



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

July 9, 2009

DMH INFORMATION NOTICE NO.: 09-10

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: EXIT PLAN FOR THE
EMILY Q. v BONTA CASE

REFERENCE: DMH INFORMATION NOTICE 08-38;
APRIL 23, 2009 FEDERAL COURT ORDER APPROVING EXIT
PLAN FOR THE *EMILY Q. v. BONTA* CASE: CRITERIA FOR
PERFORMANCE AND TERMINATION OF JURISDICTION

This Department of Mental Health (DMH) Information Notice clarifies to Mental Health Plans (MHPs) and their providers the requirements of the Federal Court (Court) exit criteria from the *Emily Q v. Bonta* Special Master proceedings. The exit criteria development is point nine of the Therapeutic Behavioral Services (TBS) Nine Point Plan. The goal of the Nine Point Plan is to increase access and utilization of TBS for the Emily Q class in California. For county responsibilities related to TBS and points one through eight of the Nine Point Plan, please refer to DMH Information Notice 08-38.

Implementation of the TBS Nine Point Plan and DMH Information Notice 08-38 began in January 2009. For copies of the Nine Point Plan, DMH Information Notice 08-38, and the Exit Plan, please refer to the DMH TBS web page (http://www.dmh.ca.gov/Services_and_Programs/Children_and_Youth/EPsDT.asp).

As point nine of the Nine Point Plan, an Exit Plan was developed with specific measures that will lead to termination of Federal Court jurisdiction on December 31, 2010. It is likely, as information is gathered and experience is gained, that the Special Master may submit to the Court for approval, improvements, modifications, and clarifications to this exit plan that will increase the prospects for successful implementation of the Nine Point Plan.

SUMMARY OF COURT-ORDERED MHP AND DMH RESPONSIBILITIES

MHP Responsibility ¹	Completion Date ²
Read and evaluate the Nine Point Plan and Exit Strategy	Upon Release
Notify DMH of MHP point of contact for TBS efforts	August 1, 2009
Identification of key leaders and stakeholders to support this process	August 1, 2009
27 Level II MHP dates set for 2 Local Stakeholder Meetings to be scheduled in 2009 ³	August 1, 2009
27 Level II MHP dates set for 2 Local Decision-maker Meetings to be scheduled in 2009	August 1, 2009
29 Level I MHP dates set for 1 Local Stakeholder Meeting to be scheduled in 2009	August 1, 2009
29 Level I MHP dates set for 1 Local Decision-maker Meeting to be scheduled in 2009	August 1, 2009

The above MHP responsibilities are also outlined on the attached MHP Responsibilities Form. The MHP should submit this form to DMH at TBS@dmh.ca.gov to report their progress on these activities by August 1, 2009.

In October 2009, the Court is requiring an annual assessment report from DMH describing the overall implementation of the Nine Point Plan, including MHP TBS performance. DMH needs the MHP Responsibilities Form to inform the Court about the implementation of the Nine Point Plan.

DMH Responsibility	Completion Date
Produce the TBS Documentation Manual	June 30, 2009
Develop and post TBS Data Dashboards to the DMH TBS Website .	June 30, 2009
Produce a TBS Best Practices Manual	September 30, 2009
TBS Implementation Report to the Public and Federal Court	October 16, 2009
Convene Small County Strategy Session	February 1, 2010
Maintain ASIS and TACT meetings	Monthly
Work with contractor, CiMH, to develop and implement TBS training for MHPs	2009-2010
Develop and implement an outreach and coordination of care strategy	2009-2010

¹ For a list of Level I and Level II MHPs, please refer to [DMH Information Notice 08-38](#).

² The DMH has identified these target dates to support implementation of the Nine Point Plan.

³ In 2010, DMH will work with MHPs to determine 2010 meeting dates.

BACKGROUND

TBS as an EPSDT Supplemental Specialty Mental Health Service—Summary of Court Activity

As explained in DMH Information Notice 08-38, *Emily Q v. Bonta* is a class action lawsuit filed in 1998. The federal court ordered a permanent injunction and final judgment in favor of the plaintiffs 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. On April 23, 2009, the Court approved the Exit Plan.

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 to the Class; clarifies definitions of TBS “eligibility” and “at risk;” and includes strategies to increase TBS access and to improve the quality of TBS. The Plan is available on the DMH website (http://www.dmh.ca.gov/Services_and_Programs/Children_and_Youth/EPSDT.asp).

Definition of TBS

As outlined in DMH Information Notice 08-38, TBS is 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 is 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 is never a stand-alone therapeutic intervention. It is used in conjunction with another mental health service.

Revised Approach to TBS Based on the Nine Point Plan

Please refer to DMH Information Notice 08-38.

EXIT PLAN CRITERIA

The Exit Plan breaks out areas of responsibility for DMH, the MHPs and the Special Master according to three time periods:

- January 2009 through December 2010;
- January 2011 through December 2011; and
- January 2012 and forward.

This Information Notice will focus on the MHP responsibilities. The information regarding the *Exit to Success* is taken directly from the Court-approved Exit Plan for the Emily Q. v Bonta Case: Criteria for Performance and Termination of Jurisdiction.

