

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLANS:
TOLL FREE NUMBERS

Decree References:

247. "Toll-free numbers for EPSDT recipients will be staffed sufficiently by well trained personnel. Each recipient will receive prompt service by a person who is knowledgeable, helpful and polite. All calls will be answered promptly absent equipment failure. Equipment will be adequate so failure results only from circumstances beyond Defendants' control, such as bad weather. *TDH will make reasonable arrangements to meet the needs of recipients who do not speak English. No calls may be "answered" by a tape recording during working hours except in unusual circumstances.*"

See also Decree ¶¶ 2, 3.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 641-646; *401 F.Supp. 2d at 662.*

Plaintiffs' Agreements with Defendants' Proposed Corrective Action Plans (Pages 35-36 of Defendants' Proposed Plans):

- It is appropriate to conduct annual reviews and updates of THSteps outreach and informing scripts.
- It is appropriate to continue oversight of call center operations and compliance with contractual requirements regarding call center performance standards, although the standards need revision.
- It is appropriate to prohibit abandonment rates in excess of 10%. Plaintiffs assume this means a maximum of 10% (not an average of 10%).
- Quarterly reporting is appropriate as long as it includes information on at least a monthly basis. In other words, it is appropriate to present month by month information to the Court and Plaintiffs as part of Defendants' quarterly reports to the Court. *See* Decree ¶¶306-307.
- Plaintiffs do not object to upgraded phone systems and have no knowledge of whether linkage to TxDOT's network is appropriate.
- It is appropriate to have separate Transportation toll free lines for class members if customer service and call tracking actually improve as a result.
- It is appropriate to develop best practices to streamline administrative processes.

Plaintiffs' Disagreements with Defendants' Proposed Corrective Action Plans

(Pages 35-36 of Defendants' Proposed Plans):

- A wait in queue not to exceed 60 seconds is not adequate, particularly because Defendants do not specify if they require a maximum or average wait of no more than 60 seconds. A shorter wait in queue should be required

- *A maximum permissible wait in queue for any single call should be specified, as well as a maximum average wait in queue per day. See TR vol. 8 (June 15, 2005), p. 64, ln 20—p. 65, ln. 5.*
- *The “wait in queue” measured should include all the time from when the call first enters the Integrated Voice Response system until a person answers the call. If a person “answers” the call not for the purpose of actually responding to it (for example, to ask the caller to hold for longer) this additional hold time should be included in measuring the wait in queue. See TR vol. 8 (June 15, 2005), p. 42, lns 8-24.*
- *Defendants’ contractors’ practice of “clearing the queue” should be eliminated. They use this method to artificially lower the measured “wait in queue” by “answering” calls only to ask callers to call back later or to tell callers staff will contact them later. See TR vol. 1 (June 6, 2005) p. 100, ln. 23---p. 102, ln. 18; p. 103, ln. 21---p. 105, ln 9.*
- *Defendants should also be required to measure and report on the incidence of callers receiving busy signals and callers being disconnected before their call is fully answered by staff. Calls thwarted, by busy signals, disconnections or otherwise, are not answered at all, let alone answered promptly as required by Decree ¶ 247.*
- There must be promptness standards for the following toll free numbers: THSteps, Medical Transportation, HHSC’s statewide Medicaid Hotline. The standards should be the same for all three types of toll free numbers, including those that are answered in English and those that are answered in Spanish.

Plaintiffs’ Alternate Proposed Corrective Action Plans:

- Within 3 months of entry of the corrective action plan Order, in each Region Defendants' Medical Transportation Program toll free numbers will comply with promptness standards outlined below.
- Within 3 months of entry of the corrective action plan Order, Defendants' THSteps toll free number (currently administered by MAXIMUS) will comply with promptness standards outlined below. Defendants will report as required below for each separate THSteps call center maintained by MAXIMUS. In other words, if there is only 1 central THSteps call center, Defendants will file 2 reports (*for English and Spanish lines*). If there is more than 1 THSteps call center, Defendants will report separately *on English and Spanish lines* for each call center.
- Within 3 months of entry of the corrective action plan Order, Defendants' statewide Medicaid Hotline will comply with promptness standards outlined below.
 - Promptness standards for Defendants' toll free numbers are: a) each call will be answered within a maximum of 120 seconds, b) the average wait in queue each day will not exceed 45 seconds, and c) the maximum abandonment rate each day will not exceed 10%, *(d) no calls will be "answered" by busy signals, disconnections, or other technical problems that prevent the caller from receiving help from staff; (e) no calls will be "answered" by "clearing the queue" (i.e. "answering" only to ask callers to call back later or to tell callers staff will contact them later)*. These standards apply to all toll free numbers, whether they are answered in English or in Spanish.
 - Beginning no later than 6 months after entry of the corrective action plan Order, Defendants will provide toll free number promptness reports to the Court and

Plaintiffs with their quarterly reports to the Court. *See* Decree ¶¶306-307. The reports will include monthly data for each toll free number, i.e., regional data for numbers that are maintained in each region and statewide data for numbers that are only maintained on a statewide basis. They will also provide separate data for their English and Spanish toll free numbers. For each toll free number, the reports will also include information about the number of times/month that each number exceeded *each of* the 5 standards set forth above. *They will also include information about the longest wait in queue for each toll-free number for each month.*

- **If any toll-free number fails to comply with any promptness standard in this Corrective Action Plan for 3 or more consecutive months, Defendants must provide daily promptness reports concerning the non-compliant number. These daily reports are to be sent to the Plaintiffs’ counsel monthly and also included with Defendants’ quarterly reports to the Court. Daily reports must continue until the number has operated in compliance with all the Plan’s promptness standards for 3 consecutive months. For purposes of this paragraph, “number” is interpreted in accordance with the immediately preceding paragraph: i.e. each separate region must be in compliance, for data maintained regionally; English and Spanish lines must each be in compliance, when considered separately.**
- *Within 6 months of entry of the corrective action plan Order, Defendants will contract for an independent, external evaluation of 1) the accuracy and appropriateness of information provided to callers to the toll free numbers, 2) whether toll free number*

staff are “knowledgeable, helpful and polite” and 3) whether callers experience busy signals or other impediments to contacting toll free number staff, including but not limited to calls that are put on hold immediately after having been answered so that the call is not recorded as having a long wait in queue on Defendants’ toll free number reports.

- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 4 months after entry of the corrective action plan Order. The motion and Plaintiffs’ response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court’s order or Defendants’ agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs’ counsel, Defendants and Defendants’ counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs’ counsel, Defendants or Defendants’ counsel, or anyone acting on their behalf.

- Defendants will present the 1st study to the Court and Plaintiffs within 14 months of entry of the corrective action plan Order. Within 15 months of entry of the Order, they will present to Plaintiffs a plan to remedy any deficiencies found. If the parties agree on a plan within 17 months of entry of the Order, the Defendants will provide it to the Court and Plaintiffs with their next regular quarterly report and will implement it within 1 month of agreement. If the parties do not agree, Defendants will present the dispute to the Court by motion within 18 months of entry of the corrective action plan Order.
- Defendants will *contract for repeated assessments to be completed* within 26 and 38 months of entry of the Order. The assessments will be conducted as described above. Defendants will provide the results to the Court and Plaintiffs with their next quarterly report to the Court. If deficiencies are found, Defendants will present a plan to Plaintiffs to remedy any deficiencies found within 2 months of receipt of the assessment that found the deficiency(ies). If the parties agree on a plan within 4 months of receipt of the assessment, Defendants will present their plan to the Court and Plaintiffs with their next quarterly report to the Court and implement it within 1 month of agreement. If the parties do not agree, Defendants will present the dispute to the Court by motion within 1 more month.
- After each report and plan mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the toll free number corrective action plan, based on information provided in the reports.

- After the reports mentioned above are filed, the Court will determine the nature and schedule of future studies and corrective action plans, if any, based on the results of Defendants' corrective action efforts.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' toll free numbers, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
HEALTH CARE PROVIDER TRAINING

Decree References:

¶107: “Training at Professional Schools Defendants will provide information and facilitate ongoing training about Medicaid and EPSDT at all relevant professional schools in Texas. ‘Relevant professional schools’ include all schools that train health care providers who could serve EPSDT recipients. The purpose of this training will be to:

- interest students in serving EPSDT recipients,
- inculcate in students a sense of ethical or social obligation to serve EPSDT recipients,
- show students how to apply to become Medicaid and EPSDT providers, and
- explain how the Medicaid and EPSDT programs work and how to get help with problems.”

¶108: “EPSDT Training Associated with Other High Caliber Training Defendants will make staff available to participate in ongoing training in conjunction with appropriate professional training. ‘Appropriate professional training’ means training about issues that are relevant to the provision of services to EPSDT recipients, such as how to conduct

a medical check up for a teenager or how to conduct a dental check up for an infant. ‘Appropriate professional training’ will also be of a high caliber to encourage providers to attend.”

See also Decree ¶¶ 104-06, 109-120, 122-142.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 658-660.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Pages 57-58 of Defendants’ Proposed Plans):

- All elements of Defendants’ plans are appropriate but not sufficient to bring them into compliance with the decree.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Pages 57-58 of Defendants’ Proposed Plans):

- Whether viewed individually or in combination, Defendants’ plans do not meet the decree’s requirements. While they offer training, they have no mechanism to ensure that it is received or that the information conveyed is understood.
- Plaintiffs address training within managed care in their managed care corrective action plan.

Plaintiffs’ Alternate Proposed Corrective Action Plans:

- Within 6 months of entry of the corrective action plan Order, Defendants will reactivate their training program for nurses and physicians assistants about how to assist with THSteps medical check ups. While Defendants provide on line training, they appear to have abandoned their more effective earlier program, which included classroom instruction and required a hands-on practicum. The program will be offered on a regular scheduled basis in various parts of the state.

- **Within 3 months of entry of the corrective action plan Order, Defendants will implement an intensive program in all areas of the state to train dentists to provide dental checkups for children 1 to 3 years of age. Defendants will include with their quarterly monitoring reports information about dates and locations of these training events, and how many dentists attend each. Defendants will also track and report how many dentists begin to bill for dental services to children age 3 and under after attending the training. *The reports will include the number of children age 3 and under who receive dental checkups from the newly trained dentists, and the number of children of this age range who receive other dental services from them.***
- **Within 3 months of entry of the corrective action plan Order, Defendants will implement an intensive program in all areas of the state to train doctors and others who provide primary care to class members about AAP guidelines concerning referrals for regular dental checkups beginning at age 1. Defendants will include information about their compliance with this requirement with their quarterly monitoring reports to the Court.**
- *Training required by this corrective action plan and/or the decree will be offered to providers in conjunction with appropriate provider groups, such as the Texas Medical Association, county medical societies, professional nursing associations, etc. To the maximum extent possible it will be offered under circumstances that permit providers to receive continuing professional education credit for completing it. However, individual providers may choose alternate means of completing the training, including on line.*

- *All provider training events required by this corrective action plan and/or the decree will provide an opportunity for feedback from providers about the subject matter and methodology of the training. Defendants will compile this feedback and submit a summary of it to the Court and the Plaintiffs annually as an exhibit to their quarterly monitoring report.*
- Defendants will report the number and percent of Medicaid enrolled health care providers who receive training required by the decree. The report will be broken down into appropriate groups of professionals, for example, pediatricians, family practice physicians, various specialist physicians, nurse practitioners whose licensure permit them to care for class members, dentists, pediatric dentists, pharmacists, mental health professionals, etc. Defendants will reassess this issue on an annual basis. Defendants will report to the Court and Plaintiffs within 9 months of entry of the Order and twice more, 21 months and 33 months after entry of the corrective action plan Order.
- *Within 9 months of entry of this corrective action plan Order Defendants will develop, in consultation with appropriate professional groups, such as the Texas Medical Association, county medical societies, professional nursing associations, etc, a system of incentives for providers who demonstrate mastery of the training materials required by this corrective action plan and the decree. This incentive system will include an opportunity for providers to be classified as an “advanced” or “certified” medical home. Attainment of this status will be accompanied by incentives such as higher payment rates for certain services or for all services, less frequent medical record reviews after initial determination of*

compliance and/or other appropriate incentives that facilitate timely delivery of high quality health care to class members. Incentives will be significant enough to accomplish their goal of securing compliance with the corrective action plan and the Decree.

