



South Carolina Bar

Continuing Legal Education Division

2024 SC BAR CONVENTION

Children's Law Committee

“Animis Opibusque Parati: Advocacy
and Representation for South Carolina’s
Children”

Saturday, January 20

SC Supreme Court Commission on CLE Course No. 240014

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Legislative Update

Representative Jason Elliott



2024 LEGISLATIVE UPDATE

THE HONORABLE JASON ELLIOTT
REPRESENTATIVE, S.C. HOUSE OF REPRESENTATIVES

AMANDA WHITTLE, J.D., CWLS
STATE CHILD ADVOCATE/DIRECTOR, S.C. DEPT OF CHILDREN'S ADVOCACY

2023

**WHAT HAPPENED DURING
THE 1ST HALF OF THE 2023-
2024 LEGISLATIVE SESSION**

BILLS SIGNED INTO LAW IN 2023

DSS Tiered Response Times (2023) - Creates a tiered response system for DSS to investigate reports of child abuse or neglect.

Kinship Guardianship Assistance (2023) - Establishes guardianship assistance payments for relatives and fictive kin after a court appoints them as a child's legal guardian. Defines legal guardianship and makes other conforming amendments. Kinship Guardianship Assistance

BILLS SIGNED INTO LAW IN 2023

Guardianship Timelines for Minors - Act 10 (2023) - Allows a parent or caregiver of a disabled child to apply for guardianship through probate court 180 days prior to the child's 18th birthday.

Homeless Youth Definitions (2023)- Adds definitions of unaccompanied homeless youth, homeless child or youth, and youth at risk of homelessness to the Children's Code.

BILLS SIGNED INTO LAW IN 2023

Support for Unborn Child; Fetal Heartbeat and Protection from Abortion Act (2023) –

- Section 63-17-325

- Requires biological father to pay support beginning at conception and 50% of mother's pregnancy expenses (or 100% if pregnancy is result of rape or incest)

BILLS SIGNED INTO LAW IN 2023

Crisis Stabilization Units for Youth (2023)

- Allows crisis stabilization units to serve children as young as age five and includes all short-term residential stabilization and intensive crisis services in the definition of “crisis stabilization unit facilities.”
- Prior to this, children could not be served in a crisis stabilization unit.

BILLS SIGNED INTO LAW IN 2023

First Steps (2023)

- Permanent Authorization of the South Carolina First Steps to School Readiness Act
- South Carolina First Steps has administered First Steps 4K, the state's free four-year-old kindergarten program in private settings. The Department of Education administers the full-day 4K program in public schools.

2024

WHAT'S NEXT?

LEGISLATION INTRODUCED AND PENDING

Safe Harbor for Minor Victims (S.142)

- Establishes legal precedent that minors under the age of 18 who were engaged in criminal sexual acts or sex trafficking are presumed to be doing so under coercion or a reasonable fear of a threat and therefore have an affirmative defense from criminal and civil liability from nonviolent offenses they committed under duress or coercion.

Sex Buyer Penalties (S.145)

- Increases the penalties for solicitation of commercial sex.
- Establishes an affirmative defense for victims of human trafficking.

LEGISLATION INTRODUCED AND PENDING

Intimate Partner Violence (S. 143)

- Revises the definition of household member in the Domestic Violence Code to:
 - include former and current dating relationship.
 - allow a parent, guardian, custodian, legal counsel, or other appropriate adult to petition the court for an order of protection on behalf of a household minor.

LEGISLATION INTRODUCED AND PENDING

Juvenile Sex Offender Registry (S. 264)

- Ensures that no child under 14 is placed on the sex offender registry.
- Allows information of an adjudicated delinquent juvenile to be made available to the public if they were deemed to commit criminal sexual conduct in the first or second degree.
- Includes “childcare facilities” for who may receive juvenile registry information.

LEGISLATION INTRODUCED AND PENDING

Juvenile Life Without Parole (S. 267)

- Bans the sentence of life without parole for any individual who is under the age of eighteen at the time of committing an offense.
- Provides maximum sentences for individuals who committed an offense as a minor.
- Prohibits the use of restraints, isolation, and room confinement for juvenile offenders.

LEGISLATION INTRODUCED AND PENDING

Status Offenders (S. 266)

- Eliminates the exception for children to be tried as an adult when charged with a status offense.
- Decreases the length of time that a child may be held for violation of a court order regarding a status offense.
- Requires the child and his family seek counseling when the status offense is of incorrigibility.

Limiting Time of Commitment for Secure Evaluation (S. 35)

- To allow a court to order temporary commitment to the Department of Juvenile Justice for not more than ten days for evaluation.

LEGISLATION INTRODUCED AND PENDING

Tax Free Baby Food & Formula (S. 300)

- Exempts baby formula and baby food from sales tax.

Tax Free & Tax Holiday for Feminine Hygiene Products and Diapers (H. 3109 & H. 3110)

- Provides a sales tax exemption for feminine hygiene products, diapers, and toilet paper.
- H. 3110 adds feminine hygiene products to the sales tax exemption holiday.

LEGISLATION INTRODUCED AND PENDING

Department of Revenue Tobacco Reporting (H. 3111)

- Requires a tobacco retailer to submit information to the Department of Revenue about whether it sells certain products used for smoking.

Tobacco Retail Licensure (H. 3548)

- Establishes and requires a tobacco retail license for sellers of all tobacco products, with stricter penalties for selling to minors.
- Requires the South Carolina Department of Revenue to conduct at least two minimum age sales compliance checks annually of tobacco retail establishments

PENDING LEGISLATION FOR 2023-2024

- ✓ **Homicide by Child Abuse (S. 125)** – To provide that the offense applies to the death of a child under the age of eighteen (18) rather than under the age of eleven (11)
- ✓ **Luring a Child (H. 3015; Representative Hewitt)** - Would make it a misdemeanor crime to lure anyone under 18 into a vehicle, home, or other structure without the consent of a parent or legal guardian.

PENDING LEGISLATION FOR 2023-2024

- ✓ **Driver's license and permits for minors (H. 3344; Representative Hixon)** – Repealing Section 56-1-250 relating to the cancellation of driver's licenses or permits of minors upon the death of persons signing the minors' application for licenses or permits

PENDING LEGISLATION FOR 2023-2024

- ✓ **Behavioral Health Services for Children (H. 3458; Representative Felder) –**
 - TO PROVIDE DEFINITIONS CONCERNING BEHAVIORAL HEALTH SERVICES FOR PUBLIC SCHOOL STUDENTS,
 - TO PROVIDE SCHOOL BOARDS MAY NOT PROHIBIT BEHAVIORAL HEALTH PROVIDERS FROM PROVIDING THESE SERVICES TO STUDENTS AT PUBLIC SCHOOLS DURING SCHOOL HOURS UPON PARENTAL REQUEST,
 - TO PROVIDE SCHOOL BOARDS SHALL ADOPT CERTAIN RELATED POLICIES, AND TO PROVIDE FOR THE CONSTRUCTION OF THE ARTICLE

PENDING LEGISLATION FOR 2023-2024

✓ **"SOUTH CAROLINA TRANSPARENCY AND INTEGRITY IN EDUCATION ACT"(H. 3728 ; Representatives Felder, A.M. Morgan, Leber, Magnuson, Haddon, Harris, Taylor, S. Jones, Landing, McCravy, Lowe, Jordan, Bradley, Herbkersman, Bannister, W. Newton, Elliott, B. J. Cox, Willis, Hewitt, West, Long, Burns, and T.A. Morgan) Similar (H.3304) -**

- TO PROHIBIT CERTAIN CONCEPTS FROM BEING INCLUDED IN PUBLIC SCHOOL INSTRUCTION AND PROFESSIONAL DEVELOPMENT,
- TO PROVIDE MEANS FOR ADDRESSING VIOLATIONS, AND TO PROVIDE PROCEDURES FOR PUBLIC REVIEW OF PUBLIC SCHOOL CURRICULUM AND INSTRUCTIONAL MATERIALS; AND
- BY AMENDING SECTION 59-28-180, RELATING TO PARENTAL EXPECTATIONS IN THE PARENTAL INVOLVEMENT IN THEIR CHILDREN'S EDUCATION ACT, SO AS TO PROVIDE PARENTS ARE EXPECTED TO BE THE PRIMARY SOURCE OF THE EDUCATION OF THEIR CHILDREN REGARDING MORALS, ETHICS, AND CIVIC RESPONSIBILITY, AND TO PROVIDE A PARENTAL PLEDGE OF EXPECTATIONS MUST BE PROVIDED TO PARENTS AS PART OF THE REGISTRATION AND ENROLLMENT PROCESS.

PENDING LEGISLATION FOR 2023-2024

✓ **H 3197 – PARENTS’ FUNDAMENTAL RIGHTS REGARDING UPBRINGING AND EDUCATION (REPRESENTATIVES BURNS, MCCRAVY, LEBER, CHUMLEY, TAYLOR, PACE, KILMARTIN, HADDON, BEACH, H. ARRIS, HARTNETT, MAGNUSON, NUTT S. JONES, M.M. SMITH, DAVIS, B.L. COX, OREMUS, MURPHY, GATCH, ROBBINS, BREWER, GILLIAM, BUSTOS, LANDING, VAUGHAN AND CROMER) SIMILAR (S. 234, S. 743, H. 3485)**

- TO PROVIDE THAT PARENTS HAVE FUNDAMENTAL RIGHTS REGARDING THE UPBRINGING, EDUCATION, AND CARE OF THEIR CHILDREN;
- TO DEFINE NECESSARY TERMS; TO LIMIT THE ABILITY OF THE GOVERNMENT TO INFRINGE ON PARENTAL RIGHTS; TO IDENTIFY CERTAIN FUNDAMENTAL RIGHTS OF PARENTS; TO REQUIRE THAT SCHOOL DISTRICTS CREATE PARENTAL INVOLVEMENT POLICIES; TO PROHIBIT CARE PROVIDERS FROM SOLICITING OR PROVIDING HEALTH CARE SERVICES TO CHILDREN WITHOUT WRITTEN PARENTAL CONSENT; TO PROVIDE THAT THE CHAPTER'S PROVISIONS SUPERSEDE STATE OF EMERGENCY DECLARATIONS; TO CREATE A CAUSE OF ACTION FOR VIOLATIONS OF THIS CHAPTER; AND BY AMENDING SECTION 63-5-340, RELATING TO THE AGE AT WHICH A MINOR MAY CONSENT TO HEALTH SERVICES, SO AS TO RAISE THE AGE TO EIGHTEEN.

PENDING LEGISLATION FOR 2023-2024



PARENTAL BILL OF RIGHTS (S. 234; SENATORS LOFTIS, GROOMS, BENNETT, RICE, KIMBRELL, DAVIS, CAMPSSEN, AND VERDIN) SIMILAR (S. 743, H. 3187 H. 3485)

- TO ENACT THE PARENTAL BILL OF RIGHTS; BY ADDING SECTION 63-23-110 SO AS TO PROVIDE THAT PARENTS HAVE FUNDAMENTAL RIGHTS REGARDING THE UPBRINGING, EDUCATION, AND CARE OF THEIR CHILDREN;
- BY ADDING SECTION 63-23-120 SO AS TO DEFINE NECESSARY TERMS; BY ADDING SECTION 63-23-130 SO AS TO PROVIDE THAT THE GOVERNMENT CANNOT INFRINGE ON FUNDAMENTAL RIGHTS OF PARENTS WITHOUT A COMPELLING STATE INTEREST THAT IS NARROWLY TAILORED AND THAT CANNOT BE ACHIEVED BY A LESS INTRUSIVE MEANS;
- BY ADDING SECTION 63-23-140 SO AS TO PROVIDE FUNDAMENTAL RIGHTS OF PARENTS; BY ADDING SECTION 63-23-150 SO AS TO REQUIRE THAT SCHOOL DISTRICTS SHOULD CREATE PARENTAL INVOLVEMENT POLICIES; BY ADDING SECTION 63-23-160 SO AS TO PROHIBIT HEALTH CARE PROVIDERS FROM SOLICITING OR PROVIDING HEALTH CARE SERVICES TO CHILDREN WITHOUT WRITTEN PARENTAL CONSENT;
- BY ADDING SECTION 63-23-170 TO PROVIDE THAT THE PROVISIONS CONTAINED IN THIS CHAPTER SUPERSEDE ANY MATTER TO THE CONTRARY CONTAINED IN A STATE OF EMERGENCY; BY ADDING SECTION 63-23-180 TO PROVIDE FOR A CAUSE OF ACTION FOR VIOLATIONS OF THIS CHAPTER; AND BY AMENDING SECTION 63-5-340, RELATING TO A MINOR'S CONSENT TO HEALTH SERVICES, SO AS TO RAISE THE AGE AT WHICH A MINOR MAY CONSENT TO HEALTH SERVICES.

PENDING LEGISLATION FOR 2023-2024

✓ **S. 148 SCHOOL BREAKFAST AND LUNCH (Senators Shealy, Goldfinch, McLeod, Kimpson, Peeler, Kimbrell, McElveen, Fanning, Sabb, K. Johnson, Hutto and Matthews)**

- TO PROVIDE THAT ELIGIBLE SCHOOLS THAT PARTICIPATE IN THE SCHOOL BREAKFAST PROGRAM SHALL PROVIDE BREAKFAST AND LUNCH WITHOUT CHARGE TO ALL STUDENTS AND
- TO PROVIDE GUIDELINES; AND BY AMENDING SECTION 59-10-350, RELATING TO THE LENGTH OF LUNCH PERIODS, SO AS TO REQUIRE SCHOOLS TO PROVIDE THIRTY MINUTE LUNCH PERIODS TO ALL STUDENTS.

PENDING LEGISLATION FOR 2023-2024

- ✓ **H. 3186 – Save Our Children Gun Lock Act (Representatives Dillard and McLeod) –**
 - TO DEFINE TERMS, TO REQUIRE A PERSON WHO KEEPS A FIREARM ON PREMISES WHERE A REASONABLE PERSON WOULD KNOW THAT A CHILD MAY GAIN ACCESS TO THE FIREARM TO STORE THE FIREARM IN A LOCKED CONTAINER OR UTILIZE A TRIGGER-LOCKING DEVICE ON THE FIREARM
 - TO PROVIDE PENALTIES FOR A VIOLATION WHEN DEATH OR INJURY OCCURS, AND TO REQUIRE RETAIL FIREARMS DEALERS TO POST NOTICE OF THIS REQUIREMENT.

PENDING LEGISLATION FOR 2023-2024

✓ S. 21- Children's Firearm Accident Prevention Act (Senator Jackson) –

- TO DEFINE NECESSARY TERMS; TO CREATE THE TIERED OFFENSES OF CRIMINAL STORAGE OF A FIREARM; TO PROVIDE EXCEPTIONS; TO MAKE CERTAIN PROVISIONS FOR WHEN AN INJURED CHILD IS RELATED TO THE PERSON WHO VIOLATES THE CHAPTER; AND
- TO REQUIRE UPON THE RETAIL SALE OR TRANSFER OF A FIREARM THAT THE SELLER GIVE NOTICE THAT IT IS UNLAWFUL FOR A PERSON TO STORE OR LEAVE A FIREARM WITHIN EASY REACH OF A CHILD.

PENDING LEGISLATION FOR 2023-2024

- ✓ **H. 4619 South Carolina's Children Deserve Help Not Harm Act (Representative Oremus)** - TO PROHIBIT PHYSICIANS, OTHER HEALTH CARE PROVIDERS, AND HEALTH CARE FACILITIES FROM PROVIDING OR FACILITATING THE PROVISION OF GENDER TRANSITION PROCEDURES ON MINORS UNDER THE AGE OF EIGHTEEN
- ✓ **H. 4624– (Representatives Hiott, G.M. Smith, McCravy, Davis and Vaughan)** - TO DEFINE GENDER, SEX, AND OTHER TERMS, TO PROHIBIT THE PROVISION OF GENDER TRANSITION PROCEDURES TO A PERSON UNDER EIGHTEEN YEARS OF AGE, TO PROVIDE EXCEPTIONS

PENDING LEGISLATION FOR 2023-2024

✓ **S. 627 – Gender Transition Bill (Senators Verdin, Cash, Martin, Climer, Bennett, Campsen, Hembree, Peeler, Loftis, Goldfinch, Cromer, G. Rooms, Kimbr4ell, Adams, Young, Gambrell, Gustafson, Talley, Rice, Turner, Alexander, Garret, T. Corbin, Reichenbach, Massey) Similar to S. 274**

- TO DEFINE GENDER, SEX, AND OTHER TERMS; BY ADDING SECTION 40-47-310 SO AS TO PROHIBIT THE PROVISION OF GENDER TRANSITION PROCEDURES TO A PERSON UNDER EIGHTEEN YEARS OF AGE; BY ADDING SECTION 40-47-320 SO AS TO PROVIDE EXCEPTIONS;
- BY ADDING SECTION 40-47-330 SO AS TO PROHIBIT THE USE OF PUBLIC FUNDS FOR GENDER TRANSITION PROCEDURES; BY ADDING SECTION 40-47-340 SO AS TO PROVIDE PENALTIES; AND
- BY ADDING SECTION 59-32-36 SO AS TO PROHIBIT SCHOOL STAFF AND OFFICIALS FROM WITHHOLDING KNOWLEDGE OF A MINOR'S PERCEPTION OF THEIR GENDER FROM THE MINOR'S PARENTS.

