

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HEALTH CARE FOR ALL, INC.; VIRGIN TORRES, on behalf of her minor child, T.T.; PATRICIA MEANEY, on behalf of herself and her minor children, D.M. and R.M.; SHARLEEN CAMPBELL, on behalf of herself and her three minor children, Sa.C., Sc.C. and J.B.; ELIZABETH and GEORGE CURTIS, on behalf of themselves and their four children, B.C, C.C., M.C., and E.C.; SHERI GUZOFSKI, on behalf of herself and her minor children, Ca.R. and Ch.R.; GEORGE MACKIE, by and for adoptive and foster children under his care, R.O., M.S. and B.M.; CHERYL HADDAD, by and for adoptive and foster children under her care, E.S., M.D., E.D., S.D., and K.H.; SIRDEANER WALKER, on behalf of herself and her minor children, D.W. and C.W.H.; YOLANDA and MIGUEL CASILLAS, on behalf of themselves and their minor children, Y.N., P.N., M.N. and S.N.; ZAIDA MOLINA, by and for her minor child, A.C.; SHARON LIBERTY, WILLIAM F. LIBERTY, JR.; MARITZA RODRIGUEZ, on behalf of her minor child, I.R.; and MARIA NEGRON, on behalf of her minor child, L.S.,
Plaintiffs,

v.

MITT ROMNEY, in his capacity as Governor of the Commonwealth; RONALD A. PRESTON, in his capacity as Secretary of Health and Human Services for the Commonwealth; ERIC KRISS, in his capacity as Secretary of Administration and Finance for the Commonwealth; BETH WALDMAN, in her capacity as Acting Commissioner of the Massachusetts Division of Medical Assistance; and CHRISTINE C. FERGUSON, in her capacities as Assistant Secretary for Health and Commissioner of Public Health for the Commonwealth,

Defendants.

C.A. No. 00CV10833RWZ

SECOND AMENDED
COMPLAINT

NATURE OF ACTION

1. This class action challenges the failure of the Commissioner of Medical Assistance and other responsible state officials to provide adequate oral health services to the members of the MassHealth program. Plaintiffs and the class they represent have suffered the consequences of poor oral health: acute and chronic pain; infections; impaired eating ability, concentration and sleep; speech difficulties; and partial or total tooth loss. Many of these problems are preventable with early treatment. In its report released in February 2000, the Special Legislative Commission on Oral Health declared that there is an escalating crisis in access to dental care for MassHealth members caused by a rapidly declining number of participating dental providers. This crisis threatens to undermine an already ineffective system of dental care, with one certain outcome being a further decline in oral health status for certain high-risk groups. As a direct result of defendants' failure to operate an adequate oral health program, plaintiffs and others similarly situated have endured, and continue to endure, needless suffering. This failure on the part of the Governor, the Secretary of Administration and Finance, the Secretary of Health and Human Services, the Commissioner of Medical Assistance and the Assistant Secretary of Health violates federal Medicaid law. Plaintiffs seek declaratory and injunctive relief to redress these violations of their federal rights.

JURISDICTION

2. Plaintiffs seek declaratory and injunctive relief to redress the deprivation of rights secured to them under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., which is enforceable under 42 U.S.C. § 1983. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights), 2201 (declaratory judgment), and 2202 (other relief).

PARTIES

PLAINTIFFS

3. Plaintiff Health Care For All, Inc. is a non-profit, tax-exempt corporation organized under Chapter 180 of the Massachusetts General Laws. Health Care For All is a membership organization, which represents Massachusetts residents seeking quality, affordable health care. Health Care For All includes among its membership MassHealth enrollees who lack adequate dental care due to the insufficient number and uneven distribution of participating MassHealth dentists. Health Care For All's offices are located at 30 Winter Street, Suite 1001, Boston, Suffolk County, Massachusetts.

4. Plaintiff Virgin Torres brings this action on behalf of her daughter T.T., who is 15 years old. Ms. Torres lives with her three children in Springfield, Hampden County, Massachusetts. Ms. Torres and her children are eligible for MassHealth benefits.

5. Plaintiff Patricia Meaney and her sons D.M. (16) and R.M. (13) live in Plymouth, Plymouth County, Massachusetts. Ms. Meaney and her sons are eligible for MassHealth.

6. Plaintiff Sharleen Campbell lives with her three children, Sa.C. (14), Sc.C. (10) and J.B. (9), in Kingston, Plymouth County, Massachusetts. Ms. Campbell and her children are eligible for MassHealth.

7. Plaintiffs Elizabeth and George Curtis live with their four minor children, B.C. (18), C.C. (16), M.C. (14) and E.C. (12), in Pocasset, Barnstable County, Massachusetts. The Curtises are eligible for MassHealth.

