

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EMILY Q. et al.,)	CASE NO. CV 98-4181 AHM (AJWx)
)	
Plaintiffs,)	SECOND QUARTERLY REPORT
)	IN RESPONSE TO COURT’S
)	ORDER APPOINTING SPECIAL
)	MASTER FEBURARY 21, 2008
)	
v.)	
)	Honorable A. Howard Matz
DIANA BONTA,)	Courtroom 14
)	
Defendant.)	
)	

1 **Introduction**

2 This report is the second report submitted pursuant to the Court’s “Order
3 Appointing Special Master” of February 21, 2008. The report covers the time period
4 from July 27, 2008 through September 28, 2008. During this period of time, the Special
5 Master implemented Phase Two of his Therapeutic Behavioral Services (TBS) planning
6 approach, *Plan Design*, of the Three Phase Work Plan submitted to the Court on March
7 11, 2008. This report to the Court contains four sections: 1) a brief summary of the plan
8 design effort; 2) a summary of the Emily Q Settlement Plan; 3) recommendation to the
9 Court regarding the plan; and 4) appendices containing details of the plan.

10

11 **Brief summary of the plan design effort**

12 The Plan Design Phase required bringing together the same core Work Group of
13 parties that were identified in the Special Master’s July 2008 Quarterly report to create
14 accessible, effective and sustained TBS for children and their families in the Emily Q
15 class in California. (See Appendix A for a complete list of participants, names and titles).

16 There has been a significant change to the Work Group. During this last month,
17 the State Department of Mental Health lead representative, Assistant Deputy Director

1 Mike Borunda, left the Department and transferred to another state department on short
2 notice. Mr. Borunda’s departure was an untimely loss to the Work Group’s efforts.
3 However, the Department took immediate action to assign Sean Tracy, Chief of Strategic
4 Planning and Policy to the Emily Q Work Group, and gave Mr. Tracy the necessary
5 authority to commit the Department fully to the Work Group’s effort; additionally,
6 CDMH Director Dr. Steven Mayberg has provided assurances to the Special Master and
7 the Work Group that the changes in leadership will not slow down or limit the progress of
8 the Work Group. Mr. Tracy has already stepped into the lead role for CDMH and is
9 rapidly coming up to speed as Phase Two of the planning process approaches completion.

10 This core TBS Work Group has met four times in Sacramento during the past
11 three months to complete the Plan Design phase. In addition, eight smaller “Task
12 Groups” primarily utilized conference calls in lieu of meetings to operationalize the eight
13 points and charters identified in the July Quarterly Report. These eight points and
14 charters, agreed on by all parties, comprise the various elements of the TBS plan and
15 together lay out a coherent and potentially successful solution to the Emily Q matter.

16 The TBS Work Group parties continue to show remarkable commitment to
17 meeting the Court’s expectations and orders. In spite of the State of California having no
18 budget for the past sixty plus days, which has resulted in most state employees and
19 contractors not getting paid, representatives to this Work Group have kept their focus and
20 energy on successfully completing the Court’s charge. The consensus recommendations
21 presented to the Court would not have been possible without each member of the Work
22 Group’s thoughtfulness about their charge, expertise, dedication and persistence to
23 getting the job done.

24 Since my July report, national and state economic and financial troubles continue
25 to become more pronounced each day in California. The depth and scope of home
26 foreclosures, upheaval in the financial markets, a marked decline in state and county
27 revenues, the prolonged absence of a state budget, and the withholding of state worker
28 pay and canceling of state contracts have increased the pressures on whatever revenues
29 are available for the state and local governments. The shortages of state and local
30 revenues have increased tensions between the state and the counties. As a result, state
31 and county relationships are strained – counties perceive that they have been consistently

1 under-funded by the state in the Medi-Cal program, and in some cases un-funded. They
2 see the realignment funding stream that transfers revenues from the state to the counties
3 as having run its course and now failing to meet minimum funding requirements.

