

**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 |
|                      | * | JUDGE RICHARD A. SCHELL   |
|                      | * |                           |
| THOMAS SUEHS, et al. | * |                           |
|                      | * |                           |
| Defendants.          | * |                           |

**ORDER GRANTING FIRST JOINT MOTION TO MODIFY  
THE OUTREACH AND INFORMING CORRECTIVE ACTION ORDER**

Plaintiffs and Defendants respectfully request modification of the Outreach and Informing Corrective Action Order (Dkt #637-7). Their requested changes would best effectuate the Order, to the benefit of all parties.

THEREFORE, the parties’ First Joint Motion to Modify the Outreach and Informing Corrective Action Order is **GRANTED**. The Court approved the Outreach and Informing Corrective Action Order orally in open court on July 9, 2007, TR 181, and memorialized this decision in the Court’s Memorandum Opinion. Dkt # 663. The Order is modified as follows:

**FIRST MODIFIED CORRECTIVE ACTION ORDER:  
OUTREACH AND INFORMING**

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 checkups 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.Supp2d at 660-666.

IT IS ORDERED:

**I. Arrange Independent Studies about Outreach and Missed Check Ups.**

¶ 1 Defendants will contract for an independent, external assessment of reasons that class members miss checkups (Phase One), will contract for the development and implementation of five outreach and informing strategies based on results of the

assessment (Phase Two), and will contract for an independent study of the effectiveness of five outreach and informing strategies (Phase Three). For the work required in Phase One and Phase Three, the Defendants will select one independent vendor from the three respondents to the HHSC Request For Proposal, numbered 529-09-0060, dated February 4, 2009. Within 15 business days following the date of this revised Order, Defendants will notify the three vendors of the changes to this Order, will submit a revised scope of work to the vendors and ask for revised proposals reflecting the changes. Defendants will make a selection based on the revised proposals. This selection will be done as expeditiously as possible while complying with state and federal law concerning contracts of this type. The assessment of reasons that class members miss checkups (Phase One) and the study of the effectiveness of the five outreach and informing strategies (Phase Three) will use professionally valid methods of assessment/evaluation. The selected vendor will use independent, unbiased, and statistically valid methodologies to conduct the assessment of reasons class members miss checkups (Phase One) and the study of the effectiveness of outreach and informing (Phase Three) described in this Order. Defendants may secure the services of one or more vendors currently under contract with HHSC or the Department of State Health Services (DSHS) for the development and implementation of the five outreach and informing strategies (Phase Two).

¶ 2 The assessment of reasons class member miss checkups (Phase One) and the study of the effectiveness of the five outreach and informing strategies (Phase Three) will be conducted by a vendor with 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 notice alerting the three vendors describing the changes in this Order is provided to Plaintiffs' counsel in draft form for review and comment. Plaintiffs will have ten business days to indicate whether they agree that the revised scope of work reflects the changes made to this Order. If Plaintiffs agree that the change accurately reflects this Order, Plaintiffs may offer suggestions. Defendants may accept or reject the suggestions. If the parties cannot agree on whether the notice reflects the changes made to this Order, the dispute will be resolved by the Court upon motion to be filed by either party.

¶ 3 Plaintiffs' counsel has executed non-disclosure certifications prior to receipt of non-public procurement-related materials and likewise signed 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 procurement-related documents 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 Request for Proposal (RFP) for which they have assisted Plaintiffs.

¶ 4 Defendants will select a vendor for Phase One and Phase Three by reviewing revised proposals from the three vendors that responded to the RFP 529-09-0060 dated Feb. 4, 2009. The three vendors submitted original proposals as part of a competitive process in accordance with state and federal requirements and Defendants' policies regarding competitive procurements. Defendants will be responsible for determining and reviewing the qualifications of all prospective evaluators, evaluating all revised

proposals, and selecting the best qualified evaluator or evaluators whose proposal best meets the requirements of this Order and supplies best value. Plaintiffs may review and comment on all proposals that Defendants receive, but Defendants will make the selection.

¶ 5 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 revised scope of work describing the changes in this Order. Defendants will provide Plaintiffs' counsel with copies of each contract deliverable within ten business days of Defendants' receipt. If Plaintiffs' counsel has 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. The completed assessment of reasons class members miss checkups (Phase One) and study of the effectiveness of the five outreach and informing strategies (Phase Three) 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.