8. Plaintiff Sheri Guzofski lives with her three minor children, including Ca.R. (13) and Ch. R. (9), in Beverly, Essex County, Massachusetts. Ca.R. and Ch. R. are eligible for MassHealth.

Sheri Gruzofski has a congenital disability and has been eligible for Medicaid (now MassHealth) since 1973.

9. Plaintiff George Mackie is the adoptive parent of B.M. (18). Mr. Mackie and B.M. live in Shirley, Worcester County, Massachusetts. Until recently, Mr. Mackie was also the foster parent of minor children, R.O. and M.S. While in Mr. Mackie's household, R.O. and M.S. were eligible for MassHealth.

10. Plaintiff Cheryl Haddad is the foster parent of M.D. (20), S.D. (18), and E.D. (17). Ms Haddad is also the adoptive mother of K.H. (15), and the legal guardian of E.S., a 23-year-old man with mental retardation. Cheryl Haddad and her family live in West Winchendon, Worcester County, Massachusetts. M.D., S.D., E.D., E.S. and K.H. are eligible for MassHealth.

11. Plaintiff Sirdeaner Walker lives with her minor children, D.W. (9) and C.W-H (6), in Springfield, Hampden County, Massachusetts. Ms. Walker and her children are eligible for MassHealth.

12. Plaintiffs Yolanda and Miguel Casillas bring this action on behalf of themselves and four of their children, Y.N. (18), P.N. (13), M.N. (8), and S.N. (6). The Casillas family lives in Fitchburg, Worcester County, Massachusetts, and is eligible for MassHealth.

13. Plaintiff Zaida Molina brings this action on behalf of her daughter A.C., who is 15 years old. Ms. Molina lives with her two children in New Bedford, Bristol County, Massachusetts. Ms. Molina and her children are eligible for MassHealth.

14. Plaintiffs Sharon Liberty and William F. Liberty, Jr. live in Dudley, Massachusetts. Mr. and Mrs. Liberty are eligible for MassHealth.

15. Plaintiff Maritza Rodriquez brings this action on behalf of her daughter, I.R., who is 12 years old. Ms. Rodriquez lives with her four children in Worcester, Worcester County, Massachusetts. Ms. Rodriquez and her children are eligible for MassHealth.

16. Plaintiff Maria Negron brings this action on behalf of her daughter, L.S., who is three years old. Ms. Negron lives with her daughter in Worcester, Worcester County, Massachusetts.

DEFENDANTS

17. Defendant Beth Waldman is Acting Commissioner of the Massachusetts Division of Medical Assistance ("DMA"), which administers the state's Medicaid program pursuant to 42 U.S.C. § 1396 et seq. and Mass. Gen. Laws c. 118E. Upon information and belief, DMA is currently the single state agency charged with the administration of the Medicaid program. The Commissioner's principal place of business is at 600 Washington Street, Boston, Suffolk County, Massachusetts.

18. Defendant Mitt Romney is Governor of the Commonwealth of Massachusetts. This action is brought against him in his official capacity. The Governor is responsible for proposing an annual budget, including funds for the Executive Office of Health and Human Services and the Division of Medical Assistance, and for approving the appropriation of funds by the legislature to run the MassHealth program. The Governor also directs, supervises and controls the executive departments of the state government, including the Executive Office of Administration and Finance and the Executive Office of Health and Human Services, of which the Division of Medical Assistance is a part. The Governor's principal place of business is State House, Room 360, Boston, Suffolk County, Massachusetts.

19. Defendant Eric Kriss is the Secretary of Administration and Finance. This action is brought against him in his official capacity. Secretary Kriss is responsible for administration of the state budget as well as the oversight and supervision of the finances of state executive agencies, including the Division of Medical Assistance. Secretary Kriss' principal place of business is State House, Room 373, Boston, Suffolk County, Massachusetts.

20. Defendant Ronald A. Preston is Secretary of the Executive Office of Health and Human Services (EOHHS). This action is brought against him in his official capacity. The Secretary of EOHHS appoints the Commissioner of Medical Assistance, who serves at the pleasure of the secretary. The Secretary may remove the Commissioner at any time, subject to the approval of the Governor. Upon information and belief, as the result of a legislatively ordered restructuring of state government, EOHHS will replace the Division of Medical Assistance as the single state agency charged with the administration of the Medicaid (MassHealth) program. Secretary Preston's principal place of business is One Ashburton Place, Room 1109 Boston, Suffolk County, Massachusetts.

21. Defendant Christine C. Ferguson serves as Assistant Secretary for Health and as Commissioner of Public Health under EOHHS. This action is brought against her in her official capacity. Upon information and belief, as the result of the restructuring of state government, Secretary Ferguson will oversee Medicaid Acute and Ambulatory Care, which includes the MassHealth dental program.