4 Furthermore, counties have experienced increased administrative and compliance
5 requirements imposed by the state without any negotiation. Counties cite as an example
6 the 2002-03 governor's action requiring a 10% match on all EPSDT, which has
7 essentially reduced the rate of growth of EPSDT and has especially impacted the
8 implementation of TBS. As a result of the overall limitations on funding and increased
9 administrative requirements on the Mental Health Medi-Cal program, some counties are
10 considering returning the Medi-Cal mental health program to the state.

11 An example, germane to the Emily Q settlement efforts, regarding how current
12 conditions have affected the planning effort, is reflected in the general comments and
13 position of the California Mental Health Directors Association (CMHDA) representatives
14 to our Work Group. The CMHDA representatives agree in principle with the Work
15 Group Recommendations and will work hard to see that they are successfully
16 implemented. However, they want to be sure the Court is informed, from their
17 perspective, that there is an additional step required to implement specific elements of
18 this settlement. It is their position that the administrative and accountability requirements
19 outlined in the Nine Point Emily Q Settlement will impact county direct and indirect
20 Medi-Cal program costs, and that these costs would need to be calculated and negotiated
21 with counties consistent with state law. They offer this caveat to suggest that there may
22 be some delays in implementing parts of the Settlement.

23
24 I share this only to inform the Court about the conditions that exist today,
25 conditions that were not present 1999, in order to be realistic and clear about conditions
26 on the ground that are going to impact the Proposed Plan as it rolls out. I am optimistic
27 about the effort the state and counties will make to implement this plan and, along with
28 the continued support and supervision of the Court, I am encouraged about the long term
29 positive outcome.

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1 **Summary of the Emily Q Settlement Plan**

2 The Emily Q Work Group consists of representatives of the state agencies and
3 county mental health plans involved in implementing TBS, and of plaintiff class
4 members and their families; the group has been meeting with the Special Master since
5 April 2008 to develop this plan. (See Appendix A for members). The Work Group has
6 developed a nine-point plan that will result in increased access to and improved delivery
7 of Therapeutic Behavior Services (TBS) to members of the Emily Q class. This plan
8 creates a comprehensive set of requirements for settling the Emily Q lawsuit and ensuring
9 Court exit from the case.

10

11 In brief, this plan:

- 12 1. Eliminates many administrative requirements that have burdened counties in the
13 past and have reduced the use of TBS;
- 14 2. Presents simple and direct language to clarify TBS eligibility requirements;
- 15 3. Establishes an accountability process and structure the California Department of
16 Mental Health (CDMH) will use to monitor and improve TBS utilization in every
17 county;
- 18 4. Describes a TBS best practice approach from assessment through service delivery
19 and termination;
- 20 5. Proposes a multiagency coordination strategy to engage Social Services and
21 Juvenile Justice agencies at the state and county levels in order to increase and
22 improve TBS service access and delivery;
- 23 6. Establishes a statewide TBS training program;
- 24 7. Outlines technical assistance manuals covering both TBS practice and chart
25 documentation;
- 26 8. Outlines an outreach strategy to increase awareness of TBS and expand its
27 utilization statewide; and
- 28 9. Defines a process that will result in Court exit from the Emily Q matter.

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1 There is agreement within the Emily Q Work Group that these nine points
2 represent a coherent plan capable of resolving the long-standing issues that arose from
3 many years of litigation. There is also agreement that this proposed plan is likely to
4 produce meaningful, measurable, and lasting solutions for the Emily Q class. The Work
5 Group members agree that additional time and data will be required to assess the impact
6 of the changes in this plan and propose that jurisdiction be extended until December 31,
7 2010.

8
9 This plan creates positive incentives for the county mental health plans (MHPs) to
10 increase utilization significantly within the next 24 months. During this time period,
11 CDMH has committed resources to help the counties improve coordination with the other
12 local agencies (such as the juvenile courts) responsible for class members, with a goal of
13 identifying expansion populations for TBS. A newly agreed-upon “data dashboard” will
14 keep MHPs apprised of their progress in increasing utilization. MHPs will know that if
15 they fail to increase utilization voluntarily during this two-year period, they run the risk
16 of stronger compliance oriented measures in the future.

