



Fact Sheet:

EPSDT Litigation Trends & Docket

**Prepared by
Jane Perkins, National Health Law Program (NHeLP)
October 2020**

This Fact Sheet summarizes the Medicaid Act's Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit and highlights enforcement trends. It then provides a docket giving citation and annotation to federal and state court cases.¹ While occasionally mentioning procedural rulings, such as decisions on motions to dismiss or class certification, it focuses on substantive decisions affecting EPSDT.

Overview of EPSDT

EPSDT is a mandatory Medicaid service for children and youth under age 21. See 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r). Forming the foundation of EPSDT, four separate screens are required: vision (including eyeglasses), hearing (including hearing aids), dental, and medical. The medical screen has five components: a comprehensive health and developmental history, unclothed physical examination, immunizations, laboratory testing (requiring 2 lead tests by age 3), and health education and anticipatory guidance. Screens must be provided according to periodicity schedules set by the state Medicaid agency in consultation with child health experts, and at other times as needed to determine whether a child has a condition that needs care. *Id.* at § 1396d(r)(1)-(4).²

State Medicaid agencies must effectively inform all Medicaid-eligible persons in the state who are under age 21 of the availability of EPSDT and its benefits. *Id.* at § 1369a(a)(43)(A). This includes informing children with disabilities and providing appointment scheduling and transportation assistance. See 42 C.F.R. § 441.56.

¹ For a previous iteration of this docket, see Jane Perkins, Nat'l Health Law Prog., *Medicaid EPSDT Litigation-Case Trends & Annotated Docket* (Sept. 25, 2018) (on file with author).

² See Am. Acad. of Ped., *Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents* (4th ed.) (recommending periodicity schedules and screening content), <https://brightfutures.aap.org/materials-and-tools/guidelines-and-pocket-guide/Pages/default.aspx>.

The Medicaid Act also requires the state Medicaid agency to “arrang[e] for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment” that the child needs. 42 U.S.C. § 1396a(a)(43)(C). The Act prescribes a comprehensive scope of benefits and describes the medical necessity standard to be applied on an individual basis to determine a child’s treatment needs:

Scope of benefits: All mandatory and optional services that the state can cover under Medicaid, whether or not such services are covered for adults. See 42 U.S.C. § 1396d(a) (listing services).

Medical necessity: All “necessary health care, diagnostic services, treatment, and other measures . . . to *correct or ameliorate* defects and physical and mental illnesses and conditions. . . .”

See 42 U.S.C. § 1396d(r)(5) (emphasis added). In sum, if a health care provider determines that a service is necessary, it should be covered to the extent needed. For example, if a child needs personal care services to ameliorate a behavioral health problem, EPSDT should cover those services to the extent the child needs them—even if the state places a quantitative limit on personal care services or does not cover them at all for adults. As stated by the U.S. Department of Health and Human Services Centers for Medicare & Medicaid Services (CMS),

[t]he goal of EPSDT is to assure that individual children gets the health care they need when they need it—the right care to the right child at the right time in the right setting.³

EPSDT Enforcement

Over the years, families and children have gone to court to enforce the EPSDT requirements. Early cases focused on requiring Medicaid-participating states to put the benefit in place. See, e.g., *Stanton v. Bond*, 504 F.2d 1246, 1251 (7th Cir. 1974) (rejecting state’s “somewhat casual approach” and requiring state to establish effective informing).

A second wave of cases involved broad, systemic challenges to states’ failures to implement the benefit because it existed mostly on paper—that is, in regulations and policy manuals that were not being implemented on the ground. See, e.g., *Frew v.*

³ CMS, *EPSDT - A Guide for States: Coverage in the Medicaid Benefit for Children and Adolescents* 1 (2014), https://www.medicaid.gov/medicaid/benefits/downloads/epsdt_coverage_guide.pdf.

Gilbert, 109 F. Supp. 2d 579 (E.D. Tex. 2000) (concerning screening, informing, and reporting) (subsequent case history omitted); *Salazar v. D.C.*, 954 F. Supp. 278 (D.D.C. 1997) (same) (subsequent case history omitted). More recent EPSDT cases have tended to seek targeted, as opposed to across-the-board, relief. See, e.g., *K.G. ex rel. Garrido v. Dudek*, 864 F. Supp. 2d 1314 (S.D. Fla. 2012) (finding ABA therapy for children with autism is a rehabilitative service covered by the EPSDT); *S.D. ex rel. Dickson v. Hood*, 391 F.3d 581 (5th Cir. 2004) (same, regarding incontinence supplies).

There are other trends. *First*, courts are applying the words of the statutory text to require state Medicaid programs to make the broad scope of benefits available to children and to cover those services when necessary to “correct or ameliorate” the child’s condition. 42 U.S.C. §§ 1396d(r)(5) and 1396a(a)(43). In addition, courts are not allowing states to simply wait for claims to be submitted; rather, states are responsible for “arranging for” services the child needs. 42 U.S.C. § 1396a(a)(43)(C). Multiple courts have recognized that, because of these laws, the obligation is “proactive” and, regardless of whether it is contracting with outside entities for the provision of services, “the ultimate responsibility to ensure treatment remains with the state.” *Katie A. v. Douglas*, 481 F.3d 1150, 1158-59 (9th Cir. 2007) (collecting cases); see also, e.g., *B.K. by next friend Tinsley v. Faust*, 411 F. Supp. 3d 462, 473 (D. Ariz. 2019). The bottom line:

The EPSDT benefit is more robust than the Medicaid benefit for adults and is designed to assure that children receive early detection and care, so that health problems are averted or diagnosed and treated as early as possible.

Ctrs. for Medicare & Medicaid Servs., *EPSDT - A Guide for States: Coverage in the Medicaid Benefit for Children and Adolescents* at 1 (2014), at https://www.medicaid.gov/sites/default/files/2019-12/epsdt_coverage_guide.pdf; *Id.* at 5 (“The affirmative obligation to connect children with necessary treatment makes EPSDT different from Medicaid for adults.”). See also, e.g., *Memisovski v. Maram*, No. 92 C 1982, 2004 WL 1878332, at *50 (N.D. Ill. Aug. 23, 2004) (stating that EPSDT “differ[s] from merely providing ‘access’ to services; the Medicaid statute places affirmative obligations on states to assure that these services are actually provided to children on Medicaid in a timely and effective manner.”).

Second, because of these laws, it has become increasingly clear that EPSDT is an essential lifeline for children with special health care needs. Without EPSDT, many of these children are at serious risk of unnecessary and potentially protracted and dangerous institutional placements. Working in tandem with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act, EPSDT is being

enforced to ensure that services are provided in the least restrictive setting and/or through unbiased methods of administration.

