IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

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| J.B., L.P., L.M., and L.S., by and through their next friends,  Plaintiffs, | ) ) ) ) ) ) ) ) ) |  |
| v.  GOVERNOR PHIL BRYANT, *et al.*,  Defendants. |  | CASE NO. 3:10-CV-153-HTW-MTP |

**Department of Justice Statement of Interest[[1]](#footnote-1)**

The United States previously filed a Statement of Interest in this matter because the litigation implicates the proper interpretation of the Early and Periodic Screening, Diagnostic and Treatment (“EPSDT”) provisions of Title XIX of the Social Security Act (“Medicaid Act”), 42 U.S.C. 1396 *et seq.*, and title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. 12101 *et seq.*. The Magistrate Judge assigned to this matter recently issued a Report and Recommendation in which he recommended granting Defendants’ Motion to Dismiss Count One of the Plaintiffs’ Complaint. In reaching his recommendation, the Magistrate interpreted the language of the EPSDT provisions of the Medicaid Act.

It is again in the United States’ interest to submit a Statement of Interest to clarify the meaning of the statute so that it may be applied as intended by Congress and as interpreted by the federal regulatory agencies charged with its implementation.

**EPSDT Screening Requests**

The Magistrate’s recommendation relies on his interpretation of 42 U.S.C. § 1396a(a)(43)(B), the requirement that states screen EPSDT-eligible children to determine whether they need treatment and what treatment they needed. He found that the Plaintiffs had not stated a claim because they “fail[ed] to request the screening” that precedes the State’s obligation to provide treatment. Magistrate Judge’s Report and Recommendations, Docket No. 55, at 10.[[2]](#footnote-2) According to the plain language of the statute, this screening obligation is incumbent upon a state only when it is requested. However, a child’s visit to a medical professional to address a behavioral problem is in fact a screening encounter related to that behavioral problem. The family need not use the term “EPSDT screen” when requesting such services. Rather, as both the federal and state agencies administering the Medicaid Act have made clear, any such visit or contact with a qualified medical professional is sufficient to satisfy EPSDT’s screening requirement. Plaintiffs have pled that they presented themselves to medical professionals and received mental health services. *See* Complaint ¶¶ 45-46 (J.B. was in custody of the Department of Mental Health at the time the Complaint was filed and had an intake interview at the state’s treatment facility, including an examination by a physician), ¶53 (L.P. entered a state hospital and was transferred to a secure treatment facility), ¶55-57 (L.M. was hospitalized for mental health treatment and committed to the state hospital for five months), and ¶61 (L.S. received limited outpatient counseling and medication management). These contacts with medical professionals constitute screenings for the purposes of EPSDT.

The Department of Health and Human Services’ regulations define screenings as “regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth.” [42 C.F.R. § 441.56(b)(2001)](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000547&DocName=42CFRS441.56&FindType=L). Guidance from the Centers for Medicare and Medicaid Services (“CMS”), the federal agency charged with administering the Medicaid Act, indicates that EPSDT screening requests need not be different than other interactions with medical providers. In 2001, CMS explained, “[W]e have long considered any encounter with a health care professional practicing within the scope of his/her practice [to be] inter-periodic screening.” CMS Letter to State Medicaid Directors #01-006, 11 (Jan. 10, 2001) (attached as Exhibit 1).[[3]](#footnote-3) Similarly, the State of Mississippi has created both a periodic schedule for EPSDT screening, and it has also identified visits to the doctor other than for periodic screens as “interperiodic screens.” *See* Mississippi Division of Medicaid, MS Cool Kids FAQs, available at: <https://msmedicaid.acs-inc.com/msenvision/AMA_ADA_licenseAgreement.do?strUrl=MS%20Cool%20Kids%28EPSDT%29&method=accept>. Thus, both the federal government and the State of Mississippi recognize that when a Medicaid eligible child visits his or her medical professional seeking guidance and treatment, the encounter qualifies as a request for an EPSDT screening.[[4]](#footnote-4)

**Conclusion**

A screening under EPSDT need not be a formal event separate from a child’s normal assessment and treatment interactions with his or her medical providers. To the extent that the Magistrate’s recent recommendations rely on an interpretation of the Medicaid Act that would require a parent or caretaker to make a formal request for an “EPSDT screening,” the recommendations should be rejected. Any visit to a medical provider seeking a Medicaid diagnosis and/or treatment would necessarily include a screening as to the condition identified and would qualify the child for medically necessary EPSDT services necessary to address that condition.

Dated: September 6, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties.

*/s/* Ryan Wilson

1. Under 28 U.S.C. § 517, “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.” [↑](#footnote-ref-1)
2. To the extent that the Court finds that alleging a request for a screening is necessary to state a claim under EPSDT, that could easily be rectified with the filing of an amended complaint. [↑](#footnote-ref-2)
3. Courts have afforded CMS’ interpretations of the Medicaid Act respectful consideration because of the authority delegated to the Secretary of the Department of Health and Human Services under the Act and because of the agency’s expertise. *Katie A. v. Bonta*, 481 F. 3d 1150, 1154-55 n. 11 (9th Cir. 2007); *see also* *S.D. v. Hood,* 391 F.3d 581, 590 n.6 (5th Cir. 2004); *Wis. Dep't of Health & Family Servs. v. Blumer,* 534 U.S. 473, 497 (2002). [↑](#footnote-ref-3)
4. The State’s argument in its Motion to Dismiss rested on the premise that Plaintiffs must provide a “particularized allegation that there is any particular corrective treatment, any particular services that these individuals think they are entitled to that Medicaid hasn’t provided or has not provided for.” (H. Pizzetta, Motion Hearing Transcript, August 19, 2011, p. 14). However, as the Magistrate correctly held, EPSDT does not require that Plaintiffs identify the particular service necessary to treat their condition, only that the State “arrange for corrective treatment of conditions discovered through the screening provided under Subsection (43)(B).” Report and Recommendations, p. 6. [↑](#footnote-ref-4)