

Did You Know?

Remembering EPSDT in the Wake of Medicaid Cuts.

Many states are struggling to contain their budgets and have trimmed or are considering ways to trim their Medicaid expenditures. In New York, for example, out-patient physical and occupational therapy are limited to 20 visits per year for most populations, and compression and surgical stockings are now available only to those who are pregnant or have venous stasis ulcers.

Whether such service cutbacks for adults will survive legal challenge is uncertain. On the other hand, advocates and attorneys should be skeptical of service cutbacks for children, particularly in light of the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, a mandatory service category for all states. 42 USC 1396a(a)(10)(A), 42 USC 1396d(a)(4)(B).

The EPSDT program creates a mandatory category of services for Medicaid recipients under the age of 21. It requires states to provide “such early and periodic screening and diagnosis ... to ascertain...physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby” 42 USC 1396d(a)(4)(B). Importantly, EPSDT requires that states provide all mandatory and optional services “*whether or not such services are covered under the State plan.*” 42 USC 1396d(r)(5)(emphasis added).

According to the Centers for Medicare and Medicaid Services (CMS) State Medicaid Manual, Overview, § 5010(B), EPSDT services were intended to be a comprehensive child health program. (Note: The CMS State Medicaid Manual is available at www.cms.hhs.gov/Manuals. At time of press the state manual was located under “Paper-Based Manuals.”) As noted in *Frew v. Gilbert*, 109 F.Supp.2d 579, 662 (E.D. Tex. 2000), “[t]he plain language of the statute demonstrates that Congress was attempting to increase preventive healthcare services for minor Medicaid recipients.” The EPSDT program imposes an obligation upon each state to have a program that includes: outreach and informing; screening, diagnosis and treatment services; adequate provider participation; and reporting. 42 USC 1396d(r); 42 CFR 441.50 *et seq.*

EPSDT mandates periodic and comprehensive health assessments. As a basic requirement, a child’s health needs must be assessed through initial and periodic (regularly scheduled) screening and evaluation. A screening must include, but not be limited to, a comprehensive health and developmental history, a comprehensive unclothed physical examination, appropriate vision testing, appropriate hearing testing, appropriate laboratory tests, and dental screening services. 42 CFR 441.56.

The comprehensive health and developmental history assessment must determine whether the individual’s developmental processes fall within a normal range of achievement according to age and cultural background. The CMS State Medicaid Manual, § 5123.2(A)(1)(a), states that assessments should at least include:

- gross motor development, focusing on strength, balance, and locomotion;
- fine motor development, focusing on eye-hand coordination;
- communication skills or language development, focusing on expression, comprehension, and speech articulation;
- self-help and self-care skills;
- social-emotional development, focusing on the ability to engage in social interaction with other children, adolescents, parents, and other adults;
- cognitive skills, focusing on problem solving or reasoning;
- as children age, visual-motor integration, visual-spatial organization, visual sequential memory, attention skills auditory processing skills, auditory sequential memory; and
- for adolescents, potential presence of learning disabilities, peer relations, psychological/psychiatric problems and vocational skills.

Once a defect, physical or mental illness, or condition has been identified by a screen, any service necessary to correct or ameliorate said defect, illness, or condition must be provided to an EPSDT recipient whether the service or item is otherwise included in the State plan. 42 USC 1396d(r)(5); 42 CFR 441.50. The Medicaid Act requires states to provide diagnostic services, treatment, and other measures to correct or ameliorate conditions discovered by mandated screening, even when those services are not included in the state plan for adult recipients. 42 USC 1396d(r). All the optional categories of service become mandatory for Medicaid recipients under the age of 21.

A wide variety of items or devices that are not covered as DME under the category of "home health services" for adults, are covered under EPSDT when such items or devices are medically necessary for persons under age 21. Some of the categories that might include assistive technology (AT) are home health care services; physical and occupational therapy and speech-language pathology services (all include necessary equipment pursuant to 42 CFR 440.110); prescribed drugs, dentures, and prosthetic devices; eyeglasses; and other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level. 42 USC 1396d(a)(7), (11), (12), (13); see also, 42 CFR Part 440.

While states have latitude in making service cuts for adult Medicaid recipients, EPSDT severely restricts their ability to cut services for recipients under the age of 21. EPSDT is discussed in great detail in our Winter 2008 issue of *AT Advocate*, available at www.nls.org/av/winter08.pdf.

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