

FOR IMMEDIATE RELEASE
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Class Action Lawsuit Filed Against State of Colorado on Behalf of Colorado's Medicaid-Eligible Children *Colorado Must Do Better for Our Kids' Mental Health*

Denver, CO - Today, a Federal Class Action Lawsuit was filed on behalf of three teenage plaintiffs and a class of thousands of Medicaid eligible children under the age of 21 who have been diagnosed with a mental health or behavioral health disorder and a doctor has recommended Intensive Home and Community-Based Services to correct or ameliorate their disorders, but they are not being provided the treatment from the State as required by federal law.

"We must do better for our kids and our families than ranking 42nd out of 50 states in our ability to provide mental health services to our youth. Currently, the families we work with cannot find access to the services they need when they need them," stated Libby Stoddard, a Federation of Families for Children's Mental Health ~Colorado Chapter Board Member.

"We must fix Colorado's youth mental health system so all kids regardless of where they live or what their families' circumstances are can get the care they need. Colorado families and kids are being harmed while we sit around trying to figure it out," continued Marjorie Grimsley, Interim Executive Director of the Federation of Families for Children's Mental Health ~Colorado Chapter.

The families who have filed this lawsuit will remain anonymous to protect their children. They are being supported by the Federation of Families for Children's Mental Health ~ Colorado Chapter. All three of the teenagers have experienced unnecessary institutionalization and other serious harms as the result of the State of Colorado's failure to provide or arrange for medically necessary mental health and behavioral services required under the Early and Periodic Screening, Diagnostic, and Treatment Service EPSDT provisions of the Medicaid Act.

"Colorado has been ignoring their duty to provide mental health services to the children of Colorado for too long. We hope this lawsuit will force the State to find a solution for providing care to all of Colorado's children and youth who need it," stated attorney Robert H. Farley, Jr.

Similar Class Action Lawsuits have been filed against other States and have been successful in establishing a comprehensive system of care for children with a mental health or behavioral disorder in

the States of Massachusetts, California and Illinois. History has shown that after a lawsuit has been filed, it is possible for the Plaintiffs and a State to resolve the issues and design and implement a systemic approach that allows children with mental health or behavioral disorders to receive the reasonable and prompt Medicaid-authorized Intensive Home and Community-Based Services that are needed to correct or ameliorate their mental health or behavior disorders.

You can view the Complaint for Declaratory and Injunctive Relief that was filed this morning [here](#).

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BACKGROUND

Medicaid-eligible children under the age of 21 are entitled to receive medically necessary mental health services under the Early and Periodic Screening, Diagnostic, and Treatment Service (EPSDT) provisions of Title XIX of the Social Security Act known as the Medicaid Act. They are also entitled to treatment under the Americans with Disabilities Act and the Rehabilitation Act.

The lawsuit seeks prospective injunctive relief to order the State of Colorado and the Executive Director of the Colorado Department of Health Care Policy and Financing Kim Bimestefer to provide the three teenagers and the class the necessary Intensive Home and Community-Based Services they need to correct or ameliorate their conditions and prevent unnecessary institutionalization.

The teenagers and their family members will be anonymous in the filing to protect them. All three of the youth have experienced unnecessary institutionalization and other serious harms as the result of the State of Colorado's failure to provide or arrange for medically necessary mental health and behavioral services required under the EPSDT provisions of the Medicaid Act.

[Colorado currently ranks 42nd](#) in the United States for prevalence of youth mental illness and access to care according to the [2021 State of Mental Health in American Report by Mental Health America](#)

A few facts from the State of Colorado:

- 26,707 children under the age of 21 were identified as having a severe emotional disturbance in Fiscal Year 2020 – [Colorado 2020 Mental Health National Outcome Measures \(NOMS\): SAMHSA Uniform Reporting System](#), page 7
- Only 223 children who had been diagnosed as having a mental health disorder and found to be at risk of out-of-home placement received intensive home and community-based services – [The Children and Youth Mental Health Treatment Act FY 2019-2020 Report](#) page 6
- 163 children were provided residential intensive community-based services in the Children's Habilitation Residential Program as of June 2021, but this program is limited to children who have an intellectual or developmental disability. – [HCPS Medicaid Premiums Expenditure and Caseload Report July 2021](#), page 13
- 2,299 children received intensive community-based services in the Children's Extensive Support Waiver program, but the program is limited to children with an intellectual or developmental disability. - [HCPS Medicaid Premiums Expenditure and Caseload Report July 2021](#), page 13