CLASS ACTION

22. Plaintiffs bring this action on their own behalf, and pursuant to Rule 23(A) and (B)(2) of the Federal Rules of Civil Procedure, on behalf of all similarly situated individuals. The proposed class is defined as all individuals who are or will be eligible for MassHealth dental

benefits, and who are or will be seeking oral health services. Plaintiffs further seek to represent a sub-class of all children who are now or will be under the age of twenty-one, who are or will be seeking oral health services, and who are or will be eligible to receive MassHealth benefits.

23. The requirements of Rule 23(a) are met in that: (i) the class is so numerous that joinder of all members is impracticable; (ii) all members of the class share common issues of law and fact, namely, whether defendant has failed to operate an adequate oral health program, and whether such failure violates the federal Medicaid Act; (iii) the claims of the named plaintiffs are typical of the claims of the class; and (iv) the named plaintiffs have retained competent and experienced counsel and will fairly and adequately protect the interests of the class.

24. The requirements of Rule 23(b)(2) are met in that defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

FEDERAL STATUTORY SCHEME

25. In 1965, Congress enacted Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., establishing Medicaid, a medical assistance program cooperatively funded by the federal and state governments. Medicaid is designed to ensure that poor people receive necessary medical services. If a state elects to participate in Medicaid, and thereby to receive federal matching funds to partially cover the cost of Medicaid benefits, it must adhere to minimum federal legal requirements, as provided by the Medicaid Act and its implementing rules and regulations.

26. The Centers for Medicare and Medicaid services (“CMS”), successor to the Health Care Financing Administration (“HCFA”), is the federal agency that publishes rules and guidelines for

implementation of the Medicaid program. These rules and regulations are set forth at 42 C.F.R. Part 405, and in the HCFA/CMS State Medicaid Manual. These regulations are binding on all participating states.

27. A state's participation in Medicaid is voluntary. If it chooses to participate, the state must adopt a plan which is consonant with the requirements of the Medicaid Act. The provisions of the state plan become mandatory upon all political subdivisions of the state. 42 U.S.C. § 1396a(a)(1) et seq.

28. The Social Security Act and regulations further require that the state must operate a Medicaid program in accordance with the following provisions, among others:

- a. 42 U.S.C. § 1396a(a)(8), which provides that Medicaid-covered services shall be delivered with reasonable promptness;
- b. 42 U.S.C. § 1396a(a)(10)(B), which provides that services delivered to Medicaid recipients shall not be less in amount, duration and scope than those available to other similarly eligible recipients;
- c. 42 U.S.C. § 1396a(a)(19), which provides that Medicaid programs must provide such safeguards as may be necessary to assure that eligibility for care and services under the state plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;
- d. 42 U.S.C. § 1396a(a)(23), which provides that Medicaid recipients shall have free choice of providers; and
- e. 42 U.S.C. § 1396a(a)(30), which provides, in pertinent part, that reimbursement rates must be adequate to attract a sufficient number of providers so that Medicaid

beneficiaries will have access to care and services available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

29. In addition, the Medicaid statute, at 42 U.S.C. §§ 1396a(a)(43), 1396d(a)(4)(B) and 1396d(r), requires special outreach to, and screening and treatment of, children under the age of 21, with respect to certain medical services, including dental services. These statutory sections are known collectively as the Early and Periodic Screening, Diagnosis and Treatment ("EPSDT") program.

a. 42 U.S.C. § 1396d(4)(B) creates the EPSDT program, and § 1396d(r) describes the services which are to be offered under that program, including dental screenings and other services provided at "intervals to meet reasonable standards for dental practice," which "at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health."

b. 42 U.S.C. § 1396a(a)(43) provides for outreach to, and screening and treatment of, persons under the age of 21 who are eligible for medical assistance, including services which may be required to facilitate achieving these results.

30. The foregoing federal Medicaid laws are designed to compel states to implement programs which make medical services actually available to Medicaid recipients. Federal law therefore contemplates the use of economic incentives and other state initiatives to accomplish provider acceptance of Medicaid patients. Provider participation policies, the level of fees, and the administrative mechanisms through which providers are paid are critical to achieving the Congressional mandate of providing access to dental care.

31. Massachusetts has chosen to participate in the Medicaid program, and provides dental care for all children enrolled in MassHealth. In March 2002, as the result of budget cuts, the Commonwealth reduced dental coverage for adults (21 years and above) on MassHealth. Benefits for adults were further limited in January 2003. Most MassHealth-eligible adults now have coverage for a severely restricted group of dental benefits. Only adult MassHealth members who qualify for the designation “special circumstances” continue to be eligible for a broader array of dental care. The criteria for this designation are set forth in Division regulations at 130 CMR 420.00 et seq. Plaintiffs Sheri Gusofski, Sharon Liberty, and William Liberty Jr. have been approved as “special circumstances” members. Upon information and belief, plaintiff E.S. is also eligible for MassHealth dental benefits on the basis of “special circumstances.”

