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

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
OCT 19 1994
DAVID J. MALAND, CLERK
BY DEPUTY Loretta Rogers

LINDA FREW, as next friend of her minor child, CARLA FREW; MARIA AYALA, as next friend of her minor children, CHRISTOPHER RAMIREZ, LEONARD JIMENEZ and JOSEPH VELIZ; MARTHA DOE, as next friend of her minor children, ERIC DOE, ESMERALDA DOE and CARLOS DOE; MARY FISHER, as next friend of her minor child, TYRONE T. EDWARDS; MARY JANE GARZA, as next friend of her minor children, HILARY GARZA and SARAH RENEA GARZA; GLORIA PADILLA, as next friend of her minor children, PEDRO PADILLA, JR., MARIA GLORIA PADILLA, LAREDO TEX PADILLA, MICHAEL PADILLA and EMILIANO PADILLA Plaintiffs,	§	
v.	§	CIVIL ACTION NO. 3:93cv65
RICHARD LADD, Commissioner of the Texas Health and Human Services Commission, DAVID SMITH, Commissioner of the Texas Department of Health, DEANN FRIEDHOLM, State Medicaid Director of the Texas Health and Human Services Commission, BRIDGET COOK, SUSAN PENFIELD, M.D. and BEVERLY KOOPS, M.D., employees of the Texas Department of Health, all in their official capacities, Defendants.	§	

PLAINTIFFS' THIRD AMENDED COMPLAINT

INTRODUCTION

1. Despite a Congressional mandate, Defendants do not provide adequate health care services to indigent Texas Medicaid recipients who have not reached the age of 21. Defendants do not

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adequately provide Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) services to young Medicaid recipients, as required by 42 U.S.C. §§ 1396a(a)(43); 1396d(r).

2. EPSDT is intended to provide comprehensive, timely and cost effective health care services to indigent youth. By failing to meet EPSDT requirements, Defendants leave some of the most vulnerable children in Texas without adequate health care services and at risk for increasingly severe and costly health problems.

3. Plaintiffs challenge Defendants' policies and procedures, which deprive Plaintiffs under color of state law of rights, privileges and immunities guaranteed by 42 U.S.C. §§ 1396a(a)(43); 1396d(r), which are sufficiently clear to allow enforcement by this Court. Plaintiffs seek declaratory and injunctive relief, 28 U.S.C. §§ 2201, 2202; 42 U.S.C. § 1983; F.R.Civ.P. 57, 65; certification of this case as a class, F.R.Civ.P. 23, attorney's fees and costs. 28 U.S.C. § 1920; 42 U.S.C. § 1988.

JURISDICTION

4. This Court has jurisdiction in accordance with the provisions of 28 U.S.C. §§ 1331, 1343(3) and (4).

VENUE

5. Venue is proper because a substantial part of the events or omissions that form the basis of this claim occurred in this judicial district. 28 U.S.C. § 1391(b).

PARTIES

6. Plaintiff Linda Frew and her daughter reside at 650 N.W. 1st Street, Cooper, Delta County, Texas 75432. Linda Frew appears

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in this case as next friend of her minor daughter, Carla Frew (born June 28, 1980).

7. Plaintiff Maria Ayala and her children reside at 220 South 25th Street, Apartment #42, Albores Courts, Edinburg, Hidalgo County, Texas 78539. Maria Ayala appears in this case on behalf of her three minor children, Christopher Ramirez (formerly Arizola) (born September 12, 1980), Leonard Jimenez (born July 4, 1987) and Joseph Veliz (born December 16, 1988).

8. Plaintiff Martha Doe and her children reside in El Cenizo, Webb County, Texas. Martha Doe appears in this case on behalf of three of her six children: Eric Doe (born October 17, 1977), Esmeralda Doe (born October 15, 1979) and Carlos Doe (born July 17, 1981). They file today a Motion to request the Court's permission to appear in this case under the pseudonym of Doe.

9. Plaintiff Mary Lucille Fisher and her child reside at 215 George Wright Homes, Paris, Lamar County, Texas 75460. Mary Fisher appears in this case on behalf of her minor son, Tyrone T. Edwards (born November 21, 1979).

10. Plaintiff Mary Jane Garza and her children reside at P.O. Box 187, 501 North Elm Street, Earth, Lamb County, Texas 79031. Mary Jane Garza appears in this case on behalf of two of her six minor children: Hilary Garza (born September 22, 1987) and Sarah Renea Garza (born February 10, 1990).

11. Plaintiff Gloria Padilla and her children reside at 446 Cadena Street, El Cenizo, Webb County, Texas 78043. Gloria Padilla appears in this case as next friend of her minor children, Pedro

Padilla, Jr. (born November 23, 1976), Maria Gloria Padilla (born September 11, 1980), Laredo Tex Padilla (born July 26, 1985), Michael Padilla (born June 19, 1986) and Emiliano Padilla (born October 3, 1987).

12. Defendant Richard Ladd is the Commissioner of the Texas Health and Human Services Commission. He is sued in his official capacity only. He has been served with process. His address is Texas Health and Human Services Commission, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759. The Texas Health and Human Services Commission is the "single state agency," 42 U.S.C. § 1396a(a)(5), that administers or supervises the administration of the Texas Medicaid program, including EPSDT. As Commissioner, Defendant Ladd is responsible for the policies and administration of the Texas Health and Human Services Commission.

13. Defendant David Smith is the Commissioner of the Texas Department of Health. He is sued in his official capacity only. He has been served with process. His address is Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. On September 1, 1993, the administration of health and human services programs in Texas was reorganized. As a result of the reorganization, the Department of Health is now responsible for proposing policies for the Texas Medicaid program, including EPSDT. The Department of Health also administers the Texas Medicaid program, including EPSDT. As Commissioner, Defendant Smith is responsible for the policies and administration of the Texas Department of Health.

