



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

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

August 30, 2004

DMH INFORMATION NOTICE NO.: 04-05

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

SUBJECT: EMILY Q. V. BONTÁ APPEAL SETTLEMENT—AVAILABILITY OF
FUNDING FOR ONE-TO-ONE SPECIAL SERVICES FOR
BENEFICIARIES BETWEEN THE AGES OF 21 AND 25

REFERENCE DMH Letter No.: 99-03

As part of the Judgment and Permanent Injunction for Emily Q. v. Bontá (C.D.Cal., 2001, CV 98-4181 AHM (AIJx)), the federal court ordered that the Mental Health Plans (MHPs) must provide Therapeutic Behavioral Services (TBS) to Medi-Cal beneficiaries age 21 or over who were incorrectly denied TBS in the past. The court called these services "compensatory TBS." The State appealed this component of the court order. A settlement was reached with Protection and Advocacy, Inc. (PAI) and other attorneys for the plaintiffs, and the State agreed to dismiss its appeal. On April 22, 2004, the federal court approved the settlement and amended the Judgment to eliminate compensatory TBS.

Under the settlement, the State is required to provide a fund of \$350,000 for one-to-one "Special Services" for certain individuals who are between the ages of 21 and 25 and meet the criteria listed below. These Special Services are not to be considered a Medi-Cal benefit. Consequently, if the youth is otherwise eligible, he or she may receive Special Services without regard to the type of facility in which the youth resides, e.g., Special Services may be delivered to a youth in an Institution for Mental Disease (IMD). There is no requirement that there be evidence that the youth was incorrectly denied TBS in the past or that the youth has even received TBS in the past.

DMH has transferred the funds for Special Services to the California Institute for Mental Health/Cathie Wright Technical Assistance Center (CIMH/CWTAC) in accordance with the court's order. CIMH/CWTAC will distribute the funds directly to providers on a first-come,

first-served basis until the fund is exhausted. CIMH/CWTAC will receive a reasonable administrative fee from the fund.

Reimbursement may be claimed for services that have already been provided to an eligible youth age 21 or over (*Retroactive Claim*) or may be claimed in advance to reserve the anticipated reimbursement from the fund prior to providing the service (*Preauthorized Claim*). However, no claims for these Special Services funds will be reimbursed after the fund has been depleted. For any one youth, the maximum amount that may be claimed and distributed for services cannot exceed \$100,000. Providers do not need MHP approval to submit a claim for Special Services.

CRITERIA FOR SPECIAL SERVICES

Service Definition: Special Services are one-to-one therapeutic contacts between a mental health provider and the client for a specified short-term period that are designed to maintain the beneficiary's residential placement at the lowest appropriate level by resolving target behaviors and achieving short-term treatment goals. A contact is considered therapeutic if it is intended to provide the beneficiary with skills to effectively manage the behavior(s) or symptom(s) that is the barrier to achieving residence in the lowest appropriate level.

Service Criteria: The provider must certify to CIMH/CWTAC that the one-to-one Special Services will meet the service criteria in DMH Letter No.: 99-03 and the court order as follows:

A) The individual who will receive the Special Services must meet all five requirements currently:

- 1) Be a full-scope Medi-Cal beneficiary;
- 2) Meet the medical necessity criteria in Title 9, California Code of Regulations (CCR), Section 1830.205 (i.e., MHP medical necessity criteria);
- 3) Be between the ages of 21 and 25;
- 4) Except for age, be a member of the certified class by satisfying at least one of the following criteria:
 - a. Youth is placed in a group facility such as (but not limited to) a group home, board and care facility, crisis residential or transitional residential facility, or an IMD;
 - b. Youth is under consideration by the county or a conservator for placement in one of these facilities;
 - c. Youth has undergone at least one emergency psychiatric hospitalization related to his or her current presenting disability within the preceding 24 months; OR

- d. Youth previously received TBS as a member of the certified class (see b.3 below); AND
 - 5) Be highly likely, in the clinical judgment of a mental health provider, to be placed in a higher level of residential care or in acute care without the additional short-term support of TBS or to be unable to transition to a lower level of residential placement.
- B) The individual who will receive the Special Services must, at some point in the past, have met all four requirements below:
- 1) Youth was a full-scope Medi-Cal beneficiary under age 21;
 - 2) Youth met the medical necessity criteria in Title 9, CCR, Section 1830.205;
 - 3) Youth met the definition of a member of the certified class in Emily Q. v. Bontá, whether or not the youth actually received TBS. (The court order defines class members as: "All current and future beneficiaries of the Medicaid program below the age of 21 who: (a) are placed in a Rate Classification Level facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs; (b) are being considered for placement in these facilities; or (c) have undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months"); AND
 - 4) Youth would have been highly likely, in the clinical judgment of a mental health provider, to be placed in a higher level of residential care or in acute care without the additional short-term support of TBS or to be unable to transition to a lower level of residential placement. (This can be satisfied by finding that a youth who did not receive TBS for a specified period was placed in a higher level of care or did not transition to a lower level.)

To request funding for Special Services, providers should follow the process outlined in the attached form. If you have questions regarding this process or completion of the form, please call Bill Carter from CIMH/CWTAC at (916) 556-3480, ext. 130 or Melinda Bird from PAI at (213) 427-8757 for assistance.

Sincerely,

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosure

cc: California Mental Health Planning Council
Chief, County Operations Section