

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 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."

¶ 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

IT IS ORDERED:

### **Medical Check Ups**

- Class members above the age of two years qualify for medical check ups immediately upon qualifying for Medicaid benefits. Further, all class members in Defendants' managed care programs qualify for medical check ups within 90 days of enrollment in managed care. See Decree ¶192.
- For class members aged two and over, Defendants will report: 1) the number of class members of each age (two years, three years, four years, etc.) who were enrolled for a minimum of 90 days; 2) the unduplicated count of class members of each age who received a medical check up; and 3) the unadjusted percent of class members of each age who were enrolled for at least 90 days and received a medical check up during the immediately preceding year. This information will be provided on a statewide basis. If Defendants choose, they may also provide it on a regional or county basis. Defendants will repeat this study annually and provide the results in their July quarterly report to the Court, in 2008 through 2011.

- No later than 12 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. At their option, Defendants' Research and Evaluation staff may provide these reports. 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. Defendants may exclude class members who qualify for Medicaid only through the spend down program. 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 qualified to receive based on the class member's age and the number of months of Medicaid eligibility; b) whether the class member received each medical check up that was due; and c) if not, the number of medical 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; and b) the number and percent who missed one medical check up that was due, two medical check ups that were due, three medical 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 six-month medical check up is missed most often. Defendants will repeat this study annually and provide the results in their July quarterly reports for 2008 through 2011.

### **Dental Check Ups**

- Each class member beginning at the age of 12 months is qualified for routine dental check ups every six months. Subsequent routine dental check ups for class members over the age of 12 months who are enrolled in Medicaid for more than six months, are based on the date of their previous dental check up services. In order for the class member to qualify for subsequent dental

check ups, generally there must be at least 180 days between each date of service for dental check up services.

- For class members aged 24 months and over, Defendants will report for the preceding year:

- 1) the number of class members of each age (1 year old, 2 years old, 3 years old, etc.), the unduplicated count of class members of each age who received 1 dental check up, the percent of class members of each age who received one dental check up; and 2) the unduplicated count of class members of each age whose Medicaid eligibility exceeds seven (7) months, the unduplicated count of class members of each age within this group who received two dental check ups and the percent of class members of each age within this group who received two dental check ups. Defendants will repeat this study annually from 2008 through 2011 and will provide the results each year in their July quarterly report to the Court.

- Defendants will provide their medical and dental statewideness reports annually in their July quarterly report to the Court.

- Defendants will develop and provide a corrective action plan for each county or cluster of counties that lags behind the state average for medical and/or dental checkups. The plan will specify the activities that will be implemented to encourage improved participation in each lagging county or cluster of counties. The plans will be provided annually from 2008 through 2011 as an exhibit to Defendants' October quarterly monitoring report.

- From the date of entry of the corrective action orders ("order entry date") until the end of 2011, Defendants' compliance with this corrective action plan will constitute full compliance with the requirements of paragraphs 171 and 284 of the consent decree and no additional or different reports presently described by those paragraphs will be required in addition to the reports required herein.

- Beginning four years from the date of entry of the corrective action orders (“order entry date”), counsel will confer to determine what further action, if any, is required. If the parties agree, they will so report to the Court within 120 days following the fourth anniversary of the order entry date. If the parties cannot agree within 90 days of the fourth anniversary of the order entry date, the dispute will be resolved by the Court. If the parties cannot agree, either party may file a motion within 30 days of the completion of discussion among counsel.