

---

## Federal Court Finds Massachusetts Violates Medicaid Act In Failing To Provide Children's Mental Health Services

2006-01-26

U.S. District Court Judge Michael A. Ponsor, sitting in Springfield, Thursday ruled that the Commonwealth of Massachusetts has violated federal law by failing to provide behavioral health services to an estimated 15,000 children with serious emotional disturbance, "the most fragile members of our society."

"The result of this failure is that thousands of Massachusetts children with serious emotional disabilities are forced to endure unnecessary confinement in residential facilities or to remain in costly institutions far longer than their medical conditions require," the judge said in a 98-page decision.

The landmark ruling, which has national ramifications for poor children throughout the country, held that Massachusetts violates the federal Medicaid Act by failing to provide medical assessments, service coordination and in-home behavioral supports.

The class action lawsuit, *Rosie D. v. Romney*, was brought on behalf of nine named plaintiffs, aged five to 18, who were either hospitalized or at risk of hospitalization due to the state's failure to provide home-based services.

Lisa, the mother of one of the named plaintiffs, said, "This decision opens the door for children and parents who are searching for treatment in their homes and communities."

During the six-week trial last spring, more than 30 witnesses testified about the effectiveness of intensive home-based services, the state's failure to provide these services, the thousands of children who need these services, and the harm they suffer when denied this treatment.

"Without such services, a child may face a stunted existence, eked out in the shadows and devoid of almost everything that gives meaning to the gift of life," the judge said.

In evaluating the evidence, Judge Ponsor concluded that "this is not a close case; the evidence favoring the plaintiffs is overwhelming."

The court concluded that the "failure" of the Commonwealth to comply with the Medicaid Act requires it to issue permanent injunctive relief unless voluntary remedial action is forthcoming. The judge will

address the issue of remedy in February.

James Burling of WilmerHale, counsel for the plaintiffs, said, "We find this decision very gratifying and are eager to secure the actual delivery of these services to Massachusetts children." Steven Schwartz, his co-counsel from the Center for Public Representation, added, "This is a stunning victory for children with serious emotional disturbance."

Plaintiffs were represented by WilmerHale, the Center for Public Representation, and the Mental Health Legal Advisors Committee. Members of the WilmerHale pro bono trial team included, [James Burling](#), [James Prendergast](#), John Rhee, [Chris Zimmerman](#) and Janet Rountree, and invaluable pro bono expert support was provided by Chris Barry's Dispute Analysis and Investigation team at PricewaterhouseCoopers.