

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:  
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 EPSDT program: ....”

¶ 61: “By September 1, 1996, Defendants will develop and implement a method for 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.**

- Defendants will contract for an independent, external evaluation of outreach and the reasons that class members miss check ups. 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. Defendants are attempting to retain the Institute for Child Health Policy (“ICHP”) to assist in the preparation of a draft RFP for an independent evaluator to conduct the study. Plaintiffs and Defendants anticipate that ICHP will agree to do so.

- 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 RFP to Plaintiffs' counsel in draft form within six months of entry of the corrective action plan Order. The RFP will address each of the outreach methods, tools, and models listed below. Defendants' initial study will assess several outreach methods in a manner that permits comparison of the methods. For each of the following five methods, the study will assess the impact on check up 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;

1) Media: A single (one) geographic area that includes both urban and rural counties will be used to study the effectiveness of television and radio advertisement outreach. The study will assess the effect of television and radio advertisement for Texas Health Steps ("THSteps") outreach over a time frame of at least 12 months.

2) Intensive School-Based Program: Defendants will study the effectiveness of intensive school based outreach in one geographic area that includes both urban and rural counties. The study will assess the effect of targeting THSteps outreach and informing information at preschool and school staff, including school sports/physical education programs, nurses, social workers, administration, etc., over a time frame of at least 12 months.

3) Intensive Community Based Program: Defendants will study the effectiveness of intensive outreach that utilizes contracts or agreements or understandings 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 promotores or similar health workers to provide information and assistance to class members' families in overcoming barriers to utilization of THSteps services. This study must include an assessment of the effectiveness of 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 project will assess effect of the use of this methodology 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 check up appointments: Defendants will study the effectiveness of telephone calls to class members who miss medical and/or dental check up appointments. The study will assess the effect of the use of this outreach methodology 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 check up appointments. Defendants will study the effectiveness of letters mailed to class members who miss medical and/or dental check up appointments. The study will assess the effect of the use of this outreach methodology in one geographic area that includes both urban and rural counties over a time frame of at least 12 months.

- 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 / participation in medical, dental and/or both check ups(s)?

- 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 the need?

- d) What causes class members to miss medical check ups, dental check ups and/or both? and

- e) What can be done to make outreach more effective?

- After the first outreach effectiveness study is complete, counsel will confer to determine what kind of corrective action plans, if any, Defendants will implement. If the parties cannot agree on corrective action plans within 90 days, the Court will resolve the dispute by motion filed by either party. Once the need for and the terms of the corrective action plans are determined, Defendants will implement them as expeditiously as possible 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 the 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.

- Eighteen months after the statewide implementation of the corrective action plans and modifications to the outreach model described in the preceding paragraph, Defendants will provide to Plaintiffs' counsel, a draft RFP for a second outreach study. The second study will evaluate the effectiveness of these corrective action plans as applied. In all other respects, arrangements for and the conduct of the second study will be according to the procedures described above.

## **II. Improve 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. Defendants may choose to base their lists of "late" check ups on submitted claims rather than paid claims. Following the completion of the first study regarding the effectiveness of various types of outreach, including outreach by mail, the standards in this section may be altered as part of the corrective action plan. Counsel will begin to confer no later than 30 days following completion of the first study. If the parties agree, they will so report to the Court within 120 days of completion of the first study. If the parties cannot agree within 90 days of completion of the first 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.

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

- Within two months of the date of this Order, Defendants will change 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 entry of this Order, Defendants will complete a program of contacting all Medicaid 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).

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

- Within 12 months of the entry of this Order, Defendants will develop and implement 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 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 six months of the entry of this Order.

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

- Within six months 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 six months after entry of the corrective action plan Order.

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

- When the second study (regarding the effectiveness of the corrective action plans as implemented statewide after the first study) 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 90 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.