

****PLEASE READ****

IMPORTANT NOTICE THAT MAY AFFECT YOUR RIGHTS

PROPOSED CLASS ACTION SETTLEMENT

This Notice is about a proposed settlement of the class action lawsuit *C.K v. McDonald*.

PURPOSE OF THIS NOTICE

This notice informs you about the proposed settlement of legal claims in a class action lawsuit against James V. McDonald, the Commissioner of the New York State Department of Health (“DOH”) and Ann Marie T. Sullivan, the Commissioner of the New York State Office of Mental Health (“OMH”).

DOH is the state agency responsible for administering the Medicaid program. OMH helps DOH administer Medicaid for people with serious mental illness, including children and teenagers with serious emotional disturbances and other mental or behavioral health conditions. OMH also has sole responsibility for licensing and overseeing the delivery of specialized services for these groups of people. DOH and OMH’s collaboration to administer mental and behavioral health programs relevant to this lawsuit is referred to as “New York Medicaid.”

This notice summarizes the Settlement Agreement (“Agreement”) and tells you what you must do **if you object to the Agreement**. You are receiving this notice because you may be a member of the Classes or a person who may act in the interest of members of the Classes.

BRIEF DESCRIPTION OF THE LAWSUIT

This class action lawsuit is about New York Medicaid’s provision of intensive home and community-based mental health services to Medicaid-eligible children in New York State under the age of 21 who have a mental or behavioral health condition. The lawsuit was filed on March 31, 2022 in federal court in the Eastern District of New York. It alleges that DOH and OMH fail to provide required services in violation of federal Medicaid laws, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.

The lawsuit does not seek to recover any money.

The parties agreed to settle the lawsuit. They entered into this Agreement to improve the

provision of mental health services to children and youth in New York’s Medicaid program. The lawsuit also requests that Defendants pay Plaintiffs’ counsel reasonable attorney’s fees and costs for their work on this case. This Agreement does not include those fees and costs for Plaintiffs’ counsel. Any fees and costs for counsel will be negotiated separately from the Agreement.

DESCRIPTION OF THE CLASSES

This case has been certified as a class action against DOH and OMH on behalf of two Classes of children and youth in New York State:

1. All current or future Medicaid-eligible children in New York State under the age of 21 (a) who have been diagnosed with a mental health or behavioral health condition, not attributable to an intellectual or developmental disability, and (b) for whom a licensed practitioner of the healing arts acting within the scope of practice under state law has recommended intensive home and community-based mental health services (as defined in Appendix A of this Settlement Agreement) to correct or ameliorate their conditions.
2. An ADA Class of all current or future Medicaid-eligible children in New York State under the age of 21 (a) who have been diagnosed with a mental health or behavioral health condition, not attributable to an intellectual or developmental disability, that substantially limits one or more major life activities, (b) for whom a licensed practitioner of the healing arts acting within the scope of practice under state law has recommended intensive home and community-based mental health services (as defined in Appendix A of this Settlement Agreement) to correct or ameliorate their conditions or who have been determined eligible for HCBS Waiver Services (as defined in Appendix A of this Settlement Agreement), and (c) who are segregated, institutionalized, or at serious risk of becoming institutionalized due to their mental health or behavioral health condition.

In other words, the Classes include children and youth with mental or behavioral health conditions who need intensive home and community-based services. They also include children and youth who might become institutionalized if they don’t get these services. The Classes do not include people with addiction disorders or intellectual or developmental disabilities without a mental health diagnosis.

SUMMARY OF THE SETTLEMENT AGREEMENT

The main objective of the Agreement is to ensure that New York Medicaid develops and delivers intensive home and community-based mental health services to children and youth in the Classes. These are referred to as the “Relevant Services.”

The Relevant Services include:

- (1) Intensive Care Coordination,
- (2) Intensive Home-Based Behavioral Health Services,
- (3) Mobile Crisis Services, and
- (4) Medicaid Home and Community- Based Waiver Services.

The Relevant Services are defined in the attached “Appendix A” from the Settlement Agreement. Under the Agreement, DOH and OMH have agreed to, among other things:

- (a) make changes to the standards and requirements for delivering these services;
- (b) make changes to the eligibility criteria for access to these services;
- (c) increase the pathways available for accessing these services;
- (d) regularly review Medicaid reimbursement rates for these services; and
- (e) ensure that these Relevant Services are available throughout New York State and provided to members of the Classes who need them.

