



Pursuant to the stipulation entered into at the start of trial, this Judgment and the remedies ordered herein shall benefit all individuals under age 21 who are or become, during the term of this Judgment, similarly eligible for dental benefits through MassHealth (hereafter “the Children”).

**II. Joint Remedial Program**

As part of the Decision, the Court ordered the parties to confer and develop a joint remedial program. Following a hearing, the Court accepted the parties’ First Joint Report on Proposed Remedial Program (“First Joint Report”), a copy of which is attached hereto as Exhibit A. The joint remedial program outlined in the parties’ First Joint Report is hereby incorporated into the Judgment. Other aspects of the Judgment, not definitively resolved in the parties’ First Joint Report, are addressed below.

**III. Further Orders of the Court**

**A. Caseload Capacity Implementation**

Defendants shall proceed with implementation of Chapter 45, Section 14 of the Acts of 2005, which authorizes MassHealth to allow, notwithstanding any general or special law to the contrary, dentists participating in the MassHealth program to limit the number of MassHealth patients in their practices.

**B. Third-Party Administrator**

Defendants shall complete the evaluation process for the dental Third Party Administrator (“TPA”) procurement, issued pursuant to a legislative directive under Chapter 149, Section 309 of the Acts of 2004, and submit the required cost-benefit report to the House and Senate Ways and Means Committees by January 15, 2006. The Executive Office of Health & Human Services’ State fiscal year 2007 House One budget

request shall include funds sufficient to account for the costs associated with retaining a TPA to administer the MassHealth dental program. The terms of this Judgment are based upon a qualified TPA being approved and fully funded by the Massachusetts Legislature. Plaintiffs reserve the right to seek additional relief from the Court concerning the administration of the MassHealth dental program should defendants not implement a TPA.

C. Member Assistance/Intervention Services

As part of the MassHealth dental program, defendants shall offer member assistance/intervention services designed to assist the Children in making and keeping dental appointments, obtaining transportation in accordance with applicable regulations to and from appointments, and following-up with members and providers about appointments.

D. Dental Provider Network

Defendants understand that to comply with this Judgment, they must develop and maintain a network of dental providers that is of sufficient size and scope to provide access to medically necessary dental services for the Children. As part of such efforts, defendants shall contact any dental provider who gives notice of the intention to withdraw from the MassHealth program to determine the reason(s) for the decision and to attempt, where possible, to persuade the provider to continue to provide dental services to MassHealth-eligible children.

E. Dental Reimbursement Rates

1. *State Fiscal Year 2007*

Effective July 1, 2006, defendants shall increase MassHealth dental reimbursement rates for eligible members under age 21 by an estimated amount of at least \$13.74 million.

2. *After State Fiscal Year 2007*

After State fiscal year 2007 and continuing thereafter for the term of this Judgment, defendants shall review and analyze MassHealth dental reimbursement rates for eligible members under age 21 on an annual basis, and assess based on then-existing circumstances whether any further adjustment is necessary to meet the dental needs of the Children. In making this assessment, defendants shall consider all relevant information available to them, including but not limited to, the information and materials identified in Subsection H of this Judgment. The results of said assessment shall be reported to the plaintiffs' counsel no later than June 30 of each year, beginning in 2007.

3. *Fee Schedule*

The most current fee schedule for MassHealth dental services shall continue to be posted on the website maintained by the Commonwealth's Division of Health Care Finance & Policy. Within 30 days of any change in dental reimbursement rates, defendants shall provide plaintiffs with a copy of the revised fee schedule and any public records reflecting consideration of the revised fee schedule.

4. *Methodology for Determining Rates*

In determining rates for dental services, defendants shall use the most current and accurate data available to them, and shall apply a methodology designed to encourage the

participation of dental providers as needed to provide sufficient access to dental care for the Children.

F. Notice and Informing

Defendants shall continue to provide or, where necessary to comply with this Judgment, implement methods for providing the following notices to all eligible members under age 21 of the availability of EPSDT dental services and related services, including, but not limited to, the member assistance/intervention services described in Subsection C above.

