

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

LINDA FREW, et al.,
Plaintiffs,

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v.

ALBERT HAWKINS, et al.,
Defendants.

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

CORRECTIVE ACTION ORDER:
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.

IT IS ORDERED:

- Defendants’ decisions about how to implement federally required checkup elements must be made after consultation with recognized medical and dental professional organizations involved in child health care.
- Defendants will contract for an independent, external study of medical check up completeness. They will arrange for this study as expeditiously as possible while complying with state and federal law concerning contracts of this type. The study will use professionally valid methods of assessment. The Request for Proposal (“RFP”) specifications will include parameters for prospective independent evaluators to use in proposing independent, unbiased, and statistically valid methodologies to conduct the study described in this Corrective Action Order.

- The specifications will emphasize the independence of the evaluator in assessing the areas of study described in this Corrective Action Order. The independent evaluator should have demonstrated expertise in the particular area of study as evidenced by published studies by either the research teams/organization or principal investigator in peer refereed journals. Defendants will assure that the study RFP and other solicitation documents (including Requests for Information, if any) are provided to Plaintiffs' counsel in draft form for review and comment. Plaintiffs' counsel will execute non-disclosure certifications prior to receipt of non-public procurement-related materials and will likewise sign conflict of interest statements of the type required of project and management personnel under agency policy and state law. Should Plaintiffs wish to utilize consultants to review any documentation, the consultants will also execute non-disclosure and conflicts statements prior to receipt of the non-public procurement-related materials. Any consultant to whom Plaintiffs' counsel provide copies of non-public procurement-related materials will be prohibited from responding to any RFP for which they have assisted Plaintiffs. Plaintiffs must provide comments to the solicitation documents within fifteen business days of the transmission of the document(s). Defendants may accept or reject suggestions. After Defendants respond to Plaintiffs' comments about the draft RFP and other solicitation documents, Plaintiffs will have ten days to indicate whether they agree that the RFP meets the requirements of this Order. If they agree it does, they may offer suggestions. Defendants may accept or reject the suggestions. If the parties cannot agree on whether the RFP meets the requirements of this Order, the dispute will be resolved by the Court upon motion to be filed by either party.
- Defendants will conduct any procurement for independent evaluation services on a competitive basis in accordance with state and federal requirements and Defendants' policies

regarding competitive procurements. Defendants will be responsible for reviewing the qualifications of all prospective evaluators, evaluating all proposals, and selecting the best qualified evaluator or evaluators whose proposal(s) best meet the requirements of the RFP and supply best value. Plaintiffs may review and comment on all proposals that Defendants receive, but Defendants will make the selection.

- Defendants will provide all required information to the independent evaluator(s) on a timely basis, in usable form, and in a manner that protects the privacy of class members and confidentiality of information in compliance with state and federal law, cooperate with the independent evaluator(s) and make timely payment to them for services properly and timely rendered, as required by the Court's order or Defendants' agreement with the evaluator(s).

Defendants will establish a table of contract deliverables in the RFP. Defendants will provide Plaintiffs' counsel with copies of each deliverable within ten business days. If Plaintiffs' counsel have comments or questions on contract deliverables, then those comment or questions must be received by Defendants within fifteen business days of the date of transmission of the contract deliverable to Plaintiffs' 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 study results to the Court and Plaintiffs within one month of receipt. They will provide the results of the second study within 36 months of completion of the first report.
- The first medical check up completeness study will review a statistically valid sample of class members' medical records to determine: a) the percent of check ups in which all of the five federally mandated elements set forth at 42 U.S.C. 1396d(4)(1)(B)(i)-(v) ("elements") are

documented; and b) for check-ups lacking documentation of one or more of these five elements, which of these elements are most commonly missed or not documented. The study will also assess the reasons that check up elements are most commonly missed or not documented.

- Defendants will include in this study class members who are enrolled in managed care (HMOs and PCCM) and class members who are not enrolled in managed care, from all parts of the state. The sample of records will be large enough to provide statistically valid comparisons among the various delivery systems and the various plans, including PCCM in each service delivery area.
- 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 encourage managed care organizations and all other contractors conducting reviews of class members' medical records to coordinate effectively. Coordination may include, but is not limited to, requiring that other reviewers under the control of Texas Health and Human Services Commission use records acquired through the independent study required by this CAP rather than unnecessarily requesting providers' medical records for their own purposes.
- If the first study shows that check ups are most commonly incomplete because they lack documentation of one specific element (or two specific elements, etc.), Defendants at their option may limit the second study to those commonly missing elements. In all other regards, arrangements for and the conduct of the second study will be according to the procedures described above. If fewer than 80% of check ups are complete in any managed care organization or PCCM (by service delivery area), Defendants will develop and implement a targeted corrective action plan to improve the rate of check up completeness for that managed care

organization or PCCM (by service delivery area). If needed, the plan will include: efforts to train health care providers who conduct Texas Health Steps check ups, to emphasize the elements of medical check ups, their importance, and proper documentation. These efforts include Defendants' on-line training, which has already begun. Specifically, the overview module concerning check up elements will be in operation no later than August 2007. When the two studies are complete, counsel will confer to determine what further action, if any, is required. Counsel will begin to confer no later than 30 days following completion of the second study. If the parties agree, they will so report to the Court within 120 days of completion of the second study. If the parties cannot agree within 90 days of completion of the study, the dispute will be resolved by the Court upon motion to be filed by either party. If the parties cannot agree, either party may file its motion within 30 days of completion of discussions among counsel.