Specifically, courts have enforced EPSDT to require coverage of evidence-based, family-centered home and community-based services for children with intensive behavioral health needs. See, e.g., *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass. 2006) (requiring state to establish system for covering screening, service coordination, and crisis and home-based services for children with serious emotional disturbances); Cf. *Katie A. v. Douglas*, 481 F.3d 1150 (9th Cir. 2007) (holding that wraparound services and therapeutic foster care are within state's EPSDT obligations under federal law, but that if all EPSDT-mandated components of these services are provided through existing state programs, then state need not repackage them as plaintiffs request), *rev'g*, 433 F. Supp. 2d 1065 (C.D. Cal. 2006). Relying on these cases, an Arizona district court recently discussed EPSDT's basic requirements when certifying a Medicaid subclass in a case involving children in foster care who need behavioral health and therapeutic services. The court found that the EPSDT obligation is active, not passive:

Arizona may not simply shrug indifferently when children do not request help, but instead must first affirmatively determine what obstacles lie between the children and the help that is available, and then mitigate those obstacles.

Tinsley v. Faust, 411 F. Supp. 3d 462, 473-74 (D. Ariz. 2019).

Courts have also enforced EPSDT and the ADA to require coverage of in-home nursing services needed by children with medically complex conditions. See, e.g., *O.B. v. Norwood*, 838 F.3d 837, 840 (7th Cir. 2016) (finding error where the state agency "left the search [for private duty nurses] to be conducted by parents who apparently lacked the knowledge or experience required to hire the needed number of nurses without a painfully protracted search"), *aff'g*, 170 F. Supp. 3d 1186 (N.D. Ill. 2016) (enforcing Medicaid EPSDT "arrange for" and reasonable promptness requirements and later extending injunction to ADA/§ 504 claims); *I.N. v. Kent*, No. C 18-03099 WHA, 2019 WL 1516785 (N.D. Cal. Apr. 7, 2019) (granting preliminary approval of class settlement requiring Medicaid agency to designate case management service providers for children with medically complex conditions who need in-home private duty nursing services); *A.H.R. v. Wash. State Health Care Auth.*, No. C15-5701JLR, 2016 WL 98513 (W.D. Wash. Jan. 7, 2016) (finding state failed to "arrange for" in-home private duty nursing services needed by children with medically complex conditions and that failure violated EPSDT and the ADA).

Finally, courts continue to reject states' arguments that Medicaid beneficiaries cannot enforce the Medicaid Act's EPSDT provisions in court.⁴ There is a case pending at Supreme Court that could affect private enforcement of many provisions of the Medicaid Act, including those governing EPSDT. See *Planned Parenthood of S. Atl. v. Baker*, 941 F.3d 687 (4th Cir. 2019) (allowing Medicaid recipients to enforce the free choice of provider provision, 42 U.S.C. § 1396a(a)(23)(A)), *petition for cert. filed*, No. 19-1186 (Mar. 27, 2020) (set for the Oct. 9 conference).⁵ In 2018, the Supreme Court denied certiorari in two cases that had also allowed enforcement of the free choice provision, but with three justices dissenting. See *Planned Parenthood of Kan. v. Anderson*, 882 F.3d 1205 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 638 (2018); *Planned Parenthood of Gulf Coast v. Gee*, 862 F.3d 445 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 408 (2018). Notably, three justices vigorously dissented. 139 S. Ct. 408 (Thomas, Alito, Gorsuch, J.J., dissenting). Four votes are needed to grant certiorari.

EPSDT Annotated Case Docket
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⁴ For discussion, see Jane Perkins, *Pin the Tail on the Donkey: Beneficiary Enforcement of the Medicaid Act Over Time*, 9 ST. LOUIS U. J. HEALTH L & POL'Y 207 (2016).

⁵ On September 17, the district court entered summary judgment for Planned Parenthood and ordered a permanent injunction. See 2020 WL 5569750 (D.S.C. Sept. 17, 2020). On September 22, Planned Parenthood submitted supplemental briefing to the Supreme Court asking the Court to deny the petition for certiorari as moot.

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U.S. Supreme Court Cases:

Frew ex rel. Frew v. Hawkins, 540 U.S. 431 (2004) (enforcement of **consent decree** does not violate **Eleventh Amendment**), *on remand*, 401 F. Supp. 2d 619 (E.D. Tex. 2005) (refusing to dissolve consent decree in part because **provider participation** rates had decreased in recent years, with extensive discussion of **CMS Form 416**), *aff'd*, 457 F.3d 432 (5th Cir. 2006) (denying motion to dissolve decree because the “object of the consent decree is not mere compliance with federal law” but rather to “implement the Medicaid statute ‘in a highly detailed way’”), *partial subsequent case history*: 820 F.3d 715 (5th Cir. 2016) (affirming dissolution of some decree provisions while reversing and remanding regarding provisions requiring defendant to address **shortage of providers** using an approach that compares the provider-to-class-member ratio with the average client load of the relevant type of provider, *e.g.* dentist), *on remand*, No. 3:93-CV-65, 2020 WL 1685159 (E.D. Tex. Apr. 7, 2020) (denying defendant’s motion to clarify and reinstate order vacating provisions of the corrective action order finding argument was contrary to instructions from the Fifth Circuit), *same case*, 5 F. Supp. 3d 845 (E.D. Tex. 2013), *aff'd*, 780 F.3d 320 (5th Cir. 2015) (finding substantial compliance with consent decree provisions and dissolving order requiring defendants to educate participating pharmacies about Medicaid and EPSDT prescription drug requirements) and *Frew v. Gilbert*, 109 F. Supp. 2d 579 (E.D. Tex. 2000) (concerning **screening, informing, and reporting**).

Federal Circuit Court of Appeals Cases:

B.K. by next friend Tinsley v. Snyder, 922 F.3d 957 (9th Cir. 2019) (decertifying and remanding Medicaid subclass, stating that Medicaid does not support the argument that being at risk of not receiving services is a Medicaid violation), *on remand sub nom. Tinsley v. Faust*, 411 F. Supp. 3d 462, 473 (D. Ariz. 2019) (certifying Medicaid subclass in the **foster care** case where children allege that Arizona is failing to provide adequate behavioral health and therapeutic services, noting that the EPSDT “**obligation is active**, not passive” and the ultimate responsibility to ensure treatment remains with the state).

A.R. by and through Root v. Sec. Fla. Agency for Health Care Admin., 769 Fed. App’x 718 (11th Cir. 2019) (finding EPSDT and ADA challenges to Florida’s provision of **private duty nursing** (PDN) services to medically fragile children **moot** after Florida

⁶ Use of an asterisk (*) denotes a case where National Health Law Program staff have appeared as counsel.

changed policies through formal rulemaking to: (1) stop applying a **convenience standard** (that denied PDN services as merely for the convenience of the caretaker if the child's parents were available to provide nursing services to the child); (2) ended prioritization of extended care center services (that limited PDN services to children who were unable to go to a care center that provided out-of-home care for up to 12 hours a day, 7 days a week); (3) abolished **caregiver preference** (that decreased authorized PDN coverage as caregivers were taught skills to care for their child); and (4) addressed inconsistent application of Pre-Admission Screening and Resident Review (PASRR) screenings that resulted in denial of necessary services, including PDN care).

