

EXIT PLAN for the EMILY Q. V BONTA case
Criteria for Performance and Termination of Jurisdiction

“Exit to Success”

Revised April 7, 2009

For the Court to terminate jurisdiction over the Emily Q. case, the California Department of Health Care Services (DHCS) and the California Department of Mental Health (CDMH) must demonstrate that the Nine-Point Plan approved and adopted by the Court on November 14, 2008, has been implemented and that Therapeutic Behavioral Services (TBS) utilization will be both increased and sustained. This requires performance by CDMH, the Mental Health Plan (MHP) counties that contract with CDMH to deliver TBS at the local level, and the Emily Q. Special Master.

Although the parties are in the early stages of implementing the Nine-Point Plan¹ and the effects of this new plan are as yet unknown, the effort needs an exit plan with specific measures that will guide CDMH and the MHPs through December 31, 2010, the proposed date for termination of jurisdiction. It is likely, as information is gathered and experience is gained, that the Emily Q. Settlement Team and the Special Master may submit to the Court for approval, improvements, modifications, and clarifications to this exit plan that will increase the prospects for successful implementation of the Nine-Point Plan.

During the period of this exit plan, oversight will be provided by the Emily Q.

¹ A summary of the Nine Point Plan and the specifics of Points 1 through 8 are set forth as an attachment to the Second Quarterly Report in Response to Court’s Order Appointing Special Master, filed on September 25, 2008 (Docket No. 544).

Settlement Team members, including the Special Master, and by an array of key stakeholders that are being mobilized for this effort including the Accountability Structure Implementation Strategy (ASIS) and Technical Assistance, Communication and Training (TACT) task groups formed by CDMH. To date, the first eight points of the Nine Point Plan have been developed through consensus among the various parties to the settlement. However, some elements of the exit plan that are essential to Point Nine were not developed through consensus, and the Special Master – building on elements where consensus was reached – has stepped forward to propose an exit plan. As the process moves forward, the Special Master encourages all parties to continue to strive for consensus in their understanding of the process and to remain engaged in this collaborative and cooperative effort to ensure that all children in the Emily Q. class who could benefit from TBS are able to receive the appropriate level of services.

The steps outlined in this exit plan meet the Emily Q. Settlement Team criteria that the plan must: be do-able; not let the perfect be the enemy of the good; be within the law and Court Order; increase utilization; decrease disproportionality between MHPs; show evidence of improvement, both quantitative and qualitative; be aligned with the parties' interests; demonstrate simplicity; be sustainable; and result in faster service access.

This exit plan breaks out areas of responsibility for CDMH, the MHPs and the Special Master according to three time periods: January 2009 through December 2010; January 2011 through December 2011; and January 2012 and forward. In brief, this exit plan describes the following:

Activities for the Period January 2009 through December 2010

- Performance Requirements for CDMH
- Performance Requirements for the MHPs
- Performance Requirements for the Special Master
- Small County Strategy
- Corrective Measures and Remedies
- Termination of Jurisdiction by December 2010

Activities for the Period January 2011 through December 2011

- Performance Requirements for CDMH
- Performance Requirements for the MHPs

Activities for the Period January 2012 and Forward

- Corrective Measures and Remedies
- Emerging Trends and Best Practices

For the Period January 2009 through December 2010

This section of the exit plan describes activities that will take place during the period January 2009 through December 2010, and addresses performance requirements for CDMH, the MHPs and the Special Master, along with corrective measures and remedies available to CDMH, and requirements for termination of jurisdiction to occur by December 2010.

Performance Requirements for CDMH – January 2009 through December 2010

CDMH shall be required to complete the following activities prior to termination of jurisdiction in December 2010.

Implement Points One through Eight of the Emily Q. Nine-Point Settlement Plan

CDMH must fully implement Points One through Eight of the TBS Nine-Point Plan, as follows:

1. Reduce administrative barriers to TBS and not replace them with additional barriers;
2. Clarify eligibility for TBS and not confuse eligibility at a later time;
3. Establish an accountability system capable of determining and documenting TBS services by the MHPs;
4. Establish a fidelity performance model for TBS;
5. Develop coordinated linkages with other state agencies that serve TBS class members, especially the California Department of Social Services, Juvenile Justice agencies, and the Administrative Office of the Courts;
6. Develop and implement a comprehensive training program for TBS providers and administrators at the local level;
7. Develop, publish and maintain training manuals consistent with the comprehensive TBS training program; and
8. Develop and implement a TBS outreach effort to children, families, providers and other stakeholders.