SOURCES AND ACKNOWLEDGEMENTS



> Many thanks to the S.C. Joint Citizens and Legislative Committee on Children (also known as the Committee on Children) for collecting and sharing information regarding legislation affecting children.

<https://www.sccommitteeonchildren.org/>



> Many thanks to the S.C. Statehouse website. Bills can be tracked and reviewed at the S.C. Legislature's website.

<https://www.scstatehouse.gov/>



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Children's Law Committee

Saturday, January 20

Lawyers Make a Difference

Natalece Washington



The Complementary Roles of Attorneys and CASA/GAL Volunteers for Child Advocacy

Attorneys for children and Court Appointed Special Advocate (CASA®)/Guardian ad Litem (GAL) volunteers have distinct but complementary roles in the child welfare court system. The chart below highlights key features of their responsibilities:

| Children’s Attorneys/Guardians ad Litem | CASA/GAL Volunteers |
|--|--|
| Professional lawyer, licensed by state bar following an exam and professional conduct review, working in law office or independently, sometimes using multidisciplinary teams (peer partners, social workers). Graduate of a 3-year law school who receives continuing legal education training in accordance with professional and ethical standards. | Community volunteers screened by local program and sworn in as a court officer, working under the supervision of a court-approved program, sometimes using multidisciplinary teams. 30-hour initial training requirement and continuing education requirement of at least 12 hours per year per National CASA standards. |
| Duty to ascertain the child’s wishes and rights, and to ensure the law is followed. | Duty to ascertain what the child needs and inform the court. |
| Confidential attorney–client relationship bound by longstanding legal and ethical rules (ex. privilege). | Volunteers take an oath to keep details confidential amongst all parties but are not bound by attorney–client privilege. |
| Typically carry a caseload of clients. Wide breadth of expertise helps child navigate the system. | Typically work with 1 child or sibling set, allowing more time for intensive attention and support. |
| Provide legal advice to the child about their rights and options. Conduct thorough investigation, call witnesses, subpoena records, file motions and appeals. Make legal arguments to judges and ensure child’s voice is heard. | Provide recommendations to the court so the judge can make a well-informed decision. Prepare written and oral reports to court with firsthand observations and best interest recommendations. |
| Both Attorneys and CASA/GAL Volunteers Should: Communicate regularly with the child, review relevant records and reports, monitor the case to ensure service delivery, thoroughly prepare for all court hearings and meetings, advocate for the child in the courtroom and community if their needs are not being met. | |

Lawyers and CASA/GAL Volunteers Collaborate for Kids

Baby Jonah’s kinship placement

Baby Jonah was placed in stranger foster care shortly after he was born. His CASA/GAL volunteer successfully searched social media for extended family and provided the information to the court. Jonah’s attorney filed a motion with the court to have the kin evaluated for expedited placement. Jonah is now thriving in the home with his kin caregivers.

Keeping Ben and Sarah together

Ten-year-old twins Ben and Sarah were initially placed in separate foster homes, nearly 2 hours apart. Their attorney filed a motion with the court to have them placed in the same home. While the motion was pending, their CASA/GAL volunteer facilitated joint outings to maintain their bond and reported to the court on the frequency of the sibling visits. The judge granted the attorney’s motion and Ben and Sarah are now placed together.

Helping Lila get to college

Lila’s attorney successfully advocated for her to remain in the same school when she entered foster care during 11th grade. Her CASA/GAL volunteer helped develop a plan for her to attend college and informed the court. Lila’s attorney advised her about her rights to ETV funds and extended foster care, then filed a motion with the court to expedite funding. She’s now a college sophomore majoring in Biology.

CONTACT

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Counsel for Kids in Foster Care

WHY DO KIDS NEED ATTORNEYS?

- A child at the center of a child welfare case is also the one person that doesn't get their own lawyer.
- In only 14 states children in foster care are not guaranteed legal representation in child welfare court proceedings.
- Children cannot navigate complex child welfare court proceedings on their own. They are at risk of experiencing harm in foster care without an advocate to hold the state accountable for their safety and wellbeing, and ensure their input is considered as the court makes critical decisions about their lives.

HOW DO ATTORNEYS MAKE A DIFFERENCE?

- **PROVIDE COUNSELING AND ADVOCACY:** Attorneys investigate the case, provide legal advice, protect and advance their client's interests in court, and help children and youth understand the process. A Court Appointed Special Advocate (CASA) volunteer is not a substitute for legal representation — they cannot render legal advice, file motions, or meet the other legal or ethical responsibilities of an attorney.
- **ENSURE DUE PROCESS AND PARTICIPATION:** Attorneys help ensure children receive adequate notice and an opportunity to attend court, participate fully in hearings and case planning, are respected and treated fairly in court processes, and that legal decisionmakers listen to them and consider their perspective.
- **IMPROVE OUTCOMES:** Children appointed attorneys exit foster care at faster rates and with more individualized case plans than children who are not appointed attorneys.

WHY IS CHILDREN'S LEGAL REPRESENTATION A NATIONALLY RECOGNIZED BEST PRACTICE?

- Children represented by specially trained legal counsel are 40% more likely to exit the foster care system within the first six months; 45% more likely to reunify with their biological parents; 30% less likely to change placements; and 65% less likely to change schools for reasons other than graduation.
- An attorney can shorten the time a child is in the foster care system, meaning cost-savings on the daily expense of out-of-home care.
- Shortened foster care stays also reduce costly long term societal problems including criminal system involvement, imprisonment, unemployment, homelessness, teenage pregnancy, and drug and alcohol dependence and abuse.
- The federal government encourages states to provide counsel for kids by offering IV-E funding reimbursement for the costs of legal representation.
- The American Bar Association, National Council of Juvenile and Family Court Judges, and National Association of Counsel for Children agree that children subject to child welfare court proceedings should have legal representation throughout the case.

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Mythbusters on Counsel for Kids in Dependency Court

Myth: Children always express a desire to return to their homes, regardless of the home's safety.



Fact: No child wants to be put into harm's way. We have a legal system where all voices should be heard before judges render their rulings. Attorneys elevate the child's voice, but a judge makes the ultimate case decisions after hearing from all parties.

Myth: Children do not need attorneys because there are enough other adults involved in their dependency case to make decisions on their behalf.



Fact: Child welfare professionals have differing responsibilities and obligations. Attorneys are specially positioned to ensure children are seen, heard and represented in the proceedings that impact their lives.

Myth: Confidential communications shared by children with their attorneys put them at risk of harm.



Fact: When children are silenced or ignored, they are unsafe. The confidential attorney-client relationship allows children to feel safe sharing sensitive and deeply personal information with attorneys that might otherwise go unvoiced.

Myth: A child's eligibility for legal representation should be based solely on their age.



Fact: No two children are the same. Child development and growth can vary widely among same-age peers. High-quality legal representation requires attorneys to be trained in areas such as child development, child interviewing, and trauma so that they are equipped to engage with a child in a developmentally appropriate manner to establish the attorney-client relationship.

Myth: Attorneys for children and volunteer lay advocates fulfill the same role.



Fact: Attorneys for children and volunteer lay advocates fulfill two separate and distinct roles. While a volunteer lay advocate can be helpful in conveying information to the court, they are not substitutes for legal representation of a child. They are prohibited from rendering legal advice or otherwise engaging in the practice of law.

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CounselforKids.org

[#Counsel4Kids](https://twitter.com/Counsel4Kids)

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Children's Attorneys Make a Difference

January 20, 2024

9:10am – 9:40am

Children's Law Committee
Meeting

South Carolina Bar Conference



**Children in
foster care
may
experience any
of the
following:**

- Family separation: grief, loss, attachment
- Loss of everything familiar (family, friends, neighborhoods, school, belongings, churches, community groups, etc.)
- Extreme uncertainty
- Lack of familiarity with complex court processes
- Potential abuse and neglect in foster care
- Foster care placement or school instability
- Physical and sexual health problems
- Mental health consequences
- Poor long-term outcomes

The Justice Gap For Children in Foster Care

- No federal “Counsel for Kids”
- No uniformity in state law
- 13 states with no guarantee
- Youth in foster care= not guaranteed counsel
- Youth in juvenile justice system= guaranteed counsel



**Child
Protection
System**

Youth Experience

**Juvenile
Legal
System**

Separated from their siblings,
family, and community

...

Trauma

...

Decisions made by judges
deeply impact their lives

...

Locked in restrictive
institutional settings

...

Subjected to dangerous physical
and chemical restraints

...

Prescribed Psychotropic
Medications

...

***No federally
recognized
right to
counsel***

***Constitutional
right to the
effective
assistance
of counsel***

No Minimum Age of Criminal Responsibility

- Child of *any* age can be charged with delinquent act *and* appointed legal counsel to defend his rights.
- A 12-year-old who can be committed to DJJ and placed in institutional confinement is not guaranteed the right to counsel in a dependency case.

https://www.njcn.org/uploads/digital-library/UPDATED%20August%202023_Minimum%20Age%20Laws%20for%20Juvenile%20Court%20Jurisdiction%20and%20Confinement.pdf

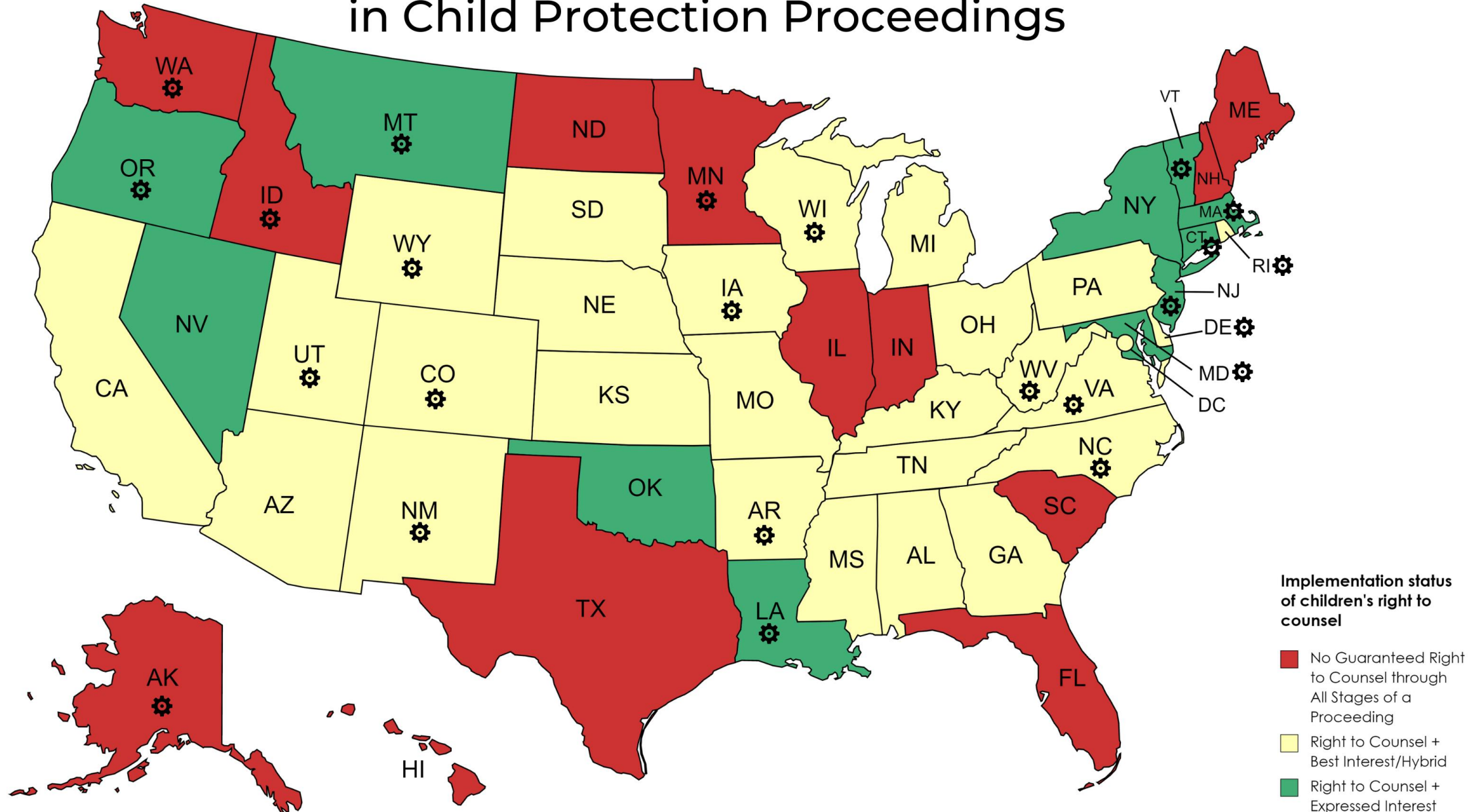
Note that children under 12 years old can be committed to the custody of the Department of Juvenile Justice but they cannot place them in institutional confinement. S.C. Code Ann. § 63-19-1440(A).



Why is Legal Representation for Children in Foster Care Critical?

- Children removed from their families and placed in the custody of the state have civil legal needs
- They are disadvantaged in hearings where other parties to the proceeding are represented by counsel
- Without counsel, children and youth may not have input in decisions with long-term impact on their lives
- Children's attorneys are necessary for fair hearings, judicial economy, and improved outcomes

Implementation of Children's Right to Counsel in Child Protection Proceedings



SECTION 63-7-1620. Legal representation of children.

In all child abuse and neglect proceedings:

(1) Children must be appointed a guardian ad litem by the family court. A guardian ad litem serving on behalf of the South Carolina Guardian ad Litem Program or Richland County CASA must be represented by legal counsel in any judicial proceeding pursuant to Section 63-11-530(C).

(2) The family court **may appoint** legal counsel for the child. Counsel for the child may not be the same as counsel for:

(a) the parent, legal guardian, or other person subject to the proceeding;

(b) any governmental or social agency involved in the proceeding;

(c) the child's guardian ad litem.

State Law on Children's Attorneys in South Carolina



Children's Attorneys

- Spend time getting to know their clients and building rapport
- Ensure that judges have all information necessary to make life changing decisions about children and families.
- Give their client a voice—dignity—respect.
- Explain complex legal processes, help clients understand their options, provide legal advice, develop legal strategy, ensure client notice and participation, prepare clients for court
- Engage in as much out-of-court advocacy as in-court
- Communicate with agency workers, service providers, foster parents, kin connections, and opposing counsel
- Can provide high quality legal representation with specialized training, standards-based oversight, reasonable caseloads, and fair compensation.



Attorneys and CASA/GAL Volunteers: Distinct & Complementary Roles

| <u>Attorneys</u> | <u>CASAs</u> |
|--|--|
| Attorney-client relationship bound by legal and ethical guidelines | Supportive mentor relationship |
| Investigate and act on case facts on behalf of the client | Investigate case and report on facts on behalf of the court |
| Typically carry a caseload of clients, offering a wide breadth of experience, familiarity with the child welfare system and a deep understanding of the pertinent laws | Typically work with 1 child or sibling set at a time, allowing more time for intensive attention and support |
| Provide legal advice to the child about their rights and legal options in their case | Cannot provide legal advice to the child |
| File motions, call witnesses, make legal arguments, and use other legal tools to advocate for the client's position | Provide written and oral reports to court with best interest recommendation |
| Law school graduate, state bar licensure, continuing education requirements, knowledge of pertinent federal and state law | 30-hour training program |
| Paid professional role | Unpaid volunteer role |

The National Consensus for Counsel for Kids



The American Bar Association's (ABA) Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

The National Council of Juvenile and Family Court Judges' Enhanced Resource Guidelines,

The NACC's Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings

“Volunteer GALs can offer a unique perspective in court cases, as well as emotional support for the child, but they cannot replace the role of an attorney representing the child’s legal rights in court proceedings.⁸ Every other party to these proceedings, including the Department of Social Services (DSS) and parents, has direct representation unless they choose to represent themselves.⁹ Courts appoint attorneys for parents who cannot afford one.¹⁰ Yet, children, the ones who arguably have the most at stake, are typically the only party-in-interest in these cases without an attorney.”