***O.B. v. Norwood**, 838 F. 3d 837 (7th Cir. 2016) (requiring state Medicaid agency to affirmatively **arrange for in-home shift nursing** services needed by children with medically complex conditions under EPSDT), *aff'g* 170 F. Supp. 3d 1186 (N.D. Ill. Mar. 21, 2016) (granting preliminary injunction enforcing EPSDT requirement to arrange for necessary in home shift nursing and denying motion to dismiss EPSDT and **ADA/§ 504 claims**; unpublished order extends injunction to include the ADA/§504 claims).

D.U. v. Rhoades, 825 F.3d 331 (7th Cir. 2016), *aff'g.*, No. 13-cv-1457, 2015 WL 224932 (E.D. Wis. Jan. 15, 2015) (finding lack of evidence from treating providers for 70 hours of **private duty nursing** and refusing to enjoin state from reducing hours), *later decision*, 2018 WL 1010486 (E.D. Wis. Feb. 20, 2018) (holding defendant did not have **sovereign immunity** from suit and denying defendants' motion for summary judgment because the record showed a genuine issue as to whether eight hours per day of private duty nursing care was medically necessary but rejecting D.U.'s argument that Wisconsin's definition of "medically necessary" was narrower than the EPSDT program's "**correct or ameliorate**" definition, finding that "medical necessity" is not explicitly defined in the Medicaid Act).

***John B. v. Emkes**, 710 F.3d 394 (6th Cir. 2013) (finding state in substantial compliance with EPSDT **consent decree** and dissolving injunction), *aff'g*, 852 F. Supp. 2d 957 and 852 F. Supp. 2d 944 (M.D. Tenn. 2012) (without comment finding 42 U.S.C. § 1396a(a)(43)(B)-(C) **provisions enforceable** under § 1983), *prior history*, 661 F. Supp. 2d 871 (M.D. Tenn. 2009) (denying defendants' motion to vacate consent decree), *rev'd in part sub nom. John B. v. Goetz*, 626 F.3d 356 (6th Cir. 2010), *on remand*, 2011 WL 795019 (M.D. Tenn. Mar. 1, 2011) (refusing to vacate consent decree and finding 2010 congressional amendment of definition of "**medical assistance**" did not disturb the ability of state to provide payment only), *additional case history*: *John B. v. Menke*, 176 F. Supp. 2d 786 (M.D. Tenn. 2001) (holding **managed care system** did not adequately meet EPSDT mandates), enforcing, No. 3-98-0168 (M.D. Tenn. Feb. 25, 1998) (consent decree to implement multi-year remedial plan that included requirements for: (1) updating periodic screening requirements to identify medical and

mental health problems; (2) developmental screening to include use of **culturally sensitive assessments** and **avoidance of premature diagnosis labeling**; (3) improving access to treatments, with attention to children who are medically fragile; and (4) integration of health care and custodial services for **children in foster care** (additional case history omitted).

***K.G. ex rel. Garrido v. Dudek**, 864 F. Supp. 2d 1314 (S.D. Fla. 2012) (finding **ABA therapy** for children with autism is a rehabilitative service covered by the Medicaid Act and is not experimental), *aff'd in part and vacated and remanded in part*, 731 F.3d 1152 (11th Cir. 2013) (finding district court did not abuse its discretion in issuing permanent injunction that overruled state's determination that ABA was experimental), *on remand*, 981 F. Supp. 2d 1275 (S.D. Fla. 2013) (permanent injunction requiring Florida to pay for ABA), *same case*, 839 F. Supp. 2d 1254 (S.D. Fla. 2011) (preliminary injunction).

Va. Dep't of Med. Assistance. Servs. v. U.S Dep't of Health & Human Servs., 678 F.3d 918 (D.C. Cir. 2012), *aff'g*, 779 F. Supp. 2d 129 (D.D.C. 2011) and *Kan. Health Pol. Auth. v. U.S. Dep't of Health & Human Servs.*, 798 F. Supp. 2d 162 (D.D.C. 2011) (finding the "under-21 exception" to federal funding exclusion for **institutions for mental diseases** applies only to inpatient psychiatric hospital services and does not allow federal funding for acute care, pharmacy, laboratory tests, pharmacy, and outside medical providers).

***Salazar v. D.C.**, 896 F.3d 489 (D.C. Cir. 2018), *rev'g*, 177 F. Supp. 3d 418 (D.D.C. 2016) (holding district court exceeded scope of its authority to modify EPSDT **consent decree** by imposing new injunctive obligations to redress new factual problems with timely processing of Medicaid applications that arose under the new Affordable Care Act law), *same case*, 236 F. Supp. 3d 411 (D.D.C. 2017) (denying plaintiffs' motion to enforce settlement order provisions regarding oral health coverage because of progress made by DC to comply with utilization targets), *prior history*, 671 F.3d 1258 (D.C. Cir. 2012) (finding order denying motion to dismiss consent decree was not immediately appealable), *lower court decision*, 729 F. Supp. 2d 257 (D.D.C. 2010) (finding EPSDT § 1396a(a)(43) **provision enforceable** under § 1983 and refusing to vacate consent decree), *additional partial prior history*, 685 F. Supp. 2d 72 (D.D.C. 2010) (refusing to vacate EPSDT **dental screening** order), *aff'd but criticized*, 633 F.3d 1110 (D.C. Cir. 2011), *same case*, 596 F. Supp. 2d 67 (D.D.C. 2009), *partial recon. granted*, 750 F. Supp. 2d 65. (D.D.C. 2010) (citing 42 C.F.R. § 438.10 and ordering District to disclose copyrighted **clinical guidelines used by managed care contractor** to deny plaintiff's request for EPSDT in-home services), *same case*, 570 F. Supp. 2d 105 (D.D.C. 2008) (assessing **financial sanctions** for District's failure to meet deadlines for dental corrective action plan), *aff'd in part and rev'd in part*, 602 F.3d 431 (D.C. Cir. 2010), and 1997 WL 306876 (D.D.C., Jan. 17, 1997) (remedial order for state to comply with

EPSDT **screening and informing** requirements), same case, *Wellington v. D.C.*, 851 F. Supp. 1 (D.D.C. 1994) (holding **EPSDT provisions enforceable** under 42 U.S.C. § 1983).

Hawkins v. Comm’r, 665 F.3d 25 (1st Cir. 2012) (refusing to extend **consent decree**; finding agency had no duty to collect information from **dental providers** regarding openings, no evidence that children requesting services were not receiving them, and that **statewideness** provisions did not require agency to provide orthodontic services within a certain driving distance), *aff’g*, No. 99-cv-143-JD, 2010 WL 2039821 (D.N.H. May 19, 2010), same case, 2008 WL 2741120 (July 10, 2008) (refusing to find contempt), 2007 WL 2325216 (Aug. 13, 2007) (same), *prior proceeding*, 2004 WL 166722 (D.N.H. Jan. 23, 2004) (approving consent decree, certifying class).

