

A VERY BRIEF OVERVIEW OF

THE KEVIN S. SETTLEMENT

Kevin S.

- Filed on Sep 22, 2018 against HSD and CYFD on behalf of 14 individual plaintiffs
- Coalition of plaintiff attorneys with varying motivations and substantive knowledge
- Settled on Mar 26, 2020 with
 - Contractual agreement re: outcomes
 - Oversight by panel of three co-neutrals
 - Standard for progress is good faith effort to achieve substantial and sustained progress
 - Hold and release individual elements of the agreement (24 months)
 - Remedy is Alternative Dispute Resolution to demand performance

Terms of Settlement Intended to Fit Entirely Within CYFD Strategic Plan

More Appropriate Placements

Reduce Congregate Care

Increase Kinship Care

Increase Community Based Mental Health Services

Special Protocols for Vulnerable Populations

Prevention

Institutionalization

Homelessness

Trauma

Optimization

Data

Accountability

Funding

Staffing

Vacancy Rates

Increased training/support

Workforce Development

What are the primary legal claims?

- Entitlements to:
 - **Least restrictive** settings in foster care (ADA and Sec 504)
 - “**Appropriate** placements” under the Indian Child Welfare Act (ICWA)
 - **Trauma responsive** services for youth in foster care (Peter P.)
 - **Community based** mental health services (Medicaid/EPSDT)

What are least restrictive settings in foster care?

Congregate Care Settings - Locked v Unlocked, Out-of-state v Close to Community

Therapeutic Foster Care

Non-Relative Foster Care

Fictive Kin /
NREFM

Kin

Home with
parents

Least restrictive settings – the focus

- Kinship care targets and processes
- Out-of-state placements targets and processes
- “Culturally appropriate homes” targets and processes
- Targets and processes for certain types of congregate care settings (eliminating shelters, short-term non-placements)
- Overlapping focus with ICWA appropriate placements and community based mental health services
- Individualized planning team meetings for any youth in certain specified placements

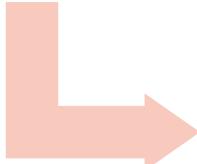
What are appropriate placements under ICWA?

- ICWA (1978) governs jurisdiction and placement of Native American (Indian) children in foster care.
- Any ICWA eligible youth in foster care must be placed in the least restrictive setting + within reasonable proximity to the child's home

Appropriate placements under ICWA

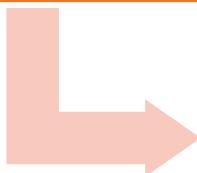
1st

- A member of the Indian child's extended family



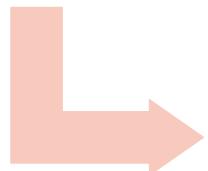
2nd

- A foster home licensed or approved by the tribe



3rd

- A foster home licensed or approved by the State



4th

- An institution

ICWA appropriate settings – the focus

- Increasing kinship and Native American / Indian foster care placements
- Increasing culturally appropriate practices and services
- Creating ICWA court and ICWA unit
- Safeguarding protections of Indian children through proposing state ICWA legislation
- Individualized team planning meetings for every ICWA eligible youth

What are trauma responsive services?

- Peter P., et al. v Compton Unified School District, et al.

Shift from what's wrong with you to what happened and how can we help?

Approach for building empathy and shared understanding that includes the child's trauma history, the impact of that trauma on how the child experiences the world, and how we will be responsive to help get the child what s/he needs



Trauma responsive services– the focus

- Trauma screenings (CANS-ACES)
- Trauma trainings for staff + providers including a training + coaching plan



Medicaid/EPSDT – Who is eligible?

“Such other necessary health care, diagnostic services, treatment, and other measures ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.”

42 U.S.C. § 1396d(r)

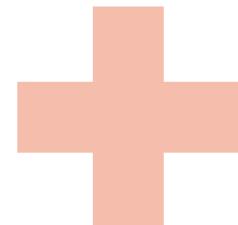
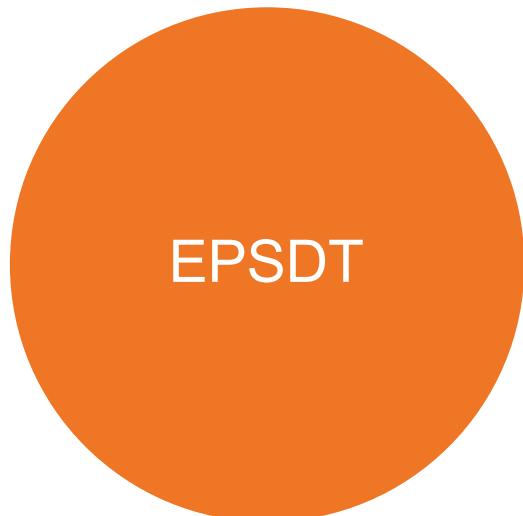
OVERVIEW: EPSDT Specialty Mental Health Services Medical Necessity Criteria

