

Proposed Notice of Settlement Agreement and Fairness Hearing for *T.R. v. Quigley*, No. C09-1677 – TSZ, a Case about Intensive Home and Community Based Mental Health Services for Children and Youth

T.R. et al. v. Kevin Quigley and Dorothy Teeter, No. C09-1677 – TSZ (“*T.R.*”), involves access to intensive home and community based mental health services for youth with insurance through Medicaid. The parties have reached an agreement in the case to increase access to intensive care coordination, home and community-based mental health services, and mobile crisis and stabilization, statewide for Medicaid-eligible youth who have a medical need for these services. The services will be phased in over a period of five years. The parties presented this agreement to the Court which preliminarily approved the agreement. You now have an opportunity to review the agreement for yourself and let the court know what you think of the agreement.

The Court will hold a fairness hearing. In this hearing, the Court will consider the comments it receives from people who are interested in the agreement. The Court will then make a final decision about whether the agreement is fair, reasonable, and adequate.

The *T.R.* lawsuit is a class action. In a class action, a few individuals represent many more people (referred to as the “class”) with the same legal issues. The case was filed in 2009 by ten young people (referred to as “class representatives”). They were each eligible for Medicaid and experienced mental illnesses. In July 2010, the Court ruled the outcome of the case will apply to everyone in the class. When the Court made this ruling, it defined class members as all persons under the age of 21 who now or in the future (1) meet or would meet Washington State Medicaid financial eligibility criteria; (2) have a mental illness or condition as determined by a licensed practitioner of the healing arts, or had a screen or an assessment been conducted by such practitioner, would have been determined to have a mental illness or condition; (3) have a functional impairment, which substantially interferes with or substantially limits the ability to function in the family, school or community setting; and (4) for whom intensive home and community based services coverable under Medicaid would have been recommended by a licensed practitioner. Therefore, the plaintiffs in this case are all of the people who meet the class definition, including the class representatives.

The members of the plaintiff class are represented by five law firms. These firms are Disability Rights Washington, the National Center for Youth Law, the National Health Law Program, Young Minds Advocacy Project, and Perkins Coie, LLP. The Court reviewed these firms’ qualifications and experience. The Court then designated them as the attorneys for the class. The defendants are the Washington State Department of Social and Health Services and the Washington State Health Care Authority.

The purpose of the Settlement Agreement is to increase access for class members to intensive home and community-based mental health services funded by Medicaid. These services will be called Wraparound with Intensive Services (“WISe”). These services will not be immediately available to all class members, however. Under the Settlement Agreement, it may take as long as five years to increase service capacity to provide all services to everyone who is eligible statewide. When its terms are fulfilled, the

Settlement Agreement provides that all eligible class members will timely receive WISE services that are medically necessary.

The Settlement Agreement has three basic sections.

(1) Goals

Goals provide structure and guidance for the settlement plan. They help to explain all of the parts of Settlement Agreement, including the commitments and exit criteria. They guide future development of the service delivery system.

(2) Commitments

Commitments are the items or actions that Defendants will do to develop and deliver WISE. The commitments are listed in the Settlement Agreement and will be further described in an Implementation Plan. Defendants have promised to meet these commitments during the time the case remains before the court.

(3) Exit Criteria

The Exit Criteria are the items or outcomes the Court will use to decide if the Defendants have done enough to allow the case to be dismissed. Defendants do not need to do everything perfectly. They must show the court they have “substantially complied” with the required exit criteria. If they can show this, the case will be over.

I. Goals

The main goal of the Settlement Agreement is to identify, screen and assess possible class members, and provide WISE services to eligible class members that need them. The Settlement Agreement has other important goals.

- WISE will be provided statewide. The services will be timely. There will be enough services to meet the demand. Services will be delivered in an effective way, and effectiveness will be measured by evidence. Services will be individualized to each class member’s needs. Services will be consistent with the WISE program model. Services delivery will follow state and federal Medicaid law and regulations.
- Class members who are denied services will be told they have a right to appeal, and may have a hearing before an impartial judge.
- Child-serving agencies and providers will coordinate the support they provide to class members. This will improve the effectiveness of services and improve outcomes for families and youth. Coordination will reduce fragmentation of services for class members, avoid duplication and waste, and lower costs;
- There will be education, training, coaching and mentoring of providers, youth and their families.