Moore ex rel. Moore v. Reese, 637 F.3d 1220 (11th Cir. 2011) (establishing **standards for determining roles of state agency and treating providers** in deciding disputes over amount of covered services), *rev’g*, 674 F. Supp. 2d 1366 (N.D. Ga. 2009), *on remand*, No. 1:07-cv-631, 2012 WL 1380220 (declaratory judgment finding reduction of **skilled nursing hours** violated EPSDT; injunctive relief denied as **moot** because trial evidence concerned condition as of 2006), prior history, 324 F. App’x 773 (11th Cir. 2009) (Moore I) (finding both state and treating physician have roles in determining what measures are needed to “correct or ameliorate” medical conditions and private physician’s word is “not dispositive”), *rev’g and remanding*, 563 F. Supp. 2d 1354 (N.D. Ga. 2008), same case, No. 1:07-CV-631, 2007 WL 1876017 (N.D. Ga. June 28, 2007) (rejecting state’s **abstention** request and plaintiff’s preemption claim).

Parents’ League for Effective Autism Servs. v. Jones-Kelley, 339 F. App’x 542 (6th Cir. 2009) (enjoining state rules that restricted EPSDT coverage of **Applied Behavioral Analysis (ABA) as a rehabilitative service**), *aff’g*, 565 F. Supp. 2d 905 (S.D. Ohio 2008) (preliminary injunction), same case, 565 F.Supp.2d 895 (S.D. Ohio 2008) (holding **EPSDT provisions enforceable** under § 1983) (additional case history omitted).

***Katie A. v. Douglas**, 481 F.3d 1150 (9th Cir. 2007) (holding that **wraparound services and therapeutic foster care** are within the State’s EPSDT obligations under federal law, but that if all EPSDT-mandated components of these services are being provided through existing State programs, then State need not repackage these services as wraparound and therapeutic foster care), *rev’g & remanding*, 433 F. Supp. 2d 1065 (C.D. Cal. 2006), later case history: No. 2:02-cv-05662 (E.D. Cal. Sept. 30, 2020) (Joint Stipulation re: Class Action Settlement), *reprinted at* <https://healthlaw.org/wp-content/uploads/2020/09/1031-Joint-Stip-Re-Class-Action-Settlement.pdf>.

Pediatric Specialty Care, Inc. v. Ark. Dept. of Human Servs., 444 F.3d 991 (8th Cir. 2006) (refusing to require disclosure of **identities of peer review physicians** who make coverage determinations), and No. 4:01CV00830, 2005 WL 5660038 (E.D. Ark. Feb. 7, 2005) (finding individually named defendants not entitled to **qualified immunity** because they violated clearly established EPSDT rights), *aff'd* in part and reversed in part, 443 F.3d 1005 (8th Cir. 2006) (holding **EPSDT provisions enforceable** under § 1983, that ADHS could not be sued because of sovereign immunity), *cert. granted, judgment vacated in part, remanded to dismiss appeal as moot sub nom. Selig v. Pediatric Specialty Care*, 551 U.S. 1142 (2007), *prior history*, 364 F.3d 925 (8th Cir. 2004) (ordering State to cover early intervention Child Health Management Services (CHMS) until impact study on terminating services was completed), *prior history*, 293 F.3d 472 (8th Cir. 2002) (holding EPSDT provisions enforceable under § 1983, that a child has a right to **early intervention day treatment** recommended by their physician, that federal law did not require state plans to list every conceivable treatment service, and that state plan satisfied EPSDT mandate if it indicated state would provide other health care to correct or ameliorate conditions as described in § 1396d(r)(5)).

***Westside Mothers v. Olszewski**, 454 F.3d 532 (6th Cir. 2006) (finding § 1396a (a)(43)(A) **provision enforceable** under § 1983) (additional case history omitted).

S.D. ex rel. Dickson v. Hood, 391 F.3d 581 (5th Cir. 2004) (holding **EPSDT provisions enforceable** under § 1983 and that **incontinence supplies** are § 1396d(a) coverable service), *aff'g*, No. 02-2164, 2002 WL 31741240 (E.D. La Dec. 3, 2002).

Collins v. Hamilton, 349 F.3d 371 (7th Cir. 2003) (requiring coverage of placements in **psychiatric residential treatment facilities**).

Rosie D. v. Baker, 958 F.3d 51 (1st Cir. 2020), *rev'g*, 362 F. Supp. 3d 46 (D. Mass. 2019) (finding district court applied incorrect legal standard when it denied Commonwealth's **motion to terminate** monitoring requirements of court-ordered remedial order and that district court had concluded, without proper analysis, that providers are required by law and/or the remedial plan to meet a 14-day reasonable promptness standard where the cited regulation, 42 C.F.R. § 441.56(e), only requires the Commonwealth to "employ processes to ensure **timely initiation of treatment**"); *partial previous history*: 310 F.3d 230 (1st Cir. 2002) (denying state's motion to dismiss on **Eleventh Amendment** grounds), same case, 599 F.Supp.2d 80 (D. Mass 2009) (allowing short delay in providing In-Home Behavioral Services and Therapeutic Mentoring Services, citing the Commonwealth's financial crisis); 474 F. Supp. 2d 238 (D. Mass. 2007) (adopting state's proposed remedial plan); and 410 F.Supp.2d 18 (D. Mass. 2006) (holding State's failure to provide for **service coordination, crisis**

services and home-based services for children with serious emotional disturbances violated EPSDT and reasonable promptness provisions of Medicaid Act).

***Antrican v. Odom**, 290 F.3d 178 (4th Cir. 2002), *aff'g*, 158 F. Supp. 2d 663 (E.D.N.C. 2001) (finding no **Eleventh Amendment** bar and **EPSDT provisions enforceable** under § 1983).

Tallahassee Mem'l Reg'l Med. Ctr. v. Cook, 109 F.3d 693 (11th Cir. 1997) (requiring coverage for **inpatient grace days** needed by adolescents during periods when alternative care settings were unavailable).

Texas v. U.S. Dep't of Health & Human Serv., 61 F.3d 438 (5th Cir. 1995) (affirming refusal to cover **inpatient residential chemical dependency treatment** (to include room and board) as EPSDT rehabilitation service).

Miller ex rel. Miller v. Whitburn, 10 F.3d 1315 (7th Cir. 1993), *vacating*, 816 F. Supp. 505 (W.D. Wis. 1993) (**transplant** covered under EPSDT).

Pittman ex rel. Pope v. Sec'y Fla. Dep't of Health & Rehab. Servs., 998 F.2d 887 (11th Cir. 1993) (**transplant** and incidental service needs).

Pereira ex rel. Pereira v. Kozlowski, 996 F. 2d 723 (4th Cir. 1993), *aff'g* 805 F. Supp. 361 (E.D. Va. 1992) (**transplant**).

Mitchell v. Johnston, 701 F.2d 337 (5th Cir. 1983) (**dental services**).