- Within 12 months of entry of the corrective action plan Order, Defendants will develop and implement a means to assess whether health care providers understand the information intended to be conveyed by training required by the decree. The report will be broken down into appropriate groups of professionals, for example, pediatricians, family practice physicians, various specialist physicians, nurse practitioners whose licensure permit them to care for class members, dentists, pediatric dentists, pharmacists, mental health professionals, etc. Defendants will reassess this issue on an annual basis. Defendants will report to the Court and Plaintiffs within 15 months of entry of the Order and twice more, 27 months and 39 months after entry of the corrective action plan Order.
- If the provider understanding assessments show deficiencies, Defendants will propose corrective action plans to remedy the identified problems. Each year, Defendants will propose their plans to Plaintiffs within 2 months of completion of the assessment. Plaintiffs will respond within 2 months. If the parties do not agree within 5 months, the Court will resolve the dispute by motion to be filed by Defendants within 6 months of the completion of the assessment.
- After the 6 studies are filed, the Court will determine the need for further studies and corrective action plans, if any, based on the results of Defendants' corrective actions.

- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the provider training corrective action plan, based on information provided in the reports.
- Fines: Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' provider training program, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.	*	
	*	
Plaintiffs,	*	
	*	
v.	*	CIVIL ACTION NO. 3:93CV65
	*	SENIOR JUDGE WILLIAM
	*	WAYNE JUSTICE
ALBERT HAWKINS, et al.	*	
	*	
Defendants.	*	

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
PRESCRIPTION AND NON-PRESCRIPTION MEDICATIONS;
MEDICAL *EQUIPMENT AND SUPPLIES*

Decree References:

¶ 3: "Recipients are also entitled to all needed follow up health care services that are permitted by federal Medicaid law. 42 U.S.C. §1396d(r).

¶129 "...Defendants will implement an initiative to effectively inform pharmacists about EPSDT, and in particular about EPSDT's coverage of items found in pharmacies..."

¶130 "...if pharmacists' understanding of the program is unacceptable, Defendants will conduct an initiative to orally inform pharmacists about EPSDT's coverage."

Citations for Evidence of Decree Violations:

- Testimony of K.C., foster mother of class member J.W. (TR vol. 5 [June 10, 2005], pp. 188-91)
- Testimony of L. L., mother of class members K.L., C.L. and K. H. (TR vol. 5 [June 10, 2005], pp.146-51)
- Testimony of K. S., mother of class members D.S. and E.S. (TR vol. 5 [June 10, 2005], pp. 95-96)

- Testimony of Plaintiffs' witness Anne Dunkelberg (TR vol. 6 [June 13, 2005], pp. 158-166)
- Testimony of Defendants' witness Don Valdes (TR vol. 8 [June 15, 2005], pp. 4-9)
- Written Deposition of M.B. (filed under seal), p. 7, ¶¶ 29-30
- Plaintiffs' Exs. Rx1, Rx2, Rx3; Exs. O11, O12

Plaintiffs' Agreements with Defendants' Proposed Corrective Action Plan:

Defendants have not proposed a plan to remedy this problem.

Plaintiffs' Disagreements with Defendants' Proposed Corrective Action Plan:

Defendants must remedy this Decree violation that prevents class members from getting needed health services.

Plaintiffs' Alternate Proposed Corrective Action Plan:

- Defendants *will* approve payment for each medication prescribed for a class member, whether or not the medication is on Defendants' preferred drug list, unless the prescriber agrees otherwise *after explanation from Defendants' staff or contractors. The explanation may include information about preferred alternatives to the prescribed medication. But, it must also affirm the prescriber's option not to alter the original prescription if to do so would be inconsistent with his or her medical judgment.*
- Defendants *will* require pharmacists not to delay dispensing medication to a class member in order to seek the approval of the prescriber to substitute a preferred drug. But, if there is time before the class members or their parent/guardian

arrives to pick up the prescription, a pharmacist and/or Defendants' representative may contact the prescriber to seek permission to substitute a preferred drug.

- Defendants or their representatives may contact prescribers who prescribe non-preferred drugs, explain the preferred drug list, provide a copy of the preferred drug list, and ask for the prescribers' compliance when consistent with their medical judgment.
- Defendants may also seek to increase compliance with their preferred drug list by creating a user-friendly, web-based prescription screening system usable by prescribers while class members' parents are still in the prescribers' offices. The web-based system *will* reliably produce responses within a maximum of 3 minutes of the prescriber's request. Responses indicating that the desired prescription falls outside the preferred drug list may suggest alternate drug possibilities. But, they may not state or imply that the prescriber must change the prescription in order to obtain coverage for it, if a change would be inconsistent with the prescriber's medical judgment.
- Within *1 month* of entry of the corrective action plan Order, Defendants *will* revise their written policies to reflect the changes described above. They *will* also revise provider manuals, contracts with pharmacies and all other communications with pharmacies to reflect these changes.
- Defendants *will* notify all enrolled prescribers and pharmacies of the changes described above, *on* or before the date on which written policies are changed.
- Defendants *will* provide posters describing the policy changes to all participating pharmacies. Defendants *will* require that the posters be placed in areas easily

viewable by all pharmacy personnel who may interact with class members or their parents/guardians.

- Within 6 months of the entry of the corrective action plan Order, Defendants will complete comprehensive training for all Medicaid-enrolled pharmacists and Medicaid-approved vendors of medical equipment and supplies about EPSDT, and particularly EPSDT coverage of prescription and non-prescription medication, medical equipment and medical supplies. All will be required to demonstrate understanding of this coverage in order to continue as Medicaid-enrolled providers. Training will be ongoing with reasonable frequency.
- Defendants will maintain and publicize a hotline *and e-mail address* through which class members, their parents/guardians, and providers may report *problems in obtaining medication, medical equipment or medical supplies for class members*. All calls to the hotline *will* be answered promptly, *according to the standards established by the toll-free number corrective action plan*. Defendants *will* provide complete assistance to persons reporting *problems to either the hotline or the e-mail address*. *They will provide the needed assistance within 24 hours, unless the caller requests a shorter timeframe due to the class member's medical needs*.
- *Defendants will preserve and accurately compile records of all contacts to the hotline and e-mail address, as well as their response to each. Reports of these contacts and responses will be provided to the Court and the plaintiffs as an exhibit to each quarterly monitoring report. The reported information will include date of each contact, pertinent demographic information (including location)*

about the class member in need of medication, equipment or supplies, nature of the item(s) needed, and when and how Defendants arranged for the class member to receive them.

- *Defendants will be fined for missing any deadline established by this corrective action plan and/or for failing to meet any requirement of the corrective action plan. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving class members' access to medication, medical equipment and supplies, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLANS:
MANAGED CARE

Decree References:

¶ 3: *“Recipients are also entitled to all needed follow up health care services that are permitted by federal Medicaid law.”*

¶190. EPSDT recipients served by managed care organizations are entitled to timely receipt of the full range of EPSDT services, including but not limited to medical and dental check ups.

¶191. TDH [now Texas Health and Human Services Commission] will assure by various means that the number and percent of EPSDT patients in each managed care organization who receive all medical and dental check ups when due and information for outcomes research as needed is accurately collected.

¶192. TDH [now TxH&HSC] will assure by various means that managed care organizations provide medical and dental check ups to newly enrolled recipients no later than 90 days after enrollment except when recipients knowingly and voluntarily decline or refuse services. Managed care organizations will also have the capacity to accelerate

services to the children of migrant farmworkers to accommodate their special circumstances. TDH [now TxH&HSC] will also assure medical and dental check ups in a timely manner to all recipients.

¶194. TDH [now TxH&HSC] will assure by various means that managed care organizations arrange appropriate training for all health care providers and their staff who serve EPSDT recipients as authorized by SB601. All will be trained about program requirements relevant to their responsibilities, including the relevant terms of this settlement.”

¶ 197. *“TDH [now TxH&HSC] will assure by various means that managed care organizations have an adequate supply of appropriate providers who can serve EPSDT recipients (including specialists) located conveniently so that recipients do not face unreasonable 1) delay scheduling appointments, 2) delay waiting for appointments once at the office or 2) travel times to get to the office...”*

See also Decree ¶¶ 184-189, 193, 195-96, 198-99.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 618-37; *401 F. Supp. 2d* at 671-85.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Pages 30, 32 of Defendants’ Proposed Plans):

- It is appropriate but insufficient to interview plan administrators as part of the initial readiness review concerning plans’ ability to begin providing services in a manner that complies with the decree.
- It is appropriate but insufficient to require *managed care organizations* to offer medical check ups within the time frames mentioned.

- It is appropriate to attempt to identify class members from migrant farmworker families.
- It is appropriate but not sufficient to impose monetary sanctions on HMOs/PCCM regions that do not submit encounter data required by federal law.
- It is appropriate to coordinate with ICHP concerning managed care data completeness problems.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Pages 30, 32 of Defendants’ Proposed Plans):

- Defendants’ plans are not sufficiently vigorous to achieve the goals and intent of the decree.
- Defendants will require their *managed care organizations* to submit all encounter data *and other information* required by the decree. Data will be accurate and timely.

Plaintiffs’ Alternate Proposed Corrective Action Plans:

- **Medical Check Ups**
 - Within 6 months after entry of the corrective action plan Order, Defendants will require each of their managed care organizations (*each HMO and PCCM for each region*) to report every quarter about the a) the total number of new enrollees under the age of 21, and the number and percent of new members who get medical check ups within 90 days of enrollment and b) the total number of enrollees under the age of 21 (excluding the new enrollees), and the number and percent of these class members who get timely, age appropriate medical check ups. The reports will provide common percents that are not adjusted as CMS

specifies. Defendants will include the reports in their quarterly reports to the Court.

- Within 8 months after entry of the corrective action plan Order, for each *managed care organization (including each HMO and each PCCM region)*, Defendants will contract for an independent, *external* evaluation of a statistically valid sample of reported medical check ups. The evaluation will review medical charts to determine the number and percent of reported check ups that are complete. “Complete” means that there is documentation of each medical check up element required by 42 U.S.C. §1396d(r).
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 6 months after entry of the corrective action plan Order. The motion and Plaintiffs’ response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court’s order or Defendants’ agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs’ counsel, Defendants and Defendants’ counsel. Completed evaluations

will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- Defendants will present the first annual check up completeness study to the Court and Plaintiffs no later than *16* months after entry of the corrective action plan Order. They will file the second and third annual studies no later than *28* and *40* months after entry of the Order.
- Based on the results of the check up studies, Defendants will develop and implement plans to reward and/or sanction *managed care organizations* with high or low rates of documented complete check ups. *Rewards and/or sanctions will be large enough to accomplish their goal of securing compliance with the corrective action plan and the Decree.* For example, rewards and sanctions could be by means of increases or decreases to payment levels and/or by means of changes to “default” enrollments of class members. Defendants' plans will provide for cessation of all enrollment of class members with *managed care organizations* that do not improve their rates of complete check ups.
- Defendants will provide a draft of their plans to Plaintiffs within *17* months of entry of the corrective action plan Order. Plaintiffs will respond within 1 month. If the parties agree on a plan, Defendants will file it with their next quarterly report to the Court. They will implement it within 1 month of filing. If the parties do not agree on a plan, the Court will resolve the issue by motion to be filed by Defendants within *19* months of entry of the Order.
- **Follow Up Care**

- Within 8 months after entry of the corrective action plan Order, for *each of their managed care organizations (including each HMO and each PCCM region)*, Defendants will contract for an independent, *external* evaluation of an acceptable sample of medical charts to determine if class members receive needed follow up care.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 6 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- The follow up study *will* use the same medical charts used for the medical check up completeness study mentioned above, *unless Defendants can demonstrate this would impair the validity of the study.*
- For each *managed care organization*, the evaluation will review medical charts to determine a) the number and percent of class members who had a documented need for follow up care and b) the number and percent of class members who are documented to have received that care. For each *managed care organization*, the study also will evaluate at least two “problem areas.” “Problem area” means illnesses or conditions that are shown in the professional literature to be associated with undertreatment, if possible among children with Medicaid.
- Defendants will present the first follow up care study to the Court and Plaintiffs no later than *16* months after entry of the corrective action plan Order. They will file the second and third annual studies no later than *28* and *40* months after entry of the Order.
- Based on the results of the follow up care reports, Defendants will develop and implement plans to reward and/or sanction *managed care organizations* with high or low rates of documented follow up. For example, rewards and sanctions could be by means of increases or decreases to payment levels and/or by means of changes to “default” enrollments of class members. *Rewards and/or sanctions will be large enough to accomplish their goal of securing compliance with the corrective action plan and the Decree .*
- The plans will also provide for cessation of all enrollment of class members with managed care organizations that do not improve their rates of follow up care.