1. *General Notices*

a. *Upon Determination of Eligibility*

Within 60 days of a determination of eligibility, including a re-determination after a period of ineligibility, defendants shall inform, in writing, eligible members under age 21 of: (i) the EPSDT dental benefits to which they are entitled, including the member assistance/intervention services described in Subsection C above; and (ii) the importance of obtaining timely dental care, including screenings, beginning no later than age three and as needed for children under age three. Such notices shall contain a customer service toll-free telephone number and a website address established either by the defendants or the defendants' vendor where additional information, including the names of participating dentists, may be obtained.

b. *At Six-Month Intervals*

After the initial notice referenced in the preceding paragraph, defendants shall send notices to eligible members under age 21 beginning one-month before the eligible child's first birthday and continuing every six months thereafter. Each notice shall advise

eligible children that: (i) preventive dental care is important; (ii) it is time to schedule a dental check-up; (iii) and they may receive the member assistance/intervention services described in Subsection C above. In addition, the notices shall contain a customer service toll-free telephone number and a website address established by either the defendants or the defendants' vendor where additional information, including the names of participating dentists, may be obtained.

2. *Targeted Notices*

On an annual basis, defendants shall identify, through dental claims and utilization data, any eligible member under age 21 for whom there is no claim for a dental examination (ADA Codes D0120 or D0150) and prophylaxis (ADA Codes D1110 or D1120) in the preceding 12-month period. Defendants shall send a targeted notice to each of the children so identified, again informing the eligible child of the importance of receiving preventive dental care and stating that MassHealth has not received a claim for a covered dental examination or cleaning in the preceding 12-month period. The notice also shall identify the member assistance/intervention services described in Subsection C above, and shall contain a customer service toll-free telephone number and a website address established by either the defendants or the defendants' vendor where additional information, including the names of participating dentists, may be obtained.

G. Promoting Education and Awareness

Defendants shall promote education and awareness about the importance of good oral health and the utilization of MassHealth covered dental services by disseminating information about dental services to school nurses, Head Start programs, and WIC programs, and shall consult with the plaintiffs and the Monitor (established under Section



H below) regarding other proposals to promote education and awareness among the Children.

H. Independent Monitor

*1. Designation*

Based on the parties' joint recommendation, I hereby appoint Catherine Hayes, D.M.D., S.M., D.M.Sc. to independently monitor the implementation and effectiveness of the remedial program established by this Judgment. Dr. Hayes is a diplomate of the American Board of Dental Public Health and is currently a director on the same board. She is an Associate Professor in the Department of Oral Health Policy and Epidemiology at the Harvard School of Dental Medicine and the Department of Epidemiology at the Harvard School of Public Health. She has held leadership positions in national and international organizations and has published numerous articles and book chapters in the field of dental public health and epidemiology. She is currently a Core Epidemiologist for the Center for Research to Evaluate and Eliminate Dental Disparities (CREEDD) and is Principal Investigator of a study within the center entitled: The Effect of Severe Early Childhood Caries (ECC) on Growth in Young Children.

*2. Responsibilities*

Exhibit B describes in further detail the responsibilities of the Monitor and is hereby incorporated into the Judgment.

*3. Access Measures*

In carrying out his/her duties, the Monitor shall evaluate and consider, among other factors, improvement in the Children's access to the following services:

- a. Dental sealants for one or more primary or permanent molars (ADA Code D1351).

b. One or more of the following dental screenings:

- i. Periodic exam (ADA Code D0120).
- ii. Comprehensive oral evaluation (ADA Code D0150).

c. Dental prophylaxis (ADA Codes D1110 and D1120).

d. Fluoride treatment (ADA Code D1203).

e. Restorative care (ADA Codes D2140 through D2999).

