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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GAYNELL GRIER, DOROTHY CANTRELL, and CAROLYN FITTS, individually and on behalf of others similarly situated,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 79-3107 Judge Nixon
FREDIA WADLEY, Commissioner, Tennessee Department of Health; NATASHA METCALF, Commissioner, Tennessee Department of Human Services; JOHN FERGUSON, Commissioner, Tennessee Department of Finance and Administration; DONNA SHALALA, Secretary, United States Department of Health and Human Services; NANCY-ANN DEPARLE, Administrator, Health Care Financing Administration; KENNETH APFEL, Commissioner, Social Security Administration,	)	
Defendants.	)	

Agreed Order Governing TennCare Appeals for Children in State Custody

Pursuant to Section C(15) of the Revised Consent Decree Governing TennCare Appeals [Docket Entry No. 492; 10-26-99], the state has submitted a detailed plan and implementation timetable for effectuating the provisions of the Decree, as it affects TennCare services for children who are in state custody. The plan, which was filed January 5, 2000, has been jointly developed by the defendant state TennCare officials and the Tennessee Department of Children's

FP 1-14-00

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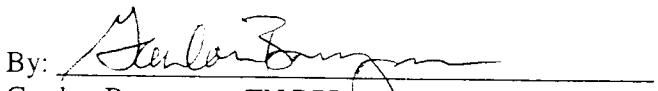
By: 

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FOR THE MIDDLE DISTRICT OF TENNESSEE
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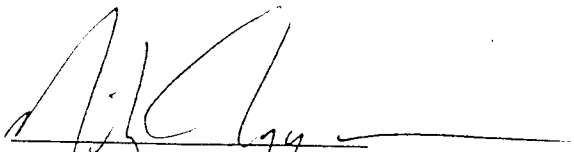
GAYNELL GRIER, DOROTHY CANTRELL and CAROLYN FITTS, individually and on behalf of others similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No. 79-3107-NA-CV Judge Nixon
FREDIA WADLEY, Commissioner, Tennessee Department of Health, *et al.*,	)	
Defendants.	)	

DEFENDANTS' DETAILED PLAN AND IMPLEMENTATION TIMETABLE FOR THE DEPARTMENT OF CHILDREN'S SERVICES

Pursuant to § III(c)(15)(e) of the Revised Consent Decree Governing TennCare Appeals ("Consent Decree"), and in accordance with the Agreed Order submitted by the parties on January 4, 2000, the defendants hereby file the accompanying Detailed Plan and Implementation Timetable ("the Implementation Plan") for the Department of Children's Services.

Respectfully submitted,

PAUL G. SUMMERS
Attorney General and Reporter



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CERTIFICATE OF SERVICE

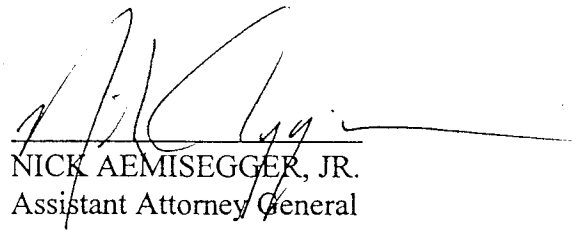
I hereby certify that a true and exact copy of the foregoing was sent by first class U.S. mail, postage prepaid, to:

Lenny J. Croce
Tennessee Justice Center
P. O. Box 4714
Oak Ridge, Tennessee 37831

and;

Gordon Bonnyman
Michele M. Johnson
Tennessee Justice Center
916 Stahlman Building
211 Union Street
Nashville, Tennessee 37201

on this the 5th day of January, 2000.



NICK AEMISEGGER, JR.
Assistant Attorney General

THE DEPARTMENT OF CHILDREN'S SERVICES
Detailed Plan and Implementation Timetable

I. Notice of Services/Rights To Be Provided

A. Notices at Staffings

1. For children in DCS custody, DCS will, through assessments and staffings, determine needed services for reaching permanency goals, including TennCare enhanced behavioral services[1] ("Services"). Assessments and Services will be discussed at the permanency planning staffing for each child. These staffings are held within 30 days of a child coming into state custody. As a result of the staffing, a permanency plan is developed which outlines the responsibilities of the agency, the parent, and other providers, as well as details the Services to be provided to the child.

