DISABILITY RIGHTS MAINE

MEMORADUM

To: Joint Standing Committee on Health and Human Services
From: Kim Moody, Executive Director, Disability Rights Maine
Re: *Risinger v. Concannon*
Date: May 6, 2021

Risinger v. Conannon was a class action law suit brought on behalf of then current or future recipients of Medicaid in Maine under the age of 21 who had a "mental impairment" and for whom the state was failing to provide medically necessary, in-home mental health services in a reasonably prompt manner. The defendants were the Commissioner of the Department of Human Services (DHS) and the Commissioner of the Department of Behavioral (DBDS) and Developmental Services. DHS was named because it was then the single Medicaid agency and DBDS was named because they actually provided services. We sought injunctive relief.

Early Periodic Screening Diagnosis and Treatment (EPSDT) is a Medicaid entitlement program for those under 21. *A list of services available under EPSDT is attached*. The federal government provides most of the funds for EPSDT services. The theory behind the program is that by spending money now to cure or ameliorate medical conditions in children, the state will achieve a double win: it will improve the lives of the children and their families; and it will reduce the likelihood that greater sums of money will need to be spent on these children in the future.

The issue in *Risinger* was reasonable promptness. Federal regulations require the state to provide in-home support services to children who need them within 6 months of being determined to be Medicaid eligible. The

focus of *Risinger* was on case management services provided under Sec. 13 and in-home supports services provided under then Sec. 24 & Sec. 65 of the MaineCare Manual. The state was not providing the services on a timely basis, and did not even have the systems in place to know with any reasonable accuracy how badly it was doing. Reasonable estimates were that from 600 to 1000 eligible children were not receiving the services, with most languishing on waiting lists.

The case settled May 3, 2002. Under the terms of the settlement, the defendants had to develop a service or treatment plan for each child within 120 days of the eligibility determination and then an additional 60 days after that to implement the plan for each child, thus meeting the 180-day requirement of federal law. The state also agreed to promulgate regulations implementing the settlement agreement, which they did. Under the regulations, only the 180-day deadline is enforceable. The deadlines were outside deadlines, with the expectation that most children would receive services in much shorter periods.

The settlement agreement required the DBDS to report to the attorneys on the case, Pierce Atwood, MEJP and DRM, for 6 quarters beginning with the quarter ending Sept. 30, 2002, on their progress coming into compliance with the settlement agreement. The case was dismissed on July 22, 2002, with the Court retaining jurisdiction to enforce the settlement.

According to the first report, received in November 2002 covering the quarter ending Sept. 30, 2002, there were 19 children who had waited at least 180 days for service and case management plans, 460 children who had not received a treatment plan within 120 days and 330 who children who had not received in-home supports within 180 days. These numbers reflected improvement over the prior state of affairs, but fell far short of what was required under the law and under the terms of the settlement.

We wrote the state in November 2002 expressing our concern and asking to meet with them. We met in December 2002 and they offered a number of explanations as to why so many children were waiting but little in the way of how to fix it.

In January 2003, we went back to court, filing a Motion to Enforce the Settlement Agreement. In February 2003, we reached a new agreement with the state under which they would consent to a Court order requiring the state

to retain an expert to assess areas of compliance and noncompliance and to provide advice on ways to come into compliance. The order provided that the state would be obligated to follow the expert's recommendations unless the state could show that there was a better and quicker way to come into compliance. The state also agreed to provide the attorneys with monthly reports describing its efforts to come into compliance with the settlement agreement until it fully complied with the settlement agreement for three consecutive months. The court also extended the time within which it would retain jurisdiction to enforce the settlement agreement.

Clarence Sundrum, Esq., the Court Master in the Community Consent Decree case (after Pineland), was hired as the expert. Clarence issued a preliminary report in March of 2003 and a final report in July 2003. In a nutshell, the report confirmed the non-compliance, and set forth detailed recommendations for achieving compliance

The State eventually came into compliance. Sec. 24 services are now Sec. 28 services. Sec. 65 services have been revised a number of times.

You can find today's numbers updated at:
https://www.maine.gov/dhhs/ocfs/data-reports-initiatives/childrens-behavioral-health

EPSDT Scope of Benefits

Mandatory services:

- Inpatient hospital services
- Outpatient hospital services
- Rural health clinic services
- Federally-qualified health center services
- Laboratory and X-ray services
- Nursing facility services for adults
- EPSDT services
- Physician services
- Family planning services and supplies
- Physician services
- Medical and surgical services furnished by a dentist (with limitation)
- Nurse-midwife services
- Pediatric nurse practitioner or family nurse practitioner services
- Home health services for persons eligible to receive nursing facility services

Optional services (for adults. mandatory under EPSDT when necessary to correct or ameliorate an illness or condition):

- Home health care services (includes nursing services, home health aides, medical supplies and equipment, physical therapy, occupation therapy, speech pathology, audiology services)
- Private duty nursing services
- Clinic services
- Dental services
- Physical therapy and related services
- Prescribed drugs
- Dentures
- Prosthetic devices

- Eyeglasses
- Other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services recommended for the maximum reduction of physical *or* mental disability and restoration of an individual to the best possible functional level
- Intermediate care facility for the mentally retarded services
- Inpatient psychiatric hospital services for individuals under age 21
- Hospice care
- Case-management services
- TB-related services
- Respiratory care services
- Personal care services
- Primary care case management services
- Any other medical care, and any other type of remedial care recognized under state law, specified by the Secretary (of DHHS)