14. Defendant DeAnn Friedholm is the State Medicaid Director of the Texas Health and Human Services Commission. She is sued in her official capacity only. She has been served with process. Her address is Texas Health and Human Services Commission, 4807 Spicewood Springs Road, Building 4, Austin, Texas 78759. As State Medicaid Director, Defendant Friedholm has authority over the policies of the Texas Medicaid program, including EPSDT.

15. Defendants Bridget Cook, Susan Penfield, M.D. and Beverly Koops, M.D., are employees of the Texas Department of Health. They are sued in their official capacity only. They have been served with process. Their address is Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Defendants Bridget Cook, Susan Penfield, M.D. and Beverly Koops, M.D. are responsible for policies and the administration of the EPSDT program.

CLASS CERTIFICATION

16. Plaintiffs bring this action on behalf of themselves and a class of those who are similarly situated. The class consists of all present and future Texas Medicaid recipients who are under the age of 21 and therefore are eligible for EPSDT services, but who have not received the entire range of EPSDT services to which they are entitled. F.R. Civ. P. 23. According to official reports of the Texas EPSDT program, about 1,200,000 Texans were eligible for EPSDT services in fiscal year 1992. In fiscal year 1993, the number increased to 1,330,465. The number of children who are eligible for EPSDT services should be even larger in the coming years. But, in fiscal year 1993, only 389,393 EPSDT eligible

Texans (29.27%) received even a medical screen. So, 70.73%, or 941,072 EPSDT eligible Texas Medicaid recipients, did not even receive a medical screen. The medical screen is a basic component of EPSDT services. Even fewer EPSDT eligible Texans received the other components of EPSDT services.

17. A class action is appropriate because 1) the class is so numerous that joinder of all members is impracticable, 2) this case involves questions of law or fact that are common to the class, 3) Plaintiffs' claims are typical of the claims of the class, and 4) Plaintiffs will fairly and adequately protect the interests of the class. F.R. Civ. P. 23(a).

18. Further, this case should be maintained as a class action because Defendants have acted or refused to act on grounds generally applicable to the class, so final injunctive and declaratory relief is appropriate with respect to the class. F.R. Civ. P. 23(b)(2).

FACTS

The Plaintiffs

Linda Frew and her Daughter

19. Linda Frew is a single mother. She has recently completed chemotherapy and radiation treatment for lung cancer. She has been hospitalized for mental health problems. Two of her three sons died at a young age. One died at age 21 of a rare kidney disorder. The second died at age 17 of a rare form of abdominal cancer.

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20. Linda and her daughter, Carla (born June 28, 1980), live together in public housing in Cooper, Delta County, Texas. They do not have a car but they have obtained telephone service since this lawsuit was filed.

21. Delta County is a small, rural county. The County has few health care resources.

22. Carla has been a Medicaid recipient continuously since birth. During that time, she should have received 19 health screens. Carla has not received the full number of health screens indicated by the EPSDT periodicity schedule for that time period.

23. Carla has been in special services classes in school.

24. Until September 1, 1993, the Texas Department of Human Services was the agency that had responsibility for the EPSDT program.

25. From February 23, 1987 to November 5, 1990, Carla was in the temporary custody of the Texas Department of Human Services. From February 23, 1987 to February 27, 1989, she was in foster care in Hopkins and Lamar County, Texas. Carla remained in the Department of Human Services' custody for 21 months after she returned to live with her mother, Linda. Linda now has custody of Carla.

26. While the Department of Human Services had custody of Carla, the Department supervised Carla's health care. For example, Defendant's staff took Carla to Dallas to see a specialist because her triglycerides were so high. They also took her for several psychological and neurological evaluations. Of course, mental

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health problems are common among children who live in foster care. Carla's mental health diagnoses ranged from dysthymia (a mood disorder) to severe right brain hemisphere dysfunction and possible childhood schizophrenia. Various treatment plans were recommended. Further, while she was in the Department's custody, Carla was grossly obese.

27. After Carla returned to live with her mother and the Department of Human Services ceased to have conservatorship over her, DHS no longer assisted with Carla's health care. Until immediately before this lawsuit was filed, Carla had not had any medical screens and had only been to the dentist once since being returned to her mother's custody on November 5, 1990. On March 9, 1993 Carla was still grossly obese at 5'4", 232 1/2 lbs., but she had not received any nutritional counseling or treatment beyond advice to cut back on her caloric intake. Her triglycerides and cholesterol had not been assessed. There had been no follow up on this issue until after this lawsuit was filed. She has since been sent to counseling for her obesity and has managed to lose 7 pounds and reduce her lipid levels, although further reductions are needed.

28. In January, 1994, Carla had to stop going to counselling. The Medicaid transportation program could not transport Carla because at her age, an adult escort was required. Linda could not accompany Carla and no other adult was available. This problem was not resolved for several months.

29. Some of Carla's mental health problems are unevaluated and continue to go untreated. Carla's lack of current mental health services is particularly egregious because of her past diagnoses of mental health problems and the many stresses that Carla faces.

30. Before this lawsuit was filed, Defendants had not assisted Carla Frew to receive the EPSDT services to which she is entitled.

31. Before this lawsuit was filed, Linda and Carla Frew had virtually no knowledge about EPSDT. Defendants had not effectively informed them about program services. Further, Defendants had not assisted Carla to get timely screens or follow up care. This failure is particularly problematic because the Department of Human Services (Defendant Department of Health's predecessor in the administration of EPSDT) has first hand knowledge of Carla's health care needs.

32. If Defendants had properly informed and otherwise assisted Linda and Carla Frew, Carla would have more fully used EPSDT services.

33. Since the filing of this lawsuit, Defendants have assigned a case manager to assist Linda and Carla to properly access EPSDT services. As a result, Carla's receipt of screens and services has improved, as has Linda and Carla's understanding of EPSDT and how it works. But, Carla still requires further case management and other assistance to meet her unpredictable future health care needs and further explanations of EPSDT. Further,

Carla still requires evaluation by a neurologist and a psychiatrist.