2. DCS will invite all interested parties to staffings. There will be an opportunity for full discussion of the needs of the child. DCS will provide a Notice of Action to those who attend staffings. The Notice of Action will set forth the Services being provided as part of the Permanency Plan. The notice will include notice of right to initiate an appeal regarding the Services contained in the Permanency Plan, as well as the right to initiate an appeal regarding any Services deemed necessary, but not included in the Permanency Plan, and notification of

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[1]Enhanced behavioral services are those services which DCS is contractually obligated to provide pursuant to the interagency agreement entered into between DCS and the Bureau of TennCare. These services include (unless otherwise changed by contract) residential treatment, Levels 2/3/4, case management, specialized outpatient and symptom management, psychiatric rehabilitation, mental health visits exceeding 45 visits per year provided by the BHO, and substance abuse benefits exceeding maximums provided by the BHO (detox days in excess of 10 and inpatient and outpatient substance abuse treatment benefits in excess of the maximum lifetime limitation of $30,000).

delay of Services if it can reasonably be anticipated that there will be a delay. It will be mailed to the following who do not attend: child/youth (over 14), Involved Adult[2], attorney, GAL, TennCare Consumer Advocacy Program (or other contractor mutually agreed to by the parties, hereinafter referred to as "the Advocacy Contractor"), residential provider, or other advocate. If, at the staffing, an individual expresses an intent to appeal the Services contained in the Permanency Plan, the Notice of Action need only be delivered to the child's current caregiver, the Advocacy Contractor and, where appropriate, the child's biological parent(s).[3]

3. As indicated, the Notice of Action will contain a provision regarding delay of service. Due to the nature of long-term residential services, Services may not be available upon immediate determination of need. Even if those Services are available, preparations must be made before a child can enter a particular residential program. The child must be packed, transported, school and medical records forwarded, etc., in order to facilitate residential placement and the accompanying treatment. Therefore, DCS will provide notice of when the service is expected to be provided. DCS will indicate in the Notice of Action that any

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[2]An Involved Adult is a biological relative, or a present or former foster parent, who is identified as being currently involved in a child's life, such that it is appropriate for that adult to contribute to decision making regarding the child's care. It is the responsibility of the DCS case manager to identify such individuals and insure their inclusion in the child's permanency plan.

[3]When an individual expresses an intent to file an appeal at a staffing, a notation will be made on the staffing summary which is sent to the Advocacy Contractor informing the contractor of the identity of the individual who wishes to file an appeal. It will be the responsibility of the contractor to assist the individual in filing an appeal.

delay is appealable. The Notice of Action will be accompanied by an appeals form for the filing of appeals.

4. When Services are recommended at subsequent staffings, the same notice described above will be provided. This includes disruption staffings, staffings to determine treatment needs, or staffings to determine changes in level of care. If, following the initial staffing, additional Services are requested or concerns are identified regarding level of service or Service needs for a child, the DCS case manager will arrange for a subsequent staffing to be held within 10 days of the request or inquiry regarding Services.

5. IF an individual requests a service on behalf of a DCS child that requires a prompt response in light of the child's condition and the urgency of his need, as defined by a prudent lay person, AND, under the circumstances, there is not sufficient time to hold a staffing, THEN the child's DCS caseworker shall promptly respond to the individual's request without holding a staffing. If DCS denies the requested Service, DCS shall, within 2 days of responding to the individual's request, send a Notice of Action to the individuals listed in § I(A)(2). This Notice of Action is intended to inform the recipients of the Services requested and of DCS's reasons for denying the Services. This paragraph is not intended to replace or affect the disruption staffing already in place for DCS contracted providers.

6. Whenever DCS takes an "adverse action" requiring notice, DCS must issue notice as required by the order to all involved parties and to the Advocacy

Contractor. This notice is required whether or not DCS holds a staffing. The Revised Consent Decree requires notice for adverse actions consistent with the federal regulations.

B. Continuum of Care Programs

1. A number of DCS children are referred to DCS contractors ("Continuum Contractors") who administer needed Services to children within a Continuum of Care Services Model ("Continuum"). In the Continuum, a child enters the program as a Level II or Level III referral as designated by contract type. The provider is then responsible for arranging the Services needed by the child and family, progressing the child through less restrictive and more home/community-based placements/Services as soon as possible. Continuums allow the provider greater flexibility in designing Services for the child and family, the ability to facilitate the timely and appropriate movement of the child and his family through the service system and the ability to customize the delivery of Services to each child and family in the least restrictive manner.

2. A Continuum Contractor shall provide notice to DCS, and an Involved Adult, if any, and the Advocacy Contractor, of the following:

a. Monthly treatment reports; and

b. "Type A" incident reports as required by DCS policy.

3. The notice required by this section shall include a copy of the treatment report and, in the case of the Involved Adult, shall be accompanied by information regarding the availability of the TennCare appeals process and how to invoke that

process on the child's behalf.

4. The notice provisions regarding Continuum Contractors shall not be construed as an attempt by the parties to define the legal status of Continuum Contractors. The parties expressly reserve their right to litigate the issue of whether Continuum Contractors are appropriately defined as providers or MCCs under applicable law.