17
18 All participants have agreed to defer the decision to set a TBS utilization rate in
19 order to assess the results of the new incentives. This process will be more fully set out
20 in the exit criteria plan to be presented to the Court in January 2009. With regard to Point
21 Three (Structured Accountability) of this proposed plan, the county representatives on the
22 Emily Q Work Group are not in agreement with certain provisions of the accountability
23 process that they believe will add considerable administrative and cost burden to some
24 counties and, for that reason, have declined to fully endorse Point Three.

25
26 The following sections describe each of the nine points in this proposed Emily Q
27 Settlement Implementation Plan. The Emily Q Work Group, the Special Master, and
28 CDMH will collaborate to ensure the complete and successful implementation of this
29 plan.

1 ***Point 1:*** Streamline the TBS Administrative Requirements

2

3 Purpose: Identify, reduce, and/or eliminate no longer necessary elements of the
4 administrative process and court-ordered requirements. Simplify necessary requirements.

5

6 Steps:

7 • CDMH shall eliminate various existing Court and CDMH requirements that have
8 been completed and/or that are no longer needed, or are outdated, or are
9 duplicative.

10 • CDMH shall eliminate quarterly data gathering and reporting requirements from
11 the MHPs that are currently of little benefit, or that create barriers to services.

12 • CDMH shall eliminate TBS pre-authorization and reauthorization, and other TBS-
13 specific compliance requirements.

14

15 Details describing the specific steps to Streamline TBS Administrative Requirements are
16 provided in Appendix B.

17

18 Responsible Parties:

19 CDMH.

20

21 Time Line:

22 CDMH shall begin immediately noticing MHPs and other appropriate TBS stakeholders
23 and complete this process by January, 2009.

24

25 Anticipated Results:

26 Streamlining of the CDMH TBS administrative process should have immediate positive
27 impact on state administration and county TBS utilization by:

- 28 • Reducing overall administrative barriers to TBS;
29 • Freeing up state and county resources; and
30 • Increasing timely access to TBS by Emily Q. class members.

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1 **Point 2:** Clarify Criteria for TBS Eligibility

2
3 Purpose: To develop standard criteria for TBS eligibility in two areas where there have
4 been past problems, so that these criteria will be consistently and uniformly applied
5 across the state. These areas are limited to children and youth who are “being
6 considered for” placement in an RCL 12 and above facility, and children and youth who
7 are “at risk of” hospitalization.”

8
9 Steps:

- 10 • CDMH shall officially publish and distribute the following language to the
11 counties and other TBS stakeholders, clarifying specific terms related to TBS
12 eligibility:

13 A child meets the requirements of “being considered for” placement in an
14 RCL 12 or above when an RCL 12 or above placement is **one option** (not
15 necessarily the only option) that is being considered as part of a set of possible
16 solutions to address the child’s needs. Additionally, whether or not an RCL
17 12 or above placement is available, a child meets the requirements when his or
18 her behavior could result in placement in such a facility if the facility were
19 actually available.

20 Similarly, a child meets the requirements of “at risk of” hospitalization in an
21 acute care psychiatric facility when hospitalization is **one option** (not
22 necessarily the only option) that is being considered as part of a set of possible
23 solutions to address the child’s needs. Additionally, whether or not
24 hospitalization in a psychiatric facility is available, a child meets the
25 requirements when his or her behavior could result in hospitalization in such a
26 facility if the facility were actually available.

27
28 Responsible Parties:

29 CDMH
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31

1 Time Line:

2 CDMH shall officially notify all counties and other appropriate TBS stakeholders by
3 January 2009.

4
5 Anticipated Results:

6 This clarified language should produce immediate increases in the number of Emily Q
7 class members accessing TBS services as measured by:

- 8 • Increased uniformity in determining Emily Q class membership across the state;
- 9 • Increased county utilization of TBS;
- 10 • Improved and increased consistency in audits;
- 11 • Increased class member access to TBS; and
- 12 • Statewide policy uniformity.

13

14 ***Point 3:*** TBS Accountability Structure

15

16 Purpose: Develop a TBS accountability structure that addresses: 1) outcomes, 2) a
17 review process, and 3) utilization.