Maria Ayala and her Children

34. Maria Ayala is a single mother. Maria, her three children, her adult sister, and her brother-in-law, live in public housing in Edinburg, Hidalgo County, Texas.

35. Maria Ayala's three children, Christopher Ramirez (formerly Arizola) (born September 12, 1980), Leonard Jimenez (born July 4, 1987) and Joseph Veliz (born December 16, 1988) have received Medicaid continuously since their births.

36. Joseph was born two months premature. He regularly has convulsions and high fevers. Sometimes he has convulsions as often as three times/month. His mother frequently has to take him to the emergency room at the Edinburg Hospital for treatment.

37. Babies who are born prematurely are at increased risk of ill health. In spite of this increased risk, Joseph has had few, if any, EPSDT medical screens.

38. Christopher suffers from respiratory problems such as chronic bronchitis and pharyngitis.

39. Before the filing of this lawsuit, Maria Ayala only took her children to the doctor if they were sick. They have not had all of the medical screens that are prescribed by the EPSDT periodicity schedule.

40. The Ayala children have not had all of the dental screens that are prescribed by the EPSDT periodicity schedule. Before this

lawsuit was filed, Christopher and Joseph had been to the dentist because they had cavities. Leonard had never been to the dentist.

41. Defendants have not assisted Maria Ayala's children to receive the EPSDT services to which they are entitled.

42. Before this lawsuit was filed, Maria Ayala and her children had virtually no knowledge about EPSDT. Defendants had not effectively informed them about program services. Although Maria Ayala was told that she would receive a booklet about Medicaid benefits and EPSDT, she never received anything. Further, Defendants have not assisted the Ayala children to get timely screens or follow up care.

43. Before this lawsuit was filed, Defendants had not provided or arranged for case management services for the Ayala family, in spite of Joseph's increased health risks because of his premature birth and the many screens that the children have missed.

44. If Defendants had properly informed and otherwise assisted Maria Ayala and her children, the children would have more fully used EPSDT services.

45. Since the filing of this lawsuit, Defendants have assigned a case manager to assist Maria and her children to properly access EPSDT services. As a result, the children's receipt of screens and services has improved, as has their understanding of EPSDT and how it works. But, the children still require further case management assistance to meet their unpredictable future health care needs and further explanations of EPSDT.

Martha Doe and her Children

46. Martha Doe is a recently divorced, single mother. She resides with five of her six children. Her oldest daughter has moved away from home.

47. Three of Martha Doe's children are eligible for Medicaid: Eric Doe (born October 17, 1977), Esmeralda Doe (born October 15, 1979) and Carlos Doe (born July 17, 1981).

48. The Doe Plaintiffs have requested that the Court allow them to appear under the pseudonym of Doe instead of under their true last name. Members of the Doe family are in this country without legal status or the permission of the Immigration and Naturalization Service. They fear adverse action by the Immigration and Naturalization Service or others if their identity is revealed during the course of this litigation.

49. Esmeralda has been a Medicaid recipient continuously since November, 1988. Eric and Carlos have been Medicaid recipients continuously since June, 1991. They had been eligible intermittently before those dates.

50. Martha Doe and her children live in El Cenizo, Webb County, Texas. El Cenizo is a small colonia about 20 miles south of Laredo, Webb County, on the Rio Grande River. Although conditions have improved somewhat in recent years, they are still deplorable. Some houses have no indoor plumbing. Others have no electricity. The streets are full of deep ruts.

51. The Doe house is substandard. Until recently, the windows did not have glass or screens. The back door swings open

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when the wind blows hard. Grit and dust blow in when the door opens. It is cold inside when the weather is cold; it is very hot when the weather is hot, as is often true in Webb County.

52. Residents of colonias, such as the Doe children, are at increased risk of health problems because of their substandard living conditions, pervasive lack of education and isolation from the mainstream of society, including health care providers.

53. Martha Doe and her children do not have a telephone. She is a monolingual Spanish speaker; she does not speak English. It is difficult for her to communicate with some health care professionals or to schedule appointments for her children.

54. Martha Doe does not have a car. Transportation problems make it difficult for them to schedule health care appointments or to travel to Laredo for health care. There are no health care providers in El Cenizo.

55. A van runs from El Cenizo to Laredo. But, the van does not provide transportation that is in any way convenient for those who need to travel from El Cenizo to the areas where doctor have their offices in Laredo. It only makes 6 trips/day. The van does not run at night. So residents of El Cenizo who do not have a car, like the Does, have no way to leave El Cenizo at night. Also, it takes a very long time to get to a doctor by using the van. Normally, the drive between El Cenizo and Laredo takes about 20-30 minutes. But, on the van the same trip takes hours because of the waiting time between the van and other buses.

56. Sometimes Martha Doe has to call an ambulance to transport her children to Laredo for care because she does not have a car. For example, in December, 1993, Esmeralda got a fever and convulsions in the middle of the night. Martha Doe was frightened and called 911 for emergency assistance. A helicopter ambulance took Esmeralda to the hospital in Laredo. After testing, she was diagnosed as having an intestinal virus. The doctor in the emergency room was very angry with Martha Doe for bringing her daughter to the hospital in the air ambulance.

57. A similar event occurred in September, 1992. Eric was sick and had a fever. Since the family had no other form of transportation, they took him by ambulance to the hospital in Laredo. The hospital staff was angry that the family had used the services of an ambulance. They refused to order an ambulance so that the family could return home to El Cenizo (20 miles). The family had to walk home on Highway 83, even though Eric was still very sick. They walked most of the way home. The only reason that they did not have to walk the whole distance was a police officer gave them a ride.

58. Esmeralda suffered from meningitis when she was an infant. Since then, she has suffered from a neurological deficit and is mentally retarded. She received an IQ score of 0 (-6.67 standard deviations) on the Leiter International Performance Scale in 1993. Esmeralda cannot communicate with others or complete even simple tasks - such as brushing her teeth unassisted - that would be expected of a much younger child. Further, her conduct can be

disruptive and distressing for her family. For example, Esmeralda sometimes removes all of her clothes in public places.