Implement Information Notices Regarding TBS

To inform the MHPs and other stakeholders about the Nine-Point Plan and their responsibilities, CDMH shall maintain communication through a series of information notices.

Implement the State TBS “Data Dashboard”

One key element of the Nine-Point Plan is development of a Web-based “data dashboard” that displays the on-going current progress of all 56 MHPs. CDMH

must establish and maintain this on-line data dashboard system.

Document the MHPs' Ability to Answer the Four Key Accountability Questions Identified in Point Three of the Nine Point Plan

Level I and II MHPs are required to convene meetings to discuss the four key questions regarding TBS service delivery in their respective MHPs. Level I MHPs and the Level II MHPs that are not among the ten Level II counties selected for the more intensive process shall convene two meetings per year. The ten Level II MHPs selected for the more intensive process shall convene four meetings per year. (Specific details regarding the types of meetings and required attendees are set forth in Point Three of the Nine Point Plan. For purposes of this exit plan, these meetings will be referred to as the "Local Meetings.") CDMH must ensure that all MHPs conduct these Local Meetings and that MHP answers to the four questions are publicly posted on the Web.

Sustain the ASIS and TACT Groups

CDMH must sustain the ASIS and TACT Groups, including convening monthly meetings of each group and posting meeting minutes on the Web.

Produce an Annual Assessment of MHP TBS Performance in October 2009 and October 2010

CDMH shall provide the Special Master and the public with two annual assessments describing overall implementation of the Nine-Point Plan, including assessment of MHP progress in meeting the performance requirements established in this proposed exit plan. These annual assessments will provide core information to the Special Master for his reports to the Court regarding overall plan progress as well as progress toward termination of jurisdiction.

Performance Requirements for the MHPs – January 2009 through December 2010

The 27 large- and medium-sized MHPs are required to engage in significant effort to fulfill the Court-ordered Nine-Point Plan. This effort will include striving to increase TBS utilization, implementing quality TBS, engaging policy leaders and other key local stakeholder agencies in the TBS effort, engaging with professional staff and contract providers for TBS training, and engaging with local family members and youth who must be involved in the local TBS effort in meaningful and influential ways.

Factors that the Special Master may consider to evaluate and certify MHP performance are outlined below. As new information and findings emerge over the next year through the Emily Q. Settlement Team, ASIS, TACT, and the support contractors hired by CDMH to work directly with the Level II MHPs, the Special Master may consider additional factors to evaluate and certify MHP performance. It is the Special Master's intention, through a consensus approach, to incorporate into the exit process any additional measures that offer direct or proxy indicators of MHP efforts to achieve and sustain the benchmark requirements. When the Special Master is satisfied with an MHP's performance based on the requirements of the Nine Point Plan and this exit plan as well as consideration of any additional factors, he shall certify that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine Point Plan applicable to that MHP. The Special Master shall send a letter to the Director of CDMH and the Director of the MHP informing them that the certification has occurred, and shall also notify the Court. The Special Master shall have discretion to certify an MHP prior to December 2010.

For the five MHPs that have been exempted from Level II because of current high TBS utilization (4% or above), the Special Master shall review their Level I reports and other documentation to ensure their continuing positive performance with TBS. When the Special Master is satisfied with an exempted MHP's performance, he shall notify the Court and send a letter to the Director of CDMH and the Director of the MHP that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine-Point Plan applicable to that MHP.

Each MHP that is certified will count toward the percentage of certified MHPs required by this plan for the Court to terminate jurisdiction.

Four Percent Benchmark for TBS Utilization

With this exit plan, the Court establishes a TBS utilization benchmark for the Level II and exempted MHPs of 4% as calculated by the number of children in an MHP receiving TBS divided by the number of children in that MHP who are receiving EPSDT Mental Health services in a given year. This TBS utilization benchmark will apply to the 27 large- and medium-sized MHPs, which represent all 22 Level II MHPs plus the 5 exempted MHPs; together, these 27 MHPs serve approximately 92% of the children who receive EPSDT Mental Health services in the State of California.