¶ 6 **Phase One:** The revised scope of work and notice alerting the three vendors describing the changes in this Order will address the initial statewide qualitative and quantitative research needed to conduct the assessment of reasons that class members

miss checkups and will provide recommendations for the development of materials for use in five outreach strategies to be field studied. The assessment will address:

(a) What causes class members to miss medical checkups, dental checkups and/or follow-up visits?

(b) What are the barriers to receiving medical checkups, dental checkups and/or follow-up visits?

(c) What can be done to make outreach more effective at helping families overcome barriers that cause them to miss medical checkups, dental checkups and/or follow-up visits?

Phase One work will also include the selection of the geographic areas of Texas where the five outreach strategies will be implemented and evaluated. These geographic areas will be selected jointly by the Defendants and the Plaintiffs, with input from the selected Vendor. If the parties cannot agree, the Court will resolve the dispute upon motion filed by either party.

¶ 7 **Phase Two:** The Phase One assessment will provide recommendations for the development of materials for use in five outreach strategies to be field studied. Defendants will share with Plaintiffs these recommendations. Plaintiffs must provide comments within fifteen business days of receipt. Defendants may accept or reject Plaintiffs' suggestions Defendants will make the selection for which recommendations will be incorporated into the five outreach strategies that are to be studied for effectiveness. Within three months of the completion of Phase One, Defendants will secure the services of one or more marketing vendors, which may include those currently

under contract with HHSC or the Department of State Health Services (DSHS), for the development and implementation of the following five outreach and informing strategies:

1) Media: A selected vendor will develop and implement television and radio outreach strategy in a single (one) geographic area that includes both urban and rural counties. This strategy will be used to study the effectiveness of television and radio advertisement outreach in phase three evaluation. The outreach strategy will be in place for a time frame of at least 12 months.

2) Intensive School-Based Program: A selected vendor will develop and implement an intensive school-based outreach and informing program in one geographic area that includes both urban and rural counties. The strategy will target THSteps education to preschool and school staff, including school sports/physical education programs, nurses, social workers, administration, etc. This school staff will provide information and assistance to class members' families in overcoming barriers to utilization of THSteps services, to the extent Defendants are able to secure contracts or agreements or understandings, in compliance with FERPA, HIPAA and/or other state and federal privacy and confidentiality law, for school-based staff to share information with families of class members who are due or overdue for THSteps medical or dental checkups. The outreach strategy will be in place for a time frame of at least 12 months.

3) Intensive Community Based Program: A selected vendor will develop and implement an intensive THSteps outreach and informing strategy that utilizes contracts or agreements or understandings in compliance with HIPAA and/or other state and federal privacy and confidentiality law, that may involve no monetary remuneration, 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 promotoras or similar health workers to provide information and assistance to class members' families in overcoming barriers to utilization of THSteps services. The strategy must include face to face (in person) outreach contact with the family of class members that are not up to date on medical and dental checkups unless this contact is explicitly refused by the family. The strategy will be in place in one geographic area that includes both urban and rural counties over a time frame of at least 12 months.

4) Telephone follow-up for missed checkups: Defendants will revise existing telephone scripts and/or processes for telephone outreach based on recommendations received at the conclusion of Phase One. Revised outreach and informing messages by telephone will be provided to class members who miss medical and/or dental checkups in one geographic area that includes both urban and rural counties over a time frame of at least 12 months.

5) Mail follow-up for missed checkup appointments: Defendants will revise outreach and informing materials and/or processes for written outreach by mail based on recommendations received at the conclusion of Phase One. Revised outreach and informing messages by mail will be sent to class members who miss medical or dental checkups in one geographic area that includes both urban and rural counties over a time frame of at least 12 months.

¶ 8 Phase Three: The evaluator selected in Phase One for the assessment of reasons class members miss checkups will also study the effectiveness of the five outreach and

informing strategies. The study will assess the outreach strategies in a manner that permits comparison of the strategies. For each of five methods, the study will assess the impact on checkup participation rates [i.e. “effect” or “effectiveness”] in the area under study. The study will also assess racial and ethnic disparities relating to each form of outreach, and may also assess other relevant issues relating to cultural appropriateness.