- Child-serving agencies, youth and families, and others will work together to make decisions about how the changes in the Settlement Agreement are implemented. This is called the “governance structure” of the Settlement Agreement.
- The Settlement Agreement will bring changes that will reduce hospitalizations and out-of-home placements.
- Access to WISE under the Settlement Agreement will help keep children safe, at home, and in school making progress; avoid delinquency; promote youth development; and maximize class members’ potential to grow into healthy and independent adults.

II. Commitments

The Settlement Agreement requires that Defendants substantially comply with a set of detailed commitments. The Commitments and timelines are enforceable by the Judge until the case ends and is dismissed. The timelines may be changed if the Defendants, Plaintiffs, and the Judge agree.

The key Commitments include:

A. WISE Access and Service Delivery

Defendants agree to provide the following Medicaid covered mental health services to class members: (1) Intensive Care Coordination, (2) Intensive Home and Community Based Services, and (3) Mobile Crisis Intervention and Stabilization Services. These three types of services are called WISE. WISE is an abbreviation for “Wraparound with Intensive Services.” A detailed description of these services is available at Appendix A of the full Settlement Agreement.

B. State Fiscal Year 2014 Services and Services to Named Plaintiffs

In January 2014, Defendants will begin transitioning recipients of existing intensive mental health services to WISE. This will be done in locations where there are enough services and funding to meet needs.

C. Workforce Development and Training

Defendants will create a group to find and train WISE service providers. This group will operate independently from the state. It will be co-led by youth and families, state agencies, and partner universities. The group will develop sustainable training programs. The trainings will include education, coaching, mentoring, and technical assistance to agencies in providing WISE. The trainings will be provided locally and statewide. The trainings will help WISE providers meet quality standards.

D. Due Process for Class Members

Class members have a right to object to decisions about their services. If they object, they get a hearing. At the hearing an impartial person will make a decision. This is called due process. Defendants will require that Prepaid Inpatient Health Plans (PIHPs) (also known as Regional Support Networks) tell class members about their right to due

process. The PIHP will do this by providing a Notice of Action. This notice will advise class members of their due process rights any time a PIHP denies, terminates or reduces services, or the class member disagrees with specific treatment recommendations. Defendants will describe these notice and due process protections in state regulations.

E. Governance & Collaboration

The Settlement Agreement will increase the role of family and youth in making decisions about how WISE services are delivered. Defendants will invite family, youth and local community representatives to join regional governance groups. These groups are called Family Youth and System Partner Round-Tables (FYSPRT). They will provide input on the way services should be managed and delivered.

Defendants will also have agreements with agencies that serve youth across the state. This will include DSHS and HCA agencies. The agreements will require collaboration and coordination of care for class members. When youth receive WISE, they will have a Child and Family Team that discusses treatment needs. If youth are served by multiple agencies, local and regional representatives from those agencies will be invited to participate in Child and Family Teams. Funding sources will also be better coordinated.

Defendants will collect data about services that are provided. Defendants and FYSPRTs will use this data to help make decisions about how to improve services.

F. Quality Management

Defendants will develop a Quality Assurance Plan (QAP). They will get input from Plaintiffs' attorneys and stakeholders. The QAP will describe how quality assurance tools and activities will be developed under this Agreement. The QAP may overlap with other existing quality assurance systems, programs, and activities. The QAP will measure the implementation and progress towards meeting the Commitments in the Settlement Agreement.

Defendants will measure the number of children identified, screened, assessed and referred to WISE. Defendants will provide this information to the public over the course of implementation of the Settlement Agreement. The QAP will be completed and adopted within one year of the date the Settlement Agreement is approved.

G. Implementation Plan and Process

Defendants will complete an Implementation Plan within six months of final court approval of the Settlement Agreement. Defendants will use the Governance Structure described above to develop the Implementation Plan. This includes using the input of the FYSPRTs. The attorneys for Plaintiffs will also provide input. Defendants will submit the completed Implementation Plan to the Court for approval. The Judge will only approve the plan if the Judge thinks the plan is reasonable.

