

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROSIE D. ET AL.,)
 Plaintiffs,)
)
 v.) CIVIL ACTION NO. 01-30199-MAP
)
MITT ROMNEY ET AL.,)
 Defendants.)

MEMORANDUM OF DECISION

January 26, 2006

PONSOR, D.J.

I. INTRODUCTION

On July 30, 1965, the citizens of this country, through the enactment of the Medicaid Act, Pub. L. 89-97, 79 Stat. 343, committed themselves to providing certain basic medical services to millions of low-income Americans. On December 19, 1989, Congress restated and deepened its commitment to eligible children by amending the Medicaid statute to promise that persons under twenty-one years of age would receive all reasonably necessary medical care regardless of ability to pay. From today's perspective, the scope of this commitment seems breathtaking: no Medicaid-eligible child in this country, whatever his or her economic circumstances, will go without treatment deemed medically necessary by his

or her clinician.

The 1989 amendment made the provision of particular services a mandatory part of each state's Medicaid program. With special relevance to this case, the amended statute called for "early and periodic screening, diagnostic, and treatment services" (so-called "EPSDT" services) for all eligible children.

This lawsuit challenges whether the Commonwealth of Massachusetts, a conceded Medicaid participant, has kept the promise made by Congress to America's children.

Specifically, it charges that Defendants have failed to provide medically necessary EPSDT services to persons who might be described as the neediest of the needy: children suffering from serious emotional disturbances ("SED") such as autism, bi-polar disorder, or post-traumatic stress disorder. Plaintiffs contend that as a result of Defendants' violation of the Medicaid statute, thousands of disabled low-income children continue to suffer needlessly.

On October 31, 2001, Plaintiffs filed their complaint, alleging violations of four specific provisions of the Medicaid Act: the EPSDT provisions, 42 U.S.C. §§ 1396a(a)(10)(A), - (a)(43), 1396d(r)(5), - (a)(4)(B) (2005)

(Count I); the "reasonable promptness" provision, § 1396a (a) (8) (2005) (Count II); the methods of administration or "equal access" provision, § 1396a(a) (30) (A) (2005) (Count III); and the managed care provision, § 1396u-2(b) (5) (Count IV).

The suit named various state officials and agencies as defendants¹ (referred to variously as "Defendants" or "the Commonwealth"): Mitt Romney, the Governor of Massachusetts; Eric Kriss, the Secretary of the Executive Office of Administration and Finance; Ronald Preston, the Secretary of the Executive Office of Health and Human Services (EOHHS); Robert H. Weber, Guardian ad Litem; EOHHS; and the Massachusetts Division of Medical Assistance.

On December 19, 2001, Defendants filed a motion to dismiss, contending, among other things, that the Eleventh Amendment granted them immunity from suit. Two days later, on December 21, 2001, Plaintiffs moved for certification of a class.

On March 29, 2002, the court denied the motion to

¹ Between the time Plaintiffs filed this lawsuit in 2001 and the date the suit went to trial in April 2005, a new administration took over the governor's office. Thus, some parties were terminated and others added. The names specified in this memorandum were the defendants at the time of trial.

dismiss and certified a class of all current and future Medicaid-eligible children in Massachusetts under twenty-one years of age, who were (or might become) eligible to receive, but were not receiving, what Plaintiffs described as "intensive home-based services."

Defendants pursued an interlocutory appeal of the court's denial of their motion to dismiss. On November 7, 2002, the Court of Appeals for the First Circuit affirmed this court's ruling, holding that "Eleventh Amendment immunity does not protect state officials from federal court suits for prospective injunctive relief under the Medicaid Act." Rosie D. ex rel. John D. v. Swift, 310 F.3d 230, 238 (1st Cir. 2002).

On March 25, 2005, the court allowed the parties' joint motion to dismiss Count IV, without prejudice. Non-jury trial with regard to liability on the three remaining counts took place from April 25, 2005, to June 9, 2005. On August 9, 2005, following submission of extensive proposed findings of facts and conclusions of law by the parties, the court heard closing arguments and took the matter under advisement.

For the reasons set forth below, the court finds that