Bond v. Stanton, 630 F.2d 1231 (7th Cir. 1980), *appeal after remand*, 655 F.2d 766 (7th Cir. 1981), *same case*, 372 F. Supp. 872 (N.D. Ind.), *aff'd*, 504 F.2d 1246 (7th Cir. 1974) (rejecting state's "somewhat casual approach" to **outreach and informing**).

Phila. Welfare Rights Org. v. Shapp, 602 F.2d 1114 (3d Cir. 1979) (**screening** goals contained in consent decree).

Federal District Courts:

***S.J. v. Tidball**, No. 2:20-cv-4036, 2020 WL 5440510 (W.D. Mo. Sept. 10, 2020) (holding children with medically complex conditions who needed in-home private duty nursing services stated a claim under the **ADA's** integration mandate and EPSDT "**arrange for**" **provisions enforceable** under 42 U.S.C. § 1983, rejecting arguments that *Does v. Gillespie*, 867 F.3d 1034 (8th Cir. 2016) precludes enforcement and that

“**medical assistance**” only requires payment of claims as opposed to actually arranging for services).

K.B. v. Mich. Dep’t of Health & Human Servs., 367 F. Supp. 3d 647 (E.D. Mich. 2019) (dismissing **reasonable promptness** claim, § 1369a(a)(8), on grounds that State can fulfil its obligation by using “**medical assistance**” as payment and plaintiffs allegations focused not on payment but on failure to provide **intensive home and community-based mental health** services; refusing to dismiss EPSDT claim, finding that § 1396a(a)(43)(C) requires the State to “**arrange for**” treatment and that contracting with **prepaid health plans** to provide EPSDT and writing checks did not absolve the State of obligation to ensure adequate treatment is in fact provided; allowing plaintiffs to proceed with **ADA integration mandate** claim based on their risk of institutionalization).

***I.N. v. Kent**, No. C 18-03099 WHA, 2019 WL 1516785 (N.D. Cal. Apr. 7, 2019) (certifying class and granting preliminary approval of **class settlement** requiring Medicaid agency to (1) designate case management service providers for children with medically complex conditions who need **in-home private duty nursing** services; (2) ensure class members can contact state agency directly regarding in-home nursing or case management services; (3) require service providers to send notices to class members with information regarding the case management services available to them; and (4) provide class counsel with data regarding in-home nursing services), *same case*, 2018 WL 4913660 (Oct. 10, 2018) (denying defendant’s motion to dismiss based on arguments that inadequate services were due to nursing shortages and actions or inactions of independent third parties, finding that the complaint alleged there are qualified providers in plaintiffs’ geographic areas, suggested steps defendants could take to address the problems, and EPSDT’s “**arrange for**” provision requires more than merely contracting with service providers and paying them).

M.J. v. D.C., 401 F. Supp. 3d 1 (D.D.C. 2019) (denying D.C.’s motion to dismiss case filed by children and advocacy program asserting violations of EPSDT and ADA due to the lack of three **intensive community-based services**—intensive care coordination, intensive behavior support services, and mobile crisis services, finding, among other things, that plaintiffs alleged that D.C. fails to provide appropriate treatment opportunities in the three areas in favor of admitting children to residential facilities and these allegations, if true, would form the basis for a violation of the EPSDT mandate).

Davis on behalf of J.D.D. v. Carroll, 329 F.R.D. 435 (M.D. Fla. 2018) (dismissing case filed on behalf of a child who did not receive medical care while in custody of the Department of Children and Families (DCF) and, 11 years later, was diagnosed with full-blown AIDS, finding that employees of DCF had **qualified immunity** from damages in their individual capacities (despite knowing of the child’s risk for HIV) because

Medicaid provisions were not sufficiently clear to put them on notice that failing to recommend **HIV screening** would violate his rights to EPSDT and finding child lacked standing to sue director of DCF in his official capacity for ongoing failure to provide outreach and information regarding EPSDT because DCF did not have **responsibility for providing EPSDT outreach**; the Agency for Health Care had that obligation).

Disability Law Center of Alaska v. Davidson, No. 3:16-cv-0277-HRH, 2018 WL 1528158 (D. Alaska Mar. 28, 2018) (granting plaintiffs' motion for summary judgment and finding that CMS cannot authorize defendants to deny providing **ABA therapy** under EPSDT and noting earlier opinion in the case stating that "CMS could not waive the requirement that defendants provide ABA under the EPSDT program[.]").

S.R. v. Pa. Dep't of Human Servs., 309 F. Supp. 3d 250 (M.D. Pa. 2018) (finding EPSDT **provisions enforceable** under § 1983 and that reasonable modifications regulation and integration regulation promulgated under the **Americans with Disabilities and Rehabilitation Acts** provided basis for private enforcement of rights under § 1983).

A.M.R. v. Wash. State Health Care Auth., No. c15-570JLR, 2016 WL 98513 (W.D. Wash. Jan. 7, 2016) (finding state failed to "**arrange for**" in-home private duty nursing services needed by children with **medically complex conditions** and that failure violated EPSDT and the **ADA**).

Troupe v. Bryant, No. 3:10-cv-153, 2016 WL 6585299 (S.D. Miss. Nov. 17, 2016) (granting Defendants' motion to dismiss Plaintiffs' claim alleging lack of screening services under 42 U.S.C. § 1396a(a)(43), finding Plaintiffs have the **affirmative duty to request health screenings** and failed to allege or do so).

M.V. v. Lyon, No. 15-cv-13065, 2016 WL 4537811 (E.D. Mich. Aug. 31, 2016) (finding plaintiffs' allegations of chronic noncompliance with the EPSDT requirement that **speech generating devices** be provided to claimants under the age of 21 to state a valid claim under § 1983).

William v. Horton, No. 1:15-cv-3792-WSD, 2016 WL 6582682 (N.D. Ga. Nov. 11, 2016) (although finding **EPSDT provisions enforceable** § 1983 right and that defendants are not entitled to immunity under the **Eleventh Amendment**, plaintiff's claims against defendants in their individual – and not official - capacity were dismissed, based on **qualified immunity** and preliminary injunction seeking placement in the **psychiatric residential treatment facility** (PRTF) was denied for insufficient information as to the specific relief sought or actions required by defendants).

J.E. v. Wong, No. 14-00399 HG-KJM, 2016 WL 4275590 (D. Haw. Aug. 12, 2016) (finding **EPSDT provisions enforceable** under § 1983, that **ABA therapy** is a covered under EPSDT, and that no state plan amendment is required to ensure such coverage; granting plaintiffs' motion for summary judgment based on defendant's failure to effectively and correctly **inform eligible persons** that ABA is a covered treatment for autism), *same case*, 2015 WL 5116774 (D. Haw. Aug. 27, 2015) (holding **EPSDT provisions enforceable** under § 1983).

A.H.R. v. Wash. State Health Care Auth., No. C1-5701, 2016 WL 98513 (W.D. Wash. Jan. 7, 2016) (noting EPSDT requirement **to arrange for** necessary services and granting preliminary injunction requiring defendants to take all actions within their power necessary for plaintiffs to receive 16 hours per day of **private duty nursing**).