Strive to Increase TBS Utilization to the 4% Benchmark

All large- and medium-sized MHPs² are strongly encouraged to achieve the 4%

² The 27 MHPs that are classified as "large- and medium sized" for purposes of the Nine Point Plan are: Los Angeles, San Diego, San Joaquin, Sonoma, Butte, Alameda, San Bernardino, Kern, Monterey, Tulare, Fresno, Marin, Merced, Orange, Placer/Sierra, Riverside, Sacramento,

benchmark. For the Court to terminate jurisdiction by December 31, 2010, two-thirds (18) of the 27 large- and medium-sized MHPs must have reached the 4% TBS delivery threshold. If the Special Master determines that all other requirements are met, the Special Master shall certify an MHP that has achieved the 4% benchmark. If an MHP has met all other requirements, but has not achieved the 4% benchmark, the Special Master shall certify the MHP if the MHP demonstrates to the Special Master that it offers services equivalent to therapeutic behavioral services to Emily Q.. class members, and/or demonstrates that the MHP is on a trajectory to achieve the 4% benchmark no later than June 30, 2012. The Special Master shall have discretion to determine whether one or both of these additional criteria will be required in order to certify the MHP, and shall have discretion to look at TBS utilization rates prior to the start of the Nine Point Plan in determining the trajectory. Although being on a trajectory to achieve the 4% benchmark is one avenue for certification, it should be understood that an MHP would have to demonstrate through data and service integrity that certification is appropriate.

The Special Master anticipates that the successful implementation of the Nine-Point Plan will result in, at a minimum, 18 of the 27 certified MHPs achieving the 4% benchmark, and that these MHPs will represent a substantial percentage of all children in California who receive EPSDT Mental Health services. At this time the Special Master will not recommend a fixed percentage of children that must be represented throughout the state. The Special Master will instead wait 12 months and observe the overall impact of the Nine-Point Plan on the utilization benchmark.

San Francisco, San Mateo, Santa Cruz, Solano, Stanislaus, Contra Costa, San Luis Obispo, Santa Barbara, Santa Clara, and Ventura.

At that time it may not be necessary to recommend to the Court a minimum statewide percent of all children in California who receive EPSDT Mental Health services. Special Master Saletta places confidence in the commitment of CDMH, the California Mental Health Directors Association (CMHDA), and the MHPs to fulfill these expectations through the Nine-Point Plan process.

Implement Quality TBS to the Satisfaction of the Special Master

Quality of TBS will be determined by several factors including:

- Fidelity to Point Four of the Nine-Point Plan as a practice standard in the MHP;
- Participation of staff and providers in the TBS training and use of the TBS Manuals described in Points Six and Seven;
- Family and youth participation in the Local Meetings;
- Analysis and documented review of the TBS data dashboard as a required tool in the Local Meetings.

MHPs demonstrate their ability to accurately employ procedure codes, cost reports and CSI data reporting for TBS services.

The Nine-Point Plan includes a streamlined administrative process, which will involve some changes in administrative procedures associated with TBS. MHPs will demonstrate their ability to implement continuing and new procedures to the satisfaction of CDMH.

Engage Other Key Local Stakeholders

The MHP will demonstrate participation of key local stakeholders in the TBS effort, including county Child Welfare Services, Juvenile Probation, the Juvenile Court (dependency and delinquency), and the County Office of Education,

through:

- Stakeholder and policy leaders' attendance at the Local Meetings;
- Increased referrals from these stakeholders of Emily Q. class members for TBS;
- Increased TBS utilization by children referred from other county agencies.

Demonstrate commitment to outreach to, provide TBS training to, and engage with professional staff and contract providers in the MHP.

Outreach to, training of and engagement with professional staff and contract providers will be demonstrated by the following:

- Participation of MHP and contract provider staffs in local TBS trainings;
- Medi-Cal Quality Assurance activities that indicate inclusion of local TBS providers;
- Ad hoc meetings between the MHP and local TBS providers to promote the Nine-Point Plan and improve local TBS efforts.