4. *Reports to be produced by defendants*

In carrying out her (his) duty to assess and evaluate the Children's access to dental services, the Monitor shall evaluate and consider, in addition to other relevant information, reports generated by or on behalf of MassHealth. Defendants shall provide plaintiffs with copies of any and all data or reports provided to the Monitor and, upon request, also shall provide plaintiffs and the Monitor with the methodology used to create the report and any electronic data used to perform the analysis. Reports to be produced by defendants include:

- a. Enrolled Provider Reports in the same or similar format as the document marked at trial as Joint Exhibit 74.
- b. Dental Service Utilization Reports in the same or similar format as the document marked at trial as Joint Exhibit 75.
- c. Reports to be generated annually (beginning one year following implementation of the caseload capacity policy identified in Subsection III(A) of this Judgment), identifying the number of participating MassHealth dentists and the numbers of eligible children they treated before and after the new caseload capacity regulations took effect.



d. Reports to be generated annually (beginning one year following entry of the Judgment) summarizing efforts the defendants have made to expand and sustain the MassHealth dental provider network during the preceding year.

e. Such other reports or data (in whatever transmissible form that may exist) that the Monitor may determine are necessary to carry out her (his) duties. If it is not feasible from an administrative or cost perspective for defendants to generate data requested or reports in the precise form requested by the Monitor, defendants shall confer with the Monitor and plaintiffs to identify an alternative method for obtaining the same or similar requested information.

I. Reports to the Court

1. *Reports from the Monitor*

Beginning one year after entry of the Judgment and continuing every six months thereafter for the term of this Judgment, the Monitor shall submit to the Court, with copies to the parties, a report outlining the implementation and effectiveness of the remedial program established by this Judgment. Either party may, if they so choose, file a response to or request a hearing on the Monitor's report by filing such response or request within 30 days from receipt of the Monitor's report.

2. *Reports from the Parties*

Beginning six months after entry of Judgment and continuing every six months thereafter from 2006 to 2008, the parties shall submit progress reports, updating the Court as to the implementation of the Judgment and remedial program. After 2008, the parties shall confer and decide how often they will submit future reports. Either party may

request a hearing before the Court to give an oral presentation on any progress report, including such background information as the party deems necessary.

**J. Attorneys' Fees & Costs**

Pursuant to 42 U.S.C. § 1988, plaintiffs are awarded reasonable attorneys' fees and costs in an amount to be determined by agreement of the parties or, if necessary, by further order of the Court. Absent an antecedent agreement of the parties, plaintiffs shall file a motion for an award of fees and costs with supporting documentation within the time specified by Fed. R. Civ. P. 54(d)(2)(B). Within 30 days from receipt of plaintiffs' motion, defendants shall file their response, indicating the matters as to which there is and is not any objection. The parties shall promptly advise the Court if an agreement as to fees and costs is reached prior to the Court ruling on plaintiffs' motion.

**IV. Resolution of Disputes**

**A. In General**

Subject to the procedures set forth in this section, the parties reserve their rights to apply to the Court at any time for resolution of any dispute related to the remedial program set forth in this Judgment. In the event of any such dispute, the party seeking relief shall notify the other party in writing of the nature of the dispute and the desired corrective action. The parties then will have 15 days from receipt of the notice to confer in an attempt to resolve or narrow the disputed issue(s). If the parties are unable to satisfactorily resolve their dispute, either party may, within 30 days from receipt of the dispute notice, file a motion with the Court seeking appropriate relief.

B. Emergency

Notwithstanding the foregoing, either party may apply to the Court immediately, with concurrent notice to the other party, if the dispute involves an emergency requiring the Court's immediate attention.

V. Retained Jurisdiction

The Court shall retain jurisdiction to enforce or modify the Judgment and remedial orders contained herein for five years from the entry date. Prior to the expiration of the five-year period, the court shall determine whether any further orders are necessary to comply with this judgment.

**So Ordered:**

February 3, 2006  
Date

Rya W. Zobel  
Hon. Rya W. Zobel  
United States District Judge