II. Discontinuation Of Services

A. Higher Level of Services Identified

If at any staffing, a higher level of service is determined to be needed, yet an appeal is received requesting a lower level, and the child/youth on an emergency basis requires Services of the higher level, the service of the higher level will be implemented and provided until the appeal is resolved or the Services are no longer necessary.

B. Special Provision for Appealing Providers

1. If an appeal is received from a DCS contracted provider requesting a continuation of stay for residential care, and all other interested parties have determined that the child should go to a different level of care or have the service discontinued, DCS will have its consulting medical director review the case. The consulting medical director is employed by the State of Tennessee. (Currently, Judy Regan, M.D. serves in this capacity).

2. If the consulting medical director certifies the child's treatment needs will not be jeopardized, the proposed transfer may continue and DCS will authorize an

attorney to represent the child if the child does not already have another attorney willing to represent him or her at the TennCare hearing. The attorney will represent the child at the hearing, and Services will be reinstated if determined to be medically necessary. Nothing in this paragraph otherwise supersedes the child's right to refuse Services.

III. Representation For Custody Children

A. DCS will contract with the Tennessee Association of Legal Services ("TALS") to provide representation for custody children at administrative hearings regarding Services if such children do not already have another attorney willing to represent them at the TennCare hearing, and to provide representation for custody children in judicial review of TennCare administrative hearing decisions if such children do not already have another attorney willing to represent them in judicial review of TennCare administrative hearing decisions.

B. In the case of non-urgent TennCare appeals, the Health Units in each region will notify TALS by fax or E-mail within two working days after receiving a notice from TennCare that a child's TennCare appeal has been sent to the Office of General Counsel for the Department of Health for an administrative hearing. On urgent/expedited appeals, DCS will notify TALS as soon as it is aware of the appeal, regardless of whether a determination has been made on the appeal.

IV. Children's Rights

A. The State has a current contract with the TennCare Consumer Advocacy Program to effectuate the TennCare appeals rights for custody children. The State may amend its

current contract with this entity to encompass the additional responsibilities referred to in this implementation plan, or the State may enter into a separate contract with a different entity which is mutually acceptable to the parties. The additional responsibilities referred to in this implementation plan include 1) a substantive review of actions by DCS and its contractors to determine whether appropriate procedures were followed and whether the action was "adverse", in which case the Advocacy Contractor should file an appeal on behalf of the child; 2) an obligation to ensure that an appeal is filed on behalf of DCS children with respect to adverse actions by MCOs or BHOs when those actions come to the Advocacy Contractor's attention, have not been appealed by another party, and the Advocacy Contractor's staff believe the services are medically necessary; 3) advocacy on children's behalf in administrative appeals which the Advocacy Contractor files involving TennCare services; 4) advocacy on children's behalf in TennCare administrative appeals which other parties have filed involving TennCare services; and 5) advocacy on children's behalf to obtain implementation of TennCare appeal decisions.

B. The contractor will receive a Notice of Action, staffing summary[4], and permanency plan after the initial staffings. This information will be faxed or e-mailed to the contractor within 2 days of the staffing. At subsequent staffings, the contractor will receive only a Notice of Action and staffing summary. If the permanency plan is revised at a subsequent staffing, the contractor will receive the Notice of Action, staffing summary, and a permanency plan. The contractor may request additional information as

[4]The staffing summary will include, to the extent available, a list of phone numbers for those individuals identified by DCS as having relevant information on the child.

needed to review and determine the need for any appeal of Services resulting from the staffing. As stated in Section VIII, they will receive training from DCS in the permanency planning and assessment process.

V. Notice of Rights And Appeals Notices

A. DCS will provide appeal procedures and appeal forms on the DCS server, making information readily accessible to all employees.

B. DCS will provide copies of such notices to DCS contracted providers and foster parent associations.

VI. Mandatory Appeal of BHO/MCO Denials

A. For children in DCS custody, BHO/MCO notices of adverse action will be mailed to the DCS Central Office Health Division. The DCS Central Office Health Division will log the notice and file an appeal. The Health Division will then fax the appeal to the home county regional Health Unit TennCare Representative, who will forward a copy to the home county case manager and the residential case manager. The residential case manager will notify the child's current caregiver (the person who has physical possession of the child) of the appeal; the home county case manager will notify any Involved Adult.

B. The above process is contingent upon the ability of the BHOs/MCOs to send notices to the central address for custody children. In the event they cannot, the notice will be mailed to the address on file, which is that of the home county case manager. The home county case manager will immediately fax or provide to the regional Health Unit a copy of the notice. The Health Unit will log the notice and file an appeal.