32. Massachusetts operates its Medicaid program for people under the age of 65 through a waiver granted under Section 1115 of the Social Security Act (42 U.S.C. § 1315). This waiver permits CMS to waive compliance by a state with certain provisions of the Medicaid Act. The purpose is to allow states to conduct research and demonstration projects to provide innovative services to Medicaid-eligible individuals. Requirements of the Medicaid program that are not expressly waived still apply to the waiver project and to all Medicaid services not included in the waiver. The Medicaid statute has not been waived with respect to the MassHealth dental program, as DMA has not requested nor received a § 1115 waiver to provide dental services.

33. MassHealth members are not required to get their dental care by referral from a primary care clinician or managed care organization. 130 C.M.R. § 450.118(I)(1)(e). Rather, they may select a dental provider from those dentists who have agreed to participate in the MassHealth program. 130 C.M.R. § 420.403.

34. The Division of Medical Assistance currently administers Massachusetts' Medicaid program, known as "MassHealth." MassHealth offers several coverage types, including Standard, Family Assistance and CommonHealth, which pay for certain preventative, diagnostic and curative dental services. Upon information and belief, EOHHS will soon become the single state Medicaid agency, and the Assistant Secretary for Health will oversee Medicaid Acute and Ambulatory Care, including the MassHealth dental program.

STATEMENT OF FACTS

NAMED PLAINTIFFS

Health Care For All

35. Health Care For All is a private, non-profit membership corporation organized under Chapter 180 of the Massachusetts General Laws. Founded in 1985, Health Care For All assists Massachusetts residents seeking access to health care and insurance, through organizing, education and policy reform. Among Health Care For All's members are MassHealth enrollees who are eligible for dental services.

T.T. by her mother and next friend Virgin Torres

36. Virgin Torres is the mother of T.T., who is 15 years old. Ms. Torres is a single parent with three children. The family lives in Springfield, Massachusetts. Ms. Torres does not own or have access to a car.

37. T.T. began seeing an orthodontist in January 2000, when she was fitted for braces. T.T. needed to have three teeth removed. T.T.'s general dentist extracted two teeth but the third

required an oral surgeon. The orthodontist referred Ms. Torres to a local oral surgeon, but he did not accept MassHealth.

38. Virgin Torres called MassHealth's toll-free number on March 24, 2000 to locate an oral surgeon for T.T. The MassHealth operator told Ms. Torres that there were no participating oral surgeons in her area. Ms. Torres called the toll-free number again on March 27, 2000. A different MassHealth operator referred Ms. Torres to an oral surgeon in North Adams, which is approximately 75 miles from Springfield.

Patricia Meaney, D.M. and R.M.

39. Patricia Meaney is the single parent of D.M. and R.M., ages 16 and 13. Ms. Meaney does not own or have access to a car.

40. Until early 1999, Ms. Meaney and her children saw a dentist in Falmouth, approximately 36 miles from their home. When Ms. Meaney arrived for a scheduled appointment in May 1999, she was told the dentist no longer accepted MassHealth.

41. Ms. Meaney then took her sons to a MassHealth dentist in Plymouth. Based on her personal observations and conversations with other patients, Ms. Meaney concluded that the quality of care provided by this dentist was unacceptable.

42. In February 2000, Ms. Meaney called DMA for a list of other dentists in her area who accepted MassHealth. The operator told Ms. Meaney that the only dentist in Plymouth or the 20 surrounding towns who accepted MassHealth was the Plymouth dentist her children had already seen. The next closest dentist on the list was in Hyannis, 33 miles away.

Sharleen Campbell, Sa.C., Sc.C. and J.B.

43. Sharleen Campbell is the single parent of three children, Sa.C. (14), Sc.C. (10) and J.B. (9). The family lives in Kingston, Massachusetts. For significant periods of time in recent years, Ms. Campbell did not own or have access to a car.

44. In early 2000, Ms. Campbell had one front tooth missing, and another that needed a cap. In January 2000, Ms. Campbell managed to arrange transportation to Boston (36 miles away) to have a root canal done. She was unable to get to Boston for follow-up treatment after the initial procedure due to lack of transportation.

45. Sa.C. had a tooth removed in December 1999. Sharleen Campbell estimates that she called 50 dentists before she found a MassHealth provider who would perform the extraction. The closest provider she could find was in Quincy, approximately 30 miles away.

Elizabeth and George Curtis and their minor children, B.C., C.C., M.C. and E.C.

46. Elizabeth ("Buffy") Curtis lives with her husband George and four children in Pocasset on Cape Cod. The family began receiving MassHealth in January 1999. Ms. Curtis spent approximately 12 hours over several days calling providers on a list sent by DMA, but she was unable to find a dentist for herself or her husband.

