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

LINDA FREW, et al.,	*	
	*	
Plaintiffs,	*	
	*	**CIVIL ACTION NO. 3:93CV65**
v.	*	
	*	
DON GILBERT, et al.,	*	
	*	
Defendants.	*	

ORDER

Parties to the above-entitled and numbered civil action, filing jointly, move to modify a provision of the consent decree heretofore entered by the court [Document No. 135]. The requested modification aims to accommodate expected legislative proposals which would simplify the Medicaid eligibility process for Texas children and youth. For the reasons set forth below, the joint motion [Document No. 332] will be granted.

Facts

The parties have asked the court to modify Paragraph 19 of the consent decree that was found to be fair, reasonable, and adequate by this court on February 16, 1996. The requested modification is as follows:

> 19. TEXAS DEPARTMENT OF HUMAN SERVICES The Texas Department of Human Services (TDHS) interviews hundreds of thousands of applicants for Medicaid benefits each year. Eligibility workers ~~almost always~~ meet with some applicants in person. The provisions of ¶¶ 19-24 apply only to applicants who meet with a TDHS worker in person to apply for Medicaid.

Paragraphs 20-24 further outline the process that TDHS workers follow to provide information about Texas Health Steps and Medicaid services to class members and their families. The parties

do not seek any modification of those paragraphs.

Parties seek to alter the single provision of the consent decree in order to facilitate simplification of the Medicaid eligibility process. The Texas Department of Human Services has proposed that the requirement of face-to-face interviews for redetermination of eligibility be eliminated in favor of redetermination via mail or telephone.[1] In addition, the Texas legislature may consider bills in its 2001 session to further simplify Medicaid eligibility for children. One proposal would eliminate face-to-face interview requirements and allow mail-in eligibility for children who may qualify for Medicaid. Another proposal would permit children to qualify for Medicaid for twelve-month periods, instead of the current six-month periods.[2]

Discussion

Before determining the propriety of the modification, the court must confront and resolve a more fundamental question of jurisdiction, *i.e.*, whether the court may act while the case is on appeal. The modification request of the parties arrives at the heels of this court's consideration and determination of plaintiffs' Second Amended Motion to Enforce the Consent Decree. The August 14, 2000 Memorandum Opinion and Order finding defendants in violation of the certain provisions of the consent decree and ordering the development of corrective action plans is currently under review by the Fifth Circuit.

"One general rule in all cases ... is that an appeal suspends the power of the court below to proceed further in the cause." *Hovey v. McDonald*, 109 U.S. 150, 157, 3 S.Ct. 136, 27 L.Ed. 888 (1883). A notice of appeal thus divests the district court of jurisdiction over the judgment or order

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[1]Mot., Ex. 1 (August 4, 2000 Memorandum, TDHS). The proposed change would affect all Texas Works Medicaid programs. Clients would retain the option of an in-person interview.

[2]Mot., Ex. 2 (Interim Report, Texas Senate Committee on Human Services, Sept. 2000).

that is subject to the appeal. *Henry v. Independent Am. Sav. Ass'n*, 857 F.2d 995, 997 (5th Cir. 1988). As the general rule applies to interlocutory orders, the lower court's authority to act is only constrained as to the subject matter and issue on appeal, and the court may still proceed with issues outside the scope of review. *See Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981); *see also Perez v. Dupuch*, 1998 WL 760282*2 n.4 (N.D.Tex.) (announcing that the pendency of appeal does not deprive court jurisdiction to rule on unrelated motion). The proposed modification does not involve or affect any portions of the consent decree that were examined in the enforcement action or the August 14 Order;[3] neither does it disturb the suspensive effect of the pending appeal. Accordingly, the court may consider and determine the parties' motion.[4]

The court's ability to modify an existing consent decree is unquestioned. *See System Federation No. 91, Ry. Emp. Dept., AFL-CIO v. Wright*, 364 U.S. 642, 81 S.Ct. 368, 5 L.Ed.2d 349 (1961); *see generally* 11A Wright, Miller & Kane, *Federal Practice and Procedure* §2961 (2d ed.1995). Indeed, the consent decree itself contemplates modification in response to changed circumstances or new initiatives. *See* Consent Decree at ¶ 304. The court should take caution,

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[3] In its order, the court evaluated compliance with the following paragraphs of the consent decree concerning medical and dental check-ups, statewide improvement plans, outreach, managed care initiatives, toll-free numbers, case management, training, transportation assessments, and performance evaluation methods: ¶¶ 2, 10, 25-64, 35, 37, 107, 112-14, 118-20, 124-30, 190-92, 194, 197, 210-12, 223-29, 247, 264-81, 286-97, and 300.

[4] Parties urge their motion under Federal Rule of Civil Procedure 62(c), which allows a lower court "to make order appropriate to preserve the *status quo* while the case is pending in the appellate court ...." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 79-80 (9th Cir. 1951)(per curiam) (citing *Newton v. Consolidated Gas Co. of New York*, 258 U.S. 165, 177, 42 S.Ct. 264, 66 L.Ed. 538 (1922); *see also Sierra Club, Lone Star Chapter v. Cedar Point Oil Company*, 73 F.3d 546, 578 (5th Cir.), *cert. denied*, 519 U.S. 811 (1996). The court's reliance on Rule 62(c) would be misguided, however, as the exception is designed to protect and preserve the issues on appeal and the rights of the adverse party as may be prejudiced by an injunctive remedy. The modification sought bears no relation to the issues pending Fifth Circuit review.

however, to intervene only when necessary to help achieve the original purposes of the injunction. *See United States v. United Shoe Machinery Corp.*, 391 U.S. 244, 248-49, 88 S.Ct. 1496, 20 L.Ed.2d 562 (1968). Here, modification furthers the decree's stated purpose of enhancing recipients' access to health care and fostering the improved use of health care services by the plaintiff class. Consent Decree at ¶ 6.

It being found to be meritorious, motion of all plaintiffs and all defendants to modify Paragraph 19 of the Consent Decree shall be and is hereby

GRANTED. It is therefore

ORDERED that Paragraph 19 of the Consent Decree be amended accordingly, as follows:

> 19. TEXAS DEPARTMENT OF HUMAN SERVICES The Texas Department of Human Services (TDHS) interviews hundreds of thousands of applicants for Medicaid benefits each year. Eligibility workers meet with some applicants in person. The provisions of ¶¶ 19-24 apply only to applicants who meet with a TDHS worker in person to apply for Medicaid.

SIGNED this 11th day of December, 2000.

William Wayne Justice
Senior United States District Judge