Defendants will provide a draft of their plans to Plaintiffs within 17 months of entry of the corrective action plan Order. Plaintiffs will respond within 1 month. If the parties agree on a plan, Defendants will file it with their next quarterly report to the Court. They will implement it within 1 month of filing. If the parties do not agree on a plan, the Court will resolve the issue by motion to be filed by Defendants within 19 months of entry of the Order.

Class Members Who Receive No Care

- Within 6 months of entry of the corrective action plan Order, *for each of their managed care organizations (including each HMO and each PCCM region)*, Defendants will contract for an independent, *external* evaluation of class members who do not receive any form of health care covered by Defendants' contracts with their managed care organizations.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 4 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work.

Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- The no-care study will be of a statistically valid sample of class members enrolled in each *managed care organization* who did not receive care within a 12 month period. The study will assess 1) whether class members missed medical check ups that were due, including both new enrollees and other enrollees, 2) whether class members needed but did not get other forms of care that the *managed care organization* was obliged to provide under their contract with Defendants, and 3) the reason(s) that class members did not get covered services that were needed.
- Defendants will present the first no-care study to the Court and Plaintiffs no later than 12 months after entry of the corrective action plan Order. They will file the second and third annual studies no later than 26 and 38 months after entry of the Order.
- Based on the results of the no-care reports, Defendants will develop and implement plans to reward and/or sanction *managed care organizations* with high or low rates of problems with failure to provide care that class members are entitled to receive. For example, rewards and sanctions could be by means of increases or decreases to payment levels and/or by means of changes to “default” enrollments of class members. *Rewards and/or sanctions will be large enough to*

accomplish their goal of securing compliance with the corrective action plan and the Decree.

- The plans will also provide for cessation of all enrollment of class members with *managed care organizations* that do not improve in this area. Defendants will provide a draft of their plans to Plaintiffs within 13 months of entry of the corrective action plan Order. Plaintiffs will respond within 1 month. If the parties agree on a plan, Defendants will file it with their next quarterly report to the Court. They will implement it within 1 month of filing. If the parties do not agree on a plan, the Court will resolve the issue by motion to be filed by Defendants within 15 months of entry of the Order.
- **Acceleration of Services to Children of Migrant Farmworkers in Managed Care**
 - **Accurate, Timely Identification of Class Members who are Children of Migrant Farmworkers:** Within 3 months of entry of the corrective action plan Order, Defendants will actively develop effective means to identify class members who are children of migrant farmworkers (hereinafter, FWC). Implementation of the plans will begin within 4 months of entry of the Order and will be fully in effect within 12 months of entry. These methods will include but are not limited to:
 - Defendants will conduct or arrange for door to door, face to face outreach in neighborhoods where migrant farmworkers are known to reside. These efforts will be conducted during the times of the year when migrant farmworker families are likely to be in residence. They will also be conducted in a culturally appropriate manner.

- Defendants will identify as many community and statewide organizations that work with FWC as possible. They will coordinate and cooperate with as many as possible. Defendants will explain to the organizations the benefits of coordination and will make appropriate efforts to encourage cooperation. Defendants will also encourage the organizations to assist in the identification of FWC. For example, if families consent, Defendants will accept information from the organizations to identify FWC. Defendants also might arrange for managed care enrollment brokers to meet with the organizations or to meet with farmworker families at the site of the organizations.
- When Defendants identify a FWC, Defendants will also inquire to determine if other class members are siblings, cousins or associates (neighbors, friends, etc.) of that child. Defendants will make their best efforts to identify each sibling, cousin and/or associate who is a FWC, including information about how to reach that FWC. Defendants will make appropriate, aggressive efforts to reach each identified FWC to provide timely medical check ups, dental check ups and follow up care if needed. When appropriate, Defendants will also ask migrant farmworker parents/aunts/uncles/grandparents etc. to help them to identify and locate other FWC.
- Defendants will develop local coalitions of community organizations that work with FWC. The coalitions' purposes will be a) to develop effective and timely methods to identify FWC, including but not limited to during times when FWC are likely to be in the local area, b) to ensure FWC's prompt receipt of medical check ups, dental check ups and needed follow up care, c)

to improve communication and cooperation among the community organizations, Defendants, Defendants' managed care enrollment broker, and Defendants' managed care organizations including HMOs and PCCM.

- Defendants will maintain accurate, current lists of all identified FWC.
- Defendants will transfer information about FWC to their managed care enrollment broker *as quickly as possible and no later than an overnight transfer*. Defendants will require their enrollment broker to contact the FWC family within 2 business days to facilitate managed care enrollment. If the enrollment broker cannot complete enrollment within 2 business days, the broker will make at least 3 appropriate efforts to contact the family within the next week. "Appropriate efforts" will vary depending on the nature of the family's resources. In some cases, "appropriate efforts" will include face to face visits at a time and place that are convenient to the family. *Upon enrollment, the broker will transfer information about the family to the appropriate managed care organization as quickly as possible and no later than an overnight transfer*.
- Regardless of delays in enrollment in managed care, if any, Defendants will provide needed health care to FWCs.
- Defendants will maintain the confidentiality of information about the identity of FWC and will require their contractors (who receive the information only because they need it) to do the same.
- To improve cooperation with community organizations that work with FWC, Defendants will request and incorporate their advice on appropriate means to

protect the confidentiality of information about the identity of FWC.

Defendants will also publicize their confidentiality protocols in an appropriate manner to facilitate cooperation with the organizations.

- **Evaluation of Preventive and Follow Up Care Provided to FWC, Including Acceleration When Needed**

- Defendants will contract for an independent, *external* evaluation of FWC according to the same schedule and protocols listed above *for class members who receive no care*. The evaluation of a statistically valid sample of FWC will 1) determine whether the FWC got a medical check up and whether it was timely and complete, 2) determine whether the FWC got a dental check up and whether it was timely, 3) determine whether the FWC received needed follow up care. This evaluation **will be conducted in a manner that includes direct comparisons between and among particular methods and combinations of methods of identification of FWC and acceleration of services to them. The assessment will enable the comparison of existing methods and protocols to new configurations of methods (to include single and multiple methods employed in combination) so as to determine the relative contribution of each method to the desired outcome of identification of FWC and provision of all needed care to them.**
- Defendants will provide reports to the Court and Plaintiffs according to the same schedule and protocols listed above *for class members who receive no care*.
- Defendants will develop and implement a system of rewards and sanctions for their *managed care organizations* based on the FWC reports. The rewards and

sanctions will be consistent with the rewards and sanctions *developed in connection with other sections of this corrective action plan*. The parties will use the same proposal/agreement/motion process listed above *for class members who receive no care*.

- **Case Management**

- FWC are at high risk for health problems because of their life circumstances. As a result, Defendants will automatically qualify FWC for CPW case management solely on the basis of their status as FWC. Defendants will make effective efforts to provide CPW case management to each FWC unless the family opts out after a full, culturally appropriate explanation of CPW case management and how it could benefit the children in the family. Defendants will include in their quarterly reports to the Court and Plaintiffs data about a) the total number of FWC identified in each Region and statewide, and b) the number and percent of FWC who receive CPW case management in each Region and statewide. The reports will begin no later than 6 months after entry of the corrective action plan Order.

- **Health Care Provider Training in Managed Care**

- As a condition of contract renewal, Defendants will require each of their managed care organizations to certify that all providers in their network, and their staff, receive a specified, appropriate minimum training about Medicaid for children, THSteps, and the *Frew* consent decree. Alternatively, Defendants may decide to pay *significantly* higher capitation rates to each *managed care organization* that makes this certification.

- *Training required by this corrective action plan will be offered to providers in conjunction with appropriate provider groups, such as Texas Medical Association, county medical societies, professional nursing associations, etc.. To the maximum extent possible it will be offered under circumstances that permit providers to receive continuing professional education credit for completing it. However, individual providers may choose alternate means of completing the training, including on line.*
- *All provider training events required by this corrective action plan and/or the decree will provide an opportunity for feedback from providers about the subject matter and methodology of the training. Defendants will compile this feedback and submit a summary of it to the Court and the Plaintiffs annually as an exhibit to their quarterly monitoring report.*
- *Beginning within 1 year after entry of the corrective action plan Order, Defendants will pay higher reimbursement rates to their managed care organizations for providers who demonstrate their mastery of the training materials required by this corrective action plan and the decree. This incentive system will be based in part on the classification of some providers as “advanced” or “certified” medical homes as described in the provider training corrective action plan Order. Increases in reimbursement rates will be large enough to accomplish their goal of securing compliance with the corrective action plan and the Decree.*
- **Managed Care Reports**
 - Check Ups: *See above.*

- Outcomes measures data:
 - Starting 3 years after entry of the corrective action plan Order, Defendants will not renew contracts with *managed care organizations* that provide inaccurate outcomes measures data for more than 2 years in a row. In this context, “inaccurate” means less than 95% accurate. To phase in, Defendants may allow up to a 20% deviation for data collected during the first year following entry of the Order and 10% during the second year following entry of the Order.
 - Within 8 months of entry of the corrective action plan Order, Defendants will contract for independent, *external* verification of the accuracy of outcomes measures data provided by each *managed care organization (including each HMO and PCCM for each region)*.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 6 months after entry of the corrective action plan Order. The motion and Plaintiffs’ response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court’s order or Defendants’ agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work.

Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- The independent verification of outcomes measure data will review medical charts of a statistically valid sample of class members. During the first year, Defendants will arrange for verification of at least 1 outcome measure, without informing the *managed care organizations* in advance which measure has been chosen. Over time, Defendants will increase verification to include all of the outcomes measures, again without advance notice to the *managed care organizations*.
- Within 18 months of entry of the corrective action plan Order, Defendants will provide to the Court and Plaintiffs all managed care outcome reports and data mentioned above and all the independent evaluation reports. Defendants will provide their 2nd and 3rd reports within 30 and 42 months of entry of the Order. The corrective action plan process will be repeated after Defendants complete the 2nd and 3rd studies of each type mentioned above, according to the equivalent schedule outlined for the 1st study.
- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the managed care corrective action plan, based on information provided in the reports.

- After all managed care studies are filed, the Court will determine the need for further studies and corrective action plans, if any, based on the results of Defendants' corrective actions.
- **Financial penalties** imposed against any managed care organization based on this or any other corrective action plan may not be passed down by the organization to health care providers except on an individual basis. Penalties may be imposed individually only on the basis of inadequate individual performance, after notice and opportunity to cure the deficiencies. When a provider's performance is inadequate, managed care organizations must collaborate with the provider to try to improve performance unless the provider refuses.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' managed care program, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLANS:
CHECK UP REPORTS *AND PLANS FOR LAGGING COUNTIES*

Decree References:

¶ 171: “...by September 30, 1996, Defendants will prepare a report of the number and percent of recipients who receive 1 dental check up/year and 2 dental check ups/year.”

