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## Children's Mental Health Advocates Declare A Major Victory On Behalf of Thousands of Children With Serious Psychiatric Disabilities

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The First Circuit Court of Appeals handed children's mental health advocates a major victory by rejecting an attempt by the Massachusetts Attorney General's Office to dismiss a class action lawsuit brought on behalf of thousands of children with serious psychiatric disabilities.

The ruling sends the case, *Rosie D. v. Swift*, back to Judge Michael Ponsor in the Western Division of the United States District Court in Springfield.

"The decision is a victory for Medicaid beneficiaries everywhere, but children in Massachusetts are still without appropriate services, still held in psychiatric facilities, still stuck in locked wards and still detained in out-of-home placements," said Steven Schwartz, executive director of the Center for Public Representation, which last year joined with attorneys from Hale and Dorr, and the Mental Health Legal Advisors Committee to file the lawsuit alleging state officials violated a federal mandate to provide intensive home-based mental health services to Medicaid-eligible children with serious emotional, behavioral and psychiatric needs.

"We are prepared to move forward with this lawsuit to end the children's mental health crisis in Massachusetts," said Schwartz. "We believe these children have a right to receive care in their homes and communities, but the Commonwealth has steadfastly refused to comply with the law."

In a strongly worded opinion written by Judge Bruce Selya, the appeals court ruled that contrary to arguments offered by the attorney general's office, the Medicaid fair hearing

procedure does not prevent individuals from challenging systemic violations of the Medicaid Act by state officials. “In so holding, we preserve three decades of case law,” the judge ruled. Last spring, Judge Ponsor allowed the case to proceed as a class action that was brought by nine named plaintiffs, ranging in age from 5 to 16, who have been hospitalized or are at risk of hospitalization due to a lack of community-based mental health services. One plaintiff who was repeatedly hospitalized was sent home without any home-based services. Another plaintiff has lived fifty miles from home in a residential treatment facility for more than two years.

The children’s mental health crisis is worsening. Increasing numbers of children aged 3 to 7 are being hospitalized and placed on significant medications. Providers cannot refer a child under 8 to the Department of Mental Health, which is charged with coordinating services. And DMH has extensive waiting lists. As of last December, when DMH last released its figures, 2,654 children were on the case management wait list.

The suit names as defendants Acting Governor Jane Swift; Robert Gittens, Secretary of the Executive Office of Health and Human Services; Stephen Crosby, Secretary of the Executive Office of Administration and Finance; and Wendy E. Warring, Commissioner of the Division of Medical Assistance, whose office administers the Medicaid program in Massachusetts.

Attorneys for the plaintiffs said they welcome a meeting with members of the new administration. However, they pointed out that prior to filing the lawsuit, they met for several months with state officials to discuss implementation of children’s mental health programs. Settlement discussions broke down when state officials refused to make commitments to expand home-based services. “Unfortunately for children in Massachusetts, the Commonwealth then decided to rely on technical legal arguments rather than resolve the crisis confronting these children and their families,” said [James Burling](#), lead counsel from Hale and Dorr.