¶ 9 In addition to effectiveness, the outreach effectiveness studies will also include at least the following topics:

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 checkups and/or follow-up care;

b) What is the relationship between type of outreach method (broken down by types and combinations of types of outreach) and subsequent receipt of / participation in medical checkups, dental checkups and/or follow-up care; and

c) Does outreach identify and effectively help families to overcome barriers that prevent class members from getting medical check ups, dental check ups and/or follow up care that they need?

¶ 10 The parties will begin to confer, no later than 30 days following the completion of Phase Three to determine what kind of corrective action plans, if any, Defendants will implement. If the parties agree, they will so report to the Court within 120 days of completion of Phase Three. If the parties cannot agree on corrective action plans within 120 days of completion of Phase Three, the Court will resolve the dispute by motion filed by either party. If the parties cannot agree, either party will file its motion within 30 days of completion of discussions among counsel. Once the need for and the terms of

any agreed corrective action plans are determined, Defendants will implement corrective action as expeditiously as possible and as agreed upon by the parties while complying with all state and federal laws concerning any actions the corrective action plans require, as well as the terms of any unexpired contracts. Once any corrective action plans are determined, Defendants will provide semi-annual interim reports about their implementation of the corrective action plans as part of their January and July quarterly monitoring reports to the Court.

¶ 11 Eighteen months after the statewide implementation of the corrective action plans, Defendants will provide to Plaintiffs' counsel, a draft RFP for a second independent, external outreach study. The second study will evaluate the effectiveness of these corrective action plans as applied. Defendants 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.

¶ 12 The specifications of the second outreach study will emphasize the independence of the evaluator. 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.

¶ 13 Plaintiffs' counsel will execute non-disclosure certifications prior to receipt of non-public procurement-related materials for the second outreach study 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 procurement related materials for the second outreach study, 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.

¶ 14 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.

¶ 15 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.

## **II. Outreach by Mail and Follow Up.**

- Defendants will continue to send check up reminder letters when check ups are due and will send follow up letters when medical check ups are late by three months, except where otherwise required under an outreach and informing study design. As allowed by the 2007 Order, Defendants base their lists of "late" check ups on submitted claims rather than paid claims. Following the completion of Phase Three regarding the effectiveness of various types of outreach, outreach by mail may be altered as part of the corrective action plan.

### **III. Improve the Med-ID Card.**

- In May 2007, in advance of the 2007 Order, Defendants changed the design of the monthly Med-ID card to clarify the availability of dental care and the appropriate scheduling of check ups.

### **IV. Require Informing and the Use of “extra effort referrals” by Eligibility Workers.**

- Within four months of the 2007 Order, Defendants initiated a program of contacting and training of all Medicaid eligibility workers who deal with class members. Through this contact, they remind these workers that the Decree requires them to provide appropriate THSteps informing to class members and their parents/guardians. Defendants 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).

### **V. Coordinate Outreach to Avoid Conflicting or Unnecessarily Duplicative Messages.**

- As required by the 2007 Order, Defendants developed and implemented a plan to effectively coordinate all Medicaid and child health-focused approaches made by Defendants and their contractors toward class members and their families. The plan provides for delivery of a concise and consistent message to these recipients, rather than conflicting, divergent or unnecessarily duplicative information. The information, which is available to all agencies, programs and contractors, includes all that is required by the Decree.
- In accordance with Decree ¶ 65, Defendants also developed and implemented 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 provides for delivery of a concise and consistent message about health outreach topics, rather than conflicting, divergent or unnecessarily duplicative information. Defendants developed and implemented the plan within six months of the entry of the 2007 Order.

**VI. Reinstate Outreach Reports Required by Decree Paragraphs 60 and 61.**

- As required by the 2007 Order, Defendants began to produce the outreach reports required by Decree paragraphs 60 and 61. These reports are included with Defendants' quarterly monitoring reports.

**VII. Determine Whether Further Action is Needed.**

- When the second study (regarding the effectiveness of the corrective action plans as implemented statewide after Phase Three of the first study of the effectiveness of outreach) is 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 120 days of completion of the second study, the dispute will be resolved by the Court upon motion to be filed by either party. If the parties cannot agree, either party will file its motion within 30 days of completion of discussions among counsel.

**SIGNED this the 23rd day of November, 2009.**



RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE

Agreed to by:

/s/ James "Beau" Eccles  
Lead Counsel for Defendants

/s/ Susan F. Zinn  
Lead Counsel for Plaintiffs