M.A. v. Norwood, No. 15-C-3116, 2015 WL 5612597 (N.D. Ill. Sept. 23, 2015) (in case challenging reduction of children's **in-home shift nursing hours**, court found allegations sufficient to state claims that EPSDT and ADA were being violated, that eligibility standards were unreasonable, unwritten, and arbitrary in violation of due process, and that **written notices** of denial were inadequate).

Cruz v. Zucker, 116 F. Supp. 3d 334 (S.D.N.Y. 2015) (finding **EPSDT provisions enforceable** under § 1983).

Providence Ped. Med. Daycare, Inc. v. Alaigh, 112 F. Supp. 3d 234 (D. N.J. 2015) (finding **health care providers could not enforce EPSDT provisions** post Armstrong and finding evidence did not support claim of that EPSDT services were denied).

Mercer Co. Children's Med. Daycare, LLC v. O'Dowd, No. 13-1436, 2015 WL 5335590 (D.N.J. Sept. 14, 2015) (refusing to allow Medicaid providers and their patients to enforce the **Supremacy Clause** to enjoin state policies they argued were inconsistent with EPSDT and other Medicaid provisions).

N.B. v. Hamos, No. 11 C 06866, 2013 WL 6354152 (N.D. Ill. Dec. 5, 2013) (finding 42 U.S.C. §§ 1396a(a)(43) and 1396d(r) **provisions enforceable** under § 1983 and allowing plaintiffs to proceed with **ADA and Rehabilitation Act** claims where plaintiffs argued defendant was not providing access to **in-home nursing** services), *same case*, 26 F. Supp. 3d 756 (N.D. Ill. 2014) (certifying class).

P.G. v. Hamos, No. 13-2030, 2013 WL 393233 (N.D. Ill. Jan. 31, 2013) (issuing temporary injunction requiring continued coverage of plaintiff's **residential mental health services** through EPSDT).

***Chisholm v. Kliebert**, No. 97-3274, 2017 WL 3730514 (E.D. La. Aug. 30, 2017) (deciding plaintiffs' **motion to enforce** 2014 Stipulated Order addressing delays in obtaining **ABA services** and looking to EPSDT requirements to determine what constitutes **reasonable promptness**, requiring defendants to mitigate problems and noting that reimbursement rate must not be set so low as to "frustrate[] the reasonable promptness provision), 2013 WL 3807990 (E.D. La. July 18, 2013) (finding agency in continuing contempt of remedial order and ordering agency to ensure direct enrollment of Board Certified Behavioral Analysts until the state has begun issuing licenses to providers who treat children with autism disorders), and 2013 WL 4089981 (Aug. 13, 2013) (denying defendant's motion to stay and to clarify), *same case*, 876 F. Supp. 2d 709 (E.D. La. 2012) (refusing to order agency to document **clinical review criteria** when denying prior authorization of home nursing services as beyond the scope of the consent decree but enforcing requirements to identify chronic needs children and provide adequate notice of denials); 133 F. Supp. 2d 894 (E.D. La. 2001) (**community-based behavioral and psychological services for autism** fall under § 1396d(a)(6) and d(a)(13)), *same case*, 110 F. Supp. 2d 499 (E.D. La. 2000) (restricting **therapy services to schools** and limiting home health services violates EPSDT).

Hunter ex rel. Lynah v. Cook, No. 1:08-CV-2930-TWT, 2013 WL 5429430 (N.D. Ga. Sept. 27, 2013) (granting permanent injunction on EPSDT and ADA grounds prohibiting defendant from reducing hours of **in-home skilled nursing**), *same case*, 2013 WL 2252917 (Mar 22, 2013) (granting partial summary judgment to defendant where plaintiff did not show lack of **EPSDT information** or denial of case management, personal care, or incontinence supplies); 2011 WL 4500009 (Sept. 27, 2011) (refusing to find case **moot** where plaintiffs were receiving some but not all requested private duty nursing hours and allowing plaintiff to add **Americans with Disabilities Act** claim); 2010 WL 623475 (Feb. 18, 2010).

Royal v. Cook, No. 1:08-cv-2930-TWT, 2012 WL 2326115 (N.D. Ga. June 19, 2012) (finding EPSDT and **ADA** violations and enjoining defendant from reducing **in-home nursing** hours).

S.B. v. Hamos, No. 12-cv-03077, 2012 WL 1901277 (N.D. Ill. May 25, 2012) (requiring continued coverage of **residential mental health services** through EPSDT), *same case*, 2012 WL 4740291 (Oct. 3, 2012) (refusing to dismiss ADA claims).

D.B. v. Dreyfus, No. C11-2017, 2012 WL 895399 (W.D. Wash. Mar. 15, 2012) (denying preliminary injunction to children challenging reductions in **personal care services**), *recon. denied*, 2012 WL 1856513 (May 21, 2012).

A.M.T. v. Gargano, 781 F. Supp. 2d 798 (S.D. Ind. Feb. 10, 2011) (requiring coverage of physician-prescribed **physical, occupational, respiratory and speech therapy as maintenance therapy** and to prevent regression).

Smith ex rel. Smith v. Benson, 703 F. Supp. 2d 1262 (S.D. Fla. 2010) (requiring coverage of **incontinence supplies**), *same case*, No. 09-21543, 2009 WL 5173957 (S.D. Fla. Oct. 26, 2009) (denying motion to dismiss).

T.D. ex rel. Cathleen D. v. Dreyfus, No. C09-5379 RBL, 2009 WL 2390345 (W.D. Wash. July 2, 2009) (temporarily enjoining cutback in child's **personal care services**).

Summer H. v. Fukino, No. 09-00047 SOM/BMK, 2009 WL 455340 (D. Haw. Feb. 23, 2009) (denying motion for temporary restraining order where defendant agreed not to cut plaintiffs' EPSDT **home care** services pending their administrative appeals) (additional case history omitted).

***D.W. v. Walker**, No. 2:09-cv-00060, 2009 WL 1393818 (S.D.W.Va. May 15, 2009) (finding **EPSDT provisions enforceable** under § 1983).

Illinois Dep't of Health-Care & Family Services v. United States Dep't of Health & Human Services, No. 06-C-6402/6412, 2008 WL 877976 (N.D. Ill. Mar.28, 2008) (affirming Departmental Appeals Board decision to disallow **school-based administrative costs** under the Medicaid program in part because the costs were properly associated with "child find" activities under the **Individuals with Disabilities Education Act**).

Carson P. ex rel. Foreman v. Heineman, 240 F.R.D. 456 (D. Neb. 2007) (finding **EPSDT provisions enforceable** under § 1983; granting state's motion to dismiss based on Younger **abstention**).