ABOUT THE PLAINTIFFS

All three of the plaintiffs are teenagers residing across Colorado who have been diagnosed with a mental illness or condition and all have experienced harm resulting from not receiving services. All three have cycled in and out of hospitals, emergency rooms and psychiatric institutions due to not receiving the medically necessary Intensive Home and Community Based Services they are allowed under Federal law.

Plaintiff A.A.

- Plaintiff A.A. is a 13-year-old boy who has been hospitalized since March 9, 2021. Previously to that he was hospitalized for a month just weeks before. A.A. is living with: Disruptive Mood Dysregulation Disorder; Attention Deficit Hyperactivity Disorder; Obsessive-Compulsive Disorder; Depressive Disorder; Reactive Attachment Disorder; Unspecified Anxiety Disorder; and some symptoms of Autistic Spectrum Disorder. A.A.'s psychiatric condition is further complicated by early trauma and possible prenatal drug exposure. A.A. has a significant history of aggressive and assaultive behavior towards his family, staff and peers at his school. A.A. has had multiple incidents for extreme and disruptive and dangerous behavior, property destruction, self-injurious behavior including headbanging, slapping, and repeated and specific threats to harm and kill others.
- Many intensive assessment and treatment services and modalities have been attempted with A.A., but with only limited or intermediate-term success. A.A. needs Intensive Home and Community-Based Services (IHCBS) in a residential treatment setting or facility to correct or ameliorate his mental and behavioral conditions.
- The State of Colorado has refused and failed to arrange for or provide Intensive Home and Community-Based Residential Services to A.A. so he remains unnecessarily institutionalized.

Plaintiff B.B.

- Plaintiff B.B. is a 16-year-old girl who has been in the emergency room of a metro area hospital since July 1, 2021 and remains in the emergency room due to the State of Colorado refusing to arrange for an Intensive Home and Community- Based Residential Program. The State has not been able to arrange for a long-term residential program in Colorado and is attempting to locate an out-of-state program.
- Since 2020, B.B. has been psychiatrically hospitalized 7 times and has had approximately 17 emergency room admissions. B.B. is living with: Post-traumatic Stress Disorder; Reactive Attachment Disorder; and Depressive Disorder.
- B.B. has a significant history of self-harm. B.B. has busted her head open by banging it on the wall and then proceeding to shove objects into her wound - pencil lead, pen caps, then eventually a plastic spoon. She has tied sheets around her neck and experiences suicidal ideation.
- The State of Colorado has refused and failed to arrange for or provide Intensive Home and Community-Based Residential Services to B.B. so she remains unnecessarily institutionalized in an emergency room.

Plaintiff C.C.

- Plaintiff C.C. is a 13-year-old girl who is currently residing at home but needs Intensive Home and Community-Based Services to correct or ameliorate her behavioral disorders. Since March 22, 2021 C.C. has been psychiatrically hospitalized three times and has received five in-patient

health placements. C.C. is living with: Major Depression; Generalized Anxiety Disorder; Depressive Disorder; Insomnia Disorder; Bipolar Disorder; and Trauma Related Disorder.

- The State of Colorado has refused and failed to arrange for or provide Intensive Home and Community-Based Residential Services to C.C.

ABOUT THE ATTORNEYS

[Attorney Robert H. Farley, Jr.](#) successfully [sued the State of Illinois](#) in *N.B. v. Norwood* on behalf of a similar class of Medicaid eligible children who were not receiving necessary mental health services. That class action lawsuit resulted in a [settlement](#) in 2018.

Jane Perkins is the [National Health Law Program](#) Legal Director. Among a long list of legal cases, Jane served as lead counsel in *Benjamin H v. Ohl*, where she obtained a court ruling that required the West Virginia Medicaid agency to provide timely services to individuals with developmental disabilities who had been placed on a waiting list for home and community-based care services.