Demonstrate commitment to outreach to, provide TBS training to, and engage with family members and youth in the MHP.

Outreach to, training of and engagement with family members and youth will be demonstrated by the following:

- Participation of family members and youth in local TBS trainings;
- Medi-Cal Quality Assurance activities that indicate inclusion of family members and youth;
- Ad hoc meetings between the MHP and local family members and youth to promote the Nine-Point Plan and improve local TBS efforts.

Performance Requirements for the Special Master – January 2009 through December 2010

The Special Master assumes oversight obligations in partnership with the various parties, and shall perform the following activities that lead to termination of jurisdiction in December, 2010. As noted above, there are three bases for MHP certification: meeting or exceeding the 4% benchmark, providing TBS and TBS-equivalent services to meet the 4% benchmark, and being on a trajectory to reach the 4% benchmark. The criteria for certification for each of these categories are as follows:

MHPs That Meet or Exceed the 4% Benchmark

The Special Master shall review progress by the 27 large- and medium-sized MHPs toward completing their requirements as described above and as detailed in the Nine Point Plan. Specifically, the Special Master shall determine whether or not an MHP has achieved the 4% utilization benchmark, implemented quality TBS, engaged other key local stakeholders and policy leaders, engaged with professional staff and contract providers, and engaged with local family members and youth as outlined above. When the Special Master is satisfied that an MHP has fulfilled these expectations, he shall certify that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine-Point Plan applicable to that MHP.

MHPs That Provide TBS-Equivalent Services to Meet or Exceed the 4% Utilization Benchmark

Some of the 27 large- and medium-sized MHPs may request that the Special Master consider certification based on a combination of TBS and TBS-equivalent services, such as one-to-one behavioral intervention programs that may be part of a

non-Medi-Cal full service partnership funded through the Mental Health Services Act (MHSA) or SB-163 Wraparound, etc., to Emily Q. class members. The Special Master shall determine whether or not a proposed TBS-equivalent service is consistent with the best practice of TBS and, at his discretion, may count class members who receive a TBS equivalent service toward the total number of class members served. If the Special Master is satisfied that an MHP has met the 4 % utilization requirement through some combination of TBS and TBS-equivalent services, he shall certify that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine-Point Plan applicable to that MHP.

MHPs That Are on a Trajectory to Reach the 4% Benchmark by June 30, 2012

The Special Master shall work with MHPs to determine whether or not an MHP is on a trajectory to reach the 4% benchmark by June 30, 2012. The Special Master shall review progress by the MHPs toward completing their requirements as described above. Specifically, the Special Master shall determine whether or not an MHP has implemented quality TBS, engaged other key local stakeholders and policy leaders, engaged with professional staff and contract providers, and engaged with local family members and youth as outlined above. In addition to these requirements, the Special Master may take into consideration any or all of the following elements in determining if an MHP is on track to meet the 4% benchmark by June 30, 2012:

- The MHP has demonstrated a significant increase in TBS and/or TBS-equivalent services to Emily Q. class members, and can document that these percentage and numeric increases, if sustained, will reach the 4% benchmark by June 30, 2012. Specifically, and in measurable terms, the MHP must show that the rate of growth achieved during 2009 and 2010 will be sustained and will result in the MHP achieving the 4% benchmark by June 30, 2012.

- The MHP has demonstrated a significant increase in TBS and/or TBS-equivalent services to Emily Q. class members, but the existing percentage and numeric increases in TBS and/or TBS equivalent services will not reach the 4% benchmark by June 30, 2012. In that event, the Special Master may consider whether commitment of additional resources on the part of the MHP will result in increased services, so that the MHP will reach the 4% benchmark by June 30, 2012. The Special Master may consider certification in such a situation, provided the MHP: provides official documentation that adequate and appropriate resources have been committed for this purpose; the MHP demonstrates that the percentage and numeric increases, if sustained, together with the additional resources committed, will allow the MHP to reach the 4% benchmark by June 30, 2012; and the Special Master believes that with the commitment of these additional resources, the MHP will achieve the 4% benchmark by June 30, 2012.
- The MHP has documented budget and contract commitments that will lead to increased TBS or TBS-equivalent services.
- The MHP can demonstrate and document that it is giving class members priority access to TBS or TBS-equivalent services.
- The MHP documents working agreements that have led, will continue to lead, or will lead to an increase in TBS or TBS-equivalent services among county child welfare and probation agencies.