As part of the Agreement, New York Medicaid has agreed to make additional changes to their mental and behavioral health services, including:

- Screening and assessing potential Class Members statewide for eligibility for the Relevant Services;
- Ensuring sufficient numbers of providers are available to deliver the Relevant Services in a timely manner;
- Providing public data related to those receiving the Relevant Services;
- Tracking and reviewing the quality of the Medicaid mental and behavioral health system to make sure that the children who need these services get them;
- Hiring an expert in children and family services to review New York Medicaid’s progress in meeting the Agreement’s requirements and reporting to the Court; and
- Developing a plan to inform potential referring providers and eligible children and their families/caregivers about the availability of the Relevant Services.

This lawsuit **does not seek money damages** for the Classes. The Agreement does **not** include any money for Class Members.

PROCEDURES FOR OBJECTING TO THE SETTLEMENT

If you agree with the Agreement between Plaintiffs and New York Medicaid, you DO NOT need to do anything. You may attend the public hearing on the Agreement (called the

“Fairness Hearing”) where the Judge will determine whether the Agreement is fair, reasonable, and adequate as to members of the Classes.

If you have objections to the Proposed Agreement, please mail or email them by the November 21, 2025 deadline to Plaintiffs’ counsel at:

CHILDREN’S RIGHTS, INC.
Attn: Daniele Gerard
88 Pine Street, Suite 800
New York, NY 10005

OR

Email: NYMedicaid@childrensrights.org

Your objection should include your name and address. Please be specific about the basis for your objection. If you do not mail or email your objection by the **November 21, 2025 deadline**, the Court is not required to consider your objection and can stop you from speaking at the Fairness Hearing.

HEARING ON THE FAIRNESS OF THE AGREEMENT

The Court will hold the Fairness Hearing to review the proposed Agreement and decide whether it is fair, reasonable, and adequate as to members of the Classes and should be approved.

If the Court approves the Agreement after the Fairness Hearing, the Agreement will be binding upon all members of the Classes.

The Fairness Hearing will be held on **January 6, 2026 at 10:00 am** in the Courtroom of the Honorable Nusrat J. Choudhury of the U.S. District Court for the Eastern District of New York. The Courtroom address is:

United States District Court
Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, NY 11722

*If you wish to speak at the Fairness Hearing to support or oppose the Agreement, you must mail or email a letter stating your name, mailing address, and desire to speak at the hearing by **November 21, 2025** to Plaintiffs’ counsel Children’s Rights at the mail and email addresses*

provided above. Plaintiffs' counsel will send your request to the Court.

The Court will either grant or deny your request. You will then receive notice of the Court's decision before the Fairness Hearing.

OBTAINING ADDITIONAL INFORMATION

A copy of the Agreement is located at the following websites:

- <https://www.childrensrights.org/nynotice>;
- <https://www.drny.org/page/notice-of-proposed-new-york-class-action-settlement-175.html>;
- https://health.ny.gov/health_care/medicaid/program/update/proposed_class_action_settlement_c_k_v_mcdonald.htm; and
- <https://omh.ny.gov/omhweb/childservice/proposed-class-action-settlement.html>.

If you would like to receive a printed copy in the mail, please email the lawyers for Plaintiffs at NYMedicaid@childrensrights.org. If you have questions about this notice or the Agreement, you may also contact the lawyers for Plaintiffs by (1) sending a letter to the address above or (2) sending an email to NYMedicaid@childrensrights.org.

****PLEASE DO NOT CALL JUDGE CHOUDHURY OR THE CLERK OF THE COURT****

The Court will NOT be able to answer your questions about the class action lawsuit or the Agreement. If you have questions, you may contact the lawyers for Plaintiffs at the email provided above.

APPENDIX A

Intensive Home and Community-Based Mental and Behavioral Health Services, the “Relevant Services,” for the Classes

As described in the Amended Complaint and Plaintiffs’ expert reports, children with serious mental and behavioral health conditions benefit from specific intensive mental and behavioral health services, provided in their homes and communities, to correct or ameliorate their conditions. These Medicaid-required services, collectively referred to as Intensive Home and Community-Based Services, include Intensive Care Coordination (“ICC”), Intensive In-Home Services, sometimes referred to as Intensive Home-Based Behavioral Health Services (“IHBBHS”), and Mobile Crisis Services.

A. Intensive Home and Community-Based Services

1. Intensive Care Coordination

ICC is an assessment and service planning process conducted through a child and family team that coordinates services across multiple systems that serve the child and family, and manages the care and services they need. This includes assessment and service planning, assistance in accessing and arranging for mental or behavioral health services, coordinating multiple mental or behavioral health services, advocating for the child and the child’s family, monitoring the child’s progress, and transition planning.