¶ 212: Defendants will present a Memorandum of Understanding that “establish[es] a method to report the number and percent of EPSDT recipients under the supervision of TDPRS [now, Texas Department of State Health Services] who receive all of their medical and dental check ups when due....”

¶ 283: “METHOD TO REPORT CHECK UPS First, Defendants report EPSDT participation statistics to the federal government every year on the HCFA Form 416 [now CMS Form 416]. The HCFA Form 416 uses calculations to approximate the number of recipients who receive EPSDT medical check ups.”

¶ 284: “Every year from 1996 through 1999, Defendants will also report to Plaintiffs the number and percent of recipients who receive all of their scheduled medical check ups. They will further report the number and percent of recipients who receive all of their

scheduled dental check ups. Defendants will provide these reports to Plaintiffs no later than December 31 of each year.”¹

¶ 280: *Defendants will complete a statewideness analysis every year by March 30. Defendants will identify the counties or county clusters that lag behind the state average...for medical and/or dental check ups...*

¶ 281. *Each year, Defendants will develop a corrective action plan for those counties that lag behind so that participation in those counties improves.*

See also ¶ 172, 191, 199, 210-11, 204-09, 271-79.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 612 (¶284); 109 F.Supp.2d at 613 (¶212); *109 F.Supp.2d at 614-616 (¶¶280-81)*; *401 F. Supp. 2d at 685 (¶284)*.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Page 23 of Defendants’ Proposed Plans):

- Defendants should continue to file their CMS 416 reports (Annual EPSDT Participation Reports) with the federal government. *See*, Decree ¶283.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Page 23 of Defendants’ Proposed Plans):

- Even though there have been changes to the CMS 416 report since this Court last heard evidence in March, 2000 in this case, the federal government still requires Defendants to use the same calculation methods that this Court found to inflate check up reports. *See* 109 F.Supp.2d at 602 and n. 34.

¹ On December 24, 2004, Plaintiffs filed their Motion to Extend the Term of Consent Decree Paragraphs 284 and 295 (Opposed). It is set for hearing at the same time as Plaintiffs’ request for corrective action plans.

- Defendants should still be required to report to the Court and Plaintiffs the “number and percent of recipients” who get all of their scheduled medical check ups and who get all of their scheduled dental check ups.

Plaintiffs’ Alternate Proposed Corrective Action Plans:

Medical Check Ups

- Class members above the age of 2 years are entitled to 1 medical check up every year. This is true even of most of those aged 7-8 and 9-10 years, when Defendants’ check up schedule does not specify that a medical check up is due annually.² Even for class members of those ages, however, most are newly enrolled in Medicaid and have not had medical check ups recently. As a result, according to Defendants’ medical check up schedule, they qualify for medical check ups immediately upon qualifying for Medicaid benefits. Further, all class members in Defendants’ managed care programs are entitled to medical check ups within 90 days of enrollment in managed care. *See* Decree ¶192.
- No later than 6 months after entry of the corrective action plan Order, for class members aged 2 and over, Defendants will report 1) the number of class members of each age (2 years, 3 years, 4 years, etc.), 2) the unduplicated count of class members of each age who got a medical check up and 3) the *unadjusted* percent of class members of each age who got a medical check up during the immediately preceding year.³ Defendants will repeat this study annually and provide the results to the Court

² Defendants’ schedule entitles class members to medical check ups every 2 years during this age period.

³ Plaintiffs note that this proposed plan reflects a significant compromise on their part. Decree ¶ 284 calls for reports of “the number and percent of recipients who receive all their scheduled medical check ups”.

and Plaintiffs no later than 18 months and 30 months after entry of the corrective action plan Order.

- No later than 8 months after entry of the corrective action plan Order, Defendants will also report on receipt of medical check ups by class members under the age of 2 years. For this report, Defendants will draw a statistically valid representative sample of class members 1) from birth to 6 months, 2) from 6 to 12 months and 3) from 12 – 24 months. Within each age group, Defendants will determine for each individual class member in the sample: a) how many medical check ups the class member was entitled to receive based on the class member’s age and the number of months of Medicaid eligibility and b) whether the class member received each check up that was due and c) if not, the number of check ups that were missed. For each age group, Defendants will report the number and percent of class members within each sample who a) received all medical check ups that were due, b) the number and percent who missed 1 check up that was due, 2 check ups that were due, 3 check ups that were due, etc. Defendants will also report if there are any patterns or trends in missed medical check ups, for example, the 6 month check up is missed most often. Defendants will repeat this study annually and provide the results to the Court and Plaintiffs no later than 20 months and 32 months after entry of the corrective action plan Order.

Dental Check Ups

- Each class member over the age of 12 months is entitled to at least one dental check up during an eligibility period. Class members over the age of 12 months who are enrolled in Medicaid for more than 6 months are entitled to 2 dental check ups during their eligibility period.
- No later than 6 months after entry of the corrective action plan Order, for class members aged 12 months and over, Defendants will report *for the preceding year*: 1) the number of class members of each age (1 year, 2 years, 3 years, etc.), the unduplicated count of class members of each age who got 1 dental check up, the percent of class members of each age who got 1 dental check up; and 2) the unduplicated count of class members of each age whose Medicaid eligibility exceeds 6 months, the unduplicated count of class members of each age within this group who got 2 dental check ups and the percent of class members of each age within this group who got 2 dental check ups. Defendants will repeat this study annually and provide the results to the Court and Plaintiffs no later than 18 months and 30 months after entry of the corrective action plan Order.
- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the check up reports corrective action plan, based on information provided in the reports.
 - After the reports mentioned above are filed, the Court will determine the nature and schedule of future reports and corrective action plans, if any, based on the results of Defendants' corrective action efforts.

Plans for counties that lag behind the state average for medical or dental checkups

- *On or before May 31 of each year, Defendants will develop and provide to Plaintiffs a corrective action plan for each county that lags behind the state average for medical and/or dental checkups. The plan will specify the means that will be implemented to improve participation in each lagging county. The plans will be provided to the Court as an exhibit to Defendants' July Monitoring Report each year.*
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan.* The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' check up reports, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLANS:
ADEQUATE SUPPLY OF HEALTH CARE PROVIDERS

Decree References:

¶ 2: "EPSDT is intended to provide comprehensive, timely and cost effective health services to indigent children and teenagers who qualify for Medicaid benefits. Check ups are the cornerstone of the program. They assess recipients' health, provide preventive care and counseling (anticipatory guidance) and make referrals for other needed diagnosis and treatment. 42 U.S.C. §§1396a(a)(43); 1396d(r). Recipients are entitled to both medical and dental check ups on a regular schedule."

¶ 3: "Recipients are also entitled to all needed follow up health care services that are permitted by federal Medicaid law. 42 U.S.C. §1396d(r)."

¶ 88: "*An adequate corps of capable providers is necessary to provide recipients with adequate access to needed services...*"

¶ 93: "*Defendants will maintain updated lists of providers who serve EPSDT recipients. The lists will specify practitioners' practice limitations, if any...*"

¶143: “Defendants must provide periodic dental check ups and needed dental services to relieve pain, restore teeth and maintain dental health for EPSDT recipients. 42 U.S.C. §1396d(r)(3)....”

¶190: “EPSDT recipients served by managed care organizations are entitled to timely receipt of the full range of EPSDT services, including but not limited to medical and dental check ups.”

¶197: “*TDH will assure by various means that managed care organizations have an adequate supply of appropriate providers who can serve EPSDT recipients (including specialists) located conveniently so that recipients do not face unreasonable 1) delay scheduling appointments, 2) delay waiting for appointments once at the office or 3) travel times to get to the office...*”

See also Decree ¶¶ 75-87, 89-92, 94-103, 144-69.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 600-11; 626-31; 401 F. Supp.2d at 641; 642, n.32; 656-57; 667; 678-83.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans:

- Defendants do not propose plans to remedy this problem.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans:

- Plans are required to resolve this significant problem that prevents class members from receiving care that they need.

Plaintiffs’ Alternate Proposed Corrective Action Plans:

- Defendants will provide or arrange for all health care *services* that class members need. Care will be provided by an appropriate provider who is reasonably close to the class member’s home unless a provider of the appropriate type is not

- located reasonably close to the class member's home. For example, some types of sophisticated health care are only provided at large medical centers in major cities, so it simply is not available locally to anyone in sparsely populated areas.
- Defendants will not allow their *staff or contractors* to require class members to travel outside of the *distance standards specified below for a health care service* that is available within the *specified area*, even if the required *service* has to be provided by a provider who is not a member of the HMO or PCCM's network. *Although class members may not be required to travel more than the specified distance, they may choose to do so if (for example) the provider(s) they prefer is located at a greater distance.*
 - Defendants will ensure that the supply of providers is adequate to allow class members to choose among at least 2 providers appropriate to meet the class members' needs. For example, if a class member needs to see a pediatric neurologist, Defendants will ensure that at least 2 qualified pediatric neurologists are available to the class member. For this purpose, "available" means 1) appointments with at least 2 qualified providers of the appropriate type are available within the timeliness standards mentioned herein, and 2) 2 qualified providers of the appropriate type are available within the distance standards mentioned herein. For types of providers who are not available within the distance standards mentioned herein (for example, some specialists), Defendants will ensure that 2 providers of the appropriate types are available within the same geographic area that they would be available to residents of the same community who are not class members.

- When class members call Defendants or their contractors (including but not limited to the THSteps toll free number, HMOs, PCCM) for help finding a doctor, dentist, *case manager or other provider of health care services*, the caller will be given the names of at least 2 providers of the appropriate type who are accepting new Medicaid patients of the relevant age at the time of the call.
- Defendants and their contractors will ensure that class members have a choice of at least 2 providers who are accepting new Medicaid patients, according to the following proximity standards:
 - Specialists in urban areas: 30 miles
 - Specialists in rural areas: 50 miles unless Defendants show that no provider of the type needed is available to the general population within this range. Then Defendants will ensure that class members have a choice of at least 2 providers of the relevant type within the same geographic area that applies to the general population within the community where the class member lives.
 - All other providers in urban areas: 10 miles
 - All other providers in rural areas: 30 miles unless Defendants show that no provider of the type needed is available to the general population within this range. Then Defendants will ensure that class members have a choice of at least 2 providers of the relevant type within the same geographic area that applies to the general population within the community where the class member lives.
 - *Nothing herein will prevent class members or their families from choosing to receive information about or assistance making an appointment with a provider at a greater distance than that specified in this plan. All instances in which a class member or*

adult responsible for a class member chooses this option will be noted in writing and will be subject to independent verification.

- If Defendants or their contractors cannot provide class members a choice of 2 providers of the appropriate type who are accepting new Medicaid patients as required by the proximity requirements, they will provide needed health care *services* by other means including special contractual arrangements. **This may include the use of properly supplied, staffed and administered mobile medical and/or dental units in areas where an inadequate supply of locally based care is available to class members. Any plans for the use of mobile units must include proper arrangements for follow up care.** Defendants and their contractors will maintain current reports about *all instances in which a mobile unit was used due to an inadequate supply of locally based care*. Defendants will include these reports in the quarterly reports to the Court. *The reported information will include date of each incident, pertinent demographic information (including location) about the class member(s) in need of care, nature of the care needed, and when and how Defendants arranged for the needed care.*
- Defendants will provide or arrange all health care *services* that class members need in a timely manner. Within 1 month of entry of the corrective action plan Order, Defendants will propose timeliness standards to Plaintiffs. The standards will apply to class members within managed care and not within managed care. The standards may account for the problems encountered in sparsely populated areas. If the parties agree on timeliness standards, Defendants will file them with their next quarterly report and implement them within 1 month of filing. If the

parties do not agree, the Court will resolve the dispute by motion to be filed by Defendants within 2 months of entry of the corrective action plan Order.