Performance Requirements for the MHPs—January 2009 through December 2010

According to the Exit Plan, the 27 large- and medium-sized MHPs are required to engage in significant effort to fulfill the Court-ordered Nine Point Plan. This effort will include striving to increase TBS utilization, implementing quality TBS, engaging policy leaders and other key local stakeholder agencies in the TBS effort, engaging with professional staff and contract providers for TBS training, and meaningful engagement with local family members and youth.

Factors that the Special Master may consider to evaluate and certify MHP performance are outlined below. As new information and findings emerge over the next year through the Emily Q. Settlement Team, the Accountability Structure Implementation Strategy (ASIS) Task Group, the Technical Assistance, Communications and Training (TACT) Task Group, and the support contractors hired by DMH to work directly with the Level II MHPs⁴, the Special Master may consider additional factors to evaluate and certify MHP performance. It is the Special Master's intention, through a consensus approach, to incorporate into the exit process any additional measures that offer direct or proxy indicators of MHP efforts to achieve and sustain the benchmark requirements (described below). When the Special Master is satisfied with an MHP's performance based on the requirements of the Nine Point Plan and this exit plan as well as consideration of any additional factors, he shall certify that DMH and the individual MHP have succeeded in meeting the requirements of the Nine Point

⁴ For a list of these Level I and Level II MHPs, please refer to [DMH Information Notice 08-38](#).

Plan applicable to that MHP. The Special Master shall send a letter to the Director of DMH and the Director of the MHP informing them that the certification has occurred, and shall also notify the Court. The Special Master shall have discretion to certify an MHP prior to December 2010.

For the five MHPs that have been exempted from Level II because of current high TBS utilization (4% or above), the Special Master shall review their Level I reports and other documentation to ensure their continuing positive performance with TBS. When the Special Master is satisfied with an exempted MHP's performance, he shall notify the Court and send a letter to the Director of DMH and the Director of the MHP that DMH and the individual MHP have succeeded in meeting the requirements of the Nine Point Plan applicable to that MHP.

Each MHP that is certified will count toward the percentage of certified MHPs required by this plan for the Court to terminate jurisdiction.

Four Percent Benchmark for TBS Utilization

With this exit plan, the Court established a TBS utilization benchmark for the Level II and exempted MHPs of 4%. The 4% benchmark is calculated by dividing the number of children in an MHP receiving TBS by the number of children in that MHP who are receiving EPSDT Mental Health services in a given year. This TBS utilization benchmark will apply to the 27 large- and medium-sized MHPs, which represent all 22 Level II MHPs plus the 5 exempted MHPs; together, these 27 MHPs serve approximately 92% of the children who receive EPSDT mental health services in the State of California.

Strive to Increase TBS Utilization to the 4% Benchmark

All large- and medium-sized MHPs are strongly encouraged to achieve the 4% benchmark. For the Court to terminate jurisdiction by December 31, 2010, two-thirds (18) of the 27 large- and medium-sized MHPs must have reached the 4% TBS delivery threshold. If the Special Master determines that all other requirements are met, the Special Master shall certify an MHP that has achieved the 4% benchmark. If an MHP has met all other requirements, but has not achieved the 4% benchmark, the Special Master shall certify the MHP if the MHP demonstrates to the Special Master that it offers services equivalent to TBS to Emily Q. class members, and/or demonstrates that the MHP is on a trajectory to achieve the 4% benchmark no later than June 30, 2012. The Special Master shall have discretion to determine whether one or both of these additional criteria will be required in order to certify the MHP, and shall have discretion to look at TBS utilization rates prior to the start of the Nine Point Plan in determining the trajectory. Although being on a trajectory to

achieve the 4% benchmark is one avenue for certification, an MHP would have to demonstrate through data and service integrity that certification is appropriate.

The Special Master anticipates that the successful implementation of the Nine Point Plan will result in, at a minimum, 18 of the 27 certified MHPs achieving the 4% benchmark, and that these MHPs will represent a substantial percentage of all children in California who receive EPSDT Mental Health services⁵.

Implement Quality TBS to the Satisfaction of the Special Master

Quality of TBS will be determined by several factors including:

- Fidelity to the service integrity of Point Four of the Nine Point Plan as a practice standard in the MHP;
- Participation of staff and providers in the TBS training and use of the TBS Manuals described in Points Six and Seven;
- Family and youth participation in the Local Meetings;
- Analysis and documented review of the TBS data dashboard as a required tool in the Local Meetings.

MHPs demonstrate their ability to accurately employ procedure codes, cost reports and CSI data reporting for TBS services.

The Nine Point Plan includes a streamlined administrative process, which will involve some changes in administrative procedures associated with TBS. MHPs will demonstrate their ability to implement continuing and new procedures to the satisfaction of DMH.

Engage Other Key Local Stakeholders

The MHP will demonstrate participation of key local stakeholders in the TBS effort, including county Child Welfare Services, Juvenile Probation, the Juvenile Court (dependency and delinquency), and the County Office of Education, through:

- Stakeholder and policy leaders' attendance at the Local Meetings;
- Increased referrals from these stakeholders of Emily Q. class members for TBS;
- Increased TBS utilization by children referred from other county agencies.