18

19 Steps:

20 • The TBS Accountability Structure requires that CDMH work with all county
21 MHPs through a continuous quality improvement process designed to increase
22 Emily Q class access to appropriate TBS services.

23

- 24 • The accountability principles are:
 - 25 -A focus on practice and quality improvement rather than
 - 26 compliance and disallowances, which have proven ineffective
 - 27 -Achieving the greatest good for the greatest number of Emily Q class
 - 28 members;

- 1 -Accountability to the class, the Court Order, and Medi-Cal requirements;
- 2 -Inter-agency collaboration;
- 3 -Key outcomes with best practices and measures;
- 4 -Information that is accessible, reliable, valid, meaningful, understandable,
- 5 and that have maximum value and utility to all stakeholders; and
- 6 -Involving family members in the accountability structure.

- 7
- 8 • The plan identifies core minimum data elements that document TBS access,
- 9 utilization, and behavioral and institutional risk.
- 10
- 11 • Accountability focuses on four key questions:
- 12 1. Are the children and youth in the county who are Emily Q class members and
- 13 who would benefit from TBS, getting TBS?
- 14 2. Are the children and youth who get TBS experiencing the intended benefits?
- 15 3. What alternatives to TBS are being provided in the county?
- 16 4. What can be done to improve the use of TBS and/or alternative behavioral
- 17 support services in the county?
- 18
- 19 • There are two levels in the TBS accountability process. The Special Master will
- 20 assign MHPs to Level I or Level II, depending on several factors, such as size,
- 21 rural nature and TBS utilization. The Level 1 process requires MHPs to convene
- 22 two annual meetings – one open to the public and the other for stakeholders and
- 23 decision-makers – to review TBS data and discuss the four key TBS questions,
- 24 and to complete and deliver a brief findings report from the meetings to CDMH.
- 25 The Level II process is more intensive and demanding.
- 26
- 27 • Small and rural counties will be assigned to Level 1; 29 MHPs meet these criteria.
- 28 Medium and large counties that have demonstrated high performance in TBS
- 29 delivery, and counties that demonstrate to the Special Master that they offer
- 30 Emily Q class member’s behavioral supports and services that are alternatives to
- 31 TBS will also be assigned to the Level I accountability process.

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- The Special Master shall monitor TBS Utilization in small and rural counties. Work group members anticipate that TBS utilization will increase as the full benefits of this plan are experienced. If this does not occur after a reasonable period of time, the Special Master will convene a meeting with all parties to consider options to address low TBS utilization.
- The remaining medium and large county MHPs will be assigned to a more intensive Level II accountability process. The MHPs will receive significant support from an independent, statewide organization, funded through a contract with CDMH. The contracted organization will assist MHPs to develop and implement TBS plans capable of rapidly increasing and sustaining TBS services to Emily Q class members in these counties. The Special Master will select an initial group of ten medium and large county MHPs to work intensively with CDMH, the Special Master and the new CDMH contract group to increase TBS utilization over the next 24 months.
- As medium and large county MHPs increase TBS utilization, they may request re-assignment to the Level I accountability process

Responsible Parties:

CDMH and the Special Master

Time Line:

The TBS accountability process will begin in January 2009 and continue until December 31, 2010 at which time it is contemplated the Court would terminate jurisdiction.

It is expected that CDMH will provide additional support, administrative direction, and graduated consequences for Level II counties to be determined in the exit criteria that will be developed by January, 2009

1 Anticipated Results:

- 2 • Sufficient accountability structures will be in place to accurately and effectively
- 3 monitor all county MHPs and provide transparency and visibility to the Court and
- 4 all other stakeholders;
- 5 • Better data reporting and decision making;
- 6 • Increased and improved TBS in all counties.

7

8 For details of the TBS Accountability Plan, see Appendix C.

9 ***Point 4:*** Define TBS Best Practice to Promote Service Integrity

10

11 Purpose: Appropriately define and operationalize Therapeutic Behavioral Services in

12 order to establish and/or maintain the fidelity of the service.

