

THE COMMONWEALTH OF MASSACHUSETTS
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August 31, 2016

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Re: *Sam H. v. Baker (Patrick)*
United States District Court, D. Mass. No. 1:14-cv-10106-MLW

Dear Counsel:

Enclosed please find the following documents: letter from Daniel Tsai, Assistant Secretary for MassHealth, dated August 30, 2016, memorializing the settlement of the above-referenced case; a draft Stipulation of Dismissal; and a Release.

I am forwarding the original of Daniel Tsai's letter to Joel Rosen, who I would ask to obtain the signatures of all Plaintiffs' counsel. Please return the original signed letter to me with each of the plaintiffs' counsels' counter-signatures. I will maintain the original in our file and I will circulate final signed copies to each party.

I have enclosed a draft Stipulation of Dismissal. Please do not sign and return the Stipulation. Rather, I will file the Stipulation electronically. By separate e-mail I will e-mail each of you an electronic version of the Stipulation, and ask you to separately agree to my filing the Stipulation with your electronic signatures. When I receive the counter-signed letter and the fully executed Release, I will then file the Stipulation electronically.

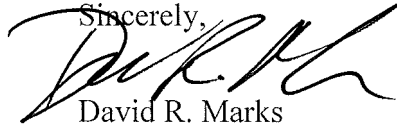
Please have each plaintiff sign the Release, in counter-parts if necessary, and return to me. This original, too, I will place in our file.



Upon receipt of all documents, I will scan them and forward you all complete copies of the documents. And, as soon as I receive all documents completely executed, they can be forwarded to the Comptroller's Office to process the attorneys' fees payment.

Thank you for your cooperation in this matter. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "D.R. Marks", written in a cursive style.

David R. Marks
Assistant Attorney General
617-963-2362

DRM/db
Enclosures



The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
One Ashburton Place, Room 1109
Boston, Massachusetts 02108



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KARYN E. POLITO
Lieutenant Governor

MARYLOU SUDDERS
Secretary

DANIEL TSAI
Assistant Secretary for
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August 30, 2016

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Re: *Sam H. v. Baker (Patrick)*
United States District Court, D. Mass. No. 1:14-cv-10106-MLW

Dear Counsel:

I am writing concerning the resolution of the above-captioned case, now pending in the United States District Court for the District of Massachusetts. In short, this will confirm that MassHealth has taken, or will take, the following actions regarding its administration of the orthodontic benefits program at MassHealth. For their part, the plaintiffs, by counsel, will execute and file a stipulation of dismissal with prejudice of the case and will provide a release of claims to the defendants.

1. Coverage of Transitional Dentition (Code D8070). MassHealth has added coverage of comprehensive orthodontic treatment of the transitional dentition under Code D8070.



See (a) Amendments to Subchapter 6 of the MassHealth Dental Manual; (b) Changes reflected in Transmittal Letter DEN-95, Jan. 2016; (c) Office Reference Manual ("ORM"), p. 102.

2. Medical Necessity Narrative. MassHealth has clarified the mechanism by which prior authorization for comprehensive orthodontic treatment can be granted in the event the member does not have an auto-qualifier or does not meet the applicable threshold score on the Handicapping Labio-Lingual Deviations Form ("HLD"). Providers may submit a Medical Necessity Narrative to describe the need a patient may have for orthodontic treatment, in every case, and especially in those cases in which the patient does not have an auto-qualifier and does not meet the HLD threshold score, but where the provider's judgment is that comprehensive orthodontic treatment is otherwise medically necessary. If such necessity is established in part by reference to medical problems not solely of a dental or orthodontic nature (e.g., psychological, nutritional, behavioral issues), the provider must submit detailed supporting documentation from the relevant clinician (e.g., psychologist, nutritionist), describing the issue and need. Detailed instructions, including a description of the supporting documentation a provider must submit with a prior authorization request, are contained in Appendix D of the Dental Manual and the ORM.

See (a) Amendment to Appendix D of the MassHealth Dental Manual; (b) Changes reflected in Transmittal Letter, DEN-95, Jan. 2016; (c) ORM, pp. 15, 47-48, 60.

3. Clarification of Internal Review Processes for Prior Authorization Denials. MassHealth has clarified the review process available to providers upon denial of a prior authorization request. They are: (1) a peer-to-peer review process, usually done by telephone, and (2) a second written review process. The details of each process are described in the ORM.

See ORM, pp. 49 and B-6.