- **Defendants' and their contractors' payment policies for all providers who serve class members will be consistent with currently accepted professional standards and practices.** *These policies will require coverage of all medically and dentally necessary health care services provided to class members. Payment levels will be sufficient to attract enough providers to meet the geographic and timeliness requirements of this corrective action plan and all requirements of the Decree with respect to all class members, whether or not they are enrolled in managed care. Within 3 months of entry of the corrective action plan Order, Defendants and their contractors will adjust provider payment levels as needed to assure compliance with this corrective action plan and with the Decree. They will also make future adjustments as needed to maintain this compliance.*
- *Class members' access to needed care is impeded when their health care providers cannot locate other providers to accept referrals of class members and provide appointments for them in a timely manner. Also, providers' frustration with their inability to effect needed referrals for class members can adversely affect their willingness to continue caring for class members. So, Defendants will make readily available to all providers who serve class members complete, accurate and up to date information about which providers of health care services in each geographic area are accepting new Medicaid-covered patients. The information for each will include: type of provider (e.g., general dentist, family medicine physician, pediatric neurologist, physical therapist, case manager),*

- which Medicaid managed care organizations the provider has contracted with, and practice limitations such as age range of patients accepted.*
- *Defendants will maintain a telephone hotline and e-mail address for health care providers and their staff to report problems in referring class members for health care services. All calls to the hotline will be answered promptly, according to the standards set by the toll-free numbers corrective action plan. The hotline and e-mail address will respond to contacts about all class members, whether or not they are enrolled in managed care. Defendants will respond to each contact by providing information about appropriate and available providers within the geographic range required by this CAP. Even if no suitable enrolled provider is available to provide care Defendants will arrange for a suitable provider to provide all necessary health care services to the class member within the geographic and timeliness requirements applicable to this CAP. Defendants will respond and provide the required information or arrangement within 1 business day, unless the referring provider requests a faster timeframe due to the class member's medical needs.*
 - *Defendants must preserve and accurately compile records of all contacts to the provider hotline and e-mail address, as well as their response to each. Reports of these contacts and responses must be provided to the Court and the plaintiffs as an exhibit to each quarterly monitoring report. The reported information must include date of each contact, pertinent demographic information (including location) about the class member in need of care, nature of the care needed, and when and how Defendants arranged for the needed care.*

- Within 6 months of entry of the corrective action plan Order, Defendants will contract for an independent, external evaluation of the adequacy of their health care provider supply to meet class members' needs. *The evaluation will address the numbers, types and locations of providers who are accepting new class members for health care services within the timeliness requirements of this corrective action plan. It will independently verify the provider availability information from directories of managed care organizations serving class members.* The first study will be completed within 12 months of entry of the corrective action plan Order. The second and third studies will be completed within 24 and 36 months of entry of the corrective action plan Order.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 5 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available

to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- The health care provider adequacy studies will in a professional and valid manner 1) determine the categories of health care providers needed to serve class members (medical doctors *including primary care providers and all relevant types of specialists*, dentists of various types, nurse practitioners of various types, hospitals of various types, psychologists and other mental health professionals of various types including child psychologists, neurologists including child neurologists, pharmacies, various therapies, durable medical equipment, and etc.), 2) determine the number of Medicaid enrolled providers of each type in the State, each Region and each county, 3) determine the number of Medicaid enrolled providers who are accepting new Medicaid patients under the age of 21 of each type in the State, each Region and each county, 4) use professionally valid measures to appropriately determine the capacity of each type of provider group to serve class members appropriately in the State, each Region and each county, 5) for each provider type, determine if the capacity is sufficient to meet class members' need in the State, each Region and each county, and 6) for each provider type, if capacity is not sufficient to meet class members' needs in the State, each Region and/or each county, determine the reason(s) for the insufficient capacity.
- *This evaluation must include an analysis of whether provider payment policies, including payment levels, are sufficient to develop and maintain enough provider*

capacity to meet the requirements of this corrective action plan with respect to all class members. If they are not, the evaluation must include recommendations about what payment policies, including payment levels, would be sufficient for this purpose.

- Based on the results of the provider supply studies, Defendants will propose plans to remedy *any identified barriers to developing and maintaining sufficient provider capacity*. Within 2 months of receipt of each study, Defendants will propose plans to Plaintiffs. If the parties agree, Defendants will file the plans with their next quarterly report and implement them within 1 month of filing. If the parties do not agree, the Court will resolve the dispute by motion, to be filed by Defendants within 5 months of receipt of each study.
- After all provider supply studies and corrective action plans are filed, the Court will determine the need for further studies and corrective action plans, if any, based on the results of Defendants' corrective actions.
- After each study mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the health care provider supply corrective action plan, based on information provided in the studies.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' supply of health care providers needed to serve class members, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
HEALTH OUTCOMES MEASURES *AND DENTAL ASSESSMENT*

Decree References:

¶ 288: “...the EPSDT program will measure several indicators of the health of the EPSDT population. These health outcome indicators will serve as a proxy to measure whether recipients receive the full range of services that they need and are entitled to receive.”

¶ 289: “The parties will together choose health outcomes indicators.... that ... measure important aspects of the population’s health. In addition, the indicators will be diverse enough to gauge the health of the entire EPSDT population, not merely factions of the population.”

¶ 293: “...The parties will develop a list of health outcome indicators by September 1, 1995. The list will include about 12 indicators. The parties may agree to change, add or delete indicators.”

¶ 294: The parties will further agree on a target goal for each health outcome indicator....”

¶ 295: “Defendants will report the best available information on each health indicator annually, beginning on September 1, 1996 and continuing through 1999.”¹ The EPSDT program will arrange for studies to evaluate the health of the EPSDT population, including each health outcome indicator. Defendants will present their proposed methodology for Plaintiffs’ approval by April 1, 1996. Plaintiffs will not unreasonably withhold approval. If they approve, Plaintiffs may make suggestions. Defendants may accept or reject the suggestions.”

¶ 296: “If reported results do not achieve the goal for each indicator, Defendants will develop corrective action plans to address all matters within Defendants’ control to improve results for each indicator. Defendants will present their corrective action plans for Plaintiffs’ review and comment by January 30 each year. Defendants will not unreasonably reject Plaintiffs’ suggestions.”

¶ 173 “...Defendants will report on dental health outcomes in the EPSDT population...”

¶ 174 “...By March 1, 1996, Defendants will arrange for a study to assess the dental health of the EPSDT population. The study will assess changes over time. At a minimum, the study will evaluate improvements in the number and percent of recipients who 1) have no cavities, 2) have no untreated cavities and 3) require hospital treatment for dental problems. The method will be subject to Plaintiffs’ approval...”

See also Decree ¶¶ 3, 9, 143-45, 191, 199, 286-87, 290-92, 298-99.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 603, n. 40; 654-58.

¹ On December 24, 2004, Plaintiffs filed their Motion to Extend the Term of Consent Decree Paragraphs 284 and 295 (Opposed). It is set for hearing, along with Plaintiffs’ request for corrective action plans, to begin April 9, 2007.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Page 45 of Defendants’ Proposed Plans):

- Immunization completion is an appropriate subject for outcomes measures studies.
- It is appropriate for the parties to work together cooperatively to develop outcomes measures. *See* decree ¶ 289.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Page 45 of Defendants’ Proposed Plans):

- The decree requires Defendants to study about 12 outcomes measures. *See* decree ¶293. It appears that they only intend to study 3, in violation of the decree. This small number of outcomes measures is not “diverse enough to gauge the health of the entire EPSDT population, not merely factions of the population.” *See* decree ¶289.
- The decree also requires Defendants to propose corrective action plans whenever their outcomes studies results indicate that the class has not achieved target goals agreed to by the parties. The Defendants must consult with Plaintiffs about the plans and implement agreed plans. *See* decree ¶296.
- *Defendants do not propose to conduct an ongoing dental study that assesses changes in class members’ dental health over time, as the Decree requires. See Decree ¶ 174. The one dental study they have conducted was unreliable and short term in nature. It made no attempt to assess changes over time. See 109 F.Supp. 2d at 603, n. 40.*

Plaintiffs’ Alternate Proposed Corrective Action Plans:

- ***Health Outcomes Measures:*** Within 3 months of entry of the corrective action plan Order, Defendants will present about 12 proposed outcomes measures to Plaintiffs. The proposed measures will meet the decree’s requirements. Plaintiffs will respond

within *2 months* of receipt of the proposed measures. If the parties cannot agree on outcomes measures within 2 more months, the Court will resolve the dispute by motion to be filed by Defendants within 8 months of the entry of the Order.

- Defendants will present their complete outcomes measures studies to the Court and Plaintiffs within 18, 30 and 42 months of entry of the corrective action plan Order.
- Defendants will present proposed outcomes measure goals and corrective action plans to Plaintiffs within 20, 32 and 44 months of entry of the corrective action plan Order. Plaintiffs will respond within *2 months* of receipt. If the parties cannot agree on the goals and/or plans *within 2 more months*, the Court will resolve the dispute by motion to be filed by Defendants *within 5 months of presentation of the outcome measures study to the Court and the Plaintiffs*.
- After the 3 sets of outcomes measures studies and corrective action plans are filed, the Court will determine the need for further studies and corrective action plans, if any, based on the results of Defendants' corrective actions.
- After each study mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the outcomes measures corrective action plan, based on information provided in the studies.
- ***Dental Assessment:*** *Within 4 months of entry of the corrective action plan Order, Defendants will propose plans for an ongoing professional and valid dental study that assesses changes in class members' dental health over time. It will include at least the evaluation of changes in the number and percent of recipients who 1) have no cavities, 2) have no untreated cavities and 3) require hospital treatment for dental problems.*

- *Plaintiffs will respond to Defendants' study proposal within 2 months of receiving it. Plaintiffs will indicate whether they agree the proposed methodology is professional and valid, and whether it complies with Decree ¶¶ 173 and 174. They may also offer suggestions, which Defendants may accept or reject.*
- *If the parties are able to agree on methodology and scheduling for an ongoing dental study, Defendants will present results of the study's 1st phase to the Court and the plaintiffs within 14 months of entry of the corrective action plan Order.*
- *If the parties cannot agree on dental study methodology or scheduling, the Court will resolve these issues on Defendants' motion, to be filed not more than 8 months after entry of the corrective action plan Order.*
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan and/or for failing to meet any requirement of the corrective action plan. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' outcomes measures studies and corrective action plans, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
TRANSPORTATION PROGRAM

Decree References:

¶ 223: “Defendants will conduct annual assessments of the effectiveness of the transportation program...”

¶ 224. “The assessments will be specific and comprehensive enough to validly evaluate the transportation program in each Standard Metropolitan Statistical Area and the rural area in each of the 8 TDH regions. The assessments will determine where services are needed, the amount of services that are needed and if existing services meet the need for transportation assistance.”

¶ 225: “Each assessment will evaluate:

- unmet need for transportation assistance,
- recipient and provider satisfaction with the transportation program ,
- the reasons for recipient and provider dissatisfaction with the transportation program,
- whether transportation times are reasonable, and

- whether recipients missed or did not schedule EPSDT services because of transportation problems, including those attributable to medical transportation program deficiencies.”

¶ 226: “Over time, the results of the evaluations will improve.”

¶ 227: “*Defendants’ method for evaluating the transportation system will be subject to Plaintiffs’ approval...*”

¶ 228: “Defendants will take corrective action wherever the assessment indicates that transportation services are inadequate. ‘Inadequate’ means problem(s) exist that Defendants can reasonably be expected to correct.”

¶ 229: “*Upon completion of each annual transportation assessment, the parties will determine a method to decide where corrective action is needed, how quickly it is needed and what actions will be taken.*”

See also, Decree ¶¶ 2,3.

Citation to Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 616-618; *401 F. Supp. 2d* at 685.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Page 27-28 of Defendants’ Proposed Plans):

- It is appropriate to conduct annual surveys of consumer satisfaction, client rights and complaints, adherence to best practices and areas needing corrective action.
- It is appropriate to continue to work with the Texas Department of Transportation since it is now administering the Medicaid Transportation Program.
- It is appropriate to develop a plan to evaluate the Medical Transportation Program.