- A single point of accountability for ensuring that medically necessary Medicaid services are accessed, coordinated, and delivered in a strength-based, individualized, family-driven, child-guided, culturally and linguistically relevant manner;
- Services and supports that are guided by the needs of the child;
- Facilitation of a collaborative relationship among a child, the family, and child-serving systems;
- Support for the family/caregiver in meeting the child’s needs;
- A care planning process that ensures that a single, consistent care coordinator coordinates care across providers and child-serving systems to allow the child to be served in the home and community; and
- Facilitated development of an individual’s child and family team, including individuals selected by the child and family who are committed to them through informal, formal, and community support and service relationships. ICC will facilitate cross-system involvement and a child and family team.

ICC service components consist of:

Assessment: The ICC performs or coordinates the performance of assessments and assessment-based care coordination activities, including, but not limited to:

- A strengths-based, needs-driven, comprehensive assessment that identifies the needs of the child for medical, school-related, social, or mental or behavioral health services, to organize and guide the development of a Person-Centered Plan and a risk management/safety plan;
- Planning and coordination of urgent needs before the comprehensive assessment is completed; and
- Further assessments as necessary within the scope of ICC.

Planning and Development of a Family-Driven, Child-Guided, Person-Centered Plan (“PCP”): ICC providers will maintain a family-driven, child-guided, person-centered planning process, which includes:

- Having the care coordinator use the information collected through an assessment, to convene and facilitate the child and family team meetings;
- Having the child and family team develop a child-guided and family-driven PCP that specifies the goals and actions to address the medical, school-related, social, mental or behavioral health, and other services needed by the child and family; and
- Ensuring that the care coordinator works directly with the child, the family, and others significant to the child to identify strengths, goals, and needs of the child and family, to inform the PCP.

Crisis Planning: The ICC provider will provide or coordinate crisis planning that, based on the child’s history and needs, (a) anticipates the types of crises that may occur, (b) identifies potential precipitants and creates a crisis plan to reduce or eliminate them, and (c) establishes responsive strategies by family or caregivers and members of the child’s team to minimize crises and ensure safety through the development of the risk management/safety plan.

Referral, monitoring, and related activities: The ICC provider must do the following:

- Work directly with the child and family team to implement elements of the PCP;
- Prepare, monitor, and modify the PCP in concert with the child and family team and determine whether services are being provided in accordance with the PCP and whether services in the PCP are adequate to meet the child’s needs; and if not, or if there are changes in the needs or status of the child, adjust the PCP as necessary, in concert with the child and family team; and
- Actively assist the child and family to obtain available services, including medical, school-related, mental or behavioral health, social, therapeutic and other services, and monitor the provision of such services, including by ensuring receipt of available services in accordance with the PCP.
- Coordinate with local governmental units (the counties) to ensure that children receive available services.

Transition: The ICC provider will:

- Develop a transition plan with the child and family team, and implement such plan when the child has achieved the goals of the PCP; and
- Collaborate with the other service providers and agencies on behalf of the child and family in order to effectuate the transition plan.

Settings: ICC may be provided to children living and receiving services at home and in the community, including foster care placements, as well as to children who are currently in a hospital, group home, or other congregate or institutional placement as part of discharge or transition planning. Notwithstanding the foregoing, ICC will not be provided to children in juvenile detention centers.

Providers: ICC is provided by a qualified provider.

2. Intensive Home-Based Behavioral Health Services

IHBBHS are intensive behavioral health services and supports, including individualized therapeutic interventions, provided on a frequent and consistent basis and delivered to children and families in the child's home or appropriate community-based setting. Interventions help the child to build skills necessary for successful functioning in the home and community and improve the family's or caregiver's ability to help the child successfully function in the home and community.

IHBBHS are delivered according to a care plan developed by the child and family team. The IHBBHS treatment plan shall develop goals and objectives for all life domains in which the child's mental or behavioral health condition causes impaired functioning, including family life, community life, education, vocation, and independent living, and identifies the specific interventions that will be implemented to meet those goals and objectives.

Providers of IHBBHS should engage the child and other family members or caregivers in home and community activities where the child has an opportunity to work towards identified goals and objectives in the child's home or appropriate community-based setting.

IHBBHS may be provided by telehealth, as appropriate and where identified in the individual's IHBBHS treatment plan.