47. In March 2000, George Curtis' tooth became infected as a result of a lack of dental care. On April 24, 2000, Buffy Curtis had to be treated at a hospital emergency room, also for an infected tooth. She was given another list of MassHealth dentists, but the closest one was 45 miles from her home.

48. Between 2001 and 2003, the Curtisses tried but were unable to find a satisfactory dentist on the Cape that accepted MassHealth. They therefore paid out-of-pocket for their own and their children's dental care.

49. In November, 2003, Ms. Curtis called MassHealth Customer Service and requested an updated list of MassHealth providers on Cape Cod. She was told that the provider list “had not been updated,” and that she therefore would need to call every dental practice on the list. Ms. Curtis made several calls to private dentists’ offices, who informed her that they no longer accepted MassHealth. She also called the Ellen Jones Community Dental Health Center in Harwich, a clinic that opened in late 2000. The receptionist told Ms. Curtis that there would be a one-year wait for her children to receive non-urgent dental services.

50. Ultimately, Ms. Curtis obtained dental care for her children at the Tatakut Dental Clinic in Falmouth, one of the few dental offices on the Cape that accepts MassHealth. Due to the lack of other MassHealth dental providers on the Cape, she felt compelled to bring her children to this clinic despite reservations from past experience about the quality of care.

Sheri Guzofski, Ca.R. and Ch.R.

51. Sheri Guzofski is a disabled parent with three children. Ms. Guzofski is not able to drive due to her disability.

52. Nine-year-old Ch. R. and 13-year-old Ca.R. have received cleanings at the Beverly school-based clinic. Ms. Guzofski has been unable to find a MassHealth participating dentist who can provide regular follow-up dental care for her daughters.

53. For many years, Sheri Guzofski was unable to find a MassHealth dentist for herself. She had no routine or preventive dental care for at least five years, between 1995 and 2000. As a result, she lost all but eight of her teeth and all of Ms. Guzofski’s remaining teeth had decayed severely.

R.O., M.S. and B.M., through their next friend and guardian George Mackie

54. George Mackie lives with his son B.M in Shirley. For several years, Mr. Mackie provided a home for foster sons, R.O. and M.S. All three boys were enrolled in MassHealth.

55. Until June 1998, Mr. Mackie took his foster sons to a dentist in Ayer, who stopped accepting MassHealth at that time. Mr. Mackie brought the boys to Pediatric Dentistry in Concord, 20 miles from his home. In 1999, Pediatric Dentistry stopped accepting MassHealth as well. Mr. Mackie obtained lists of dentists from DMA and through the foster care program, and attempted to find dentists for his sons. Though he called all of the dentists listed (some as far as 27 miles away), none would accept MassHealth or take new patients.

56. B.M. is now covered by Mr. Mackie's private dental insurance and is able to see a dentist regularly. Despite Mr. Mackie's efforts, while R.O. and M.S. lived with him, they went for more than one year without seeing a dentist due to the lack of MassHealth-participating providers.

E.S., M.D., S.D., E.D. and K.H., through their next friend and guardian Cheryl Haddad

57. Cheryl Haddad is the foster parent or guardian of five individuals, four of whom are minors and all of whom receive MassHealth benefits. Ms. Haddad took the children to a dentist in Winchendon until around 1996, when she discovered that the dentist's treatment was incompetent. She then took her children to a dentist in Gardner but that dentist stopped accepting MassHealth in 1999. Having called several dentists, sought referrals from the Department of Social Services, and spoken to other foster parents, Ms. Haddad was still unable to find a dentist within an hour's drive of her home to treat her foster children.

Sirdeaner Walker, D.W., and C.W.H.

58. Plaintiff Sirdeaner Walker lives with her two children, D.W. (9) and C.W.H. (6), in Springfield, Massachusetts. Ms. Walker and her children have been enrolled in MassHealth since 1997.

59. As of early 2000, Ms. Walker and D.W. were receiving care from a dentist in Springfield. This dentist informed Ms. Walker that he would no longer accept MassHealth as of November 2000, and would not take C.W.H. as a new patient. The dentist told Ms. Walker that she would have a great deal of difficulty finding another dentist who will accept MassHealth.

Yolanda and Miguel Casillas and Y.N., P.N., M.N. and S.N.

60. Yolanda and Miguel Casillas and their children live in Fitchburg, Massachusetts. As of April 2000, Yolanda, Miguel and their two oldest children Y.N. and P.N. received dental care at Fitchburg Family Dental. Ms. Casillas learned that the clinic planned to drop out of the MassHealth program.

61. In 1999, five-year-old M.N. had an infected tooth. Fitchburg Family Dental referred him to Pediatric Dentistry in Concord, 26 miles away. M.N. had the tooth pulled at Pediatric Dentistry in early 1999. Pediatric Dentistry thereafter stopped accepting MassHealth. Fitchburg Family Dental refused to provide follow-up care to M.N.