COMMITTEE *on* CHILDREN

2022 Annual Report



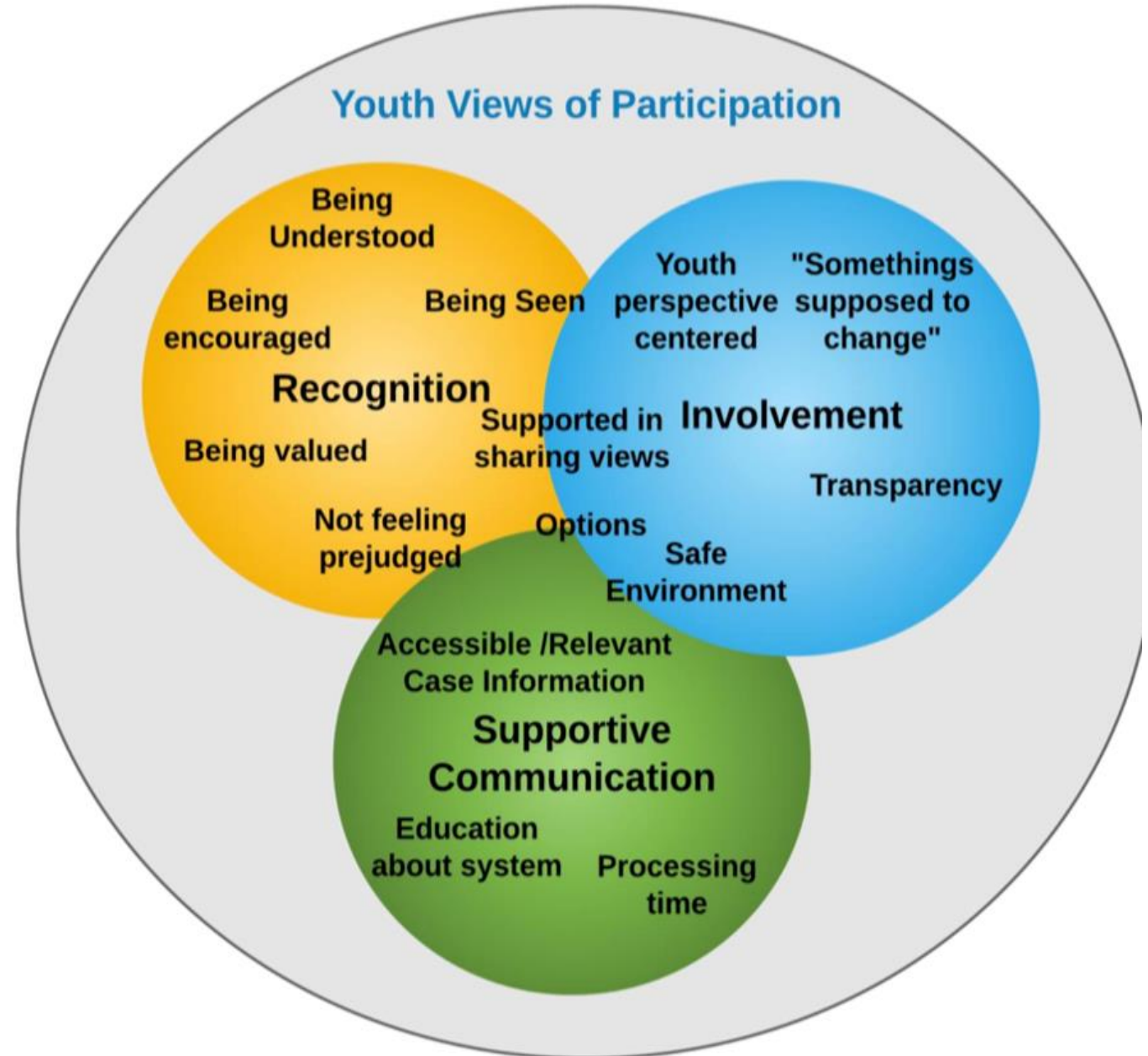
RESEARCH

What Say Youth?

Individuals with lived experience in the child welfare system overwhelmingly indicate a desire to:

- Be heard;
- Be engaged in and helped to understand their legal proceedings;
- Be told what is happening in their case.

Cody, Anna. "Children's Participation Rights in Child Welfare Systems: Identifying Opportunities for Implementation."
<https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=7617&context=etd>



Key Findings on the Impact of High- Quality Legal Representation

Prevents the need for removal;

Expedites timelines to permanency;

Decreases placement changes and school moves

Promotes engagement in case planning, services, and court hearings;

Increases rates of kinship placements; and

Yields cost savings for government agencies.

Children represented by Attorneys experience:

- 45% higher reunification rate with their biological parents
- 30% reduction in the rate of placement moves and
- 65% reduction in the rate of school moves not associated with graduations.

Evaluation of the Washington State Dependent Child Legal Representation Program (2021). Washington State Center for Court Research.
<https://seureservercdn.net/72.167.241.180/zmc.c18.myftpupload.com/wp-content/uploads/2021/11/DCLR-Report-2021.pdf>

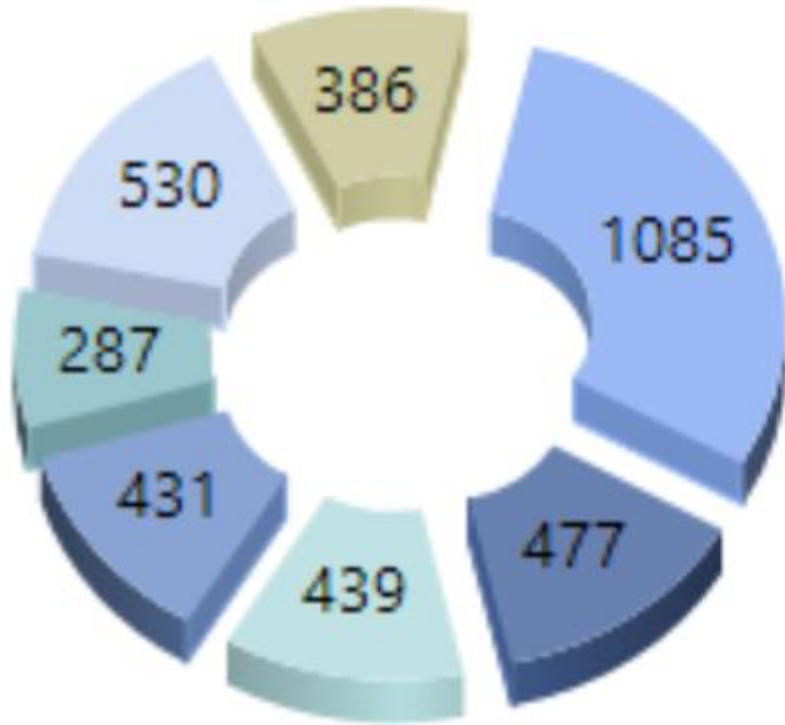
Expediting Permanency

Children represented by specially trained legal counsel are 40% more likely to exit the foster care system within their first six months.



Achieving permanency sooner increases cost savings

South Carolina



Months in Care
Total In Care: 3635

- 0 - 2 (477 - 13.12%)
- 3 - 5 (439 - 12.08%)
- 6 - 8 (431 - 11.86%)
- 9 - 11 (287 - 7.90%)
- 12 - 17 (530 - 14.58%)
- 18 - 23 (386 - 10.62%)
- 24+ (1085 - 29.85%)

<https://reports.dss.sc.gov/ReportServer/Pages/ReportViewer.aspx?/Foster+Care>

Board Rate

Board Rates for Regular Foster Homes *Effective July 1, 2023*

- **Regular Foster Care - Age 0-5**
 - Monthly Rate - \$644.00
 - Daily Rate - \$21.47
- **Regular Foster Care - Age 6-12**
 - Monthly Rate - \$752.00
 - Daily Rate - \$25.07
- **Regular Foster Care - Age 13-20**
 - Monthly Rate - \$794.00
 - Daily Rate - \$26.47

<https://dss.sc.gov/child-well-being/foster-care/current-foster-parent/board-rate/>



Societal Costs of not Appointing Children's Attorneys

- Children who enter and remain in foster care are more likely to experience poor lifelong outcomes
- Including: longer stays in foster care, unattained permanency, homelessness, criminal-legal system involvement, increase in emotional and behavioral problems, mental health symptoms, attachment disorders, physical health problems in adulthood, unemployment, and welfare dependency
- Youth of color and LGBTQIA+ youth are disproportionately represented among those youth in out-of-home placement and experience disproportionate levels of negative outcomes





IV-E Funding Opportunity

Policy changes allow Title IV-E reimbursement in eligible cases for costs of legal representation of parents and children including the costs of paralegals, social workers, investigators, etc.

As of 7/14/22:

1. \$104,200- Legal Representation of Parent or Child Federal Financial Participation
2. 46.09% -Title IV-E Participation Rate

Title IV-E Programs Expenditure and Caseload Data 2021
(<https://www.acf.hhs.gov/cb/report/report/programs-expenditure-caseload-data-2021>)





“The Children’s Bureau (CB) strongly encourages all child welfare agencies and jurisdictions to work together to ensure that high quality legal representation is provided to all parties in all stages of child welfare proceedings.”

Children’s Bureau, ACYF-CB-IM-17-02: High Quality Legal Representation for All Parties in Child Welfare Proceedings, January 17, 2017





Access to Justice Barriers

- Lack of understanding of children's legal rights and a paternalistic view that only adults know what is best for them
- Misunderstanding of the role and impact of a children's attorney
- Confusion about the distinct role of the CASA volunteer
- Misperception about a child's capacity to direct counsel
- Concerns that a child will be unsafe if empowered to set objective of legal representation



Access to Justice Barriers

- Untapped federal funding resources
- Insufficient attorney workforce
- **Absence of state law to guarantee appointment of a children's attorneys to every child at all stages of a proceeding**

What's Next?

- **Review** the handouts provided to learn more about the role of child attorneys and the research on the impact of legal representation for children in dependency cases.
- **Visit** www.counselforkids.org for even more information and resources on children's legal representation.
- **Share** knowledge and information with partners, policy makers, and other stakeholders on the right to counsel movement, national landscape, and research.
- **Advocate** for use of federal title IV-E funds to enhance the quality of legal representation.

**Natalece Washington
Policy Counsel**

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NACCchildlaw.org](mailto:Natalece.Washington@NACCchildlaw.org)**

www.counselforkids.org





South Carolina Bar

Continuing Legal Education Division

2024 SC BAR CONVENTION

Children's Law Committee

Saturday, January 20

When Good Kids Seem Bad: Spotting the
Educational Needs of Students

Jennifer Rainville

Amanda C. Hess

When Good Kids Seem Bad: Spotting the Educational Needs of Students

January 20, 2024

Further Information and Resources

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www.disabilityrightssc.org

- Behavior data
 - US Department of Education Office for Civil Rights Civil Rights Data Collection (2017-2018)
 - 11,205,797: number of school days students missed because of out of school suspensions
 - From: "An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 School Year" U.S. Department of Education Office for Civil Rights, Civil Rights Data Collection, June 2021
 - Found at:
<https://ocrdata.ed.gov/assets/downloads/crdc-exclusionary-school-discipline.pdf>
 - South Carolina School Report Cards
 - Districts with the most expulsions:
 - Berkeley (256)
 - Horry (114)
 - Richland 2 (94)

- Florence 1 (96)
 - Aiken (80)
- Students with Out of School Suspensions:
 - Berkeley (3820)
 - Horry (6312)
 - Richland 2 (3330)
 - Florence 1 (1888)
 - Aiken (3391)
- Referrals to Law Enforcement
 - Berkeley (633)
 - Horry (347)
 - Richland 2 (186)
 - Florence 1 (5)
 - Aiken (80)
- Graduation Rate
 - Berkeley 84.3%
 - Horry 82.1%
 - Richland 2 86.2%
 - Florence 1 93.3%
 - Aiken 88.7%
- Found at:
 - <https://ed.sc.gov/data/report-cards/sc-school-report-card/>
 - <https://screportcards.com/>
- South Carolina School Discipline Rules
 - S.C. Code Ann. § 59-19-90
 - Gives the school board the authority to set standards of conduct and behavior that must be met by all students as a condition to the right to attend the public school.
 - S.C. Code Ann. § 53-63-210
 - May authorize or order the expulsion, suspension, or transfer of any pupil for a commission of any crime, gross misbehavior, persistent disobedience, or for violation of written rules and regulations established by the district board, county board, or the State Board of Education, or when the presence of the pupil is detrimental to the best interest of the school.
 - SC Department of Education Regulation 43-279
 - Minimum Standards of Student Conduct and Disciplinary Enforcement Procedures to be Implemented by Local School Districts
 - Suspensions in South Carolina

- S.C. Code Ann. § 59-63-220
 - 10 day max per offense
 - 30 days max per school year
 - No suspension last 10 days of school without a hearing if it will affect a student from being promoted, unless student is actual threat to school
 - S.C. Code Ann. § 59-63-230
 - Parent must get a notice in writing for the reason of suspension and giving a time and date for a conference with administrator
 - Conference must be within 3 days of suspension
 - Can appeal suspension to school board only
 - Expulsions in South Carolina
 - S.C. Code Ann. § 59-63-240
 - Notified in writing of the time and place of the hearing by the board or designee (Hearing Officer)
 - Right to legal counsel
 - All other regular legal rights including the right to question all witnesses
 - Right to appeal to school board to either party
 - Hearing within 15 days
 - Decision within 10 days
 - Action of the Board may be appealed to the proper court
 - Incurable students can be permanently expelled
 - S.C. Code Ann. § 59-63-250
 - May transfer to another school in lieu of suspension or expulsion after meeting with parents
 - Can be appealed to school board
 - S.C. Code Ann. § 59-63-235
 - 365 days for firearm
 - Subject to modification by superintendent on a case by case basis
 - Not precluded from receiving education in an alternative setting
 - Resource: “South Carolina Compilation of School Discipline Laws and Regulations” (March 31, 2023) Prepared by the National Center on Safe Supportive Learning Environments, found at: <https://safesupportivelearning.ed.gov/sites/default/files/discipline->

[compendium/South%20Carolina%20School%20Discipline%20Laws%20and%20Regulations.pdf](#)

- Individuals with Disabilities Education Act (IDEA)
 - Rules
 - Federal Law: 20 U.S.C. § 1400, et seq.
 - Federal Regulations: 34 C.F.R. Part 300
 - SC Department of Education Regulations, See: SBE 43-243; 43-243.1
 - Clarified by case law
 - Overview of IDEA
 - Resource: "About IDEA" found at <https://sites.ed.gov/idea/about-idea/>
 - Behavior and IDEA:
 - Resources:
 - Topic Area "Discipline/Behavioral Supports" found at: <https://sites.ed.gov/idea/topic-areas/#Discipline-Behavioral-Supports>
 - U.S. Department of Education Guidance "Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions" (July 19, 2022) found at: <https://sites.ed.gov/idea/files/qa-addressing-the-needs-of-children-with-disabilities-and-idea-discipline-provisions.pdf>
 - Section 504 of the Rehabilitation Act of 1973
 - Statute: 29 U.S.C. § 794(a)
 - U.S. Department of Education Regulations: 34 C.F.R. § 104.1, et seq.
 - See Subpart D (Preschool, elementary, secondary education)
 - Resources:
 - U.S. Department of Education, Office for Civil Rights "Protecting Students With Disabilities Frequently Asked Questions About Section 504 and the Education of Children with Disabilities" found at: <https://www2.ed.gov/about/offices/list/ocr/504faq.html>
 - U.S. Department of Education, Office for Civil Rights, "Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools" (December 2016) found at:

<https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>

- Behavior and Section 504
 - Resource: U.S. Department of Education Office for Civil Rights “Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973” (July 2022) found at: <https://www2.ed.gov/about/offices/list/ocr/docs/504-discipline-guidance.pdf>
- Options to Address Concerns
 - IDEA
 - IEP meeting
 - Facilitated IEP meeting
 - Mediation
 - State Department of Ed. Complaint
 - Due Process
 - Resource: SC Department of Education Dispute Resolution Information found at: <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/>
 - 504
 - School district 504 Coordinator
 - 504 Meeting
 - Review the school district procedural safeguards
 - Due Process Hearing
 - USDOE OCR Complaint
 - Lawsuit
 - Resources:
 - U.S. Department of Education, Office for Civil Rights, “Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools” (December 2016) found at: <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>
 - USDOE OCR Complaint Process found at: <https://www2.ed.gov/about/offices/list/ocr/complaintprocess.html>
- More Resources
 - USDOE July 19, 2022 Guidance
 - <https://sites.ed.gov/idea/new-guidance-helps-schools-support-students-with-disabilities-and-avoid-discriminatory-use-of-discipline/>

- Appleseed Resources
 - Parent Guide: <https://www.scjustice.org/south-carolina-parent-guide-for-k-12-students/>
- DRSC Resources
 - “Discipline of Students with Disabilities”
<https://www.disabilityrightssc.org/discipline-of-students-with-disabilities/>
 - “Expulsion and Manifestation Meeting”
<https://www.disabilityrightssc.org/expulsion-and-manifestation-meeting/>
 - “Protections For Students Not Yet Identified as Eligible for Special Education Services”
<https://www.disabilityrightssc.org/protections-for-students-not-yet-identified-as-eligible-for-ioea/>

When Good Kids Seem Bad: Spotting the Educational Needs of Students

Jennifer Rainville, SC Appleseed Legal Justice Center

Amanda Hess, Disability Rights South Carolina

January 20, 2024

Who We Are



**DISABILITY
RIGHTS**
SOUTH CAROLINA

SOUTH CAROLINA
appleseed
LEGAL JUSTICE CENTER

SC Bar Education Law Committee

Data

- 11,205,797 (OCR 2017/2018)
 - missed school days due to out of school suspensions
- Ranked one for preschool suspensions
- State report card data

State Report Card Data

- Highest expulsions: Berkeley, Horry & Richland 2
- Highest OSS: Berkeley, Horry, & Aiken
- Highest Referrals to Law Enforcement: Berkeley, Horry, & Rich 2

