CALIFORNIA DEPARTMENT OF
Mental Health

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

December 22, 2008

DMH INFORMATION NOTICE NO.: 08-38

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

REFERENCE: UNITED STATES CENTRAL DISTRICT OF CALIFORNIA COURT ORDERS OF NOVEMBER 14, 2008, AND OCTOBER 24, 2008, INCLUDING THE NINE-POINT SETTLEMENT IMPLEMENTATION PLAN.

This Department of Mental Health (DMH) Information Notice clarifies to Mental Health Plans (MHPs) and their providers the requirements to increase utilization of Therapeutic Behavioral Services (TBS).

On November 14, 2008 the federal court in *Emily Q. v. Bonta* adopted a Nine-Point Plan (Plan) to increase access and to improve delivery of TBS. It is anticipated that implementation of this Plan will lead to increased utilization and better outcomes for children/youth.

Implementation of this Information Notice and the Nine-Point Plan is scheduled to take effect on January 1, 2009.

The points in the Plan below refine earlier orders, definitions, and policies. This Information Notice is the current iteration of the DMH on TBS, and replaces previous DMH Letters and Notices that address the specific subject of TBS.

I. Background of TBS as an EPSDT Supplemental Specialty Mental Health Service

Emily Q v. Bonta is a class action lawsuit filed in 1998. The federal court ordered a permanent injunction and final judgment in 2001. The injunction recognized TBS as a Medi-Cal reimbursable Early and Periodic Screening and Diagnostic Treatment (EPSDT) supplemental service. The court ordered the State to implement procedures for requesting and accessing TBS as a Medi-Cal EPSDT service, and to inform Class members about these available procedures. In 2004, the Court ordered the State to increase TBS utilization.

On February 21, 2008, the Court appointed Richard Saletta as Special Master. On November 14, 2008 the federal court approved a Nine-Point Plan to increase TBS access and utilization for the class.

This Plan, developed by the Special Master working with the parties and stakeholders, significantly reduces the administrative requirements for MHPs and providers related to the provision of TBS services to the Class; refines and clarifies definitions of TBS "eligibility" and "at risk;" and includes strategies to increase TBS access and improve the quality of TBS. The Plan is available on the DMH website.

II. Definition of TBS

TBS are a one-to-one behavioral mental health service available to children/youth with serious emotional challenges who are under age 21 and who are eligible for a full array of Medi-Cal benefits without restrictions or limitations (full scope Medi-Cal). TBS can help children/youth and parents/caregivers, foster parents, group home staff, and school staff learn new ways of reducing and managing challenging behaviors as well as strategies and skills to increase the kinds of behavior that will allow children/youth to be successful in their current environment.

TBS are designed to help children/youth and parents/caregivers (when available) manage these behaviors utilizing short-term, measurable goals based on the needs of the child/youth and family. TBS are never a stand-alone therapeutic intervention. It is used in conjunction with another mental health service.

III. TBS Class Eligibility

On May 5, 1999, the Court certified the class as follows:

All current and future beneficiaries of the Medicaid program below age 21 in California who:

- Are placed in a Rate Classification Level (RCL) facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs;

- Are being considered for placement in these facilities; or

- Have undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months.

This letter clarifies that a child/youth meets the requirements of "being considered for" placement in an RCL 12 or above when an RCL 12 or above placement is one option (not necessarily the only option) that is being considered as part of a set of possible solutions to address the child/youth's needs. Additionally, a child/youth meets the requirements when his or her behavior could result in placement in such a facility if the facility were actually available, regardless of whether an RCL 12 or above placement is available.

DMH Letter 04-11 clarified that TBS services are available to beneficiaries who are at risk of admission to a hospital for acute psychiatric inpatient hospital services or to a psychiatric health facility for acute care as a result of behaviors that may benefit from TBS interventions. The DMH Letter 04-11 is available on the DMH Website.

This letter clarifies that the child/youth meets the requirements of "at risk of" hospitalization in an acute care psychiatric facility when hospitalization is one option (not necessarily the only option) that is being considered as part of a set of possible solutions to address the child/youth needs. Additionally, a child/youth meets the requirements when his or her behavior could result in hospitalization in such a facility if the facility were actually available, regardless of whether hospitalization is available.