59. Esmeralda receives special education services at school, including an hour of speech therapy each week when school is in session. She does not receive therapy when school is not in session. Even though speech therapy is a service that EPSDT programs must cover, Defendants have not offered to provide or arrange for speech therapy for Esmeralda during the times when school is closed.

60. Esmeralda has had very few - if any - EPSDT medical screens. She has seen a doctor only rarely.

61. None of the Doe children has had regular EPSDT medical screens. Martha Doe only takes them to the doctor if they are sick.

62. The Doe children have each been to the dentist twice.

63. The dentist recommended braces for Esmeralda. But, Martha Doe has not been able to find a local orthodontist who accepts Medicaid. The closest orthodontist who accepts Medicaid that she has been able to find is in Corpus Christi, which is more than a two and a half hour drive from El Cenizo. Martha Doe has not been able to take Esmeralda to Corpus Christi because she has no way to get there. Defendants have not provided or arranged for the orthodontic evaluation and care that Esmeralda needs, either by finding an orthodontist in Laredo or by assisting with transportation so that she can get care in another city.

64. Further, Carlos had a false tooth in his mouth. It fell out when he was playing football at school. No one could find it. Martha Doe asked the dentist to replace the false tooth. The dentist said that Medicaid would not cover the cost of a replacement tooth. Carlos has gone without the false tooth that he needs because the family could not afford to replace it. But, the EPSDT program must provide all treatment that is necessary and cannot decline to cover the costs of Carlos' replacement tooth. Defendants have not provided or arranged for the dental care that Carlos needs.

65. Defendants have not assisted Martha Doe's children to receive the EPSDT benefits to which they are entitled.

66. Martha Doe and her children have virtually no knowledge about EPSDT. Defendants have not effectively informed them about program benefits. Further, Defendants have not assisted the Doe children to get timely screens or follow up care.

67. Defendants have not provided or arranged for case management services for the Doe family, even though the children have missed many screens, live in a destitute colonia and in spite of Esmeralda's special needs.

Mary Fisher and her Son

68. Mary Lucille Fisher is a single mother. She receives SSI disability benefits for herself and for her son, Tyrone Edwards. On March 2, 1994, the Social Security Administration found that Tyrone was disabled because of his growth delay and learning disabilities (effective March 1, 1992).

69. Mary and her son, Tyrone T. Edwards, (born November 21, 1979) live together in public housing in Paris, Lamar County, Texas. They were able to purchase a car when Mary received her lump sum payment from the social security administration in March, 1993. They recently obtained a telephone.

70. Tyrone has been on Medicaid since birth. He has been on Medicaid in Texas since approximately 1985. He has not received the full number of health screens indicated by the EPSDT periodicity schedule for that time period. In fact, he did not begin to receive regular medical treatment until 1992 when his mother was accepted as a legal services client.

71. Before this lawsuit was filed, Defendants had not effectively informed Mary and Tyrone about the EPSDT program. Mary first found out about the services available under the EPSDT program from East Texas Legal Services. Furthermore, Tyrone's Medicaid eligibility was wrongfully terminated in 1993. When his eligibility was reinstated in 1993, again, no one informed Mary about the EPSDT program.

72. Tyrone is now 14 years old and is very small for his age (4' 2", 72 lbs. on October 21, 1993 {1 month prior to his 14th birthday}). He was not evaluated for his growth deficiency until January 28, 1992, after his mother was advised by East Texas Legal Services that this was an available medical service under the EPSDT program. Tyrone was 49 1/2" tall and weighed 66 1/2 pounds. In October, 1993, Dr. Clark, a pediatrician checked Tyrone's growth deficiency and made a referral to Dr. Marx, an endocrinologist in

Dallas at Children's Medical Center. Mary was advised to pick up Tyrone's x-rays and take them to the specialist in Dallas. It was two years after the initial evaluation until Tyrone saw a specialist for his growth deficiency.

73. An East Texas Legal Services attorney tried to assist Mary in scheduling an appointment with the specialist. After several unsuccessful attempts we suggested that Mary call the DHS scheduling/transportation assistance number for Paris, Texas, which she did. She was told by the medical transportation worker she would have to schedule the appointment herself, then call them back for transportation assistance or she could call the 800 number but the medical transportation worker did not give Mary the 800 number. Mary attempted to call the 800 number for assistance. The first try she reached an answering machine which asked her to leave a telephone number. She could not leave a number because she was calling from a pay phone and she had no home phone. Her next three attempts she got a busy signal. She called again the next day and the first three tries the line was busy. She finally reached someone, was put on hold for 20 minutes at a pay phone, then told they could not help her schedule the appointment but could pay someone to take her to the appointment in Dallas whenever it was set up. They suggested that she call her doctor to schedule the appointment.

74. Tyrone has experienced emotional and behavioral problems as a result of his small stature. He was evaluated on August 8, 1993, by Dr. Randy Crittenden and diagnosed as: (1) mildly mentally

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retarded; (2) anxiety disorder secondary to feelings of low self-esteem; and (3) learning difficulties secondary to mental retardation. No follow up counseling has been provided. He still has not been evaluated by a psychologist since he was diagnosed with attention deficit disorder that required medication.

75. Tyrone has been diagnosed as learning disabled. He has been in special education and modified classes during most of the years he has been in school. He has now been removed from special education but he is failing most of his subjects.

76. Tyrone saw a dentist in 1988 because he had 5 decayed teeth - 2 lower permanent molars that needed crowns and 3 primary molars. Dr. Green saw him on two occasions. Other appointments were scheduled but Mary was not able to keep them, primarily because of lack of transportation. No one followed up on the missed appointments. Two of the appointments were canceled because of questions of coverage. A dental appointment for Tyrone was canceled on October 3, 1988, because there was a question about his eligibility for Medicaid.

