



C A L I F O R N I A   D E P A R T M E N T   O F

# Mental Health

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August 8, 2001

DMH LETTER NO.: 01-03

TO: LOCAL MENTAL HEALTH DIRECTORS  
LOCAL MENTAL HEALTH PROGRAM CHIEFS  
LOCAL MENTAL HEALTH ADMINISTRATORS  
COUNTY ADMINISTRATIVE OFFICERS  
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: THERAPEUTIC BEHAVIORAL SERVICES--CERTIFICATION  
PRIOR TO SPECIFIC TYPES OF PLACEMENT

Therapeutic Behavioral Services (TBS) is an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) supplemental specialty mental health service for children and youth with serious emotional problems who are experiencing stressful transitions or life crises and need additional short-term support to prevent an out-of-home placement or transfer from an out-of-home placement to a higher level placement. TBS may also enable a transition from one level of out-of-home placement to a lower level placement or to the beneficiary's home.

The Judgment and Permanent Injunction in Emily Q. v. Bontá (C.D.Cal., 2001, CV 98-4181 AHM (AIJx)) established specific obligations for mental health plans (MHPs) with respect to situations in which an EPSDT-eligible beneficiary is being considered for placement in a foster care group home at Rate Classification Level (RCL) 12 through 14 or Metropolitan or Napa State Hospitals, or a skilled nursing facility with a special treatment program for the mentally disordered (SNF/STP) or a Mental Health Rehabilitation Center (MHRC) that has been designated as an institution for mental diseases (IMD). Whenever MHPs are involved in placing children or youth out of their homes or transferring a child or youth from one out-of-home placement to a higher level placement in one of the categories above, MHPs must consider whether the provision of TBS in combination with other appropriate specialty mental health services will allow the child or youth to remain in his/her current living situation. When the MHP determines

that the provision of TBS in combination with other specialty mental health services will



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prevent the placement, the MHP must ensure that the services are provided. If the placement cannot be avoided, the MHP must follow the certification procedures described in this letter.

### **General Certification Requirement**

As a result of the Judgment and Permanent Injunction in Emily Q. v. Bontá, **effective immediately**, MHPs must complete a TBS certification form that documents that the MHP has considered TBS as an alternate to placement and the reason TBS is not provided, when an EPSDT-eligible beneficiary is placed in one of the following:

- Metropolitan or Napa State Hospital.
- An RCL 12 foster care group home, when the MHP is involved in the placement.
- RCL 13 or 14 foster care group home.
- A SNF/STP or an MHRC that has been designated as an IMD.

While an EPSDT-eligible beneficiary is a patient in Metropolitan or Napa State Hospital, the MHP and state hospital staff must consider whether TBS in combination with other community based specialty mental health services would allow the beneficiary to return home or to a lower level of care at each regularly scheduled placement review or discharge planning meeting. If the decision is made that the beneficiary must remain in the state hospital, the MHP must complete a TBS certification form.

A TBS certification form is not required when beneficiaries are committed by order of a court.

### **Other Critical Provisions**

#### ***1. Involvement of the MHP in RCL 12 group home placements***

The court order defines MHP involvement in an RCL 12 placement as:

- The MHP participated in an interagency review prior to placement, and
- The beneficiary is receiving MHP services or has received an MHP assessment and the MHP participates in the placement discussion, or

- The MHP has done a screening or assessment prior to placement under the provisions of Senate Bill (SB) 933 (Chapter 311, Statutes of 1998).

## 2. Qualified Practitioners

A qualified mental health practitioner must complete the TBS certification form. DMH will be working with MHPs and state licensing boards to establish minimum qualifications for these practitioners. Until this work is completed, a qualified mental health practitioner means an individual qualified under current Medi-Cal Specialty Mental Health Services regulations in Title 9, California Code of Regulations, Division 1, Chapter 11, who also has training, including on-the-job training, in behavior analysis with an emphasis on positive behavioral interventions. The relevant regulations are: Title 9, CCR, Sections 1810.218.2, 1810.222 and 1810.231, which define individual, group and organizational providers; Section 1810.435, which describes the general qualifications for individual, group and organizational providers, and Sections 1840.314(d) and 1840.344, which provide that the person delivering services must be acting within scope of practice, if applicable, and must have been determined by the MHP to be qualified to provide the service, consistent with state law.

## 4. Required Distribution of Copies

Copies of the completed TBS certification form must be provided to the following:

- The beneficiary.
- At least one adult who is a de facto or legally authorized representative of the beneficiary, if there is any such adult. (By terms of the court order, "Authorized Representative" means any person or entity authorized by law to act on behalf of any client or any person or entity in fact acting on behalf of or helping provide support for any client. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.)
- The beneficiary's court-appointed attorney, if any.
- The beneficiary's social worker, if any.
- State DMH.