13

14 Steps:

15 CDMH will finalize and publish a comprehensive description of standard TBS services

16 spanning TBS assessment, service delivery and termination. Elements of best practice

17 include:

- 18 • Service Philosophy;
- 19 • Cultural Competence;
- 20 • Components of TBS Service Delivery:
 - 21 - Composition of the TBS Treatment Team
 - 22 - Initial Meeting of the TBS Treatment Team
 - 23 - Components of the TBS Plan
 - 24 - TBS Initial Plan Implementation and Assessment Period
 - 25 - Functional Behavior Assessment
 - 26 - Development and Delivery of TBS Behavioral, Environmental, and
 - 27 Relationship-Building Interventions
- 28 • TBS Supervision;
- 29 • Monthly TBS Review Meetings; and
- 30 • TBS Termination.

1 The TBS description will provide the foundation for CDMH to develop its TBS training
2 plan along with training manuals for best practice and documentation.

3

4 Responsible Parties:

5 CDMH and its training contractor.

6

7 Time Line:

8 The TBS training process will be ready to implement by June, 2009.

9

10 Anticipated Results:

- 11 • More clarity at the county level about what is (and is not) TBS;
- 12 • Inform development of the training plan (Point 6);
- 13 • Inform development of the training manuals (Point 7);
- 14 • Inform the CDMH Policy Letter regarding TBS;
- 15 • Inform implementation of this TBS plan with regard to promoting best practices
16 in TBS delivery.

17

18 For details of TBS Best Practice, see Appendix D.

19 ***Point 5:*** Create TBS Coordination of Care Process

20

21 Purpose: Create a process to facilitate and ensure TBS coordination of care in the county
22 mental health plans and among involved agencies, providers, families, and their supports.

23

24 Steps:

- 25 • Because significant numbers of Emily Q class members are the responsibility of
26 and primarily served (or are at risk of service) through Child Welfare Services,
27 Probation, and the Juvenile Court in addition to county Mental Health,
28 coordination between these service and justice systems is essential to ensure full
29 access to TBS among children and youth in the Emily Q class who could benefit
30 from TBS.

- 1 • CDMH shall take the necessary actions with CDSS to promote interagency TBS
2 service, quality assurance and quality improvement, outreach, planning,
3 assessment, and service delivery, and to establish data-sharing agreements that
4 support data tracking and performance measurement at the state and county
5 levels.
- 6
- 7 • CDMH shall show leadership and initiative in establishing these state and county-
8 level interagency linkages and data sharing relationships.
- 9
- 10 • The goal of this effort is state and county-level engagement and interagency
11 coordination between Mental Health, Child Welfare Services, Juvenile Justice,
12 and the Court to promote TBS among eligible Emily Q class members served by
13 these local authorities that leads to appropriate TBS access and utilization within
14 the class.
- 15

16 Responsible Parties:

17 CDMH through interaction with California Department of Social Services (CDSS),
18 California Health and Human Services Agency (CHHSA), the Administrative Office of
19 the Courts (AOC).

20

21 Time Line:

22 CDMH shall determine the scope and feasibility of data matching for the purpose of
23 quality assurance at the state and county levels by January, 2009. CDMH shall officially
24 notice all counties and other appropriate TBS stakeholders with regard to data matching
25 arrangements by July, 2009.

26

27 Anticipated Results:

- 28 • Increased state- and county-level linkages and collaboration between Mental
29 Health, Child Welfare Services, Juvenile Justice, and the Juvenile Courts;

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- A data-sharing framework that underpins structural accountability regarding increased access to TBS for wards and dependents of the Court who are members of the Emily Q class.

Point 6: TBS Training

Purpose: Develop a TBS Training and Technical Assistance Plan.

Steps:

- CDMH shall establish a comprehensive training plan and process, most likely through an RFP process with an established training organization. This training plan will be informed and structured consistent with the work products described in all other Points of this plan, and will cover both the TBS best practice and the administrative and chart documentation necessary to satisfy compliance requirements.
- The training contractor shall utilize a variety of adult learning models in the training, such as learning conversations, academies, simulation, modeling, coaching, on-line presentations, and other innovative learning methods.
- Parents/caretakers and youth are to be involved in development of training modules and be included as part of the training team.
- CDMH shall provide regional trainings across the state annually for three years, beginning in 2009.
- In addition to TBS service providers, CDMH and county staff responsible for TBS policy and program audits will also receive this TBS training.