4. Concerns Regarding Third-Party Administrator Processes or Personnel. Presently, providers can and should contact DentaQuest's customer service department by phone or email with any concerns regarding third-party administrator processes or personnel. If the issue is not satisfactorily resolved by DentaQuest's customer services, the provider may contact the MassHealth Dental Director (at present, Dr. Donna Jones), in writing regarding any unresolved concerns.
5. Additional Information on Provider's Copy of Denial of Prior Authorization Request Reflecting Basis for Denial and Accompanied by Reviewer's Worksheet. DentaQuest is currently using, and will continue to use, two different messages to inform providers of prior authorization request ("PA") denials. One message, which will be used in those cases where the PA request was submitted without a medical necessity narrative, will reflect a denial on the basis that the PA request neither satisfied the HLD threshold score nor demonstrated the existence of an auto-

qualifier. (In its review of all PA requests, DentaQuest looks at both the HLD score and whether any auto-qualifier exists, even if the PA request did not identify one.) The reviewer will state, for each auto-qualifier, whether or not it is present. The other message, used when the PA request does include a medical necessity narrative, will reflect that the PA request did not meet the threshold score, did not have an auto-qualifier, and did not establish a medical necessity. All denial letters sent to the provider are (and will continue to be) accompanied by the reviewer's scoring sheet and will identify the reviewer.

6. HLD Threshold Score for PA Approvals. MassHealth has adopted a new HLD threshold score of 22, based on the HLD definitions in Appendix D, at or above which a PA will automatically be allowed. MassHealth has made this change effective in July 2016; it is reflected in updates to the ORM, Appendix D of the Dental Manual, and through a Transmittal Letter to providers.

See Transmittal Letter DEN-96, Jun. 2016; ORM pp. 47 and B-1.

7. Medical Necessity. The MassHealth Office Reference Manual ("ORM"), in a definitional section (Appendix A), defines "medical necessity" or "medically necessary" by referring to the standard in 130 CMR 450.204. MassHealth will, when the ORM is next updated, add a quotation of the entire regulatory definition, in 130 CMR 450.204(A), to this section of the ORM. *See ORM, p. A-2.*

8. Data Sharing. MassHealth will periodically share with plaintiffs' counsel, upon request, the following data (for the periods of time and at the intervals specified in the Timetable below):

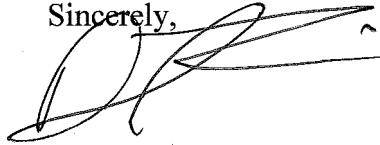
- 1) the total number of PA requests for comprehensive orthodontic coverage,
- 2) the total number of PA requests for comprehensive orthodontic coverage approved,
- 3) the total number of PA requests for comprehensive orthodontic coverage denied administratively (i.e., on some basis other than a clinical determination of medical necessity, such as a failure to include required documentation),
- 4) the total number of PA requests for comprehensive orthodontic coverage denied clinically (i.e., on the basis of a lack of an autoqualifier, failure to meet the HLD threshold score, and/or failure to demonstrate medical necessity through a narrative),
- 5) the total number of requests approved on the basis of an autoqualifier,
- 6) the total number of requests approved on the basis of the HLD score,
- 7) the total number of requests approved on the basis of the medical necessity narrative,
- 8) the total number of requests denied based on the medical necessity narrative (in addition to being denied on the basis of lack of an autoqualifier and the failure to meet the HLD threshold score), and
- 9) the total number of requests denied only on the basis of both a lack of an autoqualifier and the failure to meet the HLD threshold score (where the PA request did not include a medical necessity narrative).

Timetable: (a) Report for 2nd quarter of 2016 will be made available, upon request, approximately August 1, 2016; (b) Report for 3rd quarter of 2016 will be made available, upon request, approximately November 1, 2016; (c) For 18 months thereafter, quarterly reports will be made available, upon request, within approximately 30 days of the end of the quarter.

9. Extension of Case for Comprehensive Orthodontic Treatment. MassHealth currently allows a request for extension of comprehensive orthodontic treatment or for additional quarterly units, after the first 8 quarterly units or 2 ½ years, upon a showing that additional treatment is necessary. “Necessary,” in this context means “necessary to complete treatment” and should not be confused with the showing of “medical necessity” required to obtain prior authorization for comprehensive orthodontic treatment in the first instance.