62. In 2000, three-year-old S.N. had dental problems due to grinding of her teeth. Sara had never seen a dentist. Fitchburg Family Dental would not take her as a new patient.

A.C., by her mother and next friend Zaida Molina

63. Zaida Molina lives with her two children, E.C. (18) and A.C. (16), in New Bedford, Massachusetts. The family has been enrolled in MassHealth since September 1994. A.C. began receiving orthodontic treatment at Family Dental Care in Fall River in late 1997. An orthodontist

at Family Dental Care fitted A.C. with braces. A.C. made regular visits to an orthodontist at Family Dental Care for about one year. Then, in the winter of 1998, Family Dental Care abruptly stopped taking MassHealth patients.

64. Between 1999 and 2001, Ms. Molina made repeated efforts to find A.C. an orthodontist who accepted MassHealth. Ms. Molina called the MassHealth customer service number several times for lists of participating orthodontists. She was given oral lists. When she called the named orthodontists, they either did not take MassHealth or they refused to treat A.C. because another orthodontist had started her treatment.

65. Ms. Molina called the MassHealth customer service number again in early November 2000. On November 6, 2000, she received a written list of twelve orthodontists. (See Exhibit A appended hereto.) When Ms. Molina called the twelve doctors, she learned that eight of them no longer see MassHealth patients. Three refused to accept A.C. as a “transfer” patient, on the grounds that MassHealth would not reimburse them for completing work begun by a previous orthodontist.

66. The remaining orthodontist, Dr. Steven Gulrich of Foxboro, said he had a waiting list of six to eight months for appointments for MassHealth patients. Dr. Gulrich agreed to see A.C. on a one-time, emergency basis only to remove her braces, but not to provide ongoing orthodontic treatment. Dr. Gulrich removed A.C.’s braces on December 13, 2000.

67. As a result of the lack of regular orthodontic treatment, A.C.’s teeth became extremely crooked. She developed bloody sores on her gums because of friction caused by the braces. The crookedness of her teeth prevents proper brushing. Alyssa also developed a severe case of gum disease, which threatens the loss of her teeth.

Sharon Liberty and William F. Liberty, Jr.

68. Sharon Liberty is a 58-year-old disabled adult. She is eligible for MassHealth. William F. Liberty, Jr. is a 48-year-old disabled adult. He also is enrolled in MassHealth. The Liberties are married to each other. Both of them use wheelchairs.

69. Due to their disabilities both Mr. and Mrs. Liberty must receive dental treatment while in an upright seated position. In Mr. Liberty's case, the alternative is having two adults transfer him from his wheelchair to the dental chair. For the past several years, the Libertys have received dental care from the Harvard Faculty Practice at the Harvard Dental School (HDS).

70. On or about August 2000, the HDS Faculty Practice informed the Libertys that it would no longer accept MassHealth. The Libertys have gum problems due to medications they take and therefore require the regular care of a periodontist, in addition to regular cleanings. Mrs. Liberty also needs a dentist to replace missing fillings, which are causing her pain.

71. Mrs. Liberty called MassHealth to obtain a list of dentists. She called the dentists on the list, as well as others she found in the phone book. She also sought the help of her state senator. On her own initiative, Mrs. Liberty managed to get a one-time, emergency appointment at the Fernald School in Waltham to treat her missing fillings. However, the Fernald School would not guarantee that the dentist would treat Mrs. Liberty in a seated position. The Liberty have not been able to find a dentist willing to treat them appropriately over the long term.

72. Prior to enrolling in MassHealth, Mrs. Liberty had private dental insurance. As a privately insured patient, she had little to no difficulty finding a dentist willing to treat her in a seated position.

Maritza Rodriguez on behalf of her minor daughter, I.R.

73. Maritza Rodriguez is the mother of I.R., who is 12 years old. She is a single parent and lives in Worcester with her four children. They are all MassHealth members.

74. I.R. attends school in Worcester. She loves to dance and sing, and is always doing so. She has sung at school in her chorus.

75. I.R. has received limited preventive dental care at school. She needed further surgical and restorative care but her mother could not find a dentist that accepts MassHealth to perform these services. Maritza Rodriguez pulled some of I.R.'s baby teeth when they became loose and rotten, most recently in June 2003. She has also given I.R. Anbesol® for tooth and gum pain relief at times.

76. When I.R. had pain a few months ago in the upper right part of her mouth, Maritza Rodriguez called the Family Health Center in Worcester. She was unable to obtain a prompt dental appointment for I.R.

77. In August 2003, Maritza Rodriguez called the MassHealth Customer Service number for help in finding a MassHealth dentist. She was sent a notice about children's dental care needs but never received a list of local MassHealth dentists.