When Parents Seek an Attorney

- School Discipline
- Abbreviated School Days
- Restrictive Placements
- Seclusion or Restraint
- SRO Involvement

Subject to School Discipline

- Violation of School Code of Conduct
- Conduct in the community
- Conduct on the internet
- Criminal activity

School Discipline in South Carolina



SC Laws and Regulations

- 59-19-90 (school board code of conduct)
- 59-63-210 (discipline)
- SCDE Reg. 43-279 (minimum standards)
- School Board Policy
- Student Handbook

Suspensions in SC

- 59-63-220
 - Maximums/Hearing
- 59-63-230
 - Notice
 - Conference
 - Appeal

Expulsions in SC

- 59-63-240
 - Process
- 59-63-250
 - Transfer/Appeal
- 59-63-235
 - Firearm/Modification/Alternative setting



Students with Disabilities

Students with Disabilities

- Additional protections under federal law
- Public schools have obligations when learning is impacted by behavior
- Positive behavior interventions, supports and services

**Individuals
with
Disabilities
Education Act
(IDEA)**



IDEA Rules and Regulations

- Federal Law: 20 U.S.C. § 1400, et seq.
- Federal Regulations: 34 C.F.R. Part 300
- SC Department of Education Regulations,
See: SBE 43-243; 43-243.1
- Clarified by case law

Overview of IDEA

- Eligibility Process
- Eligible Students
 - Individualized Education Program (IEP)
 - Free appropriate public education
 - Special education and related services

Addressing Behavior Through the IEP Process

- Positive behavioral interventions, supports, services
- Modifications/Accommodations
- Functional Behavioral Assessment/Behavioral Intervention Plan

Protections for Students with Disabilities

- Subject to school code of conduct
- Protections if change of placement
- Educational services after 10th cumulative day in school year
- Manifestation Determination Review

Change in Placement

- Removal that is more than 10 consecutive school days
 - Suspension or expulsion proposal
- Series of removals that constitute a pattern
- 34 C.F.R. § 300.536

Manifestation Determination Review (MDR) Meeting

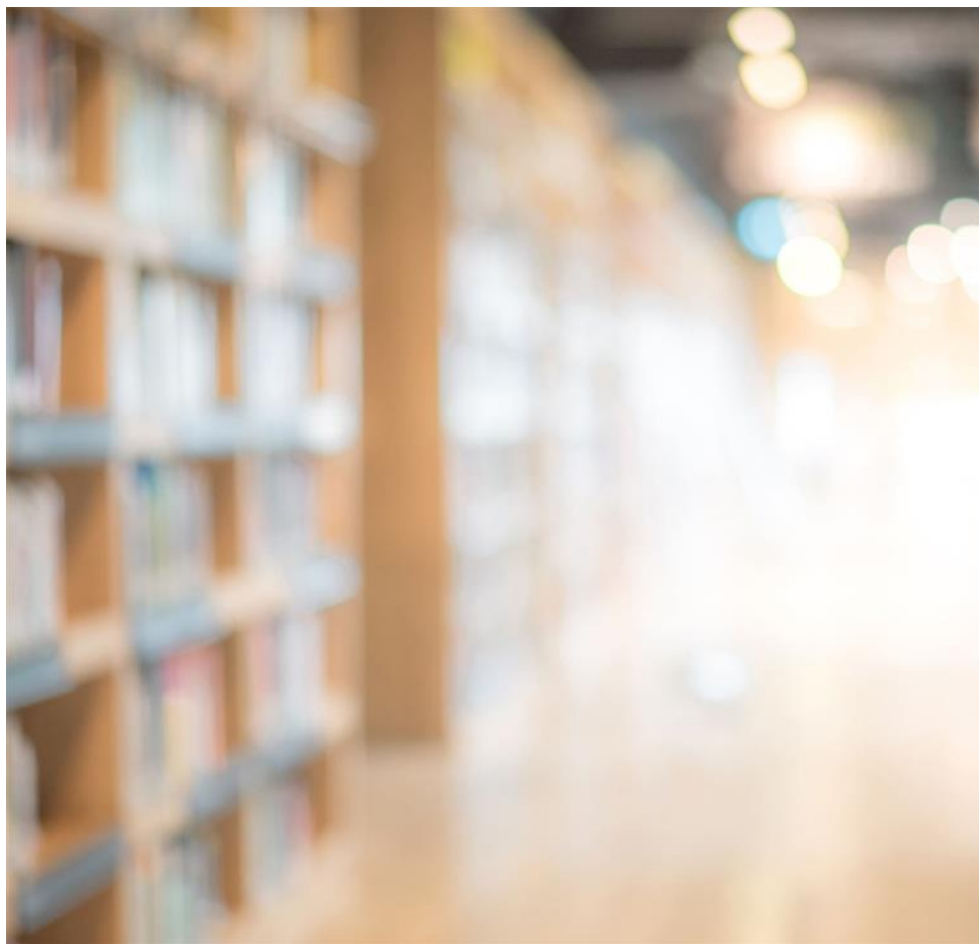
- Review all relevant information
- Answer two questions
 - 34 C.F.R. § 300.530(e)
- Yes to either/both questions:
 - Student stays in current placement
 - Unless special circumstance

Special Circumstances (34 C.F.R. § 300.530(g) and (i))

- Can be removed even if manifestation, if:
 - Weapon
 - Illegal Drugs
 - Serious Bodily Injury
- Still entitled to FAPE

What if “No” to Manifestation?

- Discipline is implemented
- Student will continue to receive educational services
- Determined by IEP team
- 34 C.F.R. § 300.530(c)



Section 504 of the Rehabilitation Act of 1973

Section 504 Rules and Regulations

- Federal law: 29 U.S.C. §794(a)
- USDOE Regulations: 34 C.F.R. § 104.1, et seq.
- Student with a disability
- “504 Plan”

Addressing Behavior Through The 504 Process

- 504 Coordinator
- 504 Meeting
- Identify student's needs
- Individualized behavioral supports and services

Discipline: Significant Change of Placement

- USDOE OCR Guidance
- Process looks similar to IDEA
- Big difference from IDEA:
 - Student is not entitled to services if behavior is not based on disability

Dispute Resolution



IDEA

- IEP meeting
- Facilitated IEP meeting
- Mediation
- State Department of Ed. Complaint
- Due Process

Section 504

- 504 Coordinator
- 504 Meeting
- Procedural Safeguards/Due Process Hearing
- USDOE OCR Complaint
- Lawsuit



Resources

USDOE Resource

- USDOE July 19, 2022 Guidance:
<https://sites.ed.gov/idea/new-guidance-helps-schools-support-students-with-disabilities-and-avoid-discriminatory-use-of-discipline/>

Appleseed Resource

- Parent Guide:

<https://www.scjustice.org/south-carolina-parent-guide-for-k-12-students/>

DRSC Education Resources

- <https://www.disabilityrightssc.org/resources/education/>
- Includes: discipline, expulsion/MDR, students not yet identified as eligible for special education

SC Appleseed Legal Justice Center

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- jennifer@scjustice.org
- 803.999.2167
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WWW.disabilityrightssc.org



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Children's Law Committee

Saturday, January 20

**Medicaid and EPSDT: What Does That Offer
South Carolina's Children**

Anna Maria Connor



EPSDT - A Guide for States: Coverage in the Medicaid Benefit for Children and Adolescents



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Early and Periodic Screening, Diagnostic and Treatment (EPSDT)

JUNE 2014

Available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Early-and-Periodic-Screening-Diagnostic-and-Treatment.html>

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NORC at the University of Chicago
www.NORC.org

I. INTRODUCTION

The Medicaid program's benefit for children and adolescents is known as Early and Periodic Screening, Diagnostic and Treatment services, or EPSDT. EPSDT provides a comprehensive array of prevention, diagnostic, and treatment services for low-income infants, children and adolescents under age 21, as specified in Section 1905(r) of the Social Security Act (the Act). 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. The goal of EPSDT is to assure that individual children get the health care they need when they need it – the right care to the right child at the right time in the right setting.

EPSDT's goal is to assure that individual children get the health care they need when they need it – the right care to the right child at the right time in the right setting.

States share responsibility for implementing the benefit, along with the Centers for Medicare & Medicaid Services (CMS). States have an affirmative obligation to make sure that Medicaid-eligible children and their families are aware of EPSDT and have access to required screenings and necessary treatment services.¹ States also have broad flexibility to determine how to best ensure such services are provided. In general, they either administer the benefit outright (through fee for service arrangements) or provide oversight to private entities with whom they have contracted to administer the benefit (e.g., managed care entities). States must arrange (directly or through delegations or contracts) for children to receive the physical, mental, vision, hearing, and dental services they need to treat health problems and conditions. Through the EPSDT benefit, children's health problems should be addressed before they become advanced and treatment is more difficult and costly.

¹ CMS, State Medicaid Manual §§ 5010, 5121, 5310 (requiring states to “[a]ssure that health problems found are diagnosed and treated early, before they become more complex and their treatment more costly, . . . that informing methods are effective, . . . [and] that services covered under Medicaid are available.”)

EPSDT entitles enrolled infants, children and adolescents to any treatment or procedure that fits within any of the categories of Medicaid-covered services listed in Section 1905(a) of the Act if that treatment or service is necessary to “correct or ameliorate” defects and physical and mental illnesses or conditions.² This includes physician, nurse practitioner and hospital services; physical, speech/language, and occupational therapies; home health services, including medical equipment, supplies, and appliances; treatment for mental health and substance use disorders; treatment for vision, hearing and dental diseases and disorders, and much more. This broad coverage requirement results in a comprehensive, high-quality health benefit for children under age 21 enrolled in Medicaid.

Children’s health problems should be addressed before they become advanced and treatment is more difficult and costly.

States report annually to CMS certain data about their delivery of services under the EPSDT benefit.³ The reporting is made on the [CMS Form 416](#). CMS and states use this data to monitor EPSDT performance.

This guide is intended to help states, health care providers and others to understand the scope of services that are covered under EPSDT so that they may realize EPSDT’s goals and provide the best possible child and adolescent health benefit through their Medicaid programs. While it does not establish new EPSDT policy, this guide serves the important purpose of compiling into a single document various EPSDT policy guidances that CMS has issued over the years.

This guide outlines:

- ✓ EPSDT’s screening requirements, including when interperiodic screening should be provided;
- ✓ Scope of services covered under EPSDT;
- ✓ EPSDT’s requirements governing dental, vision, and hearing services;
- ✓ Permissible limitations on service coverage under EPSDT;

² Section 1905(r)(5) of the Social Security Act.

³ Sections 1902(a)(43)(D) and 2108(e) of the Social Security Act; CMS, State Medicaid Manual § 2700.4.

- ✓ States' responsibilities to assure access to EPSDT services and providers;
- ✓ Assistance to states as they work with managed care plans to provide the best child health benefit possible; and
- ✓ Notice and appeal procedures required when services are denied, reduced or terminated.

II. PERIODIC AND INTERPERIODIC SCREENINGS

EPSDT covers regular screening services (check-ups) for infants, children and adolescents. These screenings are designed to identify health and developmental issues as early as possible. States have the responsibility to ensure that all eligible children (and their families) are informed of both the availability of screening services, and that a formal request for an EPSDT screening service is not required. States must provide or arrange for screening services both at established times and on an as-needed basis. Covered screening services are medical, mental health, vision, hearing and dental. Medical screenings has five components:

- ✓ Comprehensive health and developmental history that assesses for both physical and mental health, as well as for substance use disorders;⁴
- ✓ Comprehensive, unclothed physical examination;
- ✓ Appropriate immunizations, in accordance with the schedule for pediatric vaccines established by the Advisory Committee on Immunization Practices;
- ✓ Laboratory testing (including blood lead screening appropriate for age and risk factors);⁵ and
- ✓ Health education and anticipatory guidance for both the child and caregiver.⁶

Under the Act, states must establish a periodicity schedule for each type of screening service: medical, vision, hearing, and dental. The periodicity schedules set the frequency by which certain services should be provided and will be covered.⁷ The schedules are not prescribed by federal law, but should be based on current standards of pediatric medical and dental practice, and states are required to consult with recognized medical and dental organizations involved in child health care to assist in developing their periodicity schedules. One commonly used source is [Bright Futures](#) (developed by the American Academy of Pediatrics), which, for example, suggests that developmental screenings be conducted when children are ages 9 months, 18 months, and 30 months. The American Academy of Pediatric Dentistry (AAPD) has published a [recommended periodicity schedule](#) for dental services for children and adolescents. States should review their EPSDT periodicity schedules regularly to keep them up to date.

⁴ CMS issued an [Informational Bulletin](#) on March 27, 2013, discussing Prevention and Early Identification of Mental Health and Substance Use Conditions in Children and informing states about resources available to help them meet the needs of children under EPSDT.

⁵ CMS issued [guidance on June 22, 2012](#) to align blood lead screening for Medicaid children with recommendations of the Centers for Disease Control and Prevention (CDC). After providing data that demonstrates that universal screening is not the most effective approach to identifying childhood exposure to lead, a state may request to implement a targeted lead screening plan rather than continue universal screening of all Medicaid-eligible children ages 1 and 2.

⁶ Section 1905(r)(1)(B) of the Social Security Act.

⁷ 42 C.F.R. § 441.58; CMS, State Medicaid Manual §§ 5110, 5140.

States should review their EPSDT periodicity schedules regularly to keep them up to date.

EPSDT also requires coverage of medically necessary “interperiodic” screening outside of the state’s periodicity schedule. Coverage for such screenings is required based on an indication of a medical need to diagnose an illness or condition that was not present at the regularly scheduled screening or to determine if there has been a change in a previously diagnosed illness or condition that requires additional services. The determination of whether a screening service outside of the periodicity schedule is necessary may be made by the child’s physician or dentist, or by a health, developmental, or educational professional who comes into contact with a child outside of the formal health care system. This includes, for example, personnel working for state early intervention or special education programs, Head Start, and the Special Supplemental Nutrition Program for Women, Infants, and Children. A state may not limit the number of medically necessary screenings a child receives and may not require prior authorization for either periodic or “interperiodic” screenings.

Example of Screenings Beyond Those Required by the Periodicity Schedule

A child receives a regularly scheduled periodic vision screening at age 5 at which no problem is detected. According to the state’s periodicity schedule, his next vision screening is due at age 7. At age 6, the school nurse recommends to the child’s parent that the child see an optometrist because a teacher suspects a vision problem. Even though the next scheduled vision screening is not due until the age of 7, the child would be entitled to receive a timely “interperiodic” screening to determine if there is a vision problem for which treatment is needed. The screening should not be delayed if there is a concern the child may have a vision problem.

Source: NPRM, 58 Fed. Reg. 51288, 51290, 51291 (Oct. 1, 1993)

Screening services provide the crucial link to necessary covered treatment, as EPSDT requires states to “arrang[e] for . . . corrective treatment,” either directly or through referral to appropriate providers or licensed practitioners, for any illness or condition detected by a screening.⁸ The affirmative obligation to connect children with necessary treatment makes EPSDT different from Medicaid for adults.⁹ It is a crucial component of a quality child health benefit.

⁸ Section 1902(a)(43)(C) of the Social Security Act.

⁹ CMS, State Medicaid Manual § 5124.B.

The affirmative obligation to connect children with necessary treatment makes EPSDT different from Medicaid for adults.

Any qualified provider operating within the scope of his or her practice, as defined by state law, can provide a screening service. The screening *need not be* conducted by a Medicaid provider in order to trigger EPSDT coverage for follow up diagnostic services and medically necessary treatment by a qualified Medicaid provider. A screening service provided before a child enrolls in Medicaid is sufficient to trigger EPSDT coverage, after enrollment, for follow-up diagnostic services and necessary treatment. The family or beneficiary need not formally request an EPSDT screening in order to receive the benefits of EPSDT. Rather, any visit or contact with a qualified medical professional is sufficient to satisfy EPSDT's screening requirement, and states should consider a beneficiary who is receiving services to be participating in EPSDT, whether the beneficiary requested screening services directly from the state or the health care provider.¹⁰

Any qualified provider operating within the scope of his or her practice, as defined by state law, can provide a screening service.

States establish their own fee schedules for screening services and should be using Health Insurance Portability and Accountability Act (HIPAA) compliant billing codes. States may develop a bundled payment rate to pay for the physical health screening components under one billing code. States may also recognize each component of the EPSDT screening separately. For example, one state pays for the visit itself with one code and pays separately for each individual screening service delivered during the visit. This payment methodology not only encourages providers to perform every component of an EPSDT well-child visit, it also provides the state, through claims, information as to whether the physician actually met the elements of the EPSDT guidelines set out in the periodicity

¹⁰ CMS, State Medicaid Manual § 5310; HCFA, Title XIX State Agency Letter No. 91-33 (April 3, 1991).

schedules. States may encourage providers to perform all five components of the EPSDT screening but may not exclude providers who perform only partial screenings from being reimbursed for the parts they do provide.