- Eligible for MHP services if he or she meets all of the following:
 - Has an included diagnosis
 - The services are necessary “to correct or ameliorate defects and physical and mental illnesses”
 - The focus of the proposed treatment is to address the impairments
 - The condition would not be responsive to physical health care-based treatment



National Trends

- Focus on the treatment piece of EPSDT instead of the screening or informing.
- Specifically, big focus on community based care, bringing claims under:



EPDST Behavioral Health Class Action Lawsuits

- *Rosie D. v. Romney* (Massachusetts)
 - Class action to provide home-based mental health services to Medicaid-eligible youth
- *Katie A., et al. v. Bonta* (California)
 - Sought wraparound and therapeutic foster care services for Medicaid-eligible children in or at risk of placement in foster care or group homes
- *TR v. Dreyfus* (Washington)
 - Sought establishment and implementation of a system that focuses on intensive home and community-based MH services for ALL Medicaid-eligible children under 21
- *Jeff D. v. Otter* (Idaho)
 - Class action for improved access to community-based mental health services for estimated 9,000 Medicaid-eligible youth with serious emotional disturbances
- *JK v. Symington* (Arizona), etc.

“**Children with serious emotional disturbance** are among the most **fragile** members of our society. ... **Prompt coordinated services** that support a child’s continuation in the home can allow even the most disabled child a reasonable chance at a **happy, fulfilling life.**” U.S. District Court Judge Michael A. Ponsor, *Rosie D. v. Romney*, 2006

What Services Are Covered (or Coverable)?

- Any service that must be (mandatory services) or can be (optional services) covered under Medicaid may be a medical necessary service. *If it is covered by any state* (other than by waiver), than it is a Medicaid-coverable service in your state.
- An EPSDT service does not need to be listed in the State Plan. It does not need to be available to adults.
- Outreach and informing, routine and inter-periodic screens, assessment, case management, treatment, collateral, transitions, as well as appointment and transportation assistance are all covered services. Each state publishes a list of categories of services available.

EPSDT – the focus

- **Intensive community based mental health services** (e.g., high fidelity wraparound, intensive case management, and intensive home based services available to every child in foster care who meets medical necessity)
- Screenings and offering of appropriate services within established timeframes.
- Individualized team planning meetings to determine appropriate level of services tailored to the child's needs

Psychotropic Medication

- More Prescribed: 1 out of every 4 foster youth
 - Compared to 6% in non-foster care
- Higher level drugs: Over 60% of those prescriptions are for antipsychotics
- More polypharmacy – More likely to be prescribed multiple psychotropic medications at a time.
- Access to care and medications also an issue.

Psychotropic medication – the focus

- Development of protocols and tracking mechanisms for heightened protections and safeguards including medical consultations, staff approval processes, and analysis of Medicaid data for trends and alerts for polypharmacy.
- Policies promulgated May 4th.

PREPARING THE WORKFORCE TO MEET THE SETTLEMENT AGREEMENTS

Building a
Strong
Foundation of
Knowledge,
Skills, and
Attitudes



Supporting the
Workforce for
Improving Their Child
Welfare Practice

Professional Development Continuum



Trauma Responsive Departments

- Comprehensive Trauma Training for Staff that Grows as They Grow
- Experiential Learning and Skills Development
- Coaching
- Culture Shift

Improving Practice for ICWA Eligible Placements

- Partnering with Tribal Social Services for Training
- Understanding of ICWA as the Gold Standard
- Role Specific Application of ICWA Provisions
- Critical Self Reflection to Identify Own Bias and Build Culturally Responsive Practice

Viewing Partners as Workforce

- New Pre-Service Training for Resource Parents
- Ongoing Training, Personalized Needs for Resource Parents
- Recruitment and Retention for Resource Parents
- Mutual Support and Accountability with Contractors and Other External Stakeholders

Workforce Development

- Specializing Hiring Practices
- Increasing Resiliency Supports
- Identifying Professional Capacity to Meet Agreements

Progress to Date

Creating a Trauma Informed System:

- Created a Child and Adolescent Needs and Strengths (“CANS”) and Crisis Assessment Tool (“CAT”), and working to create a training curriculum and certification process to ensure every child in state custody receives screenings.
- Updated criteria to ensure children suffering from serious emotional disorders (SED) will have access to intensive home-based services.
- New Individualized Planning Process (IPP) for child and family team meetings to prioritize the child’s voice and choice, connect families to natural supports, and are respectful of the child’s family and unique cultural heritage.

