother and next
4 friend, C.H.; E.D., by and through his mother and next friend, A.D.; and L.F.S., by and through his
5 mother and next friend, B.S. Defendant reserves the right to challenge the designation of any of the
6 named plaintiffs' as class representatives.
7
8
9

10
11 4. Without waiver of any argument that the Defendant may assert with respect to the
12 amount of any claim for attorneys' fees, the following firms and individuals shall be appointed as
13 class counsel: Disability Rights Washington (Regan Bailey and Susan Kas), The National Health
14 Law Program (Jane Perkins), National Center for Youth Law (Patrick Gardner) and Perkins Coie
15 LLP. (Susan E. Foster and Frederick Riviera). Defendant reserves the right to challenge the
16 designation of multiple law firms and lawyers as class counsel if it becomes apparent that the
17 participation of the Plaintiffs' law firms and attorneys are unnecessarily increasing the cost of
18 litigation or are otherwise interfering with the efficient management of this case.
19
20
21
22
23
24
25
26

27 5. Plaintiffs should not be required to provide notice to the unnamed class members.
28

29 6. This stipulation is without waiver of the right of either party to file a motion to
30 amend the class definition.
31

32
33 STIPULATED THIS 9th day of June, 2010.
34

35 **FOR PLAINTIFFS:**
36

37
38 /s/Regan Bailey
39 Regan Bailey, WSBA No. 39142
40 reganb@dr-wa.org
41 Susan Kas, WSBA No. 36592
42 susank@dr-wa.org
43 **DISABILITY RIGHTS WASHINGTON**
44 315 5th Avenue South, Suite 850
45 Seattle, WA 98104
46 Telephone: (206) 324-1521
47 Facsimile: (206) 957-0729
48
49
50
51

/s/Susan E. Foster
Susan E. Foster, WSBA No. 18030
SFoster@perkinscoie.com
Frederick B. Rivera, WSBA No. 23008
FRivera@perkinscoie.com
Travis A. Exstrom, WSBA No. 39309
TExstrom@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Telephone: (206) 359.8000
Facsimile: (206) 359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51

/s/Patrick Gardner

Patrick Gardner, CB No. 208199
pgardner@youthlaw.org
Fiza Quraishi, CB No. 252033
fquraishi@youthlaw.org
NATIONAL CENTER FOR YOUTH LAW
405 14th Street, 15th Floor
Oakland, CA 94612
(510) 835-8098

/s/Jane Perkins

Jane Perkins, SBN 104784
perkins@healthlaw.org
NATIONAL HEALTH LAW PROGRAM
211 N. Columbia Street
Chapel Hill, NC 27514
Telephone: (919) 968-6308

ATTORNEYS FOR PLAINTIFFS

FOR DEFENDANT:

ROBERT M. MCKENNA
Attorney General

/s/ Carrie Bashaw

CARRIE L. BASHAW, WSBA No. 20253
CarrieB@atg.wa.gov
SARAH J. COATS, WSBA No. 20333
SarahC@atg.wa.gov
BILL G. CLARK, WSBA No. 09234
BillC2@atg.wa.gov
ERIC NELSON, WSBA No. 27183
EricN1@atg.wa.gov
Assistant Attorneys General
Attorneys for Defendant

Office of the Attorney General
7141 Cleanwater Drive SW
P.O. Box 40124
Olympia, WA 98504-0124
(360) 586-6565

ATTORNEYS FOR DEFENDANT

EXHIBIT 2

LIST OF SELECTED EPSDT CLASS ACTION CASES

- *John B. v. Goetz*, 661 F.Supp.2d 871 (M.D. Tenn. 2009) (State violated consent decree entered for plaintiff class of Medicaid eligible children seeking EPSDT services and related medical care)
- *Hawkins v. Comm'r, N.H. Dep't of Health & Human Servs.*, No. 99-cv-143-JD, 2008 WL 2741120 (D. N.H. July 10, 2008) (denying motion filed by plaintiff class of Medicaid-eligible children for contempt arising from defendant's alleged noncompliance with consent decree that required the provision of certain dental services under EPSDT provisions) (unpublished decision)
- *Frazer v. Ladd*, 457 F.3d 432 (5th Cir. 2006) (refusing to dissolve consent decree entered for plaintiff class of indigent children that challenged provision of medical and dental care under Texas' EPSDT program)
- *Ekloff v. Rodgers*, 443 F. Supp. 2d 1173 (D. Ariz. 2006) (holding that plaintiff class of Medicaid-eligible persons under the age of 21 were entitled to coverage for incontinence briefs under EPSDT provisions)
- *Frew v. Hawkins*, 540 U.S. 431 (2004) (holding that Eleventh Amendment did not bar enforcement of consent decree for class of children in Texas entitled to EPSDT services)
- *Collins v. Hamilton*, 349 F. 3d 371 (7th Cir. 2003) (affirming injunction requiring state to provide treatment in long-term psychiatric residential treatment facilities to plaintiff class of Medicaid-eligible persons under the age of 21 pursuant to EPSDT provisions)
- *Dajour B. ex rel. L.S. v. City of N.Y.*, 2001 WL 1173504 (S.D.N.Y. Oct. 3, 2001) (certifying plaintiff class of Medicaid-eligible persons under the age of 21 challenging failure of City and Department of Health to meet their EPSDT obligations) (unpublished decision)
- *Chisholm v. Hood*, 110 F. Supp. 2d 499 (E.D. La. 2000) (holding that State policy of limiting certain occupational, speech, and audiological services to schools violated rights of plaintiff class of Medicaid-eligible children to EPSDT services)
- *Salazar v. D.C.*, 954 F. Supp. 278, 334 (D.D.C. 1996) (State violated 42 U.S.C. § 1983 by, among other things, failing to provide EPSDT services to plaintiff class of Medicaid applicants)
- *JK By & Through RK v. Dillenberg*, 836 F. Supp. 694 (D. Ariz. 1993) (recognizing that Court certified plaintiff class of Medicaid-eligible children that challenged the State's provision of mental health services)
- *Chappell by Savage v. Bradley*, 834 F. Supp. 1030 (N.D. Ill. 1993) (holding that EPSDT provisions required coverage of medically necessary orthodontic treatment for plaintiff class of Medicaid-eligible children)

- *Mitchell v. Johnston*, 701 F. 2d 337, 345 (5th Cir. 1983) (affirming district court's certification of plaintiff class of Medicaid-eligible persons under the age of 21 seeking preventative dental service under EPSDT provisions)
- *Phila. Welfare Rights Org'n v. Shapp*, 602 F. 2d 1114 (3d Cir. 1979) (affirming order modifying consent decree entered on behalf of plaintiff class of Medicaid-eligible children and reversing order that denied orthodontic services required under Pennsylvania EPSDT program)
- *Wis. Welfare Rights Org'n v. Newgent*, 433 F. Supp. 204 (E.D. Wis. 1977) (certifying plaintiff class of Medicaid-eligible persons under the age of 21 challenging Wisconsin's provision of EPSDT services)
- *Bond v. Stanton*, 372 F. Supp. 872 (N.D. Ind. 1974) (certifying plaintiff class of Medicaid-eligible persons under the age of 21 challenging Indiana's provision of EPSDT services and granting summary judgment to plaintiffs), *aff'd* 504 F.2d 1246 (7th Cir. 1974)