In order to ensure maximum flexibility for the Special Master to certify an MHP based on its trajectory, the Special Master reserves the right to consider additional measures and approaches.

When the Special Master is satisfied that an MHP has met these requirements, and

the other requirements of the Nine Point Plan and this exit plan, he shall certify that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine-Point Plan applicable to that MHP. Once an MHP is certified, it shall be counted toward the percentage of MHPs required for termination of jurisdiction.

For the five MHPs that have been exempted from Level II because of current high performance, the Special Master shall review their Level I reports, the data dashboards and other documentation to ensure their continuing positive performance with TBS. When the Special Master is satisfied that an MHP has fulfilled these expectations, he shall certify that CDMH and the individual MHP have succeeded in meeting the requirements of the Nine-Point Plan applicable to that MHP.

The Special Master shall utilize the CDMH October 2009 Report, experiences and perspective of the Emily Q. Settlement Team, and other factors, to make any necessary recommendations to the Court in January 2010.

Small County Strategy

By February 2010, CDMH, in consultation with CMHDA and the Special Master, shall convene a joint meeting with the 29 Level I small and small/rural county MHPs³ to explore their experience to date with the Emily Q. Settlement Plan and to identify their needs for additional supports and services from CDMH. The goal of this meeting will be to develop, through a consensus approach, a small/rural

³ The 29 small and rural MHPs are: Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kings, Lake, Lassen, Madera Mariposa, Mendocino, Modoc, Mono, Napa, Nevada, Plumas, San Benito, Shasta, Siskiyou, Sutter/Yuba, Tehama, Trinity, Tuolumne, and Yolo.

county-centered strategy to ensure the most appropriate utilization and quality of TBS in those regions. The Special Master shall have discretion to include participation of other appropriate individuals or organizations in this meeting.

Corrective Measures and Remedies

During the period January 1, 2009 through December 31, 2010, corrective measures and remedies will only be exercised for MHPs that are not participating in their respective requirements as outlined in the Nine-Point Plan. These measures and remedies are outlined in the next section of this exit plan.

Termination of Jurisdiction by December 2010

The Special Master shall recommend that the Court terminate jurisdiction when he finds that:

- CDMH has fully implemented Points One through Eight of the Nine-Point Plan; and
- Two-thirds of the large-and medium-sized MHPs (18 MHPs) have been certified by the Special Master as having fulfilled the benchmark requirements, and have established the necessary conditions in the MHP to ensure sustained commitment to utilization, quality, performance, training, and engagement.

For the Period January 2011 through December 2011

Performance Requirements for CDMH – January 2011 through December 2011

Upon termination of jurisdiction (December 31, 2010), CDMH shall assume responsibility for certifying MHPs as having completed their respective requirements as described in the Emily Q. Settlement Plan. CDMH shall maintain

the TBS or TBS-equivalent effort following termination of jurisdiction.

CDMH Support to MHPs that are Making Progress Toward Certification and Certified MHPs on a Trajectory to Reach the 4% Benchmark by June 30, 2012

During 2011, the first year following termination of jurisdiction, CDMH shall provide support to MHPs that are making progress toward certification. CDMH shall also provide support to MHPs that were certified by the Special Master because they were on a trajectory to reach 4% by June 30, 2012, if support is needed to help those MHPs to achieve the 4% benchmark by June 30, 2012. Support provided by CDMH through December 31, 2011, shall include assistance to the MHPs from CDMH's accountability contractor.

CDMH Review of Previously Certified MHPs

In October 2011, CDMH shall review the performance of MHPs that were previously certified by the Special Master. If an MHP that was previously certified because it reached the 4% benchmark or was providing TBS-equivalent services experiences a decline in services that causes it to fall below the 4% benchmark CDMH shall work with the MHP to increase either TBS or TBS-equivalent services to re-achieve the 4% benchmark. If an MHP that was previously certified because it was on a trajectory to reach the 4% benchmark is not making adequate progress to achieve the 4% benchmark by June 30, 2012, CDMH shall work with the MHP and provide support with the goal of bringing the MHP back in line with the expected trajectory. Through December 31, 2011, support to the MHPs described in this paragraph shall include assistance from CDMH's accountability contractor if such assistance is needed to help MHPs re-achieve the 4% benchmark, or to resume progress toward the trajectory to reach the 4% benchmark by June 30, 2012.