Professional guidelines (e.g., Bright Futures) recommend that physicians include an oral health screening as part of the well-child visit at specified ages. In addition, states are permitted to include dental or oral health screening as a separately covered EPSDT service. These screening services, which may be performed by dental professionals or by medical professionals according to state scope of practice rules, can take place in community or group settings as well as in clinics or medical and dental offices. Such screenings can be helpful in identifying children with unmet dental care needs so they can be referred to a dental professional for treatment. Two new procedure codes were added to the Code on Dental Procedures and Nomenclature (CDT) in 2012 to facilitate payment for oral health screenings and assessments: CDT 0190 and CDT 0191.

In 2012, two new procedure codes were added to facilitate payment for oral health screenings and assessments: CDT 0190 and 0191.

Vision and hearing screening services must also be provided. States should consult with ophthalmologists and optometrists to determine what procedures should be used during a vision screening and to establish the criteria for referral for a diagnostic examination. For hearing screenings, appropriate procedures for screening and methods of administering them can be obtained from audiologists or from state health or education departments.¹¹

¹¹ CMS, State Medicaid Manual § 5123.2.F.

III. DIAGNOSTIC SERVICES

EPSDT covers medically necessary diagnostic services. When a screening examination indicates the need for further evaluation of a child's health, the child should be appropriately referred for diagnosis without delay.

A child's diagnosis may be performed by a physician, dentist or other practitioner qualified to evaluate and diagnose health problems at locations, including practitioners' offices, maternal and child health (MCH) facilities, community health centers, rehabilitation centers, and hospital outpatient departments. Diagnosis can generally be made on an outpatient basis. However, inpatient services are covered when necessary to complete a diagnosis.

When a screening examination indicates the need for further evaluation of a child's health, the child should be referred for diagnosis without delay.

IV. THE SCOPE OF EPSDT TREATMENT SERVICES

A. Scope of Services

The Act provides for coverage of all medically necessary services that are included within the categories of mandatory and optional services listed in section 1905(a), regardless of whether such services are covered under the State Plan. These include physician and hospital services, private duty nursing, personal care services, home health and medical equipment and supplies, rehabilitative services, and vision, hearing, and dental services. Covered EPSDT services also include “any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary.”¹² The role of states is to make sure the full range of EPSDT services is available as well as to assure that families of enrolled children are aware of and have access to those services so as to meet the individual child’s needs. The broad scope of services enables states to design a child health benefit to meet the individual needs of the children served by its Medicaid program—a benefit design that has the potential to result in better care and healthier children at a lower overall cost. As discussed in the next section: while children enrolled in Medicaid are entitled to a broad scope of treatment services, no such service is covered under Medicaid unless medically necessary for that particular child.

The Act provides for coverage of all medically necessary services that are included within the categories of mandatory and optional services listed in section 1905(a), regardless of whether such services are covered under the State Plan.

¹² Section 1905(a)(29) of the Social Security Act.

If a service, supply or equipment that has been determined to be medically necessary for a child is not listed as covered (for adults) in a State Medicaid Plan, the state will nonetheless need to provide it to the child as long as the service or supply could be covered under the State Plan, that is, as long as it is included within the categories of mandatory and optional services listed in section 1905(a). In such circumstances, the state would need to develop a payment methodology for the service, supply or equipment, including the possibility that payment may need to be made using a single-service agreement with an in-state provider or an out-of-state provider who will accept Medicaid payment.

A service need not cure a condition in order to be covered under EPSDT. Services that maintain or improve the child's current health condition are also covered in EPSDT because they "ameliorate" a condition. Maintenance services are defined as services that sustain or support rather than those that cure or improve health problems. Services are covered when they prevent a condition from worsening or prevent development of additional health problems. The common definition of "ameliorate" is to "make more tolerable." Thus, services such as physical and occupational therapy are covered when they have an ameliorative, maintenance purpose. This is particularly important for children with disabilities, because such services can prevent conditions from worsening, reduce pain, and avert the development of more costly illnesses and conditions. Other, less common examples include items of durable medical equipment, such as decubitus cushions, bed rails and augmentative communication devices. Such services are a crucial component of a good, comprehensive child-focused health benefit.

B. Covering a Range of Treatment Services to Meet a Child's Needs

As noted above, EPSDT covers physical and mental health and substance use disorder services, regardless of whether these services are provided under the State Plan and regardless of any restrictions that states may impose on coverage for adult services, as long as those services *could* be covered under the State Plan. This section provides some examples of EPSDT's broad scope of services, focusing on mental health and substance use services, personal care services, oral health and dental services, and vision and hearing services.

a. Mental Health and Substance Use Services

Treatment for mental health and substance use issues and conditions is available under a number of Medicaid service categories, including hospital and clinic services, physician services, and services provided by a licensed professional such as a psychologist. States should also make use of rehabilitative services. While rehabilitative services can meet a range of children's treatment needs, they

can be particularly critical for children with mental health and substance use issues. Rehabilitative services are defined to include:

*any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.*¹³

Like other services covered under EPSDT, rehabilitative services need not actually cure a disability or completely restore an individual to a previous functional level. Rather, such services are covered when they ameliorate a physical or mental disability, as discussed above. Moreover, determinations of whether a service is rehabilitative must take into consideration that a child may not have attained the ability to perform certain functions. That is, a child's rehabilitative services plan of care should reflect goals appropriate for the child's developmental stage.

Rehabilitative services are particularly critical for children with mental health and substance use issues.

Depending on the interventions that the individual child needs, services that can be covered as rehabilitative services include:

- ✓ Community-based crisis services, such as mobile crisis teams, and intensive outpatient services;
- ✓ Individualized mental health and substance use treatment services, including in non-traditional settings such as a school, a workplace or at home;
- ✓ Medication management;
- ✓ Counseling and therapy, including to eliminate psychological barriers that would impede development of community living skills; and
- ✓ Rehabilitative equipment, for instance daily living aids.

With respect to the provision of rehabilitative services, including those noted above, CMS requires more specificity of providers and services due to the wide spectrum of rehabilitative services coverable under the broad definition. CMS

¹³ Section 1905(a)(13) of the Social Security Act; 42 C.F.R. § 440.130(d).

would expect a state to include in their State Plan the services, and providers with their qualifications, as well as a reimbursement methodology for each service it provides. CMS is available to provide technical assistance to states that are covering a service for children that has not otherwise been identified in their State Plan.

A number of [home and community-based services](#), including those that can be provided through EPSDT, have proven to significantly enhance positive outcomes for children and youth. These include intensive care coordination (“wraparound”), intensive in-home services, and mobile crisis response and stabilization.

CMS has issued [detailed guidance](#) encouraging states to include screening, assessments, and treatments focusing on children who have been victims of complex trauma. EPSDT can be a crucial tool in addressing the profound needs of this population, including children who are involved in the child welfare system.

b. Personal Care Services

EPSDT requires coverage of medically necessary personal care services, which:

are furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility . . . or institution for mental disease, that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State), otherwise authorized for the individual in accordance with a service plan approved by the State; (B) provided by an individual who is qualified to provide such services and is not a member of the individual’s family; and (C) furnished in a home or . . . in other location.¹⁴

Personal care services provide a range of assistance with performing activities of daily living, such as dressing, eating, bathing, transferring, and toileting; and instrumental activities of daily living, such as preparing meals and managing medications.¹⁵ While it is optional for states to provide personal care services for adults in locations other than the home, this is not the case for a child. Under EPSDT, personal care services are to be provided, for example, in a school or group home if necessary to “correct or ameliorate” a condition.

The determination of whether a child needs personal care services must be based upon the child’s individual needs and provided in accordance with a plan of treatment or service plan. Under regular State Plan Medicaid, no Medicaid payments are available for personal care services provided by the child’s legally

¹⁴ Section 1905(a)(24) of the Social Security Act; 42 C.F.R. § 440.167.

¹⁵ CMS, State Medicaid Manual § 4480.

responsible relatives.¹⁶ In addition, the determination of whether a child needs personal care services must be based upon the child's individual needs and a consideration of family resources that are actually—not hypothetically—available.

c. Oral Health and Dental Services

Dental services required in the EPSDT benefit include:¹⁷

- ✓ Dental care needed for relief of pain, infection, restoration of teeth, and maintenance of dental health (provided at as early an age as necessary); and
- ✓ Emergency, preventive, and therapeutic services for dental disease that, if left untreated, may become acute dental problems or cause irreversible damage to the teeth or supporting structures.¹⁸

In addition, medically necessary oral health and dental services,¹⁹ including those identified during an oral screening or a dental exam, are covered for children. States must provide orthodontic services to EPSDT-eligible children to the extent necessary to prevent disease and promote oral health, and restore oral structures to health and function.²⁰ Orthodontic services for cosmetic purposes are not covered.

Once a child reaches the age specified by the state in its pediatric dental periodicity schedule, typically age one, a direct dental referral is required.²¹ The referral must be for an encounter with a dentist or with another dental professional, such as a dental hygienist, working under the supervision of a dentist.²² Dental supervision includes the entire range, for example, direct, indirect, general, public health and collaborative practice arrangements.

¹⁶ 42 C.F.R. § 440.167.

¹⁷ Information on CMS efforts working with states to improve access to oral health services for children enrolled in Medicaid and CHIP can be found in CMS, *Improving Access to and Utilization of Oral Health Services for Children in Medicaid and CHIP Programs: CMS Oral Health Strategy* (April 11, 2011). Approaches states can use to improve the delivery of dental and oral health services to children in Medicaid and CHIP can be found in *Keep Kids Smiling: Promoting Oral Health Through the Medicaid Benefit for Children and Adolescents* and in *Improving Oral Health Care Delivery in Medicaid and CHIP: A Toolkit for States*. All of these documents are available at <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Benefits/Dental-Care.html>.

¹⁸ CMS, State Medicaid Manual § 5124.B.2.b.

¹⁹ CMS, State Medicaid Manual § 2700.4 (Form 416 Instructions, Note for Line 12 Data). Dental services are those performed by or under the supervision of a dentist. Oral health services are those performed by other licensed providers not working under the supervision of a dentist, for example, a physician or nurse, or by a dental professional operating without a supervisory relationship to a dentist (e.g., an independent practice dental hygienist).

²⁰ CMS, State Medicaid Manual § 5124.B.2.b

²¹ 42 C.F.R. § 441.56(b)(vi).

²² CMS, State Medicaid Manual § 5123.2.G.

Current clinical guidelines recommend that a child have a first dental visit when the first tooth erupts or by age one.

Dental care must be provided at intervals indicated in the pediatric dental periodicity schedule adopted by the state after consultation with a recognized dental organization involved in child health care.²³ Current [clinical guidelines](#) recommend that a child have a first dental visit when the first tooth erupts or by age one, whichever occurs first. Dental care that is deemed medically necessary for an individual child is covered even when the frequency is greater than specified in the periodicity schedule.²⁴ For example, a child determined by a qualified provider to be at moderate or high risk for developing early childhood caries could be covered to receive dental exams and preventive treatments more frequently than the twice-yearly periodicity schedule recommended by the AAPD.

As determined by dental practice acts in individual states, there is a wide range of dental professionals who can work under the supervision of a dentist, for example, dental hygienists, dental therapists, dental health aide therapists, dental hygienists in advanced practice, advanced practice dental therapists, dental assistants, and community dental health coordinators. Some state practice acts permit specified dental professionals to work without dentist supervision in certain circumstances. Such provisions can help ensure access to dental care as well as promote an integrated health care delivery system. As with medical care, any qualified provider operating within the scope of his or her practice, as defined by state law, can provide a dental or oral health service to a Medicaid enrollee. To qualify for federal matching funds, State Plans must list all provider types that will be permitted to bill for dental or oral health services. However, rendering providers (providers who actually serve the patient) need not be separately enumerated in the State Plan.

Better integration of primary medical care with dental care can help identify children at risk for tooth decay at the youngest age possible, offer evidence-based preventive care, such as fluoride varnish and oral health education, and refer children to a dental professional for a complete check-up and any needed treatment. Three oral health risk assessment CDT billing codes can support this

²³ Section 1905(r)(3) of the Social Security Act; CMS, State Medicaid Manual § 5110.

²⁴ CMS, State Medicaid Manual § 5110.

approach, potentially preventing the need for costly treatment, such as that provided in an operating room.

State Medicaid and CHIP programs can use risk assessment codes to help children access services based on their individual levels of risk, instead of assuming that all children need the same level of intervention. AAPD guidelines encourage providers to customize care plans based on an assessment of each child's individual risk for developing dental disease. Risk assessment resources are available for providers, including an [assessment tool from AAPD](#) that includes a caries-risk assessment form, clinical guidelines and treatment protocols.

In addition to dental providers, states may reimburse primary care medical providers for conducting oral health risk assessments, providing oral health education to parents and children, applying preventive measures such as fluoride varnish, and making referrals to dental professionals. The CMCS oral health strategy guide, [Keep Kids Smiling: Promoting Oral Health Through the Medicaid Benefit for Children & Adolescents](#), provides additional information on oral health and EPSDT.

d. Vision and Hearing Services

Vision and hearing services are an essential component of the EPSDT benefit. Hearing impairments can lead to other problems, including interference with normal language development in young children. They can also delay a child's social, emotional, and academic development. Vision problems can be evidence of serious, degenerative conditions, and can also lead to delays in learning and social development.

EPSDT requires that vision and hearing services be provided at intervals that meet reasonable standards as determined in consultation with medical experts, and at other intervals, as medically necessary, to determine the existence of a suspected illness or condition. At a minimum, vision services must include diagnosis and treatment for defects in vision, including eyeglasses. Glasses to replace those that are lost, broken, or stolen also must be covered. Hearing services must include, at a minimum, diagnosis and treatment for defects in hearing, including hearing aids.²⁵

In addition, if hearing and vision problems are detected through screening, medically necessary services that are coverable under section 1905(a) must be covered. This includes not only physician and clinic services, but services from licensed professionals such as ophthalmologists, and equipment such as augmentative communication devices and cochlear implants.

²⁵ Sections 1905(r)(2) and (4) of the Social Security Act.

e. Other Services

Examples of other services covered for children under Medicaid when medically necessary (and for which a federal match is available) include, but are not limited to, case management services (including targeted case management);²⁶ incontinence supplies; organ transplants and any related services; a specially adapted car seat that is needed by a child because of a medical problem or condition; and nutritional supplements.

Physicians and other providers use medical terminology, not Medicaid terms or legal terms, when recommending or prescribing medical services and treatments. If a requested service or treatment is not listed by name in Medicaid's list of services, it should nonetheless be provided if the service or item is determined to be medically necessary and coverable under the list of services at section 1905(a). In general, states are encouraged to include in their State Plans a range of provider types and settings likely to be sufficient to meet the needs of enrollees. Nonetheless, there may be cases in which the type of provider that is needed is not already participating in Medicaid. In such an instance, the state could meet the EPSDT requirement by, for example, entering into a single-service agreement with the needed provider.

When providers use medical terminology instead of Medicaid or legal terms to recommend medically necessary services, the recommended services should be covered if coverable under section 1905(a).

C. Enabling Services

a. Transportation Services

In order to promote access to needed preventive, diagnostic and treatment services, states must offer appointment scheduling assistance and are required to assure necessary transportation, to and from medical appointments, for children

²⁶ Section 1905(a)(19) of the Social Security Act; 42 C.F.R. §§ 440.169, 441.18.

enrolled in Medicaid.²⁷ This includes covering the costs of an ambulance, taxi, bus, or other carrier. It can also include reimbursing for mileage. As with other services covered through EPSDT, states may cover the least expensive means of transportation if it is actually available, accessible, and appropriate. For example, public transportation can be covered instead of a taxi if the public transportation is physically accessible for a particular beneficiary and takes a reasonable amount of time. In addition, “related travel expenses” are covered if medically necessary, including meals and lodging for a child and necessary attendant.²⁸

Some states have addressed the transportation requirement by offering non-emergency transportation through brokers who coordinate transportation services, or through administrative managers who act as gatekeepers for transportation services. Transportation may also be included in managed care contracts. If a state chooses not to include transportation services in their managed care contracts, or otherwise to contract out administration of the service, the state must administer the service itself. No matter the type of arrangement, it is important to remember that the state has ultimate responsibility for ensuring the provision of transportation services.

b. Language Access and Culturally Appropriate Services

Many Medicaid-enrolled children live in families where English is not spoken at home. State Medicaid agencies and their contractors should inform eligible individuals about the EPSDT benefit with a combination of written and oral methods “using clear and nontechnical language” and “effectively informing those individuals who . . . cannot read or understand the English language.”²⁹ State Medicaid agencies and Medicaid managed care plans, as recipients of federal funds, also have responsibilities to assure that covered services are delivered to children without a language barrier. They are required take “reasonable steps” to assure that individuals who are limited English proficient have meaningful access to Medicaid services.³⁰ This may include providing interpreter services, including at medical appointments, depending on factors such as the number of limited English proficient individuals served by the program.³¹

²⁷ Section 1905(a)(29) of the Social Security Act; 42 C.F.R. §§ 440.170, 441.62.

²⁸ 42 C.F.R. § 440.170(a).

²⁹ 42 C.F.R. § 441.56(a); CMS, State Medicaid Manual §§ 5121.A, 5121.C.