Plaintiffs' Disagreements with Defendants' Proposed Corrective Action Plans (Page 27-28 of Defendants' Proposed Plans):

- *Plaintiffs cannot determine whether Defendants will comply with the decree's requirements concerning evaluation of their Medicaid Transportation Program. Their most recent transportation study, done in 2003, does not appear to have been intended to comply with the decree's requirements. It does not address any of the topics required by the decree.*
- *However, in November 2006 Defendants sent Plaintiffs information about a proposed transportation study to be performed in 2007. In December, 2006 Plaintiffs responded with questions and concerns about subject matter and methodology of the proposed study. Defendants replied in early February. Plaintiffs' expert is currently reviewing Defendants' reply.*
- *Plaintiffs cannot determine whether Defendants will comply with the decree's requirements concerning Medical Transportation Program corrective action plans. If they develop plans relating to their 2003 study, those plans will not comply with the decree because their 2003 study does not meet the decree's requirements.*

Plaintiffs' Proposed Corrective Action Plan:

- Defendants will contract with an independent, *external* evaluator to conduct the Medical Transportation Program study required by the decree. The study will be presented to the Court and Plaintiffs within 7 months of entry of the corrective action plan Order.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will

resolve the issue by motion to be filed by Defendants no later than 2 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- Defendants will draft a Medical Transportation Program corrective action plan within 9 months of entry of the corrective action plan Order. Defendants will cooperate with Plaintiffs to develop the plan. *See* Decree ¶229. If the parties agree about the plan, Defendants will present it to the Court and Plaintiffs in their next quarterly report. If the parties cannot agree about the plan, Defendants will present the dispute to the Court by motion to be filed within 10 months of entry of the corrective action plan Order.

- Defendants will implement their Medical Transportation Program corrective action plan within 12 months of entry of the corrective action plan Order.
- Defendants will *contract for an independent, external* Transportation study annually, using the same protocols as above. The second and third studies will be provided to the Court and Plaintiffs within 19 months and 31 months of entry of the corrective action plan Order. The corrective action plan process will be repeated after Defendants complete the 2nd and 3rd studies of each type mentioned above, according to the equivalent schedule outlined for the 1st schedule.
- After the 3rd corrective action plan is implemented, the Court will determine the nature and schedule of future Medical Transportation Program studies and corrective action plans, if any, based on the results of Defendants' corrective action efforts.
- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the transportation corrective action plan, based on information provided in the reports.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' transportation program, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
OUTREACH AND INFORMING; OUTREACH REPORTS

Decree References:

¶ 32: "All outreach units will have sufficient staff and other reasonably necessary resources to handle their workload promptly and effectively."

¶ 50: *"The purpose of oral outreach is to *encourage EPSDT recipients to fully use EPSDT services; and *assist recipients to overcome common barriers that prevent them from using EPSDT services."*

¶52: "Oral outreach efforts will effectively inform recipients about EPSDT, including the schedule for medical and dental check ups as well as the full range of covered services. Oral outreach will also effectively inform recipients about the benefits of preventive health care, that services are free of charge, how to locate a provider who is willing to provide services to EPSDT recipients, how to schedule appointments and how to schedule transportation assistance."

¶ 60: *"Each month, the outreach unit will at a minimum report the following information to the EPSDT program:"*

¶ 61: “By September 1, 1996, Defendants will develop and implement a method that reports the number and percent of recipients who receive medical and/or dental check ups after receipt of oral outreach.”

See also ¶¶ 10-14, 17, 20-31, 33-59, 62-74, 95-96, 148-53, 176-83, 193.

Citation for Finding of Decree Violations: *Frew v Gilbert*, 109 F.Supp.2d 579, 589-600 (E.D.Tex. 2000); 401 F.Supp. 2d at 660-666

Evidence of Confusion Resulting from Design of Med-ID card and the Med-ID Card’s Checkup Information:

- Testimony of L.L. (vol. 5, pp. 145, 171-72)
- Testimony of Dr. Seale (vol. 6, pp. 99-100)

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Page 13 of Defendants’ Proposed Plans)

It is necessary to annually review and (*if there has been significant change to relevant subject matter*) update outreach and informing materials (scripts, brochures and other materials). Statewide outreach, informing and marketing are required.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Page 13 of Defendants’ Proposed Plans)

- All printed outreach and informing materials should be *reviewed* at least annually (not biannually) and *updated* on the same schedule as scripts, brochures and other materials so that all materials contain the same information.
- All websites should be *reviewed* at least annually (not biannually) and *updated* on the same schedule as other materials, so that all contain the same information.
- Training modules should be *reviewed* at least annually (not biannually) and *updated* on the same schedule as other materials, so that all contain the same information.

- *Defendants did not indicate in their proposed CAPs that they would return to Decree compliance by reinstating outreach letters to a) remind class members when check ups are due or b) follow up when check ups are missed. However, Defendants said in their October 2006 Monitoring Report that they have reinstated the letters. (Defends' October 2006 Monitoring Report, ## 17 and 42) These letters should be continued in accordance with the Decree's requirements.*
- Defendants' proposed plans are not sufficient because they are too limited in scope to be "effective."

Plaintiffs' Alternate Proposed Corrective Action Plans:

1. Broaden Outreach Methods

- **Media** Defendants will implement a media pilot project in 1 geographic area that includes both urban and rural counties. The project will assess the use of television and radio for THSteps outreach for at least **12** months. The project will use professionally valid methods of assessment, to include assessment of check up rates in the area under study (hopefully increasing), and pre and post-tests of class members/families' understanding of THSteps.
- Defendants will begin the media pilot project within 6 months of entry of the corrective action plan Order. They will report to the Court and Plaintiffs within 21 months of entry of the Order. Within 23 months of entry of the Order, Defendants will propose to the Court and Plaintiffs follow up activities based on the pilot project. Plaintiffs will respond within 1 month. If the parties cannot agree on next steps, the Court will resolve the issue by motion, to be filed by the Defendants within 27 months of entry of the Order.

- **Intensive School-Based Program** Defendants will implement an intensive school-based outreach pilot project in 1 geographic area that includes both urban and rural counties. The project will assess intensive coordination with pre-school and school staff, including school sports/physical education programs, nurses, social workers, administration, etc. for at least **12** months. The project will use professionally valid methods of assessment, to include assessment of check up rates in the area under study (hopefully increasing), and pre and post-tests of class members/families' understanding of THSteps.
- Defendants will begin the school-based pilot project within 6 months of entry of corrective action plan Order. They will report to the Court and Plaintiffs within 21 months of entry of Order. Within 23 months of entry of the Order, Defendants will propose to the Court and Plaintiffs follow up activities based on the pilot project. Plaintiffs will respond within 1 month. If the parties cannot agree on next steps, the Court will resolve the issue by motion, to be filed by the Defendants within 27 months of entry of the Order.
- **Intensive Community Based Program:** Defendants will implement an intensive outreach pilot project using contracts with community based organizations (including faith-based institutions, neighborhood associations, and non-governmental organizations already having contact with class members' families for other purposes). Preference will be given to community based organizations that use promotores or similar health workers to provide information and assistance to class members' families in overcoming barriers to utilization of Texas Health Steps services. This pilot project must include face to face outreach

contact with the family of each class member not completely up to date on medical and dental checkups, unless this contact is explicitly refused by the family. The project will assess the use of this methodology for at least 12 months. The project will use professionally valid methods of assessment, to include assessment of check up rates in the area under study (hopefully increasing), and pre and post-tests of class members/families' understanding of THSteps.

- **Defendants will begin the community based pilot project within 6 months of entry of the corrective action plan Order. They will report to the Court and Plaintiffs within 21 months of entry of Order. Within 23 months of entry of the Order, Defendants will propose to the Court and Plaintiffs follow up activities based on the pilot project. Plaintiffs will respond within 1 month. If the parties cannot agree on next steps, the Court will resolve the issue by motion, to be filed by the Defendants within 27 months of entry of the Order.**

2. Improve Outreach by Mail and Follow Up

- *Defendants will continue to send check up reminder letters when check ups are due.*
- Defendants will *send* follow up letters when medical check ups are late by 3 months for children 2 years of age or older; when late by 2 months for children under age 2 (because up to age 2, children are entitled to more frequent medical check ups); when dental check ups are late by 2 months (because children are entitled to dental check ups every 6 months).

- Defendants will change the content for follow up letters for delayed check ups. Defendants will implement the following changes within 3 months of entry of the corrective action plan Order:
 - Defendants will include information about possible causes for confusion about whether a check up has been missed and whether it is complete; they will also ask the adult responsible for a class member to call a toll free number *if he or she has questions or concerns about the follow up letter or the delayed check up.*
 - Within 1 month of entry of the corrective action plan Order, Defendants will propose a protocol for toll free number staff to respond to calls *made in response to the follow up letters.* Plaintiffs will respond within 1 month. If the parties agree, they will notify the Court within 2 months of entry of the corrective action plan Order. Defendants will implement the plans within 1 month of filing. If the parties do not agree, the Court will resolve the dispute by written motion, to be filed by Defendants within 2 months of entry of the corrective action plan Order. The protocol will include at a minimum: a) notation of which type of check up is at issue, (medical, dental, both) b) discussion of whether a check up has been missed, c) for at least a representative sample of callers, independent verification of whether the check up has been missed or obtained, d) if the adult reports that a check up has been missed, an inquiry into the cause of the missed check up (no doctor, no dentist, transportation problems, etc), e) offer of appropriate help to resolve the problem and f) methods to provide appropriate help to resolve the problem

including methods to resolve unusual problems that the protocols do not already cover.

- Within 1 month of entry of the corrective action plan Order, Defendants will propose protocols for toll free number staff to track and report on the clarification calls. The reports will include at a minimum: a) the number of calls, b) the topic discussed, including reported problems obtaining check ups and the type of check up at issue (medical, dental, both), c) the resolution of the call, d) the percent of children who received check ups within 60 days of the clarification call (medical, dental, both) and e) the percent of children who had already received check ups before the clarification call (medical, dental, both). The percent reports will include only check ups that are verified. Plaintiffs will respond within 1 month. If the parties agree, Defendants will notify the Court and implement the protocol within 2 months of entry of the corrective action plan Order. If not, the Court will resolve the dispute by written motion, to be filed by Defendants within 2 months of entry of corrective action plan Order.
- Follow up if 30 days passes with no response to outreach letters for delayed check ups
 - If Defendants have information about a family's phone number, outreach staff will try at least 3 times to reach the family by phone within the next 30 days. If contact is made, outreach staff will follow the above protocol.
 - If phone contact is not made, then outreach staff will either a) send a letter suggesting a home visit and allowing the family to opt out. *The family will be*

given the opportunity to opt out by mail, phone or other method of the family's choice. Outreach staff will make a home visit unless family affirmatively opts out or b) ensure that a contracted community based organization completes contact with the family.

- For all class members contacted by this method, Defendants will report on a) which option was used, b) the percent of children who received a check up of the type missed within 60 days (or, when contacted, reported that a check up had already been obtained if this can be verified.)