IV. Criteria for TBS Eligibility

Once the child/youth is identified as meeting the requirements for class eligibility, the MHP then determines the need for TBS based upon the following criteria:

A. The child/youth is receiving other specialty mental health services; and

B. The clinical judgment of the mental health provider indicates that it is highly likely that without the additional short-term support of TBS that:

   1. The child/youth will need to be placed out-of-home, or into a higher level of residential care, including acute care, because of the child/youth's behaviors or symptoms which jeopardize continued placement in the current facility; "acute care" includes acute psychiatric hospital inpatient services, psychiatric health facility services, and crisis residential treatment services or;

2. The child/youth needs this additional support to transition to a home or foster home or lower level of residential placement. Although the child/youth may be stable in the current placement, a change in behavior or symptoms is expected and TBS are needed to stabilize the child/youth in the new environment. The MHP or its provider must document the basis for the expectation that the behavior or symptoms will change.

V. 30 Day Unplanned Contact

Under certain circumstances, a MHP may authorize the provision of TBS for a maximum of 30 calendar days when class membership cannot be established for a child/youth. This may be done:

A. Up to 30 days or until class membership is established whichever comes first, and

B. When the child/youth presents with urgent or emergency conditions to address his/her behaviors, and

C. Those behaviors jeopardize his/her current living arrangement, and

D. The MHP determines that TBS would be an appropriate intervention, and

E. Documentation includes evidence that TBS was medically necessary and the most appropriate level of service available to address the child/youth's mental health condition.

MHPs should use service function code 58 during this period of time to allow DMH to track utilization. The steps taken to establish class membership should also be documented.

VI. Medi-Cal Reimbursement for TBS

To be Medi-Cal reimbursable, the child/youth must:

A. Be a full-scope Medi-Cal beneficiary under age 21;

B. Meet the MHP medical necessity criteria; and

C. Be a member of the certified class or must have previously received TBS while a member of the certified class.

TBS should be claimed under Mode 15, Service Function Code 58.

TBS are not reimbursable under the following conditions:

A. For the convenience of the family or other caregivers, physician, or teacher.

B. To provide supervision or to assure compliance with terms and conditions of probation.

C. To ensure the child/youth's physical safety or the safety of others (e.g. suicide watch).

D. To address conditions that are not a part of the child's mental health condition,

E. For children/youth who can sustain non-impulsive, self-directed behavior, handle themselves appropriately in social situations with peers, and who are able to appropriately handle transitions during the day.

F. For children/youth who will never be able to sustain non-impulsive self-directed behavior and engage in appropriate community activities without full-time supervision; or when the beneficiary is an inpatient of a hospital, psychiatric health facility, nursing facility, Institutions for Mental Diseases (IMD), or crisis residential program.

VII. Continuing Administrative Requirements

Necessary administrative requirements to ensure the integrity of the service will continue under the Plan. These administrative requirements include the following:

A. MHP Providers Lists
Each MHP with at least one class member shall continue to provide a list of TBS providers to DMH annually by June 30. These lists will be posted on the DMH website.

B. Provider Requirements
TBS must be provided under the direction of a licensed practitioner of the healing arts (physicians, psychologists, licensed clinical social workers, marriage and family therapists, and registered nurses with a master's degree). MHPs may establish specific qualifications for the staff delivering TBS as long as these supervision requirements are met. In general, provider standards, billing procedures, and data collection requirements for Specialty Mental Health Services described in California Code of Regulations (CCR), Title 9, Chapter 11 are applicable to this service.

C. Beneficiary Notification

MHPs currently provide notices regarding general EPSDT information including information about TBS to heads of Medi-Cal beneficiary households with members under age 21. MHPs will continue to provide this notice when Medi-Cal benefits are approved or when a child/youth is issued his/her Medi-Cal identification card and annually thereafter. These notices will also continue to be provided to Medi-Cal eligible children/youth under age 21 at admittance to state hospitals and whenever these hospitals are informed that a child/youth is being considered for admission.

MHPs also have the responsibility to provide the EPSDT and TBS notices to any Medi-Cal beneficiary who is under age 21 and has been admitted with an emergency psychiatric condition to a hospital with which the MHP has a contract, to an IMD in California, or to any RCL 12 (when an MHP is involved in the placement), 13, or 14. MHPs are also required to provide these notices to the beneficiary's representative. These TBS notices can be found in DMH Letter 01-07 on the DMH Website.

D. Beneficiary Protections

All beneficiary protections under CCR Title 9, Chapter 11 are applicable to this service. This includes the grievance, appeal, and fair hearing processes.

E. Transition Services

The MHP will continue to provide TBS as a transition to a lower level of care for children/youth in state hospitals, IMDs, or RCL 12-14 when such services are medically necessary and when TBS are not duplicative of other Medi-Cal services.

F. Claiming and Reporting

TBS should be claimed under Mode 15, Service Function Code 58. Important components of delivering TBS include the following: 1) one to one services; 2) making collateral contacts with family members, caregivers and others significant in the life of the beneficiary; and 3) developing a plan clearly identifying specific target behaviors. They should be reported as Mode 15, Service Function 58 to the Client Services Information (CSI) system to enable DMH to accurately capture the dollars and time associated with providing TBS.