G.D. v. Jones-Kelly, No. 2:05-CV-980 (S.D. Ohio Oct. 22, 2007) (on file with NHeLP) (finding § 1396a(a)(43) **provision enforceable** under § 1983), *same case*, 2007 WL 2206559 (S.D. Ohio July 30, 2007) (finding neither Medicaid Act nor Health Insurance Portability and Accountability Act precluded **disclosure of information** and granting plaintiffs' motion to compel discovery in case alleging failure of state to provide for EPSDT).

A.G. ex rel. Giddens v. Arnold, 2006 WL 334218 (M.D. Fla. Feb. 13, 2006) (holding 42 U.S.C. § 1396 (stating purpose of the Medicaid Act), § 1396d(r) (defining EPSDT) were not **privately enforceable** under § 1983).

Ekloff v. Rodgers, 443 F. Supp. 2d 1173 (D. Ariz. 2006) (holding state obligated under § 1396d(r)(5) to cover **incontinence briefs** for children with bowel and/or bladder incontinence to avoid skin breakdown and infection).

Okla. Chapter of Am. Acad. of Ped. v. Fogarty, 366 F. Supp. 2d 1050 (N.D. Okla. 2005) (finding no EPSDT violation even though participation goals not met because goal is “hortatory”; “Failure to achieve a **performance goal** does not amount to a violation of federal law.”) (additional case history omitted).

Health Care for All v. Romney, No. Civ. A. 00-10833RWZ, 2005 WL 1660677 (D. Mass. July 14, 2005) (finding Medicaid **dental payments** so low as to effectively frustrate the **reasonable promptness** provision by foreclosing the opportunity for enrollees to receive care at all, much less in a timely manner and that lack of dentists caused enrollees to be unable to obtain treatment at reasonable intervals), *same case*, No. 00-10833-RWZ, 2004 WL 3088654 (D. Mass. Oct. 1, 2004) (holding § 1396a(a)(43) **provision enforceable** but § 1396d(r)(5) **definitional provision not enforceable** under § 1983 and finding the obligation to provide and meet standards for delivery of EPSDT derives from § 1396a(a)(10)(A)).

Clark v. Richman, 339 F. Supp. 2d 631 (M.D. Pa. 2004) (finding **EPSDT provisions enforceable** under § 1983 and finding that **timeliness standard** regulation, 42 C.F.R. § 441.56(e), while setting outer limit for initiating treatment, did not supplant the need for additional timeliness standards).

A.M.H. v. Hayes, No. C2-03-778, 2004 U.S. Dist. LEXIS 27387 (S.D. Ohio, Sept. 30, 2004) (holding § 1396a(a)(43) **provision enforceable** but § 1396d(r)(5) definitional and not enforceable under § 1983 and finding EPSDT does not require coverage of **community based services addressed in waiver** provision).

Memisovski v. Maram, No. 92 C 1982, 2004 WL 1878332 (N.D. Ill. Aug. 24, 2004) (following trial, court held the EPSDT and equal access payment **provisions enforceable** under § 1983, discussing expert review of CMS **Form 416**, and holding EPSDT and **pediatric payment rates** violated the Medicaid Act), *same case*, 2001 WL 1249615 (N.D. Ill. Oct. 17, 2001) (rejecting **Eleventh Amendment** immunity claims).

Emily Q. v. Bonta, 208 F. Supp. 2d 1078 (C.D. Cal. 2001) (requiring notice of EPSDT **mental and therapeutic behavioral health services**, develop forms to request services, provide compensatory benefits to children wrongfully denied services).

J.K. v. Eden, No. CIV-91-261-TUC-JMR (D. Ariz. Mar. 20, 2001) (settlement describing principles for improving **mental health** system), *same case sub. nom J.K. v. Dillenberg*,

836 F. Supp. 694 (D. Ariz. 1993).

Charlie H. v. Whitman, 83 F. Supp. 2d 476 (D.N.J. 2000) (EPSDT **provisions not enforceable** under § 1983).

Kirk T. v. Houstoun, No. 99-3253, 2000 WL 830731 (E.D. Pa. June 27, 2000) (granting summary judgment on claim that EPSDT **behavioral health services** were not being initiated in a timely manner in managed care settings).

***French v. Concannon**, No. 97-CV-24-B-C (D. Me. July 16, 1998) (agreement to implement policies for outreach, informing, and treatment to improve **community-based behavioral health** services).

Hunter v. Chiles, 944 F. Supp. 914 (S.D. Fla. 1996) (coverage of **augmentative communication device**; discussing other state funding agencies and school districts).

***T.L. v. Belshe**, No. CV-S-93-1782 LKKPAN (E.D. Cal. 1995) (settlement to promulgate **regulations for covering treatments** not included in state Medicaid plan for adults) (on file with author).

***Sanders v. Lewis**, No. 2:92-0353, 1995 WL 228308 (S.D. W.Va. Mar. 1, 1995) (consent order and compliance plan requiring EPSDT outreach to and screening for **children in out-of-home placement**), *same case*, No. 2:92-0353, 1995 WL 228308 (S.D. W.Va. Mar. 1, 1995).

Scott v. Snider, No. 91-CV-7080 (E.D. Pa. Dec. 2, 1994) (order and stipulation requiring state and **managed care organizations** to meet specific performance standards for screening services), *prior history*, No. 91-CV-7080 (E.D. Pa. Aug. 11, 1993), *reprinted in* MEDICARE & MEDICAID GUIDE (CCH) ¶ 42,056 (stipulated settlement requiring **outreach to mother** at time of child's birth and before mother is discharged from care).

G.L. v. Stangler, 873 F. Supp. 252 (W.D. Mo. 1994) (modified consent decree), *same case*, 731 F. Supp. 365 (W.D. Mo. 1990) and 564 F. Supp. 1030 (W.D. Mo. 1983) (consent decree regarding children in **out of home placement**).

Chappell ex rel. Savage v. Bradley, 834 F. Supp. 1030 (N.D. Ill. 1993), *clarified sub nom. Chappell ex rel. Savage v. Wright*, No. 91 C 4572, 1993 WL 496700 (N.D. Ill. Nov. 24, 1993) (**orthodontia** and informing).

***Thompson v. Raiford**, No. 3:92-CV-1539-R, 1993 WL 497232 (N.D. Tex. Sept.24, 1993) (nationwide class action case resulting in State Medicaid Manual guidance on **lead blood screening**).

McLaughlin ex rel. McLaughlin v. Williams, 801 F. Supp. 633 (S.D. Fla. 1992) (**transplant**).

Maher v. White, No. 90-4674, 1992 WL 122912 (E.D. Pa. June 2, 1992) (EPSDT coverage of **children in foster care** placement).

L.J. ex rel. Darr v. Massinga, 778 F. Supp. 253 (D. Md. 1991), *modifying* 699 F. Supp. 508 (1988) (consent decree requiring initial and periodic examinations for children in **out-of-home placement**).

Montoya v. Johnston, 654 F. Supp. 511 (W.D. Tex. 1987) (**transplant**; caps on EPSDT services).

Doe v. Pickett, 480 F. Supp. 1218 (S.D. W.Va. 1979) (parental consent, **contraceptives**).