3. Improve the Med-ID Card so that it does not continue to confuse class members and their parents/guardians

- **Within 3 months of the date of this Order, Defendants will change the design of the monthly Med-ID card so that it does not continue to mislead class members about the availability of dental care and the appropriate scheduling of checkups. Proposed changes in the card's design are subject to the approval of Plaintiffs' counsel, who will not unreasonably withhold consent.**

4. Make the Consumer Guide to the Medicaid Program Available in Other than Web-based Form

- **Within 3 months of the entry of this Order, Defendants will make their Consumer Guide to the Medicaid Program readily available in printed form to class members, their parents/guardians, health care providers and community based organizations serving class members.**

5. Require informing and the use of “extra effort referrals” by eligibility workers:

- **Within 6 months of the entry of this Order, Defendants will complete a program of contacting all eligibility workers who deal with class members. Through this contact, they will remind these workers that the Decree requires them to provide appropriate THSteps informing to class members and their parents/guardians. Defendants will also explain the appropriate use of “extra effort referrals” by the eligibility workers to the outreach units, as required by the Decree. (See Decree ¶23).**

6. *Coordinate Outreach to Avoid Conflicting or Unnecessarily Duplicative Messages*

- *Within 3 months of the entry of this Order, Defendants will develop and implement a plan to effectively coordinate all outreach approaches made by Defendants and their contractors toward class members and their families. The plan will provide for delivery of a concise and consistent message to these recipients, rather than conflicting, divergent or unnecessarily duplicative information. The information provided must include all that is required by the Decree.*
- *In accordance with Decree ¶ 65, Defendants will also develop and implement a plan for coordination with other state agencies and state contractors that provide health or public benefit information to class members or their families. The plan will provide for delivery of a concise and consistent message about health outreach topics, rather than conflicting, divergent or unnecessarily*

duplicative information. Defendants will develop and implement the plan within 6 months of the entry of this Order.

7. Reinstate Outreach Reports Required by Decree Paragraphs 60 and 61

Within 1 month of entry of the corrective action plan Order, Defendants will begin to produce the outreach reports required by Decree paragraphs 60 and 61. These reports will be included with Defendants' quarterly monitoring reports, beginning with the first report due 1 month or more after entry of the corrective action plan Order.

8. Improve Assessment and Evaluation of Informing and Outreach

- Defendants will contract for independent, external assessment and evaluation of outreach effectiveness. **This must include direct comparisons between and among particular methods and combinations of methods of Outreach.** The outreach methods to be evaluated will include but not be limited to: telephone follow-up for missed check up appointments; mail follow-up for missed check up appointments; and each outreach method specified in the 3 pilot projects described above. **The assessments will evaluate combinations of outreach methods in a manner that can reliably determine the relative contribution of each method to the desired outcome of completed check ups.** The design of these assessments will conform to the highest attainable standards for evaluation of multiple methods of Outreach. The assessments will enable the comparison of existing methods and protocols to new configurations of methods (to include single and multiple methods employed in combination) so as to determine the relative contribution of each method to the desired outcome of completed check-ups.

- Defendants will contract for independent, external assessment and evaluation of outreach effectiveness in the manner described above every year for the next 3 years. Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 4 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.
- Topics to be addressed by the outreach effectiveness studies include but are not limited to a) when information is provided orally (via telephone and/or face to face), is it accurate, appropriate, understood and can the recipient act on the information to accomplish the desired outcome of completed check ups? b) what is the relationship

between type of outreach method (broken down by types and combinations of types of outreach) and subsequent receipt of medical, dental and/or both check ups(s)? c) does outreach improve class members/families' understanding of THSteps? d) does outreach identify **and effectively help families to overcome** common barriers that prevent class members from getting medical check ups, dental check ups and/or follow up care that they need? and e) what can be done to make outreach more effective? Defendants will provide these assessments to Plaintiffs and the Court. The first report will be due no later than 24 months after entry of the corrective action plan Order. Subsequent reports will be due no later than 12 months and 24 months after the 1st report.

- After each outreach report is complete, Defendants will develop and implement outreach corrective action plans. Within 2 months of receipt of each report, Defendants will propose a corrective action plan to Plaintiffs. Plaintiffs will respond within 2 months. If the parties agree on a plan within 5 months, Defendants will file it with their next quarterly report and implement it within 1 month of filing. If the parties do not agree, the Court will resolve the dispute by motion, to be filed by Defendants within 5 months of receipt of the report.
- After the reports mentioned above are filed, the Court will determine the nature and schedule of future reports and corrective action plans, if any, based on the results of Defendants' corrective action efforts.
- After each report is filed, the parties may propose and the Court may consider modifications in the outreach corrective action plan, if any, based on information provided in the reports.

- Fines: Defendants will be fined for missing any deadline established by the corrective action plans *and/or for failing to meet any requirement of the corrective action plan*. The amount of the fine will be determined by the Court. Fines will be entered into the Registry of the Court to be used for the purpose of improving outreach and informing, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
CASE MANAGEMENT

Decree References:

¶ 248: "EPSDT programs must provide case management to each recipient if needed. Since case management is a service that Medicaid programs may cover, 42 U.S.C. §§1396d(a)(19); 1396n(g), Medicaid programs must cover it for EPSDT recipients if medically necessary. 42 U.S.C. §1396d(r)."

¶ 264: "By January 31, 1996, the parties will complete a case management plan for the EPSDT program. *Case management includes arrangements for the child and the family which are needed to meet the child's health care needs.* The plan will make sufficient case management available in every county or cluster of counties where few recipients reside..."

¶ 265: "*Among other issues, the plan will address methods to encourage the acceptance of case management by recipients and providers...*"

¶ 266: “The plan will also address the relationship between case management and managed care organizations. All EPSDT recipients, including those in managed care, are entitled to the full range of case management services when medically needed.”

¶ 267: “In addition, the plan will address the proper role of case managers. The role is to help recipients to make and effectuate their own choices about their health care and related issues. The role is not to restrict recipients’ choices in this realm.”

¶ 268: “The plan will also address case management for the children of migrant and seasonal farmworkers and how best to provide case management to that population.”

¶ 269: “Finally, the plan will address the coordination of case management services provided by the various agencies that serve EPSDT recipients. Coordination will be achieved in a manner that permits recipients to choose their case managers.”

¶ 270: “By September 1, 1996, Defendants will finalize medical case management regulations and implement the program.”

See also Decree ¶ 2, 3, 250-63.

Citation for Finding of Decree Violations: *Frew*, 109 F.Supp.2d at 646-654; 401 F. Supp. 2d at 667

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Page 42-43 of Defendants’ Proposed Plans):

- Outreach, informing and education should continue. See decree ¶265.
- Online case management training is appropriate but likely not sufficient in and of itself.
- Provider recruitment is sorely needed.
- Plaintiffs have not seen the *Children and Pregnant Women (CPW) Case Management Recruitment Plan* for FY05 so they cannot comment on it.

- It is appropriate to conduct a mass mailing about CPW case management to schools of social work and nursing.
- A client satisfaction survey is appropriate if it is conducted in a valid and professional manner.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Page 42-43 of Defendants’ Proposed Plans):

- Plaintiffs believe that the number and percent of class members who qualify for CPW case management is quite large. During the hearing in 2000, even Defendants admitted that about 7% of class members qualify for THSteps medical case management. 109 F.Supp.2d at 648.
- Even if only 7% of class members need and qualify for case management, the number would be about 195,763 (2005) – and Plaintiffs believe that the number is actually much higher. In FY04, Defendants’ case management programs combined assisted 43,730 class members (about 1.8%). In FY04, CPW case management only served 7,800 class members (about .3%).¹
- CPW case management is intended to fill in gaps so that class members who do not qualify for Defendants’ other case management programs can still get services.
- Clearly, many gaps need filling. The current system is most easily characterized as one that fails to serve more needy children than it serves.

Plaintiffs’ Proposed Corrective Action Plan:

- *Defendants will effectively inform providers who serve class members about the availability of case management, and how to access it. This information will be*

¹ Source of data: Defendants’ Ex. P to their October, 2004 quarterly report to the Court.

provided in conjunction with provider groups such as Texas Medical Association and county medical societies, as well as through other means. Defendants will also effectively inform providers of how to report problems with referrals of class members for case management services. Providers or their staff may report these problems through the provider hotline or e-mail address described in the Provider Supply corrective action plan Order.

- Within 6 months of entry of the corrective action plan Order, Defendants will contract for an independent, *external* evaluation to determine 1) the number and percent of class members who qualify for CPW case management, 2) the barriers that prevent class members who need CPW case management from getting it, 3) the barriers that prevent class members from getting enough CPW case management to fully meet their need, 4) the barriers that prevent enrollment of CPW case managers, 5) the barriers that prevent continued participation of CPW case managers, s and 6) methods to address Defendants' concerns about alleged inappropriate use *and potential duplication of case management services* without depriving class members of the full extent of case management that they need.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 4 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information.

- Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.
- The evaluation will be provided to the Court and Plaintiffs within *12* months of entry of the corrective action plan Order. The study will be repeated annually according to the protocols herein. The 2nd and 3rd studies will be provided to the Court and Plaintiffs within *24* months and *36* months of entry of the corrective action plan Order.
- Within *14* months of entry of the corrective action plan Order, Defendants will present to Plaintiffs a plan to 1) address and eliminate barriers that prevent class members who need CPW case management from getting it, 2) address and eliminate barriers that prevent class members from getting enough CPW case management to fully meet their needs 3) address and eliminate barriers that prevent enrollment of CPW case managers, 4) address and eliminate barriers that prevent continued participation of CPW case managers, and 5) address their concerns about alleged

inappropriate use of case management without depriving class members of the full extent of case management that they need. Plaintiffs will respond to Defendants within 1 month of receipt of the plan. If the parties cannot agree to a plan within 1 more month, the Court will resolve the dispute by motion. Defendants will file their motion within 16 months of entry of the corrective action plan Order. If the parties agree on a plan, Defendants will file the plan with the Court and begin to implement it within 16 months of entry of the corrective action plan Order. This process will be repeated after the 2nd and 3rd studies, according to the equivalent schedule outlined for the 1st study.

- Defendants will report *quarterly* and annual data about the number and percent of class members who receive case management in Texas and in each county. *Reports will include number and percent of class members who receive targeted forms of case management (such as for the blind, mental health/mental retardation clients, etc) and separate numbers and percents of class members who receive CPW case management.* Reports will begin within 6 months of entry of the corrective action plan Order, and will be included in Defendants' regular quarterly reports to the Court. *See Decree ¶¶306-07.*
- Within 18 months of entry of the corrective action plan Order, Defendants will show increased utilization of CPW case management. Utilization will increase every quarter until at least 90% of class who need case management are getting it, based on information provided by the independent evaluation of class members' need for CPW case management. *See above.*

- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the case management corrective action plan, based on information provided in the reports.
- After the reports mentioned above are filed, the Court will determine the nature and schedule of future reports and corrective action plans, if any, based on the results of Defendants' corrective action efforts.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' case management program, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
PARIS DIVISION

LINDA FREW, et al.

Plaintiffs,

v.

ALBERT HAWKINS, et al.

Defendants.

*
*
*
*
*
*
*
*

CIVIL ACTION NO. 3:93CV65
SENIOR JUDGE WILLIAM
WAYNE JUSTICE

PLAINTIFFS' PROPOSED CORRECTIVE ACTION PLAN:
CHECK UPS

Decree References:

¶ 2: "EPSDT is intended to provide comprehensive, timely and cost effective health services to indigent children and teenagers who qualify for Medicaid benefits. Check ups are the cornerstone of the program. They assess recipients' health, provide preventive care and counseling (anticipatory guidance) and make referrals for other needed diagnosis and treatment. 42 U.S.C. §§1396a(a)(43); 1396d(r). Recipients are entitled to both medical and dental check ups on a regular schedule."

¶ 143: "*Defendants must provide periodic dental check ups ...to...maintain dental health for EPSDT recipients.*"

¶ 170: "*Each recipient is supposed to receive a dental check up every 6 months, starting at 1 year.*"

¶ 190. "*EPSDT recipients served by managed care organizations are entitled to timely receipt of the full range of EPSDT services, including but not limited to medical and dental check ups.*"

¶ 192: “TDH [now TxH&HSC] will assure by various means that managed care organizations provide medical and dental check ups to newly enrolled recipients no later than 90 days after enrollment except when recipients knowingly and voluntarily decline or refuse services... TDH [now TxH&HSC] will also assure medical and dental check ups in a timely manner to all recipients.”

¶¶211, 212: “Many children under TDPRS supervision are EPSDT recipients. To provide needed services for them, the parties agree and the Court orders: TDH and TDPRS will present a Memorandum of Understanding for Plaintiffs’ approval by August 31, 1995 and to the Court by October 1, 1995. The Memorandum of Understanding will... assure that all EPSDT recipients under the supervision of TDPRS receive all medical and dental check ups when due.”