G. Institutions for Mental Disease (IMD)

Members of the Plaintiff class shall not be eligible to receive TBS during their treatment in those IMDs which disqualify them from receiving Medi-Cal services. However, while in such facilities, member of the Plaintiff class will be able to establish their eligibility to receive TBS immediately upon leaving the IMD. In such cases prior to discharge the MHP is responsible for determining this eligibility as follows: 1) whether the child/youth will be eligible for Medi-Cal upon discharge; and, 2) whether the child/youth will be eligible for MHP services upon discharge. If the MHP determines that the child/youth is eligible for Medi-Cal services upon discharge, and that TBS are appropriate, the MHP must ensure that the services are available upon discharge.

VIII. Discontinued Administrative Requirements, Effective January 1, 2009

Several administrative requirements present in MHP contracts that may have reduced the use of TBS have been eliminated; they will be removed from the Medi-Cal Protocol effective January 1, 2009. The updated Protocol will be posted on the DMH website. The requirements that DMH is removing are as follows:

A. DMH MHP contracts no longer require pre-authorization, authorization, or reauthorization of TBS. This requirement will be removed from the Fiscal Year 2009-10 MHP contracts.

B. MHPs are no longer required to submit TBS certification forms to DMH.

C. MHPs are no longer required to certify denials of TBS services prior to placing a child/youth in an RCL 12, 13, 14, IMD, or a state hospital.

D. MHPs are no longer required to forward Notices of Actions (NOAs) to DMH related to TBS approvals or denials.

E. The MHP that participated in the July 29, 2004 Court-ordered TBS focused reviews will no longer be required to submit corrective action plans to DMH. These MHPs are Contra Costa, Los Angeles, Napa, San Bernardino, Yolo, Riverside, Santa Clara, Santa Barbara, San Francisco and Shasta.

IX. Strategies to Address Quality Improvement Including Increased Utilization

The Nine-Point Plan approved by the Court requires the implementation of a TBS accountability structure designed to function as a continuous quality improvement process. The accountability structure will address (1) outcomes, (2) a review process; and (3) utilization. MHPs will be able to claim Federal Financial Participation (FFP) revenues for eligible quality improvement/quality assurance and utilization review activities that they undertake as part of this TBS accountability process.

A. There are two levels of requirements. The Special Master has assigned each MHP to either Level I or Level II; all MHPs are expected to participate and to increase TBS utilization. The MHP assignments are as follows:

Level I MHPs

The following 29 small and rural MHPs are assigned to Level I and must meet the requirements described in Section IX A. These MHPs are:

Alpine	Kings	Plumas
Amador	Lake	San Benito
Calaveras	Lassen	Shasta
Colusa	Madera	Siskiyou
Del Norte	Mariposa	Sutter/Yuba
El Dorado	Mendocino	Tehama
Glenn	Modoc	Trinity
Humboldt	Mono	Tuolumne
Imperial	Napa	Yolo
Inyo	Nevada	

Level II MHPs

The following ten medium and large MHPs have been selected to engage in an intensive practice improvement process. This process is described in Section IX C; Start up will begin in January, 2009:–The following MHPs listed in the order of implementation, are subject to the Level II requirements:

1. Los Angeles
2. San Diego
3. San Joaquin
4. Sonoma
5. Butte
6. Alameda
7. San Bernardino
8. Kern
9. Monterey
10. Tulare

The following 12 medium and large MHPs will only be responsible to complete the Level I requirements at this time:

Fresno	Sacramento
Marin	San Francisco
Merced	San Mateo
Orange	Santa Cruz
Placer/Sierra	Solano
Riverside	Stanislaus

As of January 1, 2009, the following 5 Level II MHPs that have demonstrated high performance in TBS delivery will be exempt from Level II requirements and will only have to meet Level I requirements:

Contra Costa	Santa Clara
San Luis Obispo	Ventura
Santa Barbara	

B. Level I Requirements

1. In each of the next two calendar years, MHPs in Level I are required to convene two annual meetings lasting a minimum of two hours each to review the core minimum TBS data elements on access, utilization, and behavioral and institutional risk reduction. The timing and sequence of the meetings is at the direction of the MHP Mental Health director, but the MHP must complete the first set of meetings by May, 2009, and the second set of meetings must be completed by May, 2010. MHPs will summarize the findings of the meetings in a brief TBS report to DMH within 60 days of the meetings.

   a. One meeting will be a general forum open to the public and will be composed primarily of providers, parents/youth, Officers of the Court, attorneys, members of the faith community and other volunteers.

   b. The other meeting will include designees of appropriate local authorities, including the Child Welfare Services Director, the Chief Probation Officer of Deputy Chief of Juvenile Probation, the Presiding Judge of the Juvenile Court, the MHP Office of Education Special Education Director, Parent/Child/Youth advocate representatives, and local TBS provider representatives.