Maria Negron on behalf of her minor child, L.S.

78. Maria Negron lives with her daughter, L.S., in Worcester. In March 2003, Ms. Negron took her daughter for her three-year medical check-up at the Family Health Center in Worcester.

79. The pediatrician told Ms. Negron that she should take L.S. to a dentist for her first dental examination. Ms. Negron contacted the Family Health Center for a dental appointment. She was told that her daughter would have to wait nine months because the clinic had a shortage of dental staff.

80. In November 2003, Ms. Negron learned that an appointment had opened up for her daughter at the Family Health Center in December, 2003. Ms. Negron is eager to have her

daughter receive a dental examination as nine months have passed since she was advised by the pediatrician.

ACCESS TO DENTAL SERVICES FOR MASSHEALTH MEMBERS

81. The experiences of plaintiffs described above reflect an extreme shortage of MassHealth dental providers. This shortage is caused by low reimbursement rates for providing MassHealth-covered services, administrative barriers to obtaining reimbursement from DMA, and difficulties associated with treating MassHealth members. Defendants have the authority and capacity, but have failed, to address each of these problems. In particular, defendants have failed in their statutory and constitutional duties to seek and ensure proper financial resources for and the effective administration of the MassHealth dental program.

82. The MassHealth dental program is not operated uniformly in all areas of the state. MassHealth members are denied access to reasonably prompt services. Members in one area receive services that are not comparable in amount, duration and scope to those available to members in other areas. The dental program is not operated efficiently and according to the best interest of the beneficiaries. Defendants have failed to provide sufficient reimbursement to recruit enough dentists to offer MassHealth members access equal to that enjoyed by the general population in the geographic area.

83. Children eligible for MassHealth have not received adequate dental screening and treatment, and the services provided have not met the standards required by the EPSDT program. The low utilization rate of MassHealth members under 21, and the experience of plaintiffs, indicate that eligible children are not receiving adequate dental screenings or treatment.

Program not in effect

84. The MassHealth dental program is not operating uniformly in all areas of the state. On information and belief, there are 106 communities in Massachusetts in which no dentists accept MassHealth patients.

85. As a result of the shortage of participating dentists, plaintiffs and similarly situated MassHealth members, have been unable to obtain prompt and adequate dental services. This situation has been particularly acute for MassHealth members residing in western Massachusetts, Worcester County, southeastern Massachusetts, the North Shore and Cape Ann, and on or near Cape Cod. On information and belief, many MassHealth beneficiaries in these geographic areas have had to travel to Boston for dental services.

No reasonably prompt access, unequal service among beneficiaries

86. As of February 2000, there were 911,816 people enrolled in MassHealth, including 396,313 persons under age 19. On information and belief, fewer than 800 of the state's 4,700 practicing dentists treat MassHealth patients.

87. On information and belief, only 35 percent of MassHealth eligible children receive annual dental checkups to which they are entitled under the EPSDT program.

88. Several of the plaintiffs have gone without dental treatment for more than one year, despite their substantial efforts to obtain such treatment. Plaintiff A.C. went without appropriate orthodontic treatment for several years, resulting in seriously misaligned teeth and consequent oral health problems. On information and belief, many other MassHealth recipients have experienced similar delays in obtaining dental treatment.

DMA's administration; efficiency, economy and best interest of the beneficiaries

89. On information and belief, DMA's administrative procedures discourage participation by dentists in the MassHealth program. Complex claims processing, use of unusual and non-standard claim forms, slow payments, arbitrary denials, prior authorization requirements for routine services, and lack of coverage for necessary services are among the reasons dentists cite for refusing to participate in MassHealth.

90. On information and belief, DMA's administrative procedures impair MassHealth members' ability to access dental services. In 2000, DMA responded to more than 4000 calls per month to its customer service line concerning dental questions. All other inquiries totalled only 700 calls per month.

91. DMA frequently sends out lists of participating dentists in response to member requests. On information and belief, these lists are often outdated, with many providers no longer accepting MassHealth. Some have not participated in the program for years. Several of the plaintiffs received outdated and inaccurate lists of MassHealth dentists from DMA.

92. DMA has failed to administer its dental program in conformity with principles of economy, efficiency, and the best interests of MassHealth beneficiaries.

Inadequate reimbursement to provide equal access

93. On information and belief, as of April 2000, Massachusetts had the third lowest Medicaid reimbursement rate in the country for four basic dental services: examinations, x-rays, cleanings and sealant applications. While DMA has increased some fees paid to dental providers since 2000, MassHealth rates for dental care remain well below the levels needed to enlist sufficient numbers of providers.

