



Maine Developmental Disabilities Council

March 29, 2023

Testimony Neither For Nor Against of LD 435, Resolve, to Ensure the Provision of Medically Necessary Behavioral Health Care Services for Children in Their Homes and Communities

Senator Baldacci, Representative Meyer and the distinguished members of the Committee on Health and Human Services:

My name is Nancy Cronin, and I am the Executive Director of the Maine Developmental Disabilities (DD) Council.¹ Medicaid **requires** all eligible children receive “Early and Periodic Screening, Diagnosis and Treatment,” or EPSDT as it became known. These requirements, put in law in 1967, expanded Medicaid’s role beyond treatment of illness to include promoting childhood growth and development. Screening and diagnosis services are intended to identify physical and mental conditions, and treatment services are to be provided to “correct or ameliorate defects and chronic conditions.”²

This bill appears to create a resolve to require medically necessary behavioral health services in Maine. That requirement already exists through the EPSDT law. Now, I am not saying at all that Maine is in compliance of that law as I am not sure that we are. EPSDT is not widely known and for those who do know about it, it remains extremely unclear HOW to access treatment services under optional EPSDT. Further, I don’t believe that having children waiting for services or unable to access the necessary services complies with EPSDT. Given the light shed on our

¹ Councils on Developmental Disabilities were created through the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) in 1970. Maine’s DD Council has been advocating with and for individuals with developmental disabilities for over 50 years. The DD Council is a federally funded, independent organization with members from across the state, including persons with disabilities, family members, and representatives of public and private agencies which provide services and/or funding for services for individuals with developmental disabilities. As required in federal law, we are involved in advocacy, capacity building and systemic change activities, with the goal that individuals with developmental and other disabilities of all ages are fully included, integrated, and involved in their communities and the decisions impacting their lives.

² <https://mchb.hrsa.gov/programs-impact/early-periodic-screening-diagnosis-treatment#:~:text=Mental%20Health%20and%20EPSDT&text=EPSDT%20also%20finances%20diagnostic%20and,are%20covered%20for%20adult%20services.>

States waitlists by the DOJ report and how that connects to Olmstead³, it would be unsurprising to me if the State was also sued and challenged that we are not in compliance with Medicaid's EPSDT requirement.

Over the past two decades there have been numerous lawsuits and court decisions reaffirming states' responsibilities to provide the full range of screening, diagnostic and treatment services and assure access to care at a level that meets each child's needs. For example, a lawsuit in Maine resulted in a settlement agreement in October, 2008, addressing timely delivery of early intervention services to children ages 0-5 and setting out a series of required actions to be undertaken by DHHS to assure that children and their families know about their rights and have access to needed services. That settlement named *KS vs Harvey* is still legally binding although I am unsure if the settlement is remembered or being fulfilled. (I have a copy of this settlement and would be more than happy to email it to anyone who might find it helpful.)

We recommend amending this bill's language to direct the Department of Health & Human Services to form a work group to evaluate the current system of providing early periodic screening, diagnosis and treatment services, with especial consideration to the T, treatment, portion of EPSDT in the State and to report to the workgroup's findings by January 15, 2024, to the Joint Standing Committee on Health & Human Services. Further include within the resolve that the Joint Standing Committee would be authorized to submit legislation to the Second Regular Session of the 131st Legislature related to the report in order to facilitate the implementation of the workgroup's recommendations.

Thank you for this opportunity to provide input and I am available for any questions.

A handwritten signature in black ink, appearing to be "John Brown", written in a cursive style.

³ <https://www.justice.gov/opa/pr/justice-department-finds-maine-violation-ada-over-institutionalization-children-disabilities>