Corrective Measures and Remedies

MHPs that were not certified as of December 31, 2010, and are not making progress toward certification as described above during the January 1, 2011 through December 31, 2011 time period shall be subject to corrective measures and/or sanctions. CDMH shall impose an array of appropriate corrective measures including technical assistance and the remedies in the state mental health managed care regulations [Cal. Code of Regs., Tit. 9, § 1810.325, 1810.380 1810.385.], including site visits, Performance Improvement Plans, monitoring, imposition of corrective action plans, withholding Federal Financial Participation revenues, termination of the MHP's managed care contract and civil penalties against the MHP of up to \$5,000.

Review and Revision of the TBS Plan

Following termination of jurisdiction, CDMH, with input from key TBS stakeholders, will review and revise the Nine-Point Plan to sustain and improve TBS utilization, quality, training and engagement as the TBS effort matures in California.

Performance Requirements for the MHPs -- January 2011 through December 2011

For the period January 2011 through December 2011, MHPs that were not certified as of December 31, 2010, and are not making progress toward certification (as described above) during the January 1, 2011 through December 31, 2011 time period shall be subject to corrective measures and remedies as outlined above.

For the Period of January 2012 and Forward

Corrective Measures and Remedies

Beginning January 2012, supports through a CDMH contractor to non-certified MHPs and to those previously certified but who fell below the 4% benchmark or failed to maintain a trajectory to reach the 4% benchmark by June 30, 2012 , (as described above) will end. The only intervention CDMH will offer to non-certified MHPs will be the corrective measures and remedies outlined above.

In the event that an MHP previously certified because it achieved the 4% benchmark or provided TBS-equivalent services reduces its TBS effort (or reduces TBS-equivalent services) such that it falls below the 4% benchmark, reduces the quality of its TBS services, disengages from its local agency partners, or disengages from its family members and youth, CDMH shall impose corrective measures and/or remedies outlined above that CDMH deems appropriate, with the goal of restoring the MHP to its former level of success in TBS.

With respect to MHPs previously certified because they were on a trajectory to reach the 4% benchmark by June 30, 2012, from January 1, 2012 through June 30, 2012, CDMH will continue to provide support and assistance to these MHPs as necessary to assist them in achieving the 4% benchmark by June 30, 2012. In the event that an MHP previously certified because it was on a trajectory to reach the 4% benchmark by June 30, 2012, fails to meet the 4% benchmark by June 30, 2012, reduces the quality of its TBS services, disengages from its local agency partners, or disengages from its family members and youth, CDMH shall impose corrective measures and/or remedies outlined above that CDMH deems appropriate, with the goal of restoring the MHP to its former level of success in

TBS. CDMH shall have discretion to determine which corrective measure(s) and/or remedy(ies) will be imposed.

Emerging Trends and Best Practices

CDMH shall continue to promote and develop TBS to members of the Emily Q. class with the intent of sustaining TBS utilization, quality, partner engagement, and family member and youth participation. It is expected that TBS will be developed and refined as more is learned about successful therapeutic behavioral supports and interventions. With regard to improvements in TBS, CDMH is encouraged to adopt promising trends and new best practices as these emerge, with the intent of continuously improving TBS and TBS-equivalent services to members of the Emily Q. class. It is the intention of this exit plan that CDMH will maintain a competent and effective statewide TBS program from January 2012 into the future that is sufficient to meet the ongoing needs of Emily Q. class children and prevent any recurrence of litigation for failure to serve members of the class.

If a new Medi-Cal behavioral intervention service is approved in the future, and it is determined by CDMH to be an equivalent to TBS that affords children, youth and families the same level of engagement, quality and effectiveness as TBS, CDMH should not be constrained by the post-jurisdiction requirements described above from providing the best possible behavioral services and supports.