³⁰ 42 U.S.C. § 2000d (Title VI of the Civil Rights Act); Affordable Care Act § 1557;

CMS [Dear State Medicaid Director \(Aug. 31, 2000\)](#).

³¹ Department of Health & Human Services, Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47311 (August 8, 2003).

Though interpreter services are not classified as mandatory 1905(a) services, all providers who receive federal funds from HHS for the provision of Medicaid services are obligated, under Title VI of the Civil Rights Act, to make language services available to those with limited English proficiency.

Though interpreters are not Medicaid qualified providers, their services may be reimbursed when billed by a qualified provider rendering a Medicaid covered service.

States are not required to (but may) reimburse providers for the cost of language services. States may consider the cost of language services to be included in the regular rate of reimbursement for the underlying direct service. In those cases, Medicaid providers are obligated to provide language services to those with limited English proficiency and to bear the costs for doing so. Alternatively, states may allow providers to bill specifically for interpreter services. States have the option to claim for the cost of interpretation services, either as medical-assistance related expenditures or as administration.³²

Claiming Federal Matching Funds for Interpreter Services. Interpreters are not Medicaid qualified providers. However, their services may be reimbursed when billed by a qualified provider rendering a Medicaid covered service. Interpreters may not be paid separately. As of February 2009, oral interpreter services can be claimed using billing code T-1013 along with the CPT code used for the medical encounter. States can also raise reimbursement rates to recognize additional service costs, including interpreter costs, but must do so for services rendered by all providers in the class. With the enactment of the Children's Health Insurance Program Reauthorization Act in 2009, states were given the option to claim a higher federal matching rate (75% under Medicaid) for translation and interpretation services that are claimed as administration and are related to the enrollment, retention and use of services under Medicaid and CHIP by children of families for whom English is not their primary language.³³ Otherwise, longstanding CMS policy permits reimbursement at the standard 50% federal

³² CMS, [Dear State Medicaid Director \(July 1, 2010\)](#); CMS, [CMCS Informational Bulletin: Recent Developments in Medicaid \(April 26, 2011\)](#).

³³ Section 1903(a)(2)(E) of the Social Security Act.

matching rate for translation and interpretation activities that are claimed as an administrative expense, so long as they are not included and paid for as part of the reimbursement rate for direct services.³⁴

State Medicaid programs, managed care entities, and Medicaid-participating health care providers should all be culturally competent.

The HHS Office for Civil Rights and the Department of Justice have provided guidance for recipients of federal funds on expectations of how to provide language services.³⁵

State Medicaid programs, managed care entities, and Medicaid-participating health care providers should all be culturally competent. This means they need to recognize and understand the cultural beliefs and health practices of the families and children they serve, and use that knowledge to implement policies and inform practices that support quality interventions and good health outcomes for children. Given changing demographics, this process is ongoing. The [DHHS Office of Minority Health](#) offers numerous resources, including:

- ✓ Center for Linguistic and Cultural Competence in Health Care;
- ✓ Think Cultural Health;
- ✓ A Physician's Practical Guide to Culturally Competent Care;
- ✓ The National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (the National CLAS Standards); and
- ✓ The National CLAS Standards' implementation guide, A Blueprint for Advancing and Sustaining CLAS Policy and Practice.

D. Settings and Locations for Services

a. Services Provided Out of State

States may need to rely upon out-of-state services if necessary covered services are not available locally, or if a Medicaid beneficiary is out of state at the time a need for medical services arises. States are required to pay for services provided

³⁴ CMS, Dear State Medicaid Director (August 31, 2000).

³⁵ *Id.*; U.S. Department of Justice, Executive Order 13166.

in another state to the same extent services furnished in-state would be paid for if:

- ✓ The out-of-state services are required because of an emergency;
- ✓ The child's health would be endangered if she or he were required to travel to their home state;
- ✓ The state determines that the needed services are more readily available in the other state; or
- ✓ It is a general practice of the locality to use the services of an out-of-state provider, for example, in areas that border another state.³⁶

Including out-of-state providers gives states the opportunity to expand the range and accessibility of Medicaid services that are available to their enrollees.³⁷

b. Services Provided in Schools

Services provided in schools can play an important role in the health care of adolescents and children. Whether implemented for children with special needs under the Individuals with Disabilities Education Act (IDEA) or through school-based or linked health clinics, school-centered programs may be able to provide medical and dental care efficiently and effectively while avoiding extended absences from school.

In order for Medicaid to reimburse for health services provided in the schools, the services must be included among those listed in section 1905(a) of the Act and included in the State Plan, or be available under the EPSDT benefit. There is no benefit category in the Medicaid statute titled "school health services" or "early intervention services." Therefore a state must describe its school health services in terms of the specific section 1905(a) services which will be provided. In addition, there must be a provider agreement in place between the state Medicaid agency and the provider billing for the service; and the school must agree to comply with Medicaid-specific requirements regarding service documentation and claims submission.³⁸ States are encouraged to promote relationships between school-based providers and managed care plans.

Services provided in schools can play an important role in the health care of adolescents and children.

³⁶ Section 1902(a)(16) of the Social Security Act; 42 C.F.R. § 431.52.

³⁷ HCFA, Dear State Medicaid Director (July 25, 2000).

³⁸ 42 C.F.R. § 431.107.

Schools are particularly appropriate places to provide medical, vision, and hearing screenings; vaccinations; some dental care; and behavioral health services. The Individuals with Disabilities Education Act (IDEA) requires that every child with a disability have available a free appropriate public education that includes special education and related services. Part B of IDEA requires the development and implementation of an individualized education program (IEP) that addresses the unique needs of each child with a disability ages 3 through 21.³⁹ A child's IEP identifies the special education and related services needed by that child. Medicaid covered services included in the IEP may be provided in, and reimbursed to, schools. Part C of IDEA covers early intervention services, which are developmental services designed to meet a child's developmental needs in physical, cognitive, communication, adaptive, and social and emotional development, for children from birth to age 3. These services are provided pursuant to an Individualized Family Service Plan (IFSP).

Examples of IDEA services that can be covered by Medicaid for a Medicaid eligible child include physical therapy, occupational therapy, personal care, and services for children with speech, hearing and language disorders.⁴⁰

c. Most Integrated Setting Appropriate

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in public programs, including Medicaid. In *Olmstead v. L.C.*, the Supreme Court held that unjustified institutionalization of Medicaid beneficiaries violates the ADA. Accordingly, states must cover services in the community, rather than in an institution, when the need for community services can be reasonably accommodated and providing services in the community will not fundamentally alter the state's Medicaid program.

Community-based care is a best practice for supporting children with disabilities and chronic conditions.

CMS has long encouraged states to provide services in home and community settings, particularly for children, not only because of *Olmstead*, but because community-based care is considered a best practice for supporting children with

³⁹ While EPSDT covers children only through age 20 (up to the 21st birthday), the IDEA covers children through age 21 (up to the 22nd birthday).

⁴⁰ Additional information about Medicaid-covered services provided in schools can be found in the CMS, [Medicaid School Based Administrative Claiming Guide \(2003\)](#).

disabilities and chronic conditions. In addition, it is generally more cost-effective.⁴¹

EPSDT provides states with many options for covering physical and mental health services in the community. The EPSDT benefit requires coverage of medically necessary personal care, private duty nursing, physical, occupational and speech-language therapy. And, as discussed below, optional services provided through home and community based services waivers can further advance the state's efforts to provide services in the community.

⁴¹ HCFA, Dear State Medicaid Director, Olmstead Update Nos. 2 and 3 (July 25, 2000), No. 5 (January 10, 2001); CMS, Dear State Medicaid Director (May 20, 2010); CMS, [Joint CMCS and SAMHSA Informational Bulletin: Coverage of Behavioral Health Services for Children, Youth, and Young Adults with Significant Mental Health Conditions \(May 7, 2013\)](#).

V. PERMISSIBLE LIMITATIONS ON COVERAGE OF EPSDT SERVICES

A. Individual Medical Necessity

Services that fit within the scope of coverage under EPSDT must be provided to a child only if necessary to correct or ameliorate the individual child's physical or mental condition, i.e., only if "medically necessary." The determination of whether a service is medically necessary for an individual child must be made on a case-by-case basis, taking into account the particular needs of the child. The state (or the managed care entity as delegated by the state) should consider the child's long-term needs, not just what is required to address the immediate situation. The state should also consider all aspects of a child's needs, including nutritional, social development, and mental health and substance use disorders. States are permitted (but not required) to set parameters that apply to the determination of medical necessity in individual cases, but those parameters may not contradict or be more restrictive than the federal statutory requirement. As discussed above, services such as physical and occupational therapy are covered when they have an ameliorative, maintenance purpose.

Determination of whether a service is medically necessary must be made on a case-by-case basis, taking into account a particular child's needs.

Because medical necessity decisions are individualized, flat limits or hard limits based on a monetary cap or budgetary constraints are not consistent with EPSDT requirements.⁴² States may adopt a definition of medical necessity that places tentative limits on services pending an individualized determination by the state, or that limits a treating provider's discretion, as a utilization control, but additional services must be provided if determined to be medically necessary for

⁴² HCFA, *Regional Transmittal Notice* (Region IV) (Sept. 18, 1990); Memorandum from Rozann Abato, Acting Director, HCFA, to Associate Regional Administrator, Atlanta (Sept. 5, 1990); Memorandum from Christine Nye, HCFA Medicaid Director, to Regional Administrator Region VIII (FME-42) (1991).

an individual child.⁴³ For example, while a state may place in its State Plan a limit of a certain number of physical therapy visits per year for individuals age 21 and older, such a “hard” limit could not be applied to children. A state could impose a “soft” limit of a certain number of physical therapy visits annually for children, but if it were to be determined in an individual child’s case, upon review, that additional physical therapy services were medically necessary to correct or ameliorate a diagnosed condition, those services would have to be covered.

While the treating health care provider has a responsibility for determining or recommending that a particular covered service is needed to correct or ameliorate the child’s condition,⁴⁴ both the state and a child’s treating provider play a role in determining whether a service is medically necessary. If there is a disagreement between the treating provider and the state’s expert as to whether a service is medically necessary for a particular child, the state is responsible for making a decision, for the individual child, based on the evidence. That decision may be appealed by the child (or the child’s family) under the state’s Medicaid fair hearing procedures, as described in Section VIII below.

B. Prior Authorization

States may impose utilization controls to safeguard against unnecessary use of care and services. For example, a state may establish tentative limits on the amount of a treatment service a child can receive and require prior authorization for coverage of medically necessary services above those limits.⁴⁵ Prior authorization must be conducted on a case-by-case basis, evaluating each child’s needs individually. Importantly, prior authorization procedures may not delay delivery of needed treatment services and must be consistent with the “preventive thrust” of EPSDT.⁴⁶ As such, prior authorization may not be required for any EPSDT screening services. In addition, medical management techniques used for mental health and substance use disorders should comply with the Mental Health Parity and Addiction Equity Act.

C. Experimental Treatments

EPSDT does not require coverage of treatments, services, or items that are experimental or investigational. Such services and items may, however, be covered at the state’s discretion if it is determined that the treatment or item would be effective to address the child’s condition.⁴⁷ Neither the Federal Medicaid statute nor the regulations define what constitutes an experimental

⁴³ 42 C.F.R. §§ 440.230(c), (d); HCFA Dear State Medicaid Director (May 26, 1993).

⁴⁴ Sections 1905(a) and (r) of the Social Security Act.

⁴⁵ *Id.*

⁴⁶ H.R. Rep. No. 101-247 at 399, *reprinted in* U.S.C.A.N. 1906, 2125.

⁴⁷ CMS, State Medicaid Manual §§ 4385.C.1, 5122.F.

treatment. The state's determination of whether a service is experimental must be reasonable and should be based on the latest scientific information available.⁴⁸

Medicare guidance on whether a service is experimental or investigational is not determinative of the issue and may not be relevant to the pediatric population.⁴⁹

D. Cost-Effective Alternatives

A state may not deny medically necessary treatment to a child based on cost alone, but may consider the relative cost effectiveness of alternatives as part of the prior authorization process. Also, a state need not make services available in every possible setting as long as the services are reasonably available through the settings where the service is actually offered. States may cover services in the most cost effective mode as long as the less expensive service is equally effective and actually available.⁵⁰ The child's quality of life must also be considered.⁵¹ In addition, the ADA and the *Olmstead* decision require states to provide services in the most integrated setting appropriate to a child's needs, as long as doing so does not fundamentally alter the state's program. See above, Section IV.D. Thus, if an institutional setting is less costly than providing services in a home or community, the ADA's integration mandate may nevertheless require that the services be provided in the community.⁵²

A state may not deny medically necessary treatment based on cost alone, but may consider the relative cost effectiveness of alternatives as part of the prior authorization process.

⁴⁸ Memorandum from S. Richardson to State Medicaid Directors (April 17, 1995).

⁴⁹ Memorandum from S. Richardson to State Medicaid Directors (April 17, 1995).

⁵⁰ CMS, Dear State Medicaid Director, *Olmstead* Update No. 4 (January 10, 2001); Letter from Rozann Abato, Acting Director, Medicaid Bureau, to State Medicaid Directors (May 26, 1993).

⁵¹ *Id.*

⁵² 28 C.F.R. § 35.130(d); CMS, Dear State Medicaid Director, *Olmstead* Update No. 4 (January 10, 2001); DOJ, [Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.* \(June 22, 2011\)](#).

VI. SERVICES AVAILABLE UNDER OTHER FEDERAL AUTHORITIES

A. Home and Community Based Services Waivers

A state Medicaid program may offer services through home and community based services (HCBS) waiver programs. Such programs allow states to provide HCBS to individuals who would otherwise need long-term care in a nursing facility, intermediate care facility, or hospital. Waiver programs provide for coverage of services that are not otherwise available through the Medicaid program (including EPSDT) because they do not fit into one of the categories listed in section 1905(a). This includes habilitative services, respite services, or other services approved by CMS that can help prevent institutionalization. These programs are sometimes called 1915(c) waivers after the section of the Social Security Act that authorizes them.⁵³

Children under age 21 who are enrolled in an HCBS waiver program are also entitled to all EPSDT screening, diagnostic, and treatment services. Because HCBS waivers can provide services not otherwise covered under Medicaid, waivers and EPSDT can be used together to provide a comprehensive benefit for children with disabilities who would otherwise need the level of care provided in an institutional setting. This enables those children to remain in their homes and communities while receiving medically necessary services and supports. The HCBS waiver services essentially “wrap-around” the EPSDT benefit. If a child enrolled in Medicaid is on a waiting list for HCBS waiver services, EPSDT requirements apply and necessary services that fit into the categories listed in 1905(a) must be covered.⁵⁴

Children who are enrolled in an HCBS waiver program are also entitled to all EPSDT services.

States may also choose to offer [services](#) to children under section 1915(j) (self-directed personal assistance services), section 1915(k) (home and community-based attendant services and support) and section 1945 (coordinated care in

⁵³ Section 1915(c) of the Social Security Act.

⁵⁴ CMS, Dear State Medicaid Director, Olmstead Update No. 4, Att. 4-B (Jan. 10, 2001).

health homes for individuals with chronic conditions). Like services provided pursuant to a 1915(c) waiver, these services are not subject to EPSDT coverage provisions, but are instead available to supplement EPSDT services.

B. Alternative Benefit Plans

States must assure access to services available under the EPSDT benefit for all EPSDT-eligible children under age 21 enrolled in [Alternative Benefit Plans](#) (formerly known as benchmark plans and benchmark-equivalent plans).⁵⁵

C. Role of Maternal and Child Health Services

Federal rules require state Medicaid agencies and Title V Maternal and Child Health (MCH) agencies and grantees to collaborate to assure better access to and receipt of the full range of screening, diagnostic, and treatment services covered under EPSDT.⁵⁶ [Title V](#) is administered by the Health Resources and Services Administration. Many state Medicaid agencies have entered into written agreements with their sister MCH programs and collaborate on improving access to EPSDT services in order to improve child health status. Among other things, cooperating MCH agencies can provide outreach, screening, diagnostic or treatment services, health education and counseling, case management and other assistance in achieving a comprehensive and effective child health benefit. MCH programs can also help Medicaid programs to enlist providers who can help deliver a broad array of services. In addition, they can inform potential and actual Medicaid recipients about EPSDT and refer them to necessary services.⁵⁷ CMS encourages such collaborations as MCH programs are crucial partners in the creation and delivery of a high quality, well-integrated child health benefit.

Many state Medicaid agencies have written agreements with their states' MCH programs and collaborate to improve access to EPSDT services.

⁵⁵ 42 C.F.R. § 440.345.

⁵⁶ 42 U.S.C. §§ 705(a)(5)(F), 709(a)(2); 42 C.F.R. § 441.61(c).

⁵⁷ CMS, State Medicaid Manual § 5230.