77. Tyrone's next dental visit was not until November 9, 1991 with Dr. Griffin. On that and two other visits, the crowns were finally completed, three years after it was determined that Tyrone needed them. Dr. Griffin told Mary that Tyrone did not need follow up care unless he developed other dental problems. Mary did not know that she could and should take her son to the dentist for check-ups every 6 months until informed by East Texas Legal Services.

78. Dental cavities were noted at Tyrone's dental examination in March, 1994. Tyrone had to cancel his appointment to have his teeth cleaned in April, 1994 because his April Medicaid card had not arrived.

79. Mary has encountered difficulties receiving medically necessary services for Tyrone on three occasions because of the grids on the Medicaid card. Defendants assert that the grids are supposed to inform recipients and providers if services are due by use of a "Y" (yes) or "N" (no). But, the grids actually are a barrier to services because they are sometimes out of date and also they confuse recipients and providers. For example, at a couple of his dental appointments, Mary was told Tyrone could not get dental care because there was a "N" on his Medicaid card. Mary also encountered a similar problem at Tyrone's eye doctor appointment in October, 1993, when the nurse said the "N" meant that Tyrone could not get eyeglasses. She insisted that he was entitled to glasses, a check was made and the eyeglasses approved. Mary said she knew she was entitled because she had been informed of her rights by the legal service office.

80. If Defendants had properly informed and otherwise assisted Mary Fisher and Tyrone, Tyrone would have more fully used EPSDT services.

81. Since the filing of this lawsuit, Defendants have assigned a case manager to assist Mary and Tyrone to properly access EPSDT services. As a result, Tyrone's receipt of screens and services has improved, as has Mary and Tyrone's understanding

of EPSDT and how it works. But, Tyrone still requires further case management assistance to meet his unpredictable future health care needs and the unmet needs listed above, and further explanations of EPSDT.

Mary Jane Garza and her Children

82. Mary Jane Garza resides with her six children in Earth, Lamb County, Texas. Only her two youngest children, Sarah Renea (born February 10, 1990) and Hilary (born September 22, 1987) are Medicaid recipients. Both have received Medicaid continuously since their births.

83. The Garza family are seasonal farmworkers. During the summer agricultural season, they work long hours in the Panhandle fields. The two Garza children are at risk for health problems, including but not limited to breathing problems, skin problems and various communicable diseases, because of their family's status as farmworkers.

84. The family has a 1986 van, which they bought used. It breaks down frequently, once for as long as two months.

85. Hilary Garza has vision problems. She now wears eye glasses.

86. No one noticed Hilary's vision problems until she began kindergarten in September, 1993. But, according to the eye doctor, Hilary's vision problems probably began at a much earlier age.

87. The nearsightedness in Hilary's right eye will not improve. But, her eyesight is corrected when she wears her glasses.

88. The "lazy eye" in Hilary's left eye will improve with treatment. It could have been completely treated before Hilary started school if it had been caught earlier.

89. Further, if Hilary's vision problems had been caught earlier, she would not have lived for most of her young life with uncorrected vision problems.

90. Good vision is essential to a child's proper development, including development of the skills that are the precursor to reading.

91. When Hilary got her eyeglasses, Mary Jane Garza did not know that EPSDT would cover the cost of the glasses. The family could not afford to pay for the glasses. So, they applied for assistance from Hilary's school. The school paid for all but $25 of the cost of Hilary's spectacles. But, the school only pays for one pair of glasses/family every few years. As a result, the Garza family has not been able to buy eyeglasses for Becky, one of the older Garza children who is not covered by Medicaid.

92. Hilary often has bronchitis and has had tonsillitis. Her doctor prescribed a vaporizer for Hilary to use at home to help her to breath better and to ease her bronchitis. But, when Mary Jane Garza went to buy the vaporizer, the pharmacist said that Medicaid would not cover the cost. So, Mary Jane Garza paid for the vaporizer herself, even though the Garza family could not afford it. Even though the EPSDT program must provide medically necessary equipment like Hilary's vaporizer, Defendants did not provide the equipment that Hilary needed.

93. Sarah Garza's speech has not developed properly. She knows too few words and says them too infrequently. Before this lawsuit was filed, Mary Jane Garza had been concerned about this problem for several months. She wanted to take Sarah for an evaluation and treatment in Plainview, which is 40 miles away. But, she could not arrange transportation.

94. Before this lawsuit was filed, neither Hilary nor Sarah had received more than one or two EPSDT medical screens. Neither had received any dental screens. Dr. Sims, in Dimmitt (27 miles away), is the dentist who has treated other family members when they have had dental problems. He does not accept Medicaid.

95. Several years ago, Mary Jane Garza took a friend to apply for benefits at a Texas Department of Human Services office. The friend did not speak English, so Mary Jane Garza translated. During the course of the interview, Mary Jane Garza heard the social worker tell her friend that Medicaid benefits would be terminated if recipients used them too much. As a result, Mary Jane Garza does not take Hilary or Sarah Renea for health care appointments often. She only takes them to the doctor if they are sick.

96. Defendants have not assisted the Garza children to receive the EPSDT services to which they are entitled.

97. Before this lawsuit was filed, Mary Jane Garza and her children had virtually no knowledge about EPSDT. Defendants had not effectively informed them about program services. Further,

Defendants had not assisted the Garza children to get timely screens or follow up care.

98. Before this lawsuit was filed, Defendants had not provided or arranged for case management services for the Garza family, even though the children have missed many screens, are at risk of health problems because the family works in the agricultural labor force and in spite of Sarah's potential developmental delay.

99. If Defendants had properly informed and otherwise assisted Mary Jane Garza and her children, the children would have more fully used EPSDT services.

100. Since the filing of this lawsuit, Defendants have assigned a case manager to assist Mary Jane and her daughters to properly access EPSDT services. As a result, the children's receipt of screens and services has improved, as has their understanding of EPSDT and how it works. But, the children still require further case management assistance to meet their unpredictable future health care needs and further explanations of EPSDT. For example, they still have not received dental screens because of transportation problems.