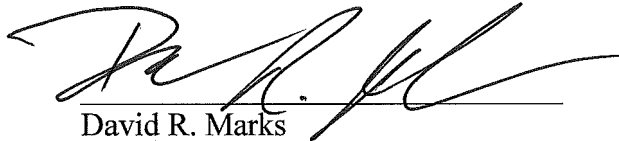
See ORM, pp. 50-51.
10. Review of Draft Updates. MassHealth will provide plaintiffs’ counsel certain proposed updating language to be incorporated in the ORM, as MassHealth determines in its sole discretion to be appropriate to provide, and will review specific areas/topics suggested by plaintiffs’ counsel, as appropriate. Proposed regulatory changes will be available for review and comment under G. L. c. 30A.
11. Dismissal. The parties will file a stipulation for dismissal of the case with prejudice, which will not take the form of a Court Order or Judgment. The Court will not have any continuing jurisdiction of the case, nor will this letter be enforceable in court. The parties agree not to file or submit this letter to the Court. Upon receipt of this letter, plaintiffs’ counsel will sign a stipulation for dismissal with prejudice, enclosed herewith, and return it to the office of the Attorney General for execution and filing, upon receipt.
12. Attorneys’ Fees. The parties will also settle and resolve the plaintiffs’ demand for attorneys’ fees, costs and expenses, asserted under 42 U.S.C. § 1988, by a total payment from the Commonwealth in the amount of \$50,000, to be paid by check payable to Rosen Law Office, P.C. This payment will be made only when funds are available in the Commonwealth’s Settlement and Judgments account. The defendants settle this claim only to avoid the expense and uncertainty of litigation, and do not admit or concede that they are obligated to pay attorneys’ fees, costs or expenses in any amount in this case. Prior to such payment, plaintiffs and their counsel will execute a Release satisfactory to the defendants.

Sincerely,



Daniel Tsai
Assistant Secretary for MassHealth
Executive Office of Health and Human Services

Approved and agreed to:



David R. Marks
Assistant Attorney General
Counsel for State Defendants

Countersigned and agreed to:

Joel Rosen, Esq.
Counsel for Plaintiffs

Jane Perkins, Esq.
Counsel for Plaintiffs

Abbi Coursolle, Esq.
Counsel for Plaintiffs

Cc: Steven Kasten, Esq.
Douglas Martland, A.A.G.
Kirk Hanson, A.A.G.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAM H., by his Mother, Alison, H.;)
GLORIELYZ R., by her Mother, Gloria C.;)
ROBERT C., by his Mother, Arcenia C.;)
STEVEN L.; BENNETT C.,)
by his Mother, Kathleen K.; on behalf of)
themselves and all others similarly situated; and)
MEDICAID ORTHODONTISTS)
OF MASSACHUSETTS, INC.,)
Plaintiffs,)

Case No.: 1:14-cv-10106-MLW

v.)

CHARLES BAKER*, in his capacity)
as Governor of Massachusetts;)
MARYLOU SUDDERS*, in her capacity as)
Secretary of Health and Human Services;)
DANIEL TSAI*, in his capacity as Assistant)
Secretary for MassHealth; and DONNA JONES*,)
in her capacity as Director of Dental Services;)
DENTAL SERVICE OF MASSACHUSETTS,)
INC., and DENTAQUEST, LLC,)
Defendants.)

STIPULATION OF DISMISSAL
(Fed. R. Civ. P. 41(a)(1)(A)(ii))

This action was brought as a putative class action under the federal Medicaid Act and 42 U.S.C. § 1983. The children-plaintiffs' class has not been certified.

Pursuant to the provisions of Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, the parties hereby stipulate to the dismissal with prejudice of the Amended Complaint.

The parties shall bear their own costs.

* These parties, named in their official capacities, have been substituted as successors in office, under Fed. R. Civ. P. 25(d).

Respectfully submitted,

CHARLES BAKER, in his capacity as Governor of Massachusetts; MARYLOU SUDDERS, in her capacity as Secretary of Health and Human Services; DANIEL TSAI, in his capacity as Assistant Secretary for MassHealth; and DR. DONNA JONES, in her official capacity as Director of Dental Services,

By their attorney,

MAURA HEALEY
ATTORNEY GENERAL

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Respectfully submitted,
DENTAL SERVICE OF MASSACHUSETTS,
INC. and DENTAQUEST, LLC

By their attorney,

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Fax: (617) 371-1051
Email: skasten@lca-llp.com

Respectfully submitted,

ROSEN LAW OFFICE, P.C.
on behalf of all plaintiffs

Joel Rosen (BBO #567788)
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204 Andover St., Ste. 402
Andover, MA 01810
978-474-0100
jrosen@rosenlawoffice.com

Respectfully submitted,

NATIONAL HEALTH LAW PROGRAM
on behalf of the child plaintiffs

Jane Perkins (Admitted Pro Hac Vice)
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101 East Weaver St., Ste. G-7
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919-968-6308
perkins@healthlaw.org

Abbi Coursolle (Admitted Pro Hac Vice)
NATIONAL HEALTH LAW PROGRAM
3701 Wilshire Blvd., Ste. 750
Los Angeles, CA 90010
310-204-6010
coursolle@healthlaw.org

_____, 2016

CERTIFICATE OF SERVICE

I certify that this document filed through the CM/ECF system will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on _____, 2016.