The MHP must retain a copy of all TBS certification forms and make these forms accessible and available for annual on-site compliance reviews by DMH.

### **TBS Certification Form**

DMH has prepared a TBS certification form to meet the requirements of the court order. A copy is enclosed. MHPs may use the enclosed form, may develop their own form provided it contains all critical elements included in the DMH form or may add the certification language to already existing forms (e.g., the forms a county is already using to authorize state hospital placements or RCL 13 and 14 placements). Please remember that copies of the certification form, whatever form it takes, must be provided to all parties. The DMH copy should be sent to: Department of Mental Health, Systems Implementation and Support, 1600 9th Street, Room 100, Sacramento, California 95814.

The critical elements in the TBS certification form are beneficiary name and social security number, MHP name, date of completion, the description of the reason(s) for denying and/or not providing TBS, statement of certification, the signature of the certifying practitioner, and the practitioner's license type and number or job title. The reason for denying and/or not providing TBS must be described with sufficient specificity to enable the beneficiary or his/her de facto or authorized representative to understand why TBS was not provided. Note that, by court order, completion or failure to complete a TBS certification form does not prevent an otherwise appropriate placement.

### **Explanation of Enclosed TBS Certification Form**

The enclosed TBS certification form was developed with input from MHP staff, DMH staff and consultants, the California Institute for Mental Health, and the California Mental Health Directors Association. The form includes the following:

#### **Client Identifier Information**

The included items are minimum identifiers. MHPs may wish to include other items. If the MHP chooses to adapt its own forms to include the TBS certification language, additional client identifier information may not be necessary.

#### **Items 1 – 4**

These items present critical information required by the court order. Many of these items are also noted in DMH Letter 99-03, issued July 23, 2000, which is incorporated by reference in the court order.

Item 1 should be checked if TBS has been provided and the placement is still required.

Item 2 should be checked if the MHP believes the beneficiary is only Medi-Cal eligible by virtue of the out-of-home placement and would not be eligible for Medi-Cal if at home. The Medi-Cal eligibility system normally looks at the whole family's assets to determine Medi-Cal eligibility. A child who would not be Medi-Cal eligible when living at home because of the family's assets will be eligible if placed in the foster care system or in a medical institution such as a state hospital. If you need assistance on this issue, consult with your county welfare office.

Item 3 offers a variety of conditions that might apply when TBS has been considered, but is not appropriate. The conditions include situations described in DMH Letter 99-03 in which TBS would not be considered a Medi-Cal covered service. The conditions also include the situation in which the beneficiary is being transferred from a SNF/STP or MHRC designated as an IMD to a state hospital, because TBS is not available in this type of IMD (see DMH Letter 99-04). Additional reasons not appearing on the form would be entered in the "Other" section and explained (the explanation should be continued on a second page, if there isn't enough space on the form.) All reasons that apply should be checked.

Item 4 identifies that the MHP has determined that TBS is appropriate but, for the reasons listed, will not be provided. The second box describes the situation in which the placing agency has the authority to decide and does decide that the placement must occur regardless of the availability of TBS. DMH believes that this situation will usually involve a court order, in which case a certification form will not be required. The check box is provided in case such a situation occurs without a court order. The last box describes the situation in which the MHP determines TBS is appropriate but is not available. DMH assumes there will be few cases in which the last box will be checked. If this is the appropriate selection to describe the circumstances, MHP staff should explain in enough detail to clarify the situation.

### **Distribution of Copies**

The court order requires that copies of the TBS certification form be provided to specific individuals (see item 4 under "Other Critical Provisions"). Space for names and dates is included to provide additional documentation of distribution.

### **Oversight of TBS Certification**

DMH will review a sample of TBS certification forms during the annual on-site review conducted by the Program Compliance Division's Medi-Cal Oversight Units. DMH will also provide copies of the TBS certification forms that the MHPs provide to DMH on an on-going basis to Protection and Advocacy, Inc. (the plaintiffs' attorneys in Emily Q. v. Bontá) on a quarterly basis.

If you have questions or need additional information, please contact your liaison in the Technical Assistance and Training Unit below.

**DMH Technical Assistance and Training Liaisons**

Bay Area Region	Ruth Walz	(707) 252-3168
Central Region	Anthony Sotelo	(916) 651-6848
Northern Region	Jake Donovan	(530) 224-4724
Southern Region	Eddie Gabriel	(916) 654-3263

Sincerely,

*Original signed by*

STEPHEN W. MAYBERG, Ph.D.  
Director

Enclosure

cc: California Mental Health Planning Council  
Chief, Technical Assistance and Training