Gloria Padilla and her Children

101. Gloria Padilla is a single mother. She does volunteer work at the El Cenizo city hall. She is also a City Commissioner.

102. Gloria Padilla lives with her five children, Pedro Padilla, Jr. (born November 23, 1976), Maria Gloria Padilla (born September 11, 1980), Laredo Tex Padilla (born July 26, 1985),

Michael Padilla (born June 19, 1986) and Emiliano Padilla (born October 3, 1987).

103. The Padilla children are all eligible for Medicaid and have been for at least the past three years. Earlier in their lives, the children were eligible for Medicaid intermittently.

104. The Padilla's home is substandard. The six family members live in one room (16' x 16') with a dirt floor. Three beds, the restroom and the stove are in this one room.

105. Residents of colonias, such as the Padilla children, are at increased risk of health problems because of their substandard living conditions, pervasive lack of education and isolation from the mainstream of society, including health care providers.

106. Michael and Laredo Tex Padilla were each born two months prematurely.

107. Babies who are born prematurely are at increased risk of ill health. In spite of this increased risk, Michael and Laredo Tex have had few, if any, EPSDT medical screens.

108. Pedro, Laredo Tex and Michael suffer from chronic respiratory problems including asthma, bronchitis, sinusitis and pharyngitis.

109. Michael was hospitalized several times as a young child because of various respiratory problems. Laredo Tex has also required hospital care for respiratory problems.

110. Gloria Padilla sometimes takes her children to the hospital emergency room for health care that could be provided elsewhere. She feels unwelcome in physicians' offices because they

make her feel that they do not want to treat Medicaid recipients, including her children.

111. Laredo Tex and Michael's speech development has been slow. They have each received speech therapy as part of a special education program at school. They do not receive therapy when school is not in session. Even though speech therapy is a service that EPSDT programs must cover, Defendants have not offered to provide or arrange for speech therapy for Laredo Tex or Michael during the times when school is closed.

112. The Padilla children have not had many EPSDT medical screens.

113. Except for Emiliano, the Padilla children have never been to a dentist. Emiliano went to the dentist when he was a Head Start student.

114. Defendants have not assisted the Padilla children to receive the EPSDT services to which they are entitled.

115. Gloria Padilla and her children have virtually no knowledge about EPSDT. Defendants have not effectively informed them about program benefits. Further, Defendants have not assisted the Padilla children to get timely screens or follow up care.

116. Defendants have not provided or arranged for case management services for the Padilla family, even though the children have missed many screens, live in a destitute colonia and in spite of the ongoing respiratory problems that several of the children face.

The Medicaid Program

117. Congress enacted Title XIX of the Social Security Act in 1965. 42 U.S.C. § 1396 et. seq. Title XIX is also known as the Medicaid program. Medicaid is administered cooperatively by the federal and state governments. Its purpose is to provide necessary medical services to eligible indigents.

118. The State of Texas participates in the Medicaid program.

119. The federal government provides approximately 64 cents of every dollar that the Texas Medicaid program spends on health care services for the poor. Texas must comply with minimum federal Medicaid requirements to receive this federal financial participation.

120. Further, the Health Care Financing Administration (HCFA), the federal agency that administers EPSDT, has published program guidelines in the State Medicaid Manual. Sections of the Manual are mandatory and binding upon the states.

The Early, Periodic, Screening,
Diagnosis and Treatment Program

121. Congress has long been concerned about poverty among children in the United States. Congress is particularly concerned about the health of indigent children in this country, because their living circumstances frequently contribute to or exacerbate health problems. Further, undiagnosed or untreated health problems may prevent indigent children from developing normally and inhibit their ability to contribute to society.

122. EPSDT is one of Congress' most significant responses to the health care needs of our country's indigent children. EPSDT is

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a mandatory Medicaid service; states must comply with minimum federal EPSDT requirements in order to participate in the Medicaid program and receive federal financial participation.

123. EPSDT involves a comprehensive program of screens, or check ups, to assess children's health and follow up care to address problems that are diagnosed during screens. EPSDT programs cannot limit the services that they provide to children, as Medicaid programs can limit services to adults. Instead, when medically necessary, EPSDT programs must provide all services allowed by the federal Medicaid Act, whether or not they are included in the state's Medicaid Plan. 42 U.S.C. § 1396d(r).

124. The Omnibus Budget Reconciliation Act of 1989 (OBRA'89) strengthened Medicaid programs' obligations to EPSDT recipients. Congress' intent was to incorporate the EPSDT regulations that existed in 1984 into OBRA'89 and also to expand Medicaid programs' EPSDT obligations beyond those incorporated in the regulations. The regulations have not been revised since OBRA'89 became effective. But, after OBRA'89 became effective, HCFA revised the EPSDT guidelines that are incorporated in the State Medicaid Manual.

Screens

125. EPSDT programs must provide preventive health care to indigent Medicaid recipients under the age of 21. A significant and mandatory component of the EPSDT program is regular screens, or "check ups," to assess recipients' health. One purpose of screens is to identify indigent recipients' health problems before they

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worsen, so that problems can be corrected in a manner that is humane, cost effective and that prevents or lessens future problems when possible.

126. EPSDT programs must provide screens to assess recipients' physical, mental, vision, hearing and dental health and to provide immunizations. Screens and immunizations must be provided in accordance with periodicity schedules that meet professional standards. 42 U.S.C. §§ 1396a(a)(43)(B); 1396d(r)(1)(A)(i); (2)(A)(i); (3)(A)(i); (4)(A)(i); State Medicaid Manual § 5140.

127. In spite of the federal requirements concerning screens, the Texas EPSDT program does not provide screens to EPSDT recipients when due. Plaintiffs' children have received few timely health screens. Further, none has received regular dental screens. This situation is common. See, below, Paragraph 131.