2. The Special Master will monitor TBS utilization in small and rural MHPs. It is anticipated that TBS utilization will increase as quality improvement strategies are implemented. If this does not occur after a reasonable period of time, the Special Master will convene a meeting with all parties to consider options to address low TBS utilization.

C. Level II Requirements for Practice Improvement MHPs

1. Accountability requirements and discussions will follow the same basic format as Level I MHPs, except that quantitative and qualitative data will be explored more deeply to develop strategies to increase and improve TBS to Emily Q class members in the MHP.

2. The ten MHPs will be required to work with a DMH contracted organization to develop and implement TBS plans to improve access and services to *Emily Q* class members. The Court has approved APS, a nationally recognized quality improvement organization.

3. The ten MHPs will have access to additional, ongoing technical assistance to support TBS expansion and quality improvement through DMH.

4. Discussions will occur in two forums as identified under Level I.

5. The goal of the Level II participation will be to resolve underlying agency and system barriers that prevent eligible children/youth from receiving TBS services to which they are entitled.

More detailed description of the Levels I and II requirements and process are available on the DMH Website at:

http://www.dmh.ca.gov/Services_and_Programs/Children_and_Youth/EPSDT.asp

D. Exit Criteria and Sustainability Measures

The federal court has directed the Special Master to develop exit criteria and sustainability measures to begin in 2011. These will be presented to the Court for approval in early 2009. As part of the progress, the Special Master will monitor TBS utilization in all MHPs. It is anticipated that TBS utilization will increase as quality improvement strategies are implemented. If this does not occur and MHPs fail to increase utilization voluntarily in the next 24 months, the Special Master will recommend stronger compliance measures.

X. Training and Support to Increase and Improve TBS Services

The following is a list of training and technical support for the MHP to increase and to improve TBS services and to promote and ensure the integrity/fidelity of the service under the plan:

A. Description of TBS Services

"TBS Best Practice to Promote Service Integrity" is a comprehensive description of high quality TBS services including TBS assessment, family engagement, service delivery, and termination. This document is the foundation for DMH's TBS training plan and training manual.

B. TBS Training Manuals

A DMH contractor will produce a DMH TBS Best Practices manual with current definitions, updated administrative and compliance requirements, and best practices. The contractor will also produce a DMH TBS Chart Documentation manual based upon the Best Practices manual. These manuals will be completed by July, 2009.

C. Training and Technical Assistance

DMH will establish a comprehensive training plan by January 1, 2009. Best Practice and Chart Documentation regional trainings will be held in 2009 and 2010. Training will also be available via DVDs, website, and webcasts. Best Practices trainings will be available for service providers, supervisors, parents, MHP staff responsible for TBS policy and program, and DMH staff. Topics will include best practices, family engagement, any changes in administrative requirements, strength based assessments and service delivery, and culturally competent TBS services. Families and youth will be involved in the development and presentation of training materials. The training manuals must be approved by DMH.

Level II MHPs will have access to additional technical assistance and trainings that will respond to the needs of these MHP. Such training may include topics such as training TBS supervisors for fidelity adherence, multi-MHP coaching and support, and case consultation. The trainings may utilize a Learning Community Model.

D. TBS Outreach

DMH will develop an outreach plan to reach all class members and provider organizations and agencies that provide TBS services. The plan will focus on reaching class members unknown to the agencies and MHPs. The website described above under Training will also assist in TBS outreach efforts. Implementation of outreach will be implemented by May 2009.

XI. Coordination of Care Strategy

Significant numbers of *Emily Q.* class members are the responsibility of, and are primarily served by, Child Welfare Services, Probation, and the Juvenile Court in addition to MHP Mental Health Departments. One strategy to improve the quality of TBS services will be to promote coordination of services among state and MHP partners, which has the potential to improve access to TBS.

DMH and the California Department of Social Services are working together to improve data sharing exchange and information. In addition, DMH encourages MHP interagency linkages to support improved coordination of services and data sharing among local and state government partners.

If you have questions regarding the contents of this letter or the attachments, please contact your MHP Contract Manager listed at: http://www.dmh.ca.gov/docs/CoOpRoster.pdf

Sincerely,

Original signed by

STEPHEN W. MAYBERG, Ph.D.
Director