

**Rosie D. News Stories                              April 2021**

**Plaintiffs Oppose Defendants’ Motion to Terminate the *Rosie D.* Judgment**

On February 1, 2021, the Commonwealth of Massachusetts filed a Motion to end the Rosie D. case.  The motion claimed that the state had fulfilled all of the requirements of the Court’s Judgment and Remedial Plan, had cured all of the underlying violations of federal Medicaid law, and had established a stable – actually exemplary – children’s mental health system.  The Motion was supported by a Statement of Facts which mostly recited actions taken to create the required home-based services and infrastructure.  The Motion and Statement notably made no mention of the adequacy, quality, or outcomes of those services or the impact on children and youth with SED.  Nor did it address the persistent concerns with long waiting lists for services, poor evaluations of services, or the failure to provide care coordination to thousands of children.

On April 1, 2021, the plaintiffs submitted a comprehensive [**Opposition to Defendants’ Motion to Terminate or Modify the Judgment**](http://rosied.org/resources/Documents/Plaintiffs%20Opposition.pdf)**,** arguing that termination of Court oversight and jurisdiction in *Rosie D. v. Baker* was premature, and that the defendants had not proven substantial compliance with the terms of the Judgment**.** Supporting the Plaintiffs’ Opposition are three expert affidavits and three affidavits from fact witnesses – families and providers -- familiar with the implementation of *Rosie D*. home-based services in Massachusetts.

Relying on the defendants’ own data, the plaintiffs’ [**Statement of Material Facts**](http://rosied.org/resources/Documents/Plaintiffs%20Statement%20of%20Material%20Fact.pdf) illustrates the myriad of ways in which implementation efforts have fallen short of the requirements of the Judgment, failed to fully remedy underlying violations of federal Medicaid law, and failed to put in place a durable remedy.

Specifically, plaintiffs’ allege that the defendants remain out of compliance with six key obligations set out under the Judgment and required by federal law: (1) the provision of timely access to remedial services; (2) the establishment of an adequate network of providers with sufficient capacity to provide timely access to remedial services; (3) the delivery of adequate care coordination and remedial services to eligible youth with Serious Emotional Disturbance (SED); (4) the provision of Intensive Care Coordination (ICC) and In-Home Therapy (IHT); (5) the completion of CANS assessments for children leaving acute inpatient, community-based treatment, and residential programs; and (6) the provision of crisis services.

A hearing date on the defendants’ [**Motion for Termination or Modification of the Judgment**](http://rosied.org/resources/Documents/Defs%20Motion%20to%20Terminate%20or%20Modify%20Judgment.pdf) is anticipated this spring.

**Court to Hear Plaintiffs’ Affirmative Motions to Modify the Judgment**

In addition to the Defendants’ Motion to Terminate or Modify, the plaintiffs have filed three Motions to Modify the Judgment on behalf of *Rosie D*. class members.  Each motion is discussed below.

[**Plaintiffs’ Motion To Modify The Judgment To Incorporate The Defendants’ EPSDT Timeliness Standard for Remedial Services**](http://rosied.org/resources/Documents/Plfs%20Motion%20to%20Modify%20on%20Timeliness%2012.21.20.pdf) would require defendants’ to comply with their long-standing 14 day standard for the initiation of home-based services.  As described in plaintiffs’ supporting [**Memorandum**](http://rosied.org/resources/Documents/Plfs%20Memo%20in%20Support%20Modification%20on%20Timeliness%2012.21.20.pdf), ensuring timely access to services is a central purpose of the *Rosie D*. remedy.  It is required by performance specifications created under the Judgment, and necessary to remedy the violations of Medicaid requirements on reasonable promptness and Early Periodic Screening Diagnosis and Treatment (EPSDT) found in the District Court’s 2006 liability decision.  In 2019, the District Court concluded that the defendants had persistently failed to comply with this timeliness standard for between one-third and two-thirds of all children with Serious Emotional Disturbance (SED).  But because the District Court had not formally modified its Judgment to include this standard, the Court of Appeals reversed the decision.  The plaintiffs’ Motion to Modify would cure this problem and make the standard a mandatory and enforceable provision of the Judgment.

The defendants’ own data continues to show that a significant percentage of class members do not receive medically necessary home-based services within the required timeframe.  Plaintiffs’ proposed modification would require that class members are offered an initial, face-to-face appointment within 14 days of a service request, as required by the defendants’ EPSDT timeliness standard.

[**Plaintiffs’ Motion to Modify the Judgment to Incorporate Outpatient Therapy**](http://rosied.org/resources/Documents/Pls%27%20Motion%20to%20Modify%20Incorporating%20Outpatient%20Therapy.pdf) would require adequate care coordination for class members who currently depend on outpatient therapists to perform this function.  As described in plaintiffs’ supporting [**Memorandum**](http://rosied.org/resources/Documents/Pls%27%20Memo%20to%20Modify%20Outpatient%20Therapy.pdf), the absence of adequate service coordination was a central finding in the Court’s 2006 liability decision.  This deficiency led to the creation of Wraparound, Intensive Care Coordination as a central component of the home-based service system.  Outpatient therapists were never intended to provide care coordination under the Judgment.  Nevertheless, over the plaintiffs’ objection, the defendants conditioned receipt of certain remedial services on approval by outpatient therapists, and expected these therapists to provide the requisite service coordination that the children needed.  They they claimed that the performance of outpatient therapists was not covered by the Judgment and not within the Court’s oversight and jurisdiction.

Reports commissioned by the defendants have shown that outpatient providers are limited in their ability to make appropriate referrals to remedial service providers, to communicate adequately with collateral providers, schools, and state agency staff, and to effectively coordinate service delivery.  The plaintiffs’ proposed modification would make clear that if outpatient therapists are expected to provide service coordination to children and youth with SED who are class members in this case, they must perform the same basic service coordination activities for which ICC care managers are responsible under the Judgment.  The Motion would also make clear that these activities are covered by the Judgment and are enforceable by the Court.

Finally, [**Plaintiffs’ Motion to Modify Paragraph 52 of the Judgment and to Reinstate Court Monitoring and Reporting**](http://rosied.org/resources/Documents/Pls%27%20Motion%20to%20Modify%20Monitoring%20and%20Reporting.pdf) would re-appoint Karen Snyder as the Court Monitor, and require the continuation of defendants’ reporting obligations, which ended on June 1, 2020, as a result of the Court of Appeals decision.  Plaintiffs’ Motion and [**Memorandum**](http://rosied.org/resources/Documents/Pls%27%20Memo%20to%20Modify%20Monitoring%20and%20Reporting.pdf) sought to ensure that the Court had the assistance of an independent disability professional in evaluating the pending motions, including the defendants’ implementation activities and claims of compliance with the Judgment.   After further briefing and a hearing with the parties, the Court issued an [**Order** **Appointing Technical Advisor**](http://rosied.org/resources/Documents/Court%27s%20Final%20Order%20on%20Technical%20Advisor.2.10.21.pdf).  Pursuant to this Order, Ms. Snyder will advise the Court on technical, data, and historical matters related to the pending motions.  The need for modification of paragraph 52 of the Judgment, including continued court monitoring and reporting by the defendants, will depend upon the disposition of these motions.