/s/ David R. Marks
David R. Marks

RELEASE

1. This release arises from the case of Sam H., by his Mother, Alison H.; Glorielyz R., by her Mother Gloria C.; Robert C., by his Mother Arcenia C.; Steven L.; Bennett C., by his Mother, Kathleen K.; on behalf of themselves and all others similarly situated; and Medicaid Orthodontists of Massachusetts Association, Inc. v. Charles Baker, Governor, Marylou Sudders, Secretary of the Office of Health and Human Services; Daniel Tsai, Assistant Secretary for MassHealth; Donna Jones, Director of Dental Services; Dental Service of Massachusetts, Inc. and Denta Quest, LLC, United States District Court, District of Massachusetts, Docket No. 1:14-cv-10106-MLW (“Sam H. case”). The plaintiffs are child beneficiaries of Medicaid, who sought coverage for comprehensive orthodontic services, and the Medicaid Orthodontists of Massachusetts Association, Inc., an organization whose members the complaint alleged include families and children who are Medicaid beneficiaries who need or may need orthodontic services. The plaintiffs alleged that the procedures used by the defendants to deny their coverage requests violated the EPSDT standard of the Medicaid Act in 42 U.S.C. §§ 1396a (a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), and 1396d(r). The parties have agreed to resolve the case.
2. In consideration of payment of Fifty Thousand Dollars and Zero Cents (\$50,000.00), allocated as payment for plaintiffs’ claims to the payment of attorney fees (by check made payable to Rosen Law Office, P.C.), and in consideration of certain actions MassHealth has taken, or agreed to take, regarding the administration of orthodontic coverage to MassHealth members, as described in a separate letter of Daniel Tsai, Assistant Secretary for MassHealth, dated and co-signed by plaintiffs’ co-counsel in

the case, each named plaintiff on behalf of themselves, representatives, agents, successors, assigns, executors, administrators, and heirs, hereby completely releases and forever discharges the Commonwealth of Massachusetts, including its agencies, the Massachusetts Medicaid program (“MassHealth”), Dental Service of Massachusetts, Inc., DentaQuest LLC, and all their current and former officers, agents, directors, employees, assigns, and successors, both individually and in their official capacity (collectively, the “Releasees”), from all claims, rights, demands, actions, obligations, and causes of action, of every kind, nature and character, which each and every named plaintiff now has, may now have, or has ever had, against the Releasee(s) arising from or in any way related to the facts or circumstances set forth in the Sam H. case, or that were raised or could have been raised in the Sam H. case.

3. Named plaintiffs understand and agree that execution of this Release is not in any way to be construed as any admission or concession of liability on the part of MassHealth or any of the Releasees, and shall not be introduced in evidence in any administrative or court proceeding, other than as an affirmative defense. Each named plaintiff further understands and agrees that this Release, and payment, as well as any negotiations associated with it, including all statements or communications by MassHealth and its present and former employees, agents, servants, attorneys, and assigns shall neither be construed as admissions by MassHealth or any of the Releasees nor introduced in evidence in any administrative or court proceeding, other than as an affirmative defense.

4. The named plaintiffs agree and understand that this payment will be made from the Settlement and Judgments account of the Commonwealth and is subject to appropriation.
5. The named plaintiffs agree to accept the amount in paragraph 2 in full compromise and settlement of all claims for attorneys' fees and/or costs that they have, or might claim to have, in or related to the Sam H. case. This Release shall not establish, or be evidence of a "reasonable" hourly rate for plaintiffs' counsel or any other counsel or the "reasonableness" of any claim for attorneys' fees or litigation costs. The plaintiffs agree that they shall not be entitled to attorneys' fees for activities related to the Sam H. case or resolution of it any time hereafter, or in excess of the amount in paragraph 2.
6. The named plaintiffs and signatories below warrant that they have legal authority to execute this Release; that each is legally competent to execute this Release; that each has read this document; that each has consulted with each one's attorney and understands this document and that each signs this document intentionally and willingly.
7. This Release may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Release.

Signed under the penalties of perjury this ____ day of ____ 2016.

Alison Hook as Mother of Sam H.

Signed under the penalties of perjury this ____ day of ____ 2016.

Gloria Colon as she is Mother of Glorielyz

Signed under the penalties of perjury this ____ day of ____ 2016.

Arcenia Castellucio as she is Mother of Robert C.

Signed under the penalties of perjury this ____ day of ____ 2016.

Steven Lopez

Signed under the penalties of perjury this ____ day of ____ 2016.

Kathleen Kelts as she is Mother of Bennett C.