1 Responsible Parties:

2 CDMH and its training contractor.

3

4 Time Line:

5 The TBS Training program will be in place by July, 2009.

6

7 Anticipated Results:

- 8 • Expanded training statewide, increased county participation, better TBS,
9 increased compliance with program and fiscal audit requirements, and better child
10 results.

11

12 For details of the TBS Training, see Appendix E.

13

14 ***Point 7:*** TBS Manuals

15

16 Purpose: Develop TBS Training and Documentation Manuals.

17

18 Steps:

- 19 • CDMH shall, in coordination with the Training program described above,
20 develop, publish, and endorse written manuals and other media materials that
21 accompany the training effort (some through the contract provider and some
22 through CDMH policy or information notices).

23

- 24 • Develop a manual for chart documentation and audit procedures.

25

- 26 • Develop practice protocols as a way to disseminate the TBS Best Practice
27 description developed for Point 4, along with other training strategies.

28

29 Responsible Parties:

30 CDMH and its training contractor.

31

1 Time Line:

2 The TBS Manuals will be completed by July, 2009.

3

4 Anticipated Results:

- 5 • Expanded training statewide, increased county participation, better TBS,
6 increased compliance with program and fiscal audit requirements, and better child
7 results.

8

9 **Point 8:** TBS Outreach

10

11 Purpose: To develop a TBS outreach plan to reach all class members and those provider
12 organizations, and those agencies serving members of the class.

13

14 Steps:

- 15 • Focus on reaching class members and those involved in helping class members
16 obtain services that are currently unknown to the MHPs.
- 17
- 18 • Promote the dissemination of information regarding the availability of TBS and
19 how to access the service as class members.
- 20
- 21 • Adopt an electronic information dissemination strategy; hire a contractor to
22 implement this “E” strategy to class members.
- 23
- 24 • Partner with other organizations for electronic links and outreach.

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27 Responsible Parties:

28 CDMH.

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30 Time Line:

31 Begin implementation by May, 2009.

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Anticipated Results:

- Increased TBS access and utilization statewide, and better child results.

For details of TBS Outreach, see Appendix F.

Point 9: Termination of Court Jurisdiction

Purpose: To identify and clarify a structure and criteria that will ensure continuity and sustainability after court jurisdiction ends.

Steps:

- The Emily Q Work Group will meet between October 1 and December 31, 2008 to establish exit criteria.
- By January 1, 2009, the Special Master will make recommendations regarding the exit criteria that will release the State of California from Court jurisdiction, with an estimated date of December 31, 2010.
- The Emily Q Work Group recognizes that some Level II MHPs may continue to have low TBS utilization at the end of 24 months. Discussion regarding exit criteria will include, but not be limited to: (1) The Special Master establishing a TBS utilization rate for Level II MHPs that continue to be low-performing; and (2) Corrective measures the CDMH will require of MHPs provided in the state mental health managed care regulations for those same Level II MHPs.
- No later than October 1, 2010, the Special Master and all parties shall file a joint report with the Court with recommendations (if any) regarding exit.

Responsible Parties:

Special Master until termination of jurisdiction; CDMH thereafter.

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Time Line:

Exit Criteria to be developed by December 31, 2008.

Anticipated Results:

Termination of jurisdiction and continued improvement in the provision of TBS.

Special Master Recommendations:

1. Adopt the Nine Point Settlement Implementation Plan as outlined in this report and Appendices A through F;
2. Extend Court jurisdiction through December 31, 2010;
3. Schedule a status conference in the next 30 days; and
4. The proposal for exit criteria shall be included in the next quarterly report due January 9, 2009.

In conclusion, it's been an extremely productive three months. Phase Three, Plan Implementation, will begin in January and at that time I once again look forward to a positive report to the Court. I have appreciated the challenges the Court has presented, and value the privilege to serve as your Special Master.

Dated: September 24, 2008

Respectfully Submitted

Richard Saletta, LCSW
Special Master

Appendices