Beginning November 15, 2014, Defendants will provide an annual report to the Judge, the Plaintiffs, and the public. This report will describe Defendants' progress in meeting their obligations under the Settlement Agreement. The report will include

accomplishments and remaining tasks. It will identify potential or actual problems. It will also include a description of what is being done to solve identified problems.

III. Exit Criteria and Procedure

The parties anticipate Defendants will complete implementation of the Settlement Agreement on or about June 30, 2018. All obligations under the agreement will end if Defendants show they are in substantial compliance with the exit criteria. The exit criteria are the only measures that can show the state of Washington has met its obligations, and thereby, allow the Judge to dismiss the case. If the state of Washington is in substantial compliance, the lawsuit will be dismissed. There are detailed exit criteria for the following subject areas:

- WISE Access and Service Delivery;
- Due Process Protections;
- System Collaboration and Governance;
- Implementation Plan; and
- Quality Management.

IV. Plaintiff Counsel Access to Information

The Plaintiffs' lawyers will monitor the implementation of this Agreement. They will have access to information about Defendants' progress. Plaintiffs may need additional information that is not available to them under the Agreement. If that happens, they can request that information; but they must give the reason for requiring the information. If Plaintiffs' lawyers seek confidential information contained in the records of individual class members, they must obtain a release from that class member or an authorized representative. If they cannot get a release, Plaintiffs' lawyers may seek an order from the Judge for release of the information

V. Attorneys' fees and costs.

Subject to Court approval, Defendants have agreed to pay Plaintiffs' attorneys Three Million One Hundred Thousand Dollars (\$3,100,000.00) in attorneys' fees and costs. Detailed information about the work Plaintiffs' attorneys did and the costs paid can be found in the Memorandum in Support of Fees and Costs at:

<http://www.disabilityrightswa.org/kids-community-based-mental-health>

To get a copy of the Memorandum in Support of Fees and Costs and the supporting materials, or to ask a question about fees and costs, call toll-free or write to Disability Rights Washington:

1-800-562-2702

Disability Rights Washington
315 5th Ave S. Suite 850
Seattle, WA 98104

TRLawsuit@dr-wa.org

VI. Additional Information and Fairness Hearing

This is just a summary of the Settlement Agreement. If you want to learn more about the Settlement Agreement or share your opinions with the Judge, you have several options.

Read the entire Settlement Agreement. If you or someone you know may be a class member, learn more about your rights at:

<http://www.disabilityrightswa.org/kids-community-based-mental-health>

There, you will find additional information. The site includes a copy of the full proposed Settlement Agreement. It also includes documents that describe WISE services and how to access those services.

Attend video conferences and information sessions. You can view video conferences about this Settlement Agreement in various locations throughout the state in the next few months. There will also be two in-person presentations you can attend. For more information on dates and locations, visit:

<http://www.disabilityrightswa.org/kids-community-based-mental-health>

Ask questions. The Settlement Agreement is long and full of detailed information. Disability Rights Washington (DRW) is available to answer your questions. DRW is one of the organizations serving as the attorneys for class members. Talking to DRW does not cost you any money. You can call them toll-free at 1-800-562-2702.

Submit your comments to DRW or to the Court. Anyone who wishes to comment on the Settlement Agreement either for or against it may do so by submitting written comments via mail, email or other means.

Submit comments to Disability Rights of Washington at:

Disability Rights Washington
315 5th Ave. S., Suite 850
Seattle, WA 98104 TRLawsuit@dr-wa.org

Any comments received by DRW, or any listed class counsel in this case, will be provided to the Court.

Statements may also be provided to the Court. Written comments must be received by the Court no later than December 5, 2013. Such comment shall bear (must include) the Case Number for this case, which is: No. C09-1677-TSZ. Submit comments to the court at:

Office of the Clerk of the Court
United States District Court for the Western District of Washington, Seattle
700 Stewart Street
Seattle, WA 98101

Attend the fairness hearing. Oral comments may be made at the fairness hearing to be held in Seattle on Thursday, December 19, 2013 at 10:00 A.M.

The address to appear for the hearing is:

Courtroom of the Honorable Thomas S. Zilly
United States District Court for the Western District of Washington, Seattle
700 Stewart Street, Floor 15
Seattle, WA 98101