See also Decree ¶¶ 16, 144-169, 172, 184-89, 197, 200-09.

Citation for Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 605-613; *401 F. Supp. 2d* at 641-656.

Plaintiffs’ Agreements with Defendants’ Proposed Corrective Action Plans (Pages 17-18 of Defendants’ Proposed Plans):

- Outreach and informing must continue.
- It is appropriate to attempt to cooperate with health care professional schools by offering education about THSteps. See Decree ¶107.
- Cooperative and coalition efforts are appropriate, including with other state agencies. See Decree ¶¶65-72.

- Defendants must continue to provide data about the number and percent of class members under supervision of the Department of Family and Protective Services who receive medical and dental check ups on time.

Plaintiffs’ Disagreements with Defendants’ Proposed Corrective Action Plans (Pages 17-18 of Defendants’ Proposed Plans):

- Defendants’ current informing and outreach activities are not sufficient to be effective. *See* Plaintiffs’ proposed corrective action plan: outreach and informing.
- Adjusted check ups rates are less accurate and useful than “common” percents that are not adjusted according to the protocols used in the CMS 416, *Annual Participation Report*. 109 F.Supp.2d at 602.
- Defendants must obtain and provide accurate data about the number and percent of class members under supervision of the Department of Family and Protective Services who receive medical and dental check ups on time.
- In 2000, Defendants reported a medical check up participation rate of 0.66 for FY98. 109 F.Supp.2d at 601. The Court found that the reports were inflated and that the Defendants were not complying with the decree. *Id.* at 602 and n. 34 (inflated reports); *Id.* at 611 (decree violation).
- Defendants reported many medical check ups that should not have been reported because they lacked basic elements required by federal law. 42 U.S.C. §1396d(r); 109 F.Supp.2d at 622-24.
- Defendants now report a medical check up participation rate of 0.63 **for** FY2005 (most recent report). *See Defendants’ CMS 416 for FY 2005, Ex. A to Defendants’ April, 2006 Monitoring Report*. Since their FY98 report, things have gotten worse,

not better. Indeed, according to Defendants, more than 1,478,813 class members got no medical check ups in FY2005. (CMS 416: TOTAL from line 1 minus TOTAL from line 9).

- **Defendants continue to “pad” their medical checkup rates by improperly including all types of preventive visits, not just THSteps checkups. (Testimony of Dr. Shenkman, vol. 6, pp. 45-47 (2005).**
- Further, according to Defendants’ most recent report, almost 1.5 million class members over the age of 12 months got no dental care at all in FY2005.¹ (CMS 416 for FY2005: TOTAL from line 1 minus TOTAL for infants from line 1 minus TOTAL from line 12a).

Plaintiffs’ Alternate Proposed Corrective Action Plans:

1) Medical Check Up Completeness

- *Defendants’ decisions about how to implement federally required checkup elements must be made after consultation with recognized medical and dental organizations involved in child health care.*
- Defendants will contract for an independent, external evaluation of medical check up completeness.
- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 6 months after entry of the corrective action plan Order. The motion and Plaintiffs’ response will list proposed recommendations of independent evaluators, a brief

description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.

- Defendants will provide their first medical check up completeness report to the Court and Plaintiffs within 12 months of entry of the corrective action plan Order. They will provide their 2nd and 3rd reports within 24 and 36 months of entry of the Order. The 2nd and 3rd reports will be prepared according to the protocols stated above.
- The medical check up completeness assessment will review a statistically valid sample of class members' medical records to determine a) the percent of check ups where all elements are documented and b) for incomplete check ups, what elements are most commonly missed. The study will also assess the reasons that check up elements are most commonly missed.

¹ Plaintiffs exclude infants because Defendants' dental check up schedule begins at the

- Defendants may opt *to combine this study with* the check up completeness studies required by the managed care corrective action plan Order. If they take this option, the study will comply with the standards *and scheduling requirements* for check up studies set out in the managed care corrective action plan. *However, Defendants will include all areas of the state* in their study, including those that are excluded from managed care, if any. *They will include class members who receive care through all forms of Medicaid, including managed care (HMOs, PCCM) and traditional Medicaid.*
- *Adequate review of class members' medical records is essential to assessing Decree compliance. But, unnecessarily duplicative record reviews may hinder accomplishment of the Decree's goals. To avoid unnecessarily duplicative medical record reviews, Defendants will require managed care organizations and all other contractors conducting reviews of class members' medical records to coordinate effectively. Coordination will include, but is not limited to, requiring that other reviewers use records acquired through the independent evaluation required by this CAP rather than unnecessarily requesting providers' medical records for their own purposes.*
- The external review will also determine a complete list of other databases that may be used to assess medical check up completeness. The review will then use these databases as another means to assess check up completeness. For example, the study will compare the number of 12 month old class members and 24 month old class members to the number of blood samples submitted to Defendants'

age of 12 months.

laboratories for testing for each age group.² Another example is: if ImmTrack includes immunization data about all or virtually all class members, it could be used to compare the total number of 26 month old class members to a) the number of class members who have completed all of their recommended shots by then and b) for class members who have not completed all recommended shots by then, the number of class members who have completed 1 of the recommended shots, 2 of the recommended shots, etc.³

- Defendants will cease to report incomplete medical check ups on any reports about class members' receipt of this service (CMS 416, *Annual EPSDT Participation Report*, Statewideness Reports, *see* Decree ¶¶ 271-81, etc.)

If fewer than 90% of check ups are complete, Defendants will develop and implement a corrective action plan to improve the rate of check up completeness. If needed, the plan will include:

- Defendants will develop and implement a new initiative to train health care providers who conduct THSteps check ups, to emphasize the elements of medical check ups, their importance, proper documentation. *This training will be offered under the same conditions and subject to the same provider feedback opportunities as set out in the provider training corrective action plan Order.*
- Defendants will implement programs to eliminate problems that prevent complete check ups. **This implementation will be accomplished in a manner that permits direct comparison of the effects of 2 or more different approaches to**

² Lead blood testing is a mandatory check up element. 42 U.S.C. §1396d(r). Defendants require lead blood tests at 12 and 24 months. They also require all lead blood samples to be submitted to their laboratory in Austin for testing.

these problems. All assessments performed in connection with this Corrective Action Plan will evaluate Defendants' methods and combinations of methods in a manner that can reliably determine the relative contribution of each method to the desired outcome of complete check ups.

- Defendants will engage in aggressive efforts to educate class members/families so they know a) what elements are included in complete check ups b) why each element is important and c) how to effectively request complete check ups. The first step in this effort will be an assessment of the baseline understanding of these issues among class members and the adults responsible for them. The baseline assessment will be completed within 6 months of entry of the corrective action plan order. The study will be repeated annually (within 18, 30 and 42 months of the pre-study) to determine if Defendants' efforts are effective so that understanding improves. The percent of study participants who understand these topics will increase at least 10% each year.
- Defendants will establish a baseline and improve check up completeness 20% every year. For example, if their initial report about check up completeness shows that 7% of check ups are complete, then within 1 year, 27% of check ups would need to be complete. Within another year, 47% will need to be complete, etc.
- *During the 3 year period following entry of this corrective action plan Order, and beyond it as needed, Defendants will work with their contracted managed care organizations serving class members to develop their ability to conduct accurate,*

³ Immunizations proper by age are a mandatory check up element. 42 U.S.C. §1396d(r).

reliable studies of check up completeness. Defendants will also amend their contracts with their managed care organizations [HMOs, Primary Care Case Management] to require the organizations to conduct the studies required by this corrective action plan.

- *After the 3 annual studies of check up completeness are finished, Defendants will begin to transfer this study responsibility to their contracted managed care organizations (HMOs, Primary Care Case Management). During the transition, representative samples of each managed care organizations' reported data will be verified by independent reviewers. Full responsibility will be transferred only if and when the managed care organizations demonstrate they can provide complete, accurate and timely data. If the parties are unable to agree on the managed care organizations' assumption of this responsibility, the Court will determine it upon motion by the Defendants.*
- *The managed care organizations in each region will conduct semi-annual studies of check up completeness within their networks. Defendants will receive the reports from the managed care organizations in each region at least every 6 months, according to a schedule established by Defendants. Defendants will file these reports with their next quarterly report to the Court.*
- *Sanctions and rewards for high or low rates of checkup completeness will be assessed in accordance with the managed care corrective action plan Order. Rewards and/or sanctions will be large enough to accomplish their goal of securing compliance with the corrective action plan and the Decree.*

2) Checkup Reminders to Class Members' PCPs

- Defendants' *managed care organizations* in each region will initiate and maintain effective reminder systems to trigger timely check ups. These systems will effectively address problems that result when a primary care provider's panel list includes class members who are not actually on that PCP's panel. The reminder systems will be in place and working properly no later than 3 months after entry of the corrective action plan Order.
- Defendants will develop and implement a valid system to check that the reminders actually occur in a timely and effective manner. The system will be in place and in operation no later than 4 months after entry of the corrective action plan Order.

3) Reasons that Class Members Miss Checkups

- Defendants will contract for an independent, external evaluation of the reasons that class members miss medical check ups, dental check ups, and/or both. **It will focus special attention on known areas of particular deficiency—such as medical and dental checkups for teens and dental checkups for children aged 1 to 3. It will also focus special attention on particularly vulnerable groups of class members, including but not limited to those supervised by the Department of Protective and Regulatory Services.** The study will focus on finding barriers that can be remedied. The study will be conducted in a professional and valid manner. The 1st study will be completed within 12 months of entry of the corrective action plan Order. The 2nd and 3rd studies will be completed according to the protocols mentioned herein. They will be completed within 24 and 36 months of entry of the Order.

- Counsel for the parties will try to agree on the person(s) and/or organizations that will conduct the assessment and evaluation. If counsel cannot agree, the Court will resolve the issue by motion to be filed by Defendants no later than 6 months after entry of the corrective action plan Order. The motion and Plaintiffs' response will list proposed recommendations of independent evaluators, a brief description of their qualifications and other relevant information. Defendants will provide all required information to the independent evaluator(s) on a timely basis and in usable form, cooperate with the independent evaluator(s) and make timely payment to the evaluator(s) as required by the Court's order or Defendants' agreement with the evaluator(s). Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will further require the evaluator(s) to make all information about the status of their work, drafts of reports and other relevant information equally available to Plaintiffs' counsel, Defendants and Defendants' counsel. Completed evaluations will be provided to the Court as completed by the evaluator(s), without editing or changes by Plaintiffs' counsel, Defendants or Defendants' counsel, or anyone acting on their behalf.
- Defendants will propose corrective action plans to the Plaintiffs to overcome all barriers identified by the studies. Each year, Defendants will propose their plans within *1 month* of their receipt of the studies. Plaintiffs will respond within *1 month* of their receipt of Defendants' proposed plans. If the parties agree on proposed corrective action plans, they will file their agreed plans within *3 months* of Defendants' receipt of the studies. Defendants will implement the plans within 1

month of filing them. If the parties do not agree, the Court will resolve the dispute by motion to be filed by Defendants within *3 months* of their receipt of the study.

- The corrective action plan process will be repeated after Defendants complete the 2nd and 3rd studies of each type mentioned above, according to the equivalent schedule outlined for the 1st schedule.
- After the reports mentioned above are filed, the Court will determine the nature and schedule of future reports and corrective action plans, if any, based on the results of Defendants' corrective action efforts.
- After each report mentioned above in this corrective action plan is filed, the parties may propose and the Court may consider modifications in the check up corrective action plan, based on information provided in the reports.
- **Fines:** Defendants will be fined for missing any deadline established by this corrective action plan *and/or for failing to meet any requirement of the corrective action plan*. The Court will determine the amount of the fine. Fines will be entered into the Registry of the Court to be used for the purpose of improving Defendants' check up program, as directed by further order of the Court. These fines do not supplant any other remedy that may be appropriate.