VII. ACCESS TO SERVICES

A. Access to Providers

Access to covered services is of course a critical component of delivering an appropriate health benefit to children. Accordingly, a number of Medicaid and EPSDT provisions are intended to assure that children have access to an adequate number and range of pediatric providers. For example, states are required to “make available a variety of individual and group providers qualified and willing to provide” services to children.⁵⁸ States must also “take advantage of all resources available” to provide a “broad base” of providers who treat children.”⁵⁹ Some states may find it necessary to recruit new providers to meet children’s needs.⁶⁰ In the event a child needs a treatment that is not coverable under the categories listed in section 1905(a), states are to provide referral assistance that includes giving the family or beneficiary the names, addresses, and telephone numbers of providers who have expressed a willingness to furnish uncovered services at little or no expense to the family.⁶¹

States are required to make available a variety of providers who are qualified and willing to treat EPSDT children.

A child is entitled to receive Medicaid services from any provider qualified to provide the service and willing to furnish it, unless CMS has decided that this “freedom of choice” requirement will not apply.⁶² Most states have received permission from CMS to provide some services to some children through managed care arrangements that restrict the free choice of provider.

An appropriate level of reimbursement can be critical to ensuring adequate access to providers.⁶³ While the statute provides states with broad authority to set provider payment rates, it requires that payments to providers must be consistent with efficiency, economy, and quality care and be sufficient to enlist enough

⁵⁸ 42 C.F.R. § 441.61.

⁵⁹ CMS, State Medicaid Manual § 5220.

⁶⁰ *Id.*

⁶¹ 42 C.F.R. § 441.61(a).

⁶² Sections 1902(a)(23) and 1932(a) of the Social Security Act; 42 C.F.R. § 431.51(b).

⁶³ HCFA, Dear State Medicaid Director (Jan 18, 2001).

providers that care and services are available to Medicaid beneficiaries at least to the extent that they are available to the general population in the geographic area.⁶⁴

Federal regulations provide that a Medicaid provider must agree to accept, as payment in full, the Medicaid payment for a covered service or item.⁶⁵ This means that a provider *may not* bill a Medicaid beneficiary for the difference between the provider's charge and the Medicaid payment (called "balance billing"). The payment in full requirement also prohibits Medicaid providers from billing beneficiaries for missed appointments. States may need to monitor compliance with this requirement.

Section 1905(a) lists coverable Medicaid services and some provider types. There are at least two means by which a state may cover a service by a provider type that is not specified in section 1905(a). Section 1905(a)(6) permits states to cover "medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law." Thus, a state may cover services performed by a class of providers (such as licensed dietitians) when the service they provide is not specified in section 1905(a) as long as the service is determined medically necessary for a child. Alternatively, a provider's services can be covered as a component of a section 1905(a) service. For example, in the case of a licensed social worker, the services could be provided through a federally qualified health center or a clinic, both of which are recognized providers under section 1905(a). The process for covering a provider for a service not specified in section 1905(a) varies depending on how the state intends to provide the service.

B. Managed Care

EPSDT benefits must be available to all children covered by Medicaid. As such, children enrolled in managed care plans, prepaid inpatient health plans, prepaid ambulatory health plans, primary care case management systems (collectively referred to as managed care entities) are entitled to the same EPSDT benefits they would have in a fee for service Medicaid delivery system. Properly implemented, managed care can enhance and promote EPSDT's goals of ensuring that care is provided in a coordinated way and with an emphasis on prevention.

States are responsible for assuring that the full EPSDT benefit is available to all Medicaid children in the state, even if the state contracts with a managed care entity to deliver some or all of the services available under EPSDT. The state's

⁶⁴ Section 1902(a)(30)(A) of the Social Security Act; Medicaid Program: Methods for Assuring Access to Covered Medicaid Services, 76 Fed. Reg. 26,342 (May 11, 2011) (proposed regulations).

⁶⁵ 42 C.F.R. § 447.15.

contracts with managed care entities should be drafted with sufficient precision so that the entity's responsibilities with respect to children are clearly delineated. A contract can provide that the managed care entities will be responsible for providing services under the EPSDT benefit to the same degree that the services are covered by the state. Or, if certain responsibilities are carved out of the managed care contract, those carve-outs must be explicit, and the state will retain the responsibility for ensuring that those carved-out services are provided to enrolled children. For example, the state may 'carve out' dental services from the managed care contract; nonetheless, the state must assure that children receive those services (through either fee for service or a specialized dental plan).

Managed care entities may not use a definition of medical necessity for children that is more restrictive than the state's definition.

Managed care entities may not use a definition of medical necessity for children that is more restrictive than the state's definition. One way to ensure this is for the state to include its definition of medical necessity in the entity's contract. States should review managed care entities' medical necessity definitions and criteria to ascertain whether they meet this requirement. As a further step to provide for consistency across the delivery system and proper implementation of the children's benefit package, it is the state's responsibility to educate its contracted managed care entities about EPSDT requirements, as well as to verify that managed care providers are informed about EPSDT requirements through trainings and provider manuals. Further, states are responsible for ensuring that managed care entities fulfill their contractual responsibilities to inform all families of the services available under EPSDT and how to access them.⁶⁶ Information made available to enrollees, usually included in a member handbook, should clearly explain which EPSDT services the managed care entity will provide and how any EPSDT services not within the scope of the contract can be accessed by enrollees. Managed care entities must make available to all enrolled children the entire scope of services included in the EPSDT benefit that is within their contract with the state.⁶⁷

⁶⁶ Sections 1902(a)(5) and (a)(43) of the Social Security Act.

⁶⁷ 42 C.F.R. § 438.210(a)(4).

Managed care entities must demonstrate to the state that they have adequate provider capacity in the plan to serve enrolled children, including an appropriate range of pediatric and specialty services; access to primary and preventive care; and a sufficient number, mix and geographic distribution of providers.⁶⁸

Monitoring managed care entities' compliance with EPSDT requirements is essential; a strong oversight framework ensures that states are meeting their responsibilities to children as well as Federal monitoring requirements.⁶⁹ There are several methods of exercising effective oversight in managed care systems.

First, states contracting with managed care organizations (MCOs) or prepaid inpatient health plans (PIHPs) are statutorily required to draft, implement, and maintain a managed care quality strategy.⁷⁰ The quality strategy is intended to provide a blueprint for states in assessing and improving the quality of care provided to managed care enrollees.⁷¹ By means of this strategy, states can monitor and evaluate managed care entities' compliance with quality initiatives, track their performance on specified performance measures, and require them to design, implement and report the results of performance improvement projects.

Second, states are also required to ensure that external quality review of MCOs and PHIPs are performed by unbiased, external entities.⁷² In this way, states can determine whether managed care entities are reporting accurate performance outcomes data and whether they are in compliance with state contract provisions.

Third, states can engage in an ongoing review of grievances and appeals related to children's services, as well as monitoring complaints filed with the state's enrollee and provider hotlines (if the state operates such hotlines). States could also require reports and perform data analysis of managed care entities' encounter data to detect underutilization of services by children.

In addition, all states are required to complete and file the Form 416 each year.⁷³ This reports the number of children receiving health screening services, dental and oral health services, and referrals for corrective treatment, as well as the state's rates of meeting EPSDT participation goals.

⁶⁸ 42 C.F.R. § 438.206.

⁶⁹ 42 C.F.R. § 438.240.

⁷⁰ Section 1932(c)(1) of the Social Security Act; 42 C.F.R. §§ 438.202, 438.204.

⁷¹ 42 C.F.R. § 438.202.

⁷² Section 1932(c)(2) of the Social Security Act; 42 C.F.R. § 438.350.

⁷³ Section 1902(a)(43)(D) of the Social Security Act.

C. Timeliness

Services under the EPSDT benefit, like all Medicaid services, must be provided with “reasonable promptness.”⁷⁴ The state must set standards to ensure that EPSDT services are provided consistent with reasonable standards of medical and dental practice. The state must also ensure that services are initiated within a reasonable period of time. What is reasonable depends on the nature of the service and the needs of the individual child. Because states have the obligation to “arrang[e] for . . . corrective treatment” either directly or through referral to appropriate providers, a lack of providers does not automatically relieve a state of its obligation to ensure that services are provided in a timely manner. For example, as noted above, it may be necessary to cover services provided out of state.

Services under the EPSDT benefit, like all Medicaid services, must be provided with reasonable promptness.

⁷⁴ Section 1902(a)(8) of the Social Security Act.

VIII. NOTICE AND HEARING REQUIREMENTS

Children under age 21, like all other people enrolled in Medicaid, have the right to notice and an opportunity for a hearing. If a state or managed care entity takes an “action” – to deny, terminate, suspend, or reduce a requested treatment or service, it must give the beneficiary written notice of the action and of their right to a hearing (a pre-termination hearing, in instances where services are reduced or terminated), including instructions on how to request a hearing.⁷⁵ When services are being terminated or reduced, the notice must be sent at least ten days before the effective date of the action.⁷⁶ Under exceptional circumstances, the notice must be mailed no later than the day of the action, such as when the beneficiary’s physician prescribes a change in treatment or the beneficiary has been admitted to an institution and is no longer eligible.⁷⁷ The notice must contain a statement of the intended action, the specific reasons and legal support for the action, and an explanation of the individual’s hearing rights, rights to representation and to continued benefits.⁷⁸

If a state or managed care entity takes an action to deny, terminate, suspend, or reduce a requested treatment or service, it must give the beneficiary written notice of the action and of their right to a hearing.

The beneficiary is entitled to a hearing before the state Medicaid agency, or, if a state’s hearing process provides for it, an evidentiary hearing at the local level (for example at a county department of social services) with a right of appeal to the state agency.⁷⁹ The hearing must be conducted at a reasonable time, date, and place by an impartial hearing official. A beneficiary must be allowed to present his or her case to an impartial decision maker and present evidence and

⁷⁵ Section 1902(a)(3) of the Social Security Act; *Goldberg v. Kelly*, 397 U.S. 254 (1970).

⁷⁶ 42 C.F.R. § 431.211.

⁷⁷ 42 C.F.R. § 431.213.

⁷⁸ 42 C.F.R. §§ 431.206, 431.210.

⁷⁹ 42 C.F.R. § 431.205(b).

witnesses.⁸⁰ The beneficiary is also entitled to have representation, including legal counsel, a relative, or a friend.⁸¹ Before the hearing, beneficiaries must have the right to examine the case file and all documents that will be used at the hearing.⁸²

When a service is terminated or reduced, if the beneficiary requests a hearing within ten days of receiving notice of the termination or reduction, the beneficiary has the right to continued coverage of services pending a hearing decision.⁸³ This is sometimes called “aid paid pending.” Once the agency issues a final decision, the beneficiary generally has the right to appeal that decision to state court.

Managed care enrollees must have access to in-plan grievance and appeal processes, in addition to the state fair hearing system.⁸⁴ Managed care plans must provide enrollees written notices that explain the action, the reason for the action, and the procedures for using the in-plan grievance and state fair hearing processes, including rights to continued benefits. Managed care plans must resolve complaints in a timely manner, including within three working days when the enrollee or provider indicates that delay could seriously jeopardize the enrollee’s life, health or ability to attain, maintain, or retain maximum function.⁸⁵ The state can require enrollees to exhaust the plan’s internal grievance process before obtaining a state fair hearing.

The state agency must issue and publicize its hearing decisions.⁸⁶ In addition, the public must have access to all fair hearing decisions, subject to regulatory requirements providing for safeguarding of confidential personal and health information.⁸⁷

⁸⁰ 42 C.F.R. §§ 431.240, 431.242.

⁸¹ 42 C.F.R. § 431.206(b)(3).

⁸² 42 C.F.R. § 431.242.

⁸³ 42 C.F.R. § 431.230.

⁸⁴ 42 C.F.R. § 438.402.

⁸⁵ 42 C.F.R. § 438.408.

⁸⁶ 42 C.F.R. § 431.206(a).

⁸⁷ 42 C.F.R. § 431.244(g).

IX. CONCLUSION

The goal of EPSDT is to assure that all Medicaid-enrolled children under age 21 receive the health care they need. EPSDT covers not only medically necessary treatment to correct or ameliorate identified conditions, but also preventive, and maintenance services. In addition, EPSDT covers age-appropriate medical, dental, vision and hearing screening services at specified times, and when health problems arise or are suspected.

The broad scope of EPSDT provides states with the tools necessary to offer a comprehensive, high-quality health benefit. To fully realize EPSDT's potential, however, attention is needed on issues affecting access to services, including supply of providers, the presence of managed care, linguistic and disability access, and transportation. CMS is available to help states address these issues to ensure that EPSDT coverage meets the needs of children under age 21 who depend on Medicaid for their health care.

X. WHAT YOU NEED TO KNOW ABOUT EPSDT

EARLY: Assessing and identifying problems early

Children covered by Medicaid are more likely to be born with low birth weights, have poor health, have developmental delays or learning disorders, or have medical conditions (e.g., asthma) requiring ongoing use of prescription drugs. Medicaid helps these children and adolescents receive quality health care.

EPSDT is a key part of Medicaid for children and adolescents. EPSDT emphasizes preventive and comprehensive care. Prevention can help ensure the early identification, diagnosis, and treatment of conditions before they become more complex and costly to treat. It is important that children and adolescents enrolled in Medicaid receive all recommended preventive services and any medical treatment needed to promote healthy growth and development.

PERIODIC: Checking children’s health at age-appropriate intervals

As they grow, infants, children and adolescents should see their health care providers regularly. Each state develops its own “periodicity schedule” showing the check-ups recommended at each age. These are often based on the American Academy of Pediatrics’ Bright Futures guidelines: [Recommendations for Preventive Pediatric Health Care](#). Bright Futures helps doctors and families understand the types of care that infants, children and adolescents should get and when they should get it. The goal of Bright Futures is to help health care providers offer prevention-based, family-focused, and developmentally-oriented care for all children and adolescents. Children and adolescents are also entitled to receive additional check-ups when a condition or problem is suspected.

SCREENING: Providing physical, mental, developmental, dental, hearing, vision and other screening tests to detect potential problems

All infants, children and adolescents should receive regular well-child check-ups of their physical and mental health, growth, development, and nutritional status. A well-child check-up includes:

- A comprehensive health and developmental history, including both physical and mental health development assessments;
- Physical exam;
- Age-appropriate immunizations;
- Vision and hearing tests;
- Dental exam;
- Laboratory tests, including blood lead level assessments at certain ages; and
- Health education, including anticipatory guidance.

DIAGNOSTIC: Performing diagnostic tests to follow up when a health risk is identified

When a well-child check-up or other visit to a health care professional shows that a child or adolescent might have a health problem, follow up diagnostic testing and evaluations must be provided under EPSDT. Diagnosis of mental health, substance use, vision, hearing and dental problems is included. Also included are any necessary referrals so that the child or adolescent receives all needed treatment.

TREATMENT: Correct, reduce or control health problems found

EPSDT covers health care, treatment and other measures necessary to correct or ameliorate the child or adolescent’s physical or mental conditions found by a screening or a diagnostic procedure. In general, States must ensure the provision of, and pay for, any treatment that is considered “medically necessary” for the child or adolescent. This includes treatment for any vision and hearing problems, including eyeglasses and hearing aids. For children’s oral health, coverage includes regular preventive dental care and treatment to relieve pain and infections, restore teeth, and maintain dental health. Some orthodontia is also covered.

XI. RESOURCES

CMS Resources

- [CMS, *State Medicaid Manual §§ 2700.4 and 5010-5360*](#)
- [CMS, *Early and Periodic Screening Diagnostic and Treatment Resources*](#)

Adolescent Health

- [CMS, *Paving the Road to Good Health: Strategies for Increasing Medicaid Adolescent Well-Care Visits \(Feb. 2014\)*](#)

Oral Health

- [CMS, *Keep Kids Smiling: Promoting Oral Health Through the Medicaid Benefit for Children and Adolescents \(September 2013\)*](#)
- [CMS, *Improving Access to and Utilization of Oral Health Services for Children in Medicaid and CHIP Programs, CMS Oral Health Strategy \(April 11, 2011\)*](#)
- [CMS, *CMCS Informational Bulletin, CMS Oral Health Initiative and Other Dental Related Issues \(April 18, 2013\)*](#)
- [*Improving Oral Health Care Delivery in Medicaid and CHIP: A Toolkit for States \(February 2014\)*](#)

Mental Health

- [CMS, *CMCS Informational Bulletin, Prevention and Early Identification of Mental Health and Substance Use Conditions \(March 27, 2013\)*](#)
- [CMS, *Joint CMCS and SAMHSA Informational Bulletin, Coverage of Behavioral Health Services for Children, Youth, and Young Adults with Significant Mental Health Conditions \(May 7, 2013\)*](#)

Screening Services

- [CMS, *Guide for States Interested in Transitioning to Targeted Blood Lead Screening for Medicaid-eligible Children \(May 2012\)*](#)

Accessibility

- [CMS, *CMCS Informational Bulletin \(April 26, 2011\) \(federal funding for interpretation and translation services\)*](#)
- [CMS, *Dear State Medicaid Director \(Aug. 31, 2000\) \(Limited English Proficiency\)*](#)
- [CMS, *Dear State Medicaid Director, Olmstead Update No. 4, Att. 4-B EPSDT \(Jan. 10, 2001\)*](#)
- [CMS, *Medicaid School-Based Administrative Claiming Guide \(May 2003\)*](#)

Other Federal Resources

- [CDC, Vaccine Recommendations of the ACIP](#)
- [HRSA, EPSDT & Title V Collaboration to Improve Child Health](#)
- [Health Resources and Services Administration EPSDT website](#)
- [HHS Office of Minority Health's *Think Cultural Health: Advancing Health Equity at Every Point of Contact*](#)
- [HHS Office of Minority Health's *A Physician's Practical Guide to Culturally Competent Care*](#)
- [HHS Office of Minority Health's *Culturally Competent Nursing Care: A Cornerstone of Caring*](#)
- [HHS Office of Minority Health's *Cultural Competency Curriculum for Disaster Preparedness and Crisis Response*](#)
- [HHS Office of Minority Health's *Cultural Competency Program for Oral Health Professionals*](#)
- [HHS Office of Minority Health's *National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care \(the National CLAS Standards\)*](#)
- [HHS Office of Minority Health's *A Blueprint for Advancing and Sustaining CLAS Policy and Practice \(The Blueprint\)*](#)

Other Resources

- [American Academy of Pediatrics, *Bright Futures* \(2014\)](#)
- [American Academy of Pediatrics, *Bright Futures Recommendations for Pediatric Preventive Care* \(2014\)](#)
- [American Academy of Pediatric Dentistry, *Guideline on Periodicity of Examination, Preventive Dental Services, Anticipatory Guidance/Counseling, and Oral Treatment for Infants, Children, and Adolescents* \(2013\)](#)
- [Association of Maternal and Child Health Programs, *Standards for Systems of Care for Children and Youth with Special Health Care Needs* \(March 2014\)](#)
- [George Washington University, Health Information & The Law, *Understanding the Interaction Between EPSDT and Federal Health Information Privacy and Confidentiality Laws* \(2013\)](#)
- [National Academy of State Health Policy, *Managing the "T" in EPSDT Services* \(2010\)](#)
- [National Academy of State Health Policy, *Resources to Improve Medicaid for Children and Adolescents*](#)
- [National Health Law Program, *Toward a Healthy Future: Medicaid EPSDT Services for Poor Children and Youth*](#)
- [National Health Law Program, *Annotated Federal Documents*](#)

Medicaid and Early Periodic Screening Diagnostic and Treatment (EPSDT): What Does that Offer South Carolina's Children?