128. Congress requires EPSDT programs to meet annual goals developed and set by the Secretary of Health and Human Services, so that an increasing number of EPSDT recipients actually receive screens. 42 U.S.C. § 1396d. The Secretary developed and set goals for medical screens; EPSDT programs must achieve 80% by 1995. Expected annual increases are based upon each state's rates in 1989, the baseline year. State Medicaid Manual § 5360.

129. The Secretary developed 2 measures of EPSDT goals: a) the participant ratio and b) the screening ratio. The participant ratio is the percent of recipients who received at least one medical screen during the fiscal year. The more nebulous screening

ratio is the total number of EPSDT recipients divided by the total number of screens provided during the fiscal year.

130. The Texas EPSDT program fails to meet the Secretary's goals. The goals and Texas ratios are as follows:

FISCAL YEAR	GOAL	PARTICIPANT RATIO	SCREENING RATIO
1989	24%		
1991	34%	17.85	33.2%
1992	46%	24.57%	36.69%
1993	58%	29.27%	47.68%
1994	69%		
1995	80%		

The 1993 data show that fewer than 30% of recipients received even one screen. Further, the Texas EPSDT program is falling farther behind its targeted participation goal each year. Although its screening ratio was less than 1% behind the goal in fiscal year 1991; it was almost 10% behind the goal in fiscal year 1992 and more than 10% behind the goal in fiscal year 1993.

131. In addition, most Texas EPSDT recipients do not receive dental, vision or hearing screens as required by the Texas periodicity schedules. According to the periodicity schedule, EPSDT recipients should receive dental screens every 6 months beginning at age 1. 40 T.A.C. § 33.306(c). They should also receive vision and hearing screens. According to official Texas EPSDT reports, few actually receive dental, vision or hearing screens:

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FY	# ELIGIBLE	Dental	Vision	Hearing
1991	1,029,776	172,014	152,793	70,667
1992	1,197,648	199,218	182,566	79,805
1993	1,330,465	160,284	176,574	(incomplete)

In fiscal year 1993, about 39,000 fewer dental screens and about 6,000 fewer vision screens were provided to Texas EPSDT recipients than were provided in fiscal year 1992.

132. The Texas EPSDT program does not employ policies or procedures to provide timely health, dental, vision, or hearing screens to EPSDT recipients. State Medicaid Manual § 5310. The Texas EPSDT program further does not employ policies or procedures to provide screens to recipients who "are overdue for services." State Medicaid Manual § 5330.

133. Further, Defendants do not adequately provide or arrange for screens or other services because they do not adequately provide or arrange for supportive services, including scheduling and transportation assistance. Further, they do not have an adequate system to track recipients' receipt of screens and other services to facilitate follow up if services are not received.

134. EPSDT recipients often have difficulty in arranging screens and/or follow up treatment for their children. Sometimes the problems have communication as their source; for example, many EPSDT recipients and the adults responsible for them do not have telephones so they cannot call to schedule or reschedule appointments. Also, many EPSDT recipients and the adults

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responsible for them do not speak English, so there are difficulties in making arrangements.

135. But, problems with arranging appointments are not limited to communication problems. Some EPSDT recipients and the adults responsible for them do not know that the children need services, or do not know what services the children need. Others do not have ongoing relationships with health care providers, so they do not know where to turn for care or for advice about what care is needed and referral to specialists. Further, given the shortage of health care providers who are willing to care for EPSDT recipients in Texas, it is often difficult to find providers to care for recipients. Further, many recipients are faced with hostility from health care providers and do not feel welcome in their offices. So, they are reluctant to seek care.

136. In spite of these common problems among the Texas EPSDT population, the Texas EPSDT program does not properly "provide for ... providing or arranging for the provision of such screening services in all cases where they are requested [and] arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child receiving health screening services." 42 U.S.C. § 1396a(a)(43)(B); (C). The Texas EPSDT program does not have an effective system to "provide" or "arrange for" screens or follow up care for recipients, including an effective system to help recipients to locate health care providers

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or schedule and reschedule appointments. See, State Medicaid Manual, § 5150.

137. Transportation problems also commonly prevent EPSDT recipients from making arrangements for screens and follow up services. Many EPSDT recipients and the adults responsible for them do not have cars, or at least cars that work, so they do not have reliable ways to get to scheduled appointments on time.

138. Transportation assistance is essential to "providing for or arranging for the provision" of care to Plaintiffs and class members. 42 C.F.R. §§431.53, 440.170, State Medicaid Manual, § 5150. But, the Texas Medicaid transportation system is not adequate to meet the needs of the Texas EPSDT population. Defendant Friedholm has stated that there is "universal dissatisfaction" with the Medicaid transportation system in Texas.

139. First, the program does not provide enough assistance. It only provided the following assistance:

	# EPSDT recipients	# one way trips
FY91	1,029,776	594,804
FY92	1,197,648	670,693
FY93	1,321,048	743,824

EPSDT recipients do not receive all of the transportation assistance provided each year; older Medicaid recipients also use this service.

140. Among recipients and health care providers, there is widespread lack of information about the Medicaid transportation program.

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141. Also, Medicaid transportation assistance is so inconvenient that it is often unusable. The phone numbers to request transportation help are often busy or require long waits. Recipients sometimes must leave a message to be returned, which does not help recipients who do not have telephones. Waiting times are so long that they are impractical. Rides show up on the wrong day and cannot be rescheduled in time to allow recipients to keep their appointments. Rides home do not show up.

142. In addition, Defendants do not have an adequate tracking system to determine if recipients receive screens or follow up services in a timely manner. Without a tracking system, Defendants have no way to know if recipients have missed screens or services. Therefore, Defendants cannot provide or arrange for missed screens or services in a timely manner. Defendants do not even have a definition of when a recipient has missed a screen.