Wis. Welfare Rights Org. v. Newgent, 433 F. Supp. 204 (E.D. Wis. 1977) (denying plaintiffs' motion of summary judgment regarding EPSDT **screening and outreach** where responsibility was delegated to counties and the **delegation** was not attacked).

Woodruff v. Lavine, 399 F. Supp. 1008 (S.D.N.Y. 1975), *same case*, 417 F. Supp. 824 (S.D.N.Y. 1976) (state in **substantial compliance** with EPSDT law).

State Courts

Freeman v. Wash. Dep't of Soc. & Health Servs., 173 Wash. App. 729 (Ct. App. 2013) (holding **general supervisory care provided by parents** of child with disability is not a personal care service or remedial service under EPSDT).

Tex. Health & Human Servs. Comm'n v. Advocates for Patient Access, Inc., 399 S.W.3d 615 (Tex. Ct. App. 2013) (finding that limitation of **transportation** services to only those children whose guardian accompanied them to an EPSDT visit overly stringent).

J.S. v. Hardy, 229 W. Va. 251 (Ct. App. 2012) (remanding with instructions for **hearing officer** to conduct independent review of facts in case seeking power wheelchair with numerous accessories for minor with Quad Cerebral Palsy).

E.B. v. Ag. for Health Care Admin., 94 So.3d 708 (Fla. Ct. App. 2012) (reversing and remanding to require **hearing officer** to consider federal EPSDT standards when deciding extent to which home health services are covered by Medicaid).

I.B. v. State, 97 So.3d 6 (Fla. Dist. Ct. App. Feb. 29, 2012) (reversing decision to exclude **personal care services that included transportation** to and from therapy sessions, finding Agency erroneously applied state **medical necessity standard** rather than federal ESDPT statute).

Fuller ex rel. Smith v. Emkes, No. M2010-01590-COA-R3-CV, 2011 WL 2571537 (Tenn. Ct. App. June 28, 2011) (following Semerzakis and affirming lower court decision to deny **orthodontia** coverage).

Lee ex rel. Lee v. Emkes, No. M2010-01909-COA-R3-CV, 2011 WL 2552660 (Tenn. Ct. App. June 27, 2011) (following Semerzakis and affirming trial court decision to deny **orthodontia** coverage).

Mazzitti & Sullivan Counseling Servs., Inc. v. Dep't of Pub. Welf., 7 A.3d 875 (Pa. Commw. Ct. 2010) (affirming denial of EPSDT **outpatient mental health services** payments to provider who engaged in **fraud**).

Comprehensive Advocacy v. Idaho Dep't of Health & Welf., No. CV OC 0815034 (Idaho Dist. Ct. 4th Dist., May 13, 2009) (on file with NHeLP) (finding Department's **school based health** service rules impermissibly restricted necessary and mandatory services for children who are eligible for EPSDT services provided by their public school districts).

Urban v. Meconi, 930 A.2d 860 (Del. 2007) (reversing and remanding hearing officer's decision denying coverage of **breast reduction surgery**, noting the opinion of the examining doctor deserved weight).

Cook ex rel. Cook v. Agency for Persons with Disabilities Dist., 967 So.2d 1002 (Fla. Dist. Ct. App. 2007) (holding that a more restrictive state definition of medical necessity than the federal "**correct or ameliorate**" definition is impermissible for services listed in § 1396d(a), but affirming hearing officer's decision to approve only six hours of personal care assistance rather than the requested nine hours).

In re Erena, No. 2007-162, 2007 WL 5313358 (Vt. Nov. Term 2007) (affirming order denying the parents' request for reimbursement for wheelchair lift for van and denying reimbursement as "**personal choice drivers**" for their disabled son).

S.A.H. ex rel. S.J.H. v. Dep't of Soc. & Health Servs., 149 P.3d 410 (Wash. Ct. App. 2006) (holding mother was no longer entitled to state-funded **transportation** services for her autistic child to receive Applied Behavioral Analysis therapy outside her geographic area, once equivalent services became available locally).

C.F. v. Dep't Children and Families, 934 So.2d 1 (Fl. Dist. Ct. App. 2005) (holding **administrative hearing officer** improperly applied narrow definition of “medical necessity” and “personal care services” than contained in federal EPSDT statute and failed to give appropriate deference to the opinion of plaintiff’s treating physician).

Semerzakis v. Wilson-Coker, 873 A.2d 911 (Conn. 2005) (holding EPSDT coverage of **dental services** is explicitly addressed in § 1396d(r)(3) so “correct or ameliorate” standard of § 1396d(r)(5) does not apply), *rev'g*, No. CV030520876S, 2003 WL 23177501 (Conn. Super. Ct. Dec 24, 2003).

Jacobus v. Dep't of PATH, 857 A.2d 785 (Vt. 2004) (requiring coverage of “interceptive” **orthodontic treatment** to prevent a malocclusion and refusing to limit coverage to treatment for already existing “handicapping malocclusions.” Citing EPSDT but also focusing on amount, duration and scope requirements and prohibitions on differing treatment based on condition; finding coverage cannot be limited to predefined list of criteria, as individualized review and deference to treating physician are required).

Lawson v. Dep't. of Health & Soc. Servs., No. Civ. A. 02A09002HDR, 2004 WL 440405 (Del. Super. Ct. Feb. 25, 2004) (hearing officer’s decision to deny coverage of child’s orthodontic treatment under Medicaid invalid because federal and state Medicaid requirements for a **fair hearing** not followed).

Department of Community Health v. Freels, 258 Ga. App.446 (Ct. App. 2002) (requiring Department to determine whether **hyperbaric oxygen therapy** was necessary to correct or ameliorate child’s cerebral palsy; rejecting Department’s position that services need to fall within an acceptable standard of medical practice to be eligible for reimbursement).

N.Y. City Coalition to End Lead Poisoning v. Giuliani, 720 N.Y.S.2d 298 (N.Y. Sup. Ct. 2000) (finding **EPSDT provisions enforceable** under § 1983 and **exhaustion** not required).

Sullivan v. Bullen, No. 94-0972, 1994 WL 878826 (Mass. Super. Ct. Dec. 15, 1994) (refusing coverage of **orthodontics** when family income increased).

Tomorrow's Hope, Inc. v. Idaho Dep't of Health & Welf., 864 P.2d 1130 (Idaho 1993) (EPSDT as reimbursable cost for **ICF/MRs**).

N.Y. City Coalition to End Lead Poisoning v. Koch, 524 N.Y.S.2d 314 (N.Y. Sup. Ct. 1987) (finding violation of EPSDT **lead blood screening** requirements).

Persico v. Maher, 465 A.2d 308 (Conn. 1983) (regarding coverage of **orthodontia**).

Biewald v. State, 451 A.2d 98 (Me. 1982) (regarding coverage of **diabetic supplies**).

Brooks v. Smith, 356 A.2d 723 (Me. 1976) (regarding coverage of **orthodontia**).