Anna Maria Conner
January 20, 2024



About DRSC

- Non-profit, free services statewide
- Mandated by state and federal law
- Independent of agencies



DRSC Services

- Information and referral
- Legal Support
- Education and outreach
- Monitoring and investigations
- Public Policy



Basics of Medicaid

- Jointly funded by states and the federal government
- Single State Agency: DHHS
- Medicaid pays last
- Due Process Rights



State Plan

- The “State Plan” is the document that outlines a state’s Medicaid program
- Mandatory and optional benefits



Medical Necessity

- “Medical necessity”- usually justified by documentation from medical professionals
- Sometimes prior authorization



EPSDT

Early and Periodic Screening,
Diagnostic, and Treatment



What is EPSDT?

A mandatory state benefit that provides comprehensive and preventative health care for children under age 21.

Section 1905(r) of the Social Security Act (the Act).



Screening & Diagnosis

- Routine comprehensive check-ups
- Designed to identify health and developmental diagnoses ASAP
- The “crucial link” to necessary covered treatment



Treatment

A state should arrange for and cover **any** item or service – even if not in the State Plan –



Purpose of EPSDT

Provide children services which are medically necessary to “correct and ameliorate” their health conditions.



Burden is on SCDHHS

Affirmative obligation to ensure that Medicaid-eligible children and their families know of EPSDT and access screenings/treatment.



EPSDT Requires:

States must ensure that treatment services are initiated in a timely way, based on professional standards of care, *see* 42 C.F.R. § 441.56(e).



Medicaid HCBS Waivers

Legally, the term “waiver” refers to the Medicaid agency applying to seek a waiver of a federal requirement so it can operate a specialized program.



HCBS Waivers

Home and Community-based services to a limited group of beneficiaries **instead of** institutional care



SC Waivers require

Individuals must meet an institutional level of care- nursing home, ICF-IID, etc.



HCBS Waivers Specifically for Children

Medically Complex Children's Waiver- birth to age 21; chronic physical/health condition, hospital level of care (1,947)



SC Children's Waivers

Palmetto Coordinated System
of Care- age 21 or younger;
SMI, hospital level of care
(131)



Other HCBS Waivers Available for Children

- ID/RD-ID/RD diagnosis; ICF-IID LOC
- Community Supports- ID/RD; ICF-IID LOC
- HASCI-head/spinal cord injury; NH/ICF-IID



HCBS Final Rule

- Person Centered Planning
- Conflict Free Case Management
- Settings Requirement:
integrated/full access to
community



Medicaid Fair Hearing

Beneficiaries have a
Constitutional right to notice
before termination of benefits



Notice Required When:

Adverse action including: eligibility determinations, any denials, terminations, reductions, or suspension of services.



Time to Appeal

After receipt of notice, a beneficiary has 30 days to submit a request for a Fair Hearing (10 days for status quo).



Other Concepts to Keep in Mind...

Reasonable Promptness: all services “shall be furnished” (paid for and provided) within a reasonable timeframe.



Other Concepts:

Freedom of Choice: gives beneficiaries the right to choose among a range of providers “qualified” and “willing” to furnish services.



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- ✓ Access to Justice
- ✓ Behavioral Health
- ✓ Children, Families and Elders
- ✓ Communication, Civics and Disinformation
- ✓ Court Management and Performance
- ✓ Courthouse Planning and Security
- ✓ Data
- ✓ Interpreter Information
- ✓ Leadership and Governance
- ✓ Racial Justice
- ✓ Technology

NATIONAL JUDICIAL TASK FORCE



Conference of
CHIEF JUSTICES



COSCA

Conference of State Court Administrators

In March 2020, the Conferences of Chief Justices and Conference of State Court Administrators established the National Judicial Task Force to examine state courts' response to mental illness. This was in an effort to “assist state courts in their efforts to more effectively respond to the needs of court-involved individuals with severe mental illness.”

TASK FORCE'S EXECUTIVE COMMITTEE



Hon. Paul L.
Reiber (VT)



Hon. Robert M.
Brutinel (AZ)



Hon. Richard A.
Robinson (CT)



Hon. Loretta A.
Rush (IN)



Hon. Lawrence
K. Marks (NY)



Nancy J. Cozine
(OR)



Tonnya K. Kohn
(SC)



Marcia M. Meis
(IL)

The Executive Committee:

- Honorable Paul L. Reiber (VT)
- Honorable Robert M. Brutinel (AZ)
- Honorable Richard A. Robinson (CT)
- Honorable Loretta A. Rush (IN)
- Honorable Lawrence K. Marks (NY)
- Nancy J. Cozino (OR)
- Tonnya K. Kohn (SC)
- Marcia M. Meis (IL)

The Executive Committee divided the members into three Work Groups to plan and meet regularly.

THREE WORK GROUPS

Criminal Justice Workgroup

Co-Chairs:

Chief Justice Richard Robinson (CT)
and Nancy Cozine (OR)

Civil, Probate and Family Justice Workgroup

Co-Chairs

Chief Justice Robert Brutinel (AZ)
and Tonnya K. Kohn (SC)

Education and Partnership Workgroup

Co-Chairs:

Chief Justice Loretta H. Rush (IN)
and Marcia M. Meis (IL)

REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Children, Youth, and Families

TASK FORCE RECOMMENDATION

Children, Youth, and Families

It is not just a criminal justice issue. The needs of adults, children, and families impacted by serious mental illness touch every aspect of the court system, including child welfare, juvenile, and domestic relations cases. Courts must examine, educate, and advocate for better ways to meet the needs of individuals who enter the justice system and how better to coordinate multiple courts and responses to make a more person-centered system.

Recommendation

CHILD WELFARE

Courts should examine [Upstream](#) and other Task Force [resources](#) to ensure a continuum of behavioral health practices and improve outcomes for children and families with behavioral health needs. State and local courts should use Upstream as a framework to coordinate and align efforts across the child welfare system to promote safe and healthy families and communities and map community resources and opportunities.



Courts have long worked with our system partners and the community to find ways to address the mental health needs of children and their parents who touch the court system... We have all seen a dramatic increase in the number of individuals who are experiencing challenges with their mental health, and the complexity of the issues has intensified... I strongly recommend to child welfare courts and their communities the NCSC's Upstream strategy. This preventative, community-based approach coordinates and leverages court and community resources through community mapping to develop more robust intervention and prevention opportunities. The collaboration during the Upstream approach is powerful. When services are identified and the gaps filled, the social determinants of health for individuals and the community will greatly improve.

Task Force Member Judge Kathleen Quigley, Arizona



REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Juvenile Justice



School Justice Partnerships are perhaps the most critical components in our efforts to reduce youths' contact with the juvenile justice system. We know that exclusionary school discipline often leads to juvenile court referrals and that contact with the juvenile justice system increases the likelihood of recidivism and other negative outcomes for youth. Keeping kids in school and out of the justice system requires relentless and ongoing commitment by community stakeholders involved in School Justice Partnerships.

Task Force Member
Neira Siaperas,
Utah Administrative Office
of the Courts



JUVENILE JUSTICE

Recommendation

Courts should lead efforts to divert youth with mental health needs from juvenile justice involvement, when appropriate. Courts should examine [Mental Health Diversion](#) and Task Force [resources](#) to support opportunities for youth with mental health diagnoses to be diverted away from deeper involvement with the justice system at multiple points of contact, such as at school when contacted by law enforcement, referral, pre-petition, detention, and pre-adjudication.



The juvenile mental health guidelines were created to streamline early identification of behavioral health issues. Coupled with a trauma-informed approach, the guidelines help ensure appropriate treatments and assistance are provided on an individual basis. By applying the guidelines, juvenile courts can redirect youth to the appropriate system and reduce youth involvement in the justice system.

Task Force Member
Judge Teresa Dellick, Ohio



REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Domestic Relations

Recommendation

DOMESTIC RELATIONS

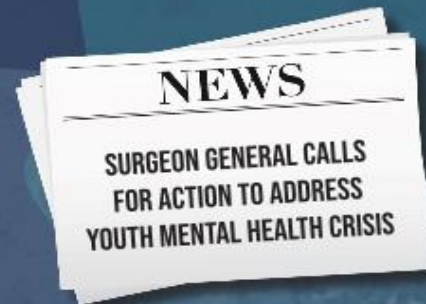
Courts must promote the well-being of individuals and families, including implementation of trauma-responsiveness for families, throughout the life of their case and the primary desired outcome, utilizing the Understanding Series and other Task Force [resources](#).



Understanding Well-Being – the Understanding Series provides a wonderful foundation for all judges, attorneys, and court personnel when dealing with the well-being of individuals and families in divorce, dissolution or child custody cases.



Task Force Member Dr. Sarah Vinson presents at the Southern Regional Summit about childhood trauma and leads a panel about using social and structural context to understand the mental illness and justice interface.



U.S. Surgeon General Vivek H. Murthy, M.D., M.B.A., issued a rare public health advisory in December 2021, calling on the nation to respond to the growing mental health crisis impacting young people that has worsened with the pandemic.

REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Behavioral Health and Equity

TASK FORCE RECOMMENDATION

Behavioral Health and Equity

Ample evidence points to the inequities that exist in access to treatment, misdiagnoses for marginalized populations, an over-representation of minority communities in the justice system, and a lack of behavioral health providers of color. Treatment rates are the lowest for Black, Indigenous, and people of color (BIPOC).

Recommendation

Courts should develop and adopt a Behavioral Health and Equity statement as it relates to children, youth, and adults with behavioral health conditions and identify and implement evidence-based practices to ensure diversity, equity, and inclusion across all programs and processes.

Courts should examine the disproportionate impact of behavioral health conditions and associated demographics such as race on the over-representation of individuals who enter the justice system and ensure that interventions, diversion systems, specialized dockets, and other programming are equitably applied.

Courts should actively collect and review **race and ethnicity data** in order to identify inequitable practices and to monitor progress in achieving equity. This analysis should extend to diversion to treatment placements.



REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Trained,
Educated,
and
Trauma-
Informed

TASK FORCE RECOMMENDATION

All Judges and Court Professionals Trained, Educated, and Trauma-Informed

There is a lack of education and training for state court judges and court professionals necessary to equip them with the knowledge, data, research, and resources they need to improve the state courts' response to court-involved individuals with mental illness. Judges and court personnel are not trained in mental health conditions, substance use disorders, or co-occurring disorders, nor are they trained in the pervasiveness of trauma and how to be trauma responsive. They lack understanding and knowledge about how behavioral health needs impact all court dockets, ways that judges can improve outcomes for individuals with behavioral health needs while improving public safety, and the unique role of a judge as a leader for positive change.

Recommendation

All judges, court personnel, and justice system partners should be provided collaborative ongoing training and education across all case types utilizing [Task Force Education](#) resources, including [Trauma and Trauma-Informed Responses](#), the [Behavioral Health Resource Hub](#),

[Behavioral Health Alerts](#), and other national educational offerings. A broad array of specific topics, as identified in the CCJ/COSCA [Resolution](#), must be included in ongoing training curricula as well as for new judges and new court personnel.



The Task Force and the Judges and Psychiatrists Leadership Initiative (JPLI) share a belief in the importance of judicial education to achieve a better understanding of behavioral health needs. Only with that education and specialized knowledge imparted by teams of judges and psychiatrists can we serve as catalysts for meaningful change in our communities and at the state and national levels.

Task Force Member Hon. Katherine Zenoff, Illinois Appellate Court, Co-Chair, JPLI



REPORT AND RECOMMENDATIONS ISSUED OCTOBER, 2022

Well-Being of Judiciary and Court Personnel

TASK FORCE RECOMMENDATION

Well-Being of Judges and Court Personnel

Sixty-three percent of judges have at least one symptom of secondary or vicarious trauma and 50% of court child protection staff experience high or very high levels of compassion fatigue. Daily interactions with individuals, children, and families who are reliving trauma takes an emotional toll on justice system practitioners and places them at high risk for experiencing secondary trauma.

Recommendation

Courts should examine [Task Force resources](#) on the well-being of judges and court personnel that provide guidance, best practices, tips, and support for mental health. Courts should engage in an [organizational assessment](#) to gauge the strengths and gaps across areas of workplace mental health including leadership, access, culture, and awareness. Courts should promote best practices in the workplace including communicating effectively about employee assistance programs (EAP), lawyer assistance programs (LAP), and educational resources.

Courts should implement secondary trauma prevention and intervention strategies, including adopting policies that promote self-care, ensuring a safe work environment, providing secondary trauma education, establishing peer-mentoring programs, offering supportive services, and setting manageable work and caseload expectations.



CHIEF JUSTICE DONALD W. BEATTY



In 2022, Chief Justice Donald W. Beatty authorized the Judicial Branch to establish the South Carolina Mental Health Initiative, a collaborative, statewide endeavor to improve the administration of justice for people affected by mental health issues.

“We are looking forward to working with South Carolina partners and mental health professionals so that we may collaboratively develop policies, resources, tools, and other practices needed to create a more effective, fair, and timely judicial system for individuals facing mental health issues,” Chief Justice Donald W. Beatty said.

WEBINARS



The Judicial Branch kicked off the Initiative with a series of educational webinars exploring concepts related to mental illness and the judicial system. The initiative was administered through Court Administration. Individuals and organizations in the mental health field, judicial system, or related industries were invited to attend the webinars for information about becoming involved.

Session 1: Mental Health Diversions from the Justice System through Leadership, Collaboration, Building Momentum, and Moving Forward with Lessons Learned from the Pandemic by Judge Steven Leifman- Thursday, October 13, 2022 Noon to 1:30 p.m.

Session 2: The Future of Crisis Care by Paul Galdys Thursday, October 20, 2022 Noon to 1:30 p.m.

Session 3, Systems, Struggles and Strategies: Opportunities at the Justice and Behavioral Health Interface by Dr. Debra A. Pinals - Thursday, October 27, 2022 Noon to 1:30 p.m.

STAKEHOLDER MEETINGS



In 2022 and 2023, the Judicial Branch held stakeholder meetings in each of South Carolina's 16 judicial circuits. The Judicial Branch stressed the importance of engagement and participation of judges and court officials, state and local behavioral health organizations, law enforcement officials, lawmakers, healthcare providers, prosecuting attorneys, defense attorneys, and others stakeholders to ensure success for the Initiative.

In October of 2023, a Statewide Mental Health Summit was held.

MENTAL HEALTH SUMMIT

Supreme Court of South Carolina Chief Justice Donald W. Beatty welcomed over 350 court officials and circuit stakeholders from all sixteen judicial circuits to the South Carolina Courts Mental Health Summit, held Monday, October 30, in Columbia. A first of its kind convening for the Judicial Branch, the one-day event, combined educational sessions with opportunities for state and local planning all centered on improving the administration of justice for individuals experiencing severe mental illness


“Fortunately, the stigma surrounding mental health issues are decreasing. Unfortunately, some individuals suffering from mental illness enter the justice system,” said Chief Justice Donald Beatty. “Through this initiative, it is our hope we will develop the policies, resources, tools and other practices needed to create a more effective, fair and timely court response for individuals affected by serious mental illness when they come into contact with the justice system.”



THANK YOU!

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