IHBBHS include, but are not limited to:

- Educating the child's family about, and training the family in addressing, the child's needs;
- Comprehensive mental health assessments;
- Behavioral supports, provided based on the PCP, which offer interventions, supports, and modeling for the child's family and others on how to implement strategies to guide and support a child's positive behaviors. These services provided by in-home

non-licensed practitioners, assist in implementing the goals of the treatment plan, monitor its effectiveness, and report the interventions' effectiveness to clinical professionals;

- Therapeutic services delivered in the child's home and community, including, but not limited to, therapeutic interventions such as individual and/or family therapy, including evidence-based practices. These services:
 - o Improve wellness, including addressing behaviors and social skills deficits that limit the child's ability to function in the child's natural environment;
 - o Improve self-management of symptoms, including teaching self-administration of medications, as developmentally appropriate;
 - o Improve psychosocial functioning, including addressing social skills deficits, anger management, and emotional regulation skills, as developmentally appropriate;
 - o Support the development and maintenance of social support networks and the use of community resources, as developmentally appropriate;
 - o Support identifying and addressing behaviors that interfere with success in other settings, such as employment or school; and
 - o Support independent living objectives by identifying and addressing behaviors that interfere with seeking and maintaining housing and living independently, as developmentally appropriate.

Settings: IHBBHS may be provided to children living and receiving services at home and in the community, including foster care placements.

Providers: IHBBHS are provided by a qualified provider.

3. Mobile Crisis Services

Mobile crisis services ("MCS") are mental or behavioral health services designed to interrupt and ameliorate a child or youth's crisis episode, wherever the crisis occurs outside of an institutional setting, through crisis intervention and/or resolution, de-escalation, and safety planning. Mobile crisis services work to stabilize the child by providing interventions to minimize or prevent the crisis in the future, with the intent of diverting emergency room visits or inpatient admissions, and/or avoiding other behavior-related disruptions. Prior approval by a managed care plan or any other entity shall not be required for a child to receive MCS.

Services include, but are not limited to:

- Responding to the immediate crisis and assessing child and family safety, and the resources available to address immediate problems;

- Stabilization of functioning by reducing or eliminating immediate stressors and providing counseling to assist the child, family, and caregivers in de-escalating behaviors and interactions;
- Referral and coordination with (a) other services and supports necessary to continue stabilization or prevent future crises from occurring, and (b) any current providers and team members, including, but not limited to, the care coordinator, therapists, family members, primary care practitioners, and school personnel; and
- Follow-up mobile crisis services, which include:
 - o Therapeutic communication and interactions to maintain stabilization following a crisis episode and prevent escalation of mental and behavioral health symptoms;
 - o Facilitation of engagement in mental and behavioral health services, care coordination, medical health, or basic needs related to the original crisis service; and
 - o Confirmation with service providers to ensure crisis services are in place while the child/youth is awaiting initiation or resumption of other services.

Settings: During a crisis, MCS should be provided at the location where the crisis is occurring, including the home (biological, foster, relative, or adoptive) or any other setting where the child is naturally located, including schools, recreational settings, child-care centers, and other community settings.

Availability: MCS are available 24 hours a day, seven days a week, 365 days a year.

Providers: MCS are provided by a trained and experienced mobile crisis professional or team. MCS providers include both licensed and unlicensed staff.

B. Waiver Services to Ensure Receipt of Services in the Least Restrictive Setting

These services are used in conjunction with covered EPSDT services to support children with serious emotional disturbances and to help maintain them in their homes and communities and avoid higher levels of care and out-of-home placements. These services are currently authorized through a waiver under Section 1915(c) of the Social Security Act and in conjunction with the Section 1115 Demonstration Waiver, allowing New York State to spend federal Medicaid dollars on these services.

These services improve a child's, family's, or caregiver's ability to help the child successfully function in the home and community. Such services include services or supports not required to be covered under Medicaid EPSDT provisions. The specific services provided by New York's Home and Community Based Services ("HCBS") Waiver will include services such as respite, caregiver support and training, in-home response, and additional intensive services that may be identified in connection with the development of the Implementation Plan.

Children receiving waiver services must have an individualized service plan developed collaboratively with the child and family team. This plan documents the agreed upon goals, objectives, and service activities. The individualized service plan must be reviewed and updated to meet the needs of the child and family. The child and family team consists of the child, the child's parents or legal guardians, care coordinator, mental health professionals, and any other persons that the child and family choose to include. The team meets to plan the supports a child and family need to safely maintain the child in the home and community.