C. If the DCS case manager is aware of an adverse action, and receives no notice

from the BHO/MCO, the case manager will contact the Central Office Health Division. The Central Office Health Division will appeal to the TennCare Appeals Unit.

D. When a custody child is enrolled in TennCare, or when the child comes into custody, the child's name and address of the home county case manager is put on the TennCare file. The BHO/MCO will continue to send enrollee handbooks and ID cards to the address on file. When mail for the child is received, it is sorted and given to the assigned case manager. As part of implementation, DCS will reinforce with office workers the importance of the timeliness of correspondence coming from BHOs/MCOs.

VII. DCS Contracted Providers

A. DCS contracted providers may appeal an adverse action on behalf of a custodial child in their care regarding a TennCare service, whether the service is administered by DCS or a BHO/MCO.

B. When DCS contracted providers are aware of an adverse action regarding a BHO/MCO service, they may contact the Central Office Health Division to ascertain if an appeal has been filed. IF a notice has not been issued for such action, the Central Office Health Division will file an appeal with the TennCare Appeals Unit.

C. DCS contracted agencies will be sent a copy of the Notice of Action following a child's staffing whom they serve if they do not attend the staffing.

D. Continuum Contractors will provide a Notice of Action at staffings for children in the continuum program when changes in service delivery are made.

E. DCS contracted providers will receive training on the BHO/MCO appeals process, and the DCS appeals process.

VIII. Training

A. DCS will coordinate a joint training of DCS personnel, Tennessee Association of Legal Services, the Advocacy Contractor, DCS provider agencies, and (to the extent available) the foster parent advocates. This training will be held no later than January 14, 2000. Training will include the appeals process with instructions on procedures and implementation, as well as the TennCare BHO/MCO appeals process. Training will also include a summation of DCS policy regarding the appeals process. As part of this training, DCS will reiterate its continuing policy of encouraging individuals involved with DCS children to exercise their right to file an appeal if they feel that a child is not receiving appropriate medical care. Furthermore, DCS will ensure that employees are aware of its policy which strictly prohibits, under any circumstances, DCS employees from retaliating or threatening to retaliate against an individual who files a TennCare appeal. As used in this provision, the words "retaliating or threatening to retaliate" shall mean taking action or threatening to take action against an individual (such as attempting to remove a DCS child from a foster parent's home) based on that individual's filing of a TennCare appeal.

B. DCS field staff will be trained by bringing in representative staff from each region to the coordinated joint training event and instructing them and providing training materials. The "train the trainer" staff will include a member of regional management, a member of regional Resource Management, and a member of the Health Unit. Core Central Office staff will provide technical assistance to regional staff as they train and implement.

C. Regional training teams will then begin training in the regions as soon as possible. The regional training teams will be responsible for training over 2,500 DCS staff members located throughout the state. The training for these staff members shall be completed no later than March 15, 1999.

D. DCS will provide instructions on changes in the appeals process to employees on E-mail to augment training.

E. DCS will incorporate this training on DCS TennCare appeals and BHO/MCO appeals into its orientation pre-service training for new case managers. As part of the training, DCS will educate staff regarding the legal rights of TennCare enrollees to receipt of notices regarding adverse action.

F. DCS contracted providers will be required to send a representative to the initial training session which will occur no later than January 14, 2000 training. They will be required to train their staff by February 1, 2000.

G. DCS will provide training to the Advocacy Contractor regarding the procedures regarding staffings, notices, and information to be provided to the contractors at the joint training session. In addition, DCS will train the contractor on the permanency planning and assessment process and provide them with ongoing information on DCS processes. DCS will be available to provide technical assistance to both the Advocacy Contractor and the legal assistance contractor.

H. DCS will train the Foster Parent Advocates on the TennCare appeals process, and on the appeals arising from adverse action from a DCS administered TennCare service. (DCS will provide an additional training opportunity to supplement the joint training if

foster parent advocates are unable to attend). Foster Parent Advocates will be educated on the rights of TennCare enrollees to notifications of adverse actions. They will be trained regarding the importance of staffings, and that staffings must occur before level of care treatment decisions are implemented. They will be informed of the importance of the role of foster parents in staffings, including foster parents who may not be active with a particular child (i.e., the child is currently in residential treatment). Foster Parent Advocates will be provided with training materials and notices.

I. DCS will provide training on the BHO/MCO appeals process and the DCS appeals process to the attorneys with whom DCS contracts to provide legal representation for custody children at TennCare hearings at the joint training conference. In addition, attorneys will be made aware of regional training scheduled so they may attend.

IX. Modification and Amendment

This plan is subject to modification based on experience gained and problems encountered in implementation. This plan may be modified only by a written amendment executed by the parties.