Progress to Date

Developing more appropriate placement options, reducing congregate care and institutionalization, and increasing utilization of kinship care and guardianships:

- A new Kinship Unit created to support families and field staff.
- Between January 2019 and April 2021, initial relative placements increased from 4 percent to 48 percent.
- CYFD will continue working to remove barriers to kinship placements, including streamlining foster care licensing requirements to allow the provision of services and economic support to relative placements.
- Team meetings for all youth in out-of-state placements and 30-day team meetings to review all Indian Child Welfare Act-eligible youth in non-ICWA preferred placements are already in place.
- New procedures to ensure no child under 18 will be placed in any hotel, motel, or office unless there are extraordinary circumstances are necessary to protect the safety and security of the child .
- Joint clinical reviews of any out-of-state placement are now required every 30 days for children placed out of state and team meetings are convened prior to a youth being placed out of state.
- Developing and promoting a warm line for Resource Families and parents who need assistance meeting the behavioral needs of the children in their care.

Progress to Date

Building a healthy, well-trained and supported workforce:

The Workforce Development Bureau (WDB) was formed in CYFD in October 2019. When completed (planned date of December 2021) the WDB will consist of Employee and Resource Parent (foster parent) Training, Regional Based Coaching, Pipeline Development, Culture Shift of Initiatives, Retention Initiatives and Workforce Learning Evaluation Units.

- Created a new model for exit interviews to increase the usable information we receive as someone is exiting the department.
- On-going work on hiring protocols to improve recruitment and selection and the establishment of healthy workforce workloads.
- Worked with Annie E. Casey Foundation to develop a Supervisory Practice Framework and train all PS Supervisors
- Increased pipeline programs that have a giveback commitment (educational leave and an increase in stipends for social work students).
- Increased, from 19 to 50, the number of trainings eligible for social work CEUs.
- Reduced the turnover rate from 39.7 percent in fiscal year 2019 to 29.9 percent in fiscal year 2020.

Progress to Date

Working collaboratively with New Mexico's 23 tribes and pueblos and the Navajo Nation to establish and nurture trusted partner relations.

- Created an Office of Tribal Affairs headed by a full-time Director of Tribal Affairs to address the needs of tribal families, identify culturally relevant services, develop intergovernmental agreements, provide technical assistance to the tribes, and coaching for CYFD staff in their interactions with tribal children, youth, and families.
- Revitalized prioritization of culturally appropriate placements.
 - In 2020, the Tribal Affairs Division began conducting a compliance review of all ICWA cases
 - New procedures to ensure preferred placement and out-of-preferred placement reviews every 30 days until a child is in a preferred placement.
 - In FY20, CYFD saw a 13 percent increase in placement of Native American children in custody with relatives.
- In partnership with The National Indian Child Welfare Association (NICWA), developing a New Mexico specific ICWA training curriculum and plan.
- Worked collaboratively with the Administrative Office of the Courts, the 2nd Judicial District Court, the New Mexico Tribal ICWA Consortium, the Navajo Nation, and Casey Family Foundation Indian Child Welfare Program to develop a dedicated Indian Child Welfare Special Court in Bernalillo County.

Progress to Date

Expanding Access to Behavioral Health Services and Building the Workforce:

- Increased Medicaid reimbursement rates for multiple Medicaid-funded behavioral health services.
- Supported the workforce development of High Fidelity Wraparound, youth and family peer, and other services through federal grants in scattered sites. Since 2019, High Fidelity Wraparound sites have increased by more than 100 percent and BHS work to expedite and streamline Medicaid credentialing for behavioral health providers has set High Fidelity Wraparound at the threshold of becoming financially self-sustaining through the increased capacity of providers to bill through Medicaid.
- New regulations governing medication protocols to ensure that Children in State Custody are not overmedicated, while ensuring timely access to medically necessary medication and treatment.