94. On information and belief, the cost to a MassHealth dental provider of delivering services is approximately 66 percent of the usual and customary fees charged to private paying patients. The current MassHealth fee schedule pays participating dentists on average only 50 percent of their usual and customary fees, significantly below the cost to the dentist of providing dental care.

95. On information and belief, the Governor has failed to seek or approve funds from the legislature adequate to administer the state's Medicaid oral health program in compliance with standards in Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* Secretary Preston and Secretary Kriss have also failed in their legal duties to ensure the proper financial resources and effective administration of the state Medicaid oral health program.

96. Defendants' failure to seek adequate funding and the consequent failure of Acting Commissioner Waldman and Assistant Secretary Ferguson to provide adequate reimbursement to dentists for providing services to MassHealth members is a fundamental reason that plaintiffs cannot obtain dental services. DMA's failure to sufficiently increase reimbursements for dental services has left reimbursement rates well below what is required for adequate member access. In general, participating dentists lose money on every MassHealth member they treat. This has led to a flood of dentists leaving the program.

97. Plaintiffs have no adequate remedy at law.

CAUSES OF ACTION

98. Plaintiffs incorporate and re-allege paragraphs 1 through 97, as if fully set forth herein.

FIRST CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1396a(a)(1)

99. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(1), which requires that the Medicaid program "shall be in effect in all political subdivisions of the state," meaning in existence, operational and functioning uniformly.

100. This violation, which has been repeated, entitles the plaintiffs to relief under 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1396a(a)(8)

101. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(8), which requires that assistance shall be furnished with reasonable promptness.

102. This violation, which has been repeated, entitles the plaintiffs to relief under 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION
VIOLATION OF 42 U.S.C. § 1396a(a)(10)(B)

103. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(10)(B), which requires that any MassHealth member receive medical assistance not less in amount, duration and scope than that received by any other similarly-eligible individual.

104. This violation, which has been repeated, entitles the plaintiffs to relief under 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

42 U.S.C. § 1396a(a)(19)

105. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(19), which requires that the administration of the state Medicaid program be consistent with efficiency and the best interests of the beneficiaries. Defendants have failed to administer the dental program in accordance with this regulation, by fostering a shortage of MassHealth dental providers through financial, administrative and procedural barriers to participation.

106. This violation, which has been repeated, entitles the plaintiffs to relief under 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION

42 U.S.C. § 1396a(a)(30)

107. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(30), which requires that the state plan "shall provide such methods and procedures . . . as may be necessary . . . to assure that payments are . . . sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

108. This violation, which has been repeated, entitles the plaintiffs to relief under 42 U.S.C. § 1983.

CLAIMS OF SUB-CLASS

SIXTH CAUSE OF ACTION

42 U.S.C. § 1396a(a)(43)

109. Defendants' practices and procedures for administering the MassHealth dental program violate 42 U.S.C. § 1396a(a)(43), which requires outreach to and treatment of qualified Medicaid beneficiaries under age 21. In particular, the practice of sending outdated provider lists violates the obligation to conduct effective outreach to eligible persons under age 21.

110. This violation, which has been repeated, entitles the members of the sub-class to relief under 42 U.S.C. § 1983.

SEVENTH CAUSE OF ACTION

42 U.S.C. § 1396d(a)(4)(B), 42 U.S.C. § 1396d(r)

111. Defendants' practices and procedures for administering the MassHealth dental program violate the EPSDT provisions of the Medicaid act, which require periodic screening and treatment of eligible beneficiaries under the age of 21. Among other violations, the intervals between dental visits plaintiffs under 21 years of age have experienced do not meet the reasonableness standard imposed in the statute.

112. This violation, which has been repeated, entitles the members of the sub-class to relief under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this court:

1. Certify the action as a class action, pursuant to Fed. R. Civ. P. 23(b)(2), with respect to the class and sub-class identified herein;
2. Declare that the policies and methods of administration used by the defendants in providing dental services to MassHealth-eligible children and adults violate the provisions of 42 U.S.C. § 1396a et seq., and the implementing regulations at 42 C.F.R. Part 405;
3. With respect to the sub-class of plaintiffs, declare that the policies and methods of administration used by the defendants in providing dental services to MassHealth members under 21 years of age violate the provisions of the EPSDT program, including 42 U.S.C. §§ 1396a(a)(43), 1396d(a)(4)(B) and 1396d(r);
4. Issue an injunction requiring that the defendants take such measures, including, without limitation, increasing dental reimbursement rates, as are necessary to recruit an adequate number and geographic distribution of qualified dental providers so as to make available prompt and adequate dental services for plaintiffs and all similarly situated MassHealth members, improve administration of the MassHealth dental program, and otherwise bring the statewide dental program into compliance with applicable law;
5. Retain jurisdiction over the action, to ensure compliance with the Court's orders;
6. Award plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

7. Grant such other and further relief as this Court may deem just and equitable.

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