⁵ For a list of the 27 MHPs, please refer to [DMH Information Notice 08-38](#).

Demonstrate commitment to provide outreach, training, and meaningful engagement for professional staff, contract providers, family members, and youth in the MHP.

Outreach, training, and meaningful engagement for professional staff, contract providers, family members, and youth will be demonstrated by the following:

- Participation of MHP and contract provider staffs, family members, and youth in local TBS trainings;
- Medi-Cal Quality Assurance activities that indicate inclusion of local TBS providers, family members, and youth;
- Ad hoc meetings between the MHP and local TBS providers, family members, and youth to promote the Nine Point Plan and improve local TBS efforts.

Small County Strategy

By February 2010, DMH, in consultation with the California Mental Health Director's Association (CMHDA) and the Special Master, shall convene a joint meeting with the 29 Level I small and small/rural county MHPs⁶ to explore their experience to-date with the Emily Q. Settlement Plan and to identify their needs for additional supports and services from DMH. The goal of this meeting will be to develop, through a consensus approach, a small/rural county-centered strategy to ensure the most appropriate utilization and quality of TBS in those regions. The Special Master shall have discretion to include participation of other appropriate individuals or organizations in this meeting.

Corrective Measures and Remedies

During the period January 1, 2009 through December 31, 2010, corrective measures and remedies will only be exercised for MHPs that are not participating in their respective requirements as outlined in the Nine Point Plan. Corrective measures and remedies include technical assistance and the remedies in the state mental health managed care regulations (Cal. Code of Regs., Tit. 9, § 1810.325, 1810.380, 1810.385), including site visits and corrective action plans. For further details, please refer to the [Court approved Exit Plan](#).

Termination of Jurisdiction by December 2010

The Special Master shall recommend that the Court terminate jurisdiction when he finds that:

- DMH has fully implemented Points One through Eight of the Nine Point Plan; and
- Two-thirds of the large-and medium-sized MHPs (18 MHPs) have been certified by the Special Master as having fulfilled the benchmark requirements, and have established the

⁶ For a list of Level I MHPs, please refer to [DMH Information Notice 08-38](#).

necessary conditions in the MHP to ensure sustained commitment to utilization, quality, performance, training, and engagement.

Performance Requirements for the MHPs—January 2011 through December 2011

For the period January 2011 through December 2011, MHPs that were not certified as of December 31, 2010, and are not making progress toward certification (as described above) during the January 1, 2011 through December 31, 2011 time period shall be subject to corrective measures and remedies.

DMH Assistance to MHPs

During 2011, the first year following termination of jurisdiction, MHPs that are making progress toward certification will receive support from DMH. The DMH shall also provide support to MHPs that were certified by the Special Master because they were on a trajectory to reach 4% by June 30, 2012, if support is needed to help those MHPs to achieve the 4% benchmark by June 30, 2012.

The MHPs that were previously certified to have reached the 4% benchmark will be reviewed by DMH. If any of these MHPs have fallen below the benchmark, DMH shall work with the MHP and provide support with the goal of bringing the MHP back in line with the expected trajectory.

For the Period of January 2012 and Forward

Corrective Measures and Remedies

In January 2012, supports through a DMH contractor to non-certified MHPs and to those previously certified but who fell below the 4% benchmark or failed to maintain a trajectory to reach the 4% benchmark by June 30, 2012, (as described above) will end. The only intervention DMH will offer to non-certified MHPs will be the corrective measures and remedies outlined on page seven of this Information Notice.

In the event that an MHP previously certified because it achieved the 4% benchmark or provided TBS-equivalent services reduces its TBS effort (or reduces TBS-equivalent services) such that it falls below the 4% benchmark, reduces the quality of its TBS services, disengages from its local agency partners, or disengages from its family members and youth, DMH shall impose corrective measures and/or remedies that DMH deems appropriate, with the goal of restoring the MHP to its former level of success in TBS.

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With respect to MHPs previously certified because they were on a trajectory to reach the 4% benchmark by June 30, 2012, DMH will continue to provide support and assistance to these MHPs as necessary to assist them in achieving the 4% benchmark by June 30, 2012. In the event that an MHP previously certified because it was on a trajectory to reach the 4% benchmark by June 30, 2012, fails to meet the 4% benchmark by June 30, 2012, reduces the quality of its TBS services, disengages from its local agency partners, or disengages from its family members and youth, DMH shall impose corrective measures and/or remedies outlined above that DMH deems appropriate, with the goal of restoring the MHP to its former level of success in TBS. DMH shall have discretion to determine which corrective measures and/or remedies will be imposed.

For technical assistance and support, please contact your County Technical Assistance specialist listed on the DMH website at http://www.dmh.ca.gov/Services_and_Programs/Local_Program_Support/County_Technical_Assistance.asp.

Sincerely,

Original signed by

STEPHEN W. MAYBERG, Ph.D.
Director

Enclosure: MHP Responsibilities 2009