Identifying and Informing Recipients and their Families about EPSDT

143. To ameliorate problems with low EPSDT participation, Congress requires EPSDT programs to aggressively identify and inform families whose children are eligible for EPSDT services about the benefits of EPSDT. EPSDT programs must "provide for ... informing all [EPSDT recipients] of the availability of [EPSDT] services." 42 U.S.C. 1396a(a)(43)(A). Federal regulations further require EPSDT programs to inform eligible individuals about EPSDT services and how to obtain them. 42 C.F.R. §§ 441.56(c)(2); 441.62(b)(1984)(1984).

144. Also, the State Medicaid Manual requires EPSDT programs to inform eligible persons about EPSDT effectively and in a timely manner, generally within 60 days of eligibility. § 5121A. Further, the Manual instructs that "[a] combination of face-to-face, oral and written informing activities is most productive.... it is effective and efficient to target specific informing activities to particular 'at risk' groups." Id. The State Medicaid Manual further requires EPSDT programs to offer transportation and scheduling assistance prior to each due date of a child's periodic examination." § 5150 (emphasis added).

145. In spite of the requirement that EPSDT programs effectively inform recipients and their families about EPSDT services, Plaintiffs, their children and other EPSDT recipients are not made fully aware of all available EPSDT services. As a result, Plaintiffs and other EPSDT recipients do not obtain or knowingly decline all EPSDT services to which they are entitled. This situation is common, particularly because the Texas EPSDT program does not employ effective means to inform recipients about program services. Further, the Texas EPSDT program does not comply with the requirements imposed by the State Medicaid Manual.

Follow Up Treatment

146. EPSDT services include "other necessary health care, diagnostic services, treatment, and other measures ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services." 42 U.S.C. § 1396d(r)(5). EPSDT programs must provide or arrange for these

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services. 42 U.S.C. § 1396a(a)(43)(C). EPSDT programs must refer recipients for "diagnosis without delay and follow-up to make sure that the recipient receives a complete diagnostic evaluation.... (They must also) [d]evelop quality assurance procedures to assure comprehensive care for the individual." State Medicaid Manual § 5124A. Further, EPSDT programs must "[e]mploy processes to ... insure timely initiation of treatment" and assure that recipients who "are overdue for services" receive them. Id. § 5330. But, according to official EPSDT reports, only 139,072 of the almost 1,200,000 Texas EPSDT recipients received referrals for corrective treatment in fiscal year 1992. In fiscal year 1993, only 191,626 of the 1,330,465 Texas EPSDT recipients received similar referrals.

147. The Texas EPSDT program does not have effective policies or procedures to insure that EPSDT recipients receive needed health care, diagnosis, treatment or other measures needed to correct or ameliorate defects and physical and mental illnesses and conditions discovered during screens.

148. Further, Defendants do not adequately provide or arrange for follow up services, 42 U.S.C. § 1396a(a)(43)(C), because they do not provide adequate supportive services, including assistance with scheduling appointments and transportation. Further, they do not have an adequate system to track recipients' receipt of screens and other services to facilitate follow up if services are not received. See, above, Paragraphs 133-42.

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Case Management

149. The Texas EPSDT program does not provide case management for all recipients when needed. Case management is a service that assists families to assure that their children receive needed health care in a manner that is coordinated, appropriate and cost effective. It could appreciably improve EPSDT recipients' coordinated and timely access to screens and other EPSDT services. Further, case management is a service that federal law permits Medicaid programs to cover. 42 U.S.C. §§ 1396d(a)(19); 1396n(g). So, EPSDT programs must provide it for children when needed. 42 U.S.C. § 1396d(r).

Services are not Uniformly Available Statewide

150. Finally, EPSDT services do not exist, operate and function uniformly in all political subdivisions of the state. 42 U.S.C. § 1396a(a)(1); 42 C.F.R. § 431.50.

FIRST CLAIM FOR RELIEF

151. Defendants and the Texas EPSDT program do not employ policies or procedures to provide or arrange for health, dental, vision and/or hearing screens for recipients in accordance with the Texas EPSDT periodicity schedules. 42 U.S.C. §§ 1396a(a)(43)(B), 1396d(r)(1)(A)(i); (2)(A)(i); (3)(A)(i); (4)(A)(i); State Medicaid Manual §§ 5310;5330.

SECOND CLAIM FOR RELIEF

152. Defendants and the Texas EPSDT program do not meet the annual participation goals that the Secretary of Health and Human

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Services developed and set for the Texas EPSDT program. 42 U.S.C. § 1396d(r); State Medicaid Manual § 5360.

THIRD CLAIM FOR RELIEF

153. Defendants and the Texas EPSDT program do not effectively inform all persons in the State who are under age 21 and who are eligible for Medicaid of the availability of EPSDT services. 42 U.S.C. § 1396a(a)(43)(A); 42 C.F.R. § 441.56(a); State Medicaid Manual § 5121.

FOURTH CLAIM FOR RELIEF

154. Defendants and the Texas EPSDT program do not employ policies or procedures to provide or arrange for "other necessary health care, diagnostic services, treatment and other measures ... to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services" for recipients. 42 U.S.C. § 1396d(r)(5); State Medicaid Manual §§ 5124A; 5330.

FIFTH CLAIM FOR RELIEF

155. Defendants and the Texas EPSDT program do not provide case management services to all EPSDT recipients as needed. 42 U.S.C. § 1396d(r).

SIXTH CLAIM FOR RELIEF

156. EPSDT services do not exist, operate and function uniformly in all political subdivisions of the state. 42 U.S.C. § 1396a(a)(1); 42 C.F.R. § 431.50.

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THEREFORE, Plaintiffs request that the Court:

Certify the existence of a class of all present and future Texas Medicaid recipients who qualify for EPSDT because they have not reached the age of 21, but who have not received the entire range of EPSDT services to which they are entitled.

Declare that Defendants violate the federal Medicaid Act, regulations and mandatory portions of the State Medicaid Manual by failing to comply with minimum EPSDT standards;

Preliminarily and permanently enjoin Defendants from violating federal EPSDT standards;

Order Defendants to pay to Plaintiffs' attorneys reasonable fees and costs;

Order any other relief that is appropriate.

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