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
	§	SENIOR JUDGE WILLIAM
ALBERT HAWKINS, et al.,	§	WAYNE JUSTICE
Defendants.	§	

CORRECTIVE ACTION PLAN ORDER:
MANAGED CARE

Decree References:

¶3: "Recipients are also entitled to all needed follow up health care services that are permitted by federal Medicaid law."

¶190: EPSDT recipients served by managed care organizations are entitled to timely receipt of the full range of EPSDT services, including but not limited to medical and dental check ups.

¶191: TDH [now Texas Health and Human Services Commission] will assure by various means that the number and percent of EPSDT patients in each managed care organization who receive all medical and dental check ups when due and information for outcomes research as needed is accurately collected.

¶192: TDH [now TxH&HSC] will assure by various means that managed care organizations provide medical and dental check ups to newly enrolled recipients no later than 90 days after enrollment except when recipients knowingly and voluntarily decline or refuse services. Managed care organizations will also have the capacity to accelerate services to the children of migrant farmworkers to accommodate their special circumstances. TDH [now TxH&HSC] will also assure medical and dental check ups in a timely manner to all recipients.

¶194: TDH [now TxH&HSC] will assure by various means that managed care organizations arrange appropriate training for all health care providers and their staff who serve EPSDT recipients as authorized by SB601. All will be trained about program requirements relevant to their responsibilities, including the relevant terms of this settlement."

¶ 197: "TDH [now TxH&HSC] will assure by various means that managed care organizations have an adequate supply of appropriate providers who can serve EPSDT recipients (including specialists) located conveniently so that recipients do not face unreasonable 1) delay scheduling appointments, 2) delay waiting for appointments once at the office or 3) travel times to get to the office…"

See also Decree ¶¶ 184-189, 193, 195-96, 198-99.

Citation for Finding of Decree Violation: Frew, 109 F.Supp.2d at 618-37; 401 F. Supp. 2d at 671-85.

IT IS ORDERED:

I. Medical Check Ups.

• Beginning in their next renewal, amended or new contracts in 2007, Defendants will require each of their managed care organizations (each HMO within each service delivery area and PCCM by Texas Health and Human Services Commission ("HHSC") region) to report annually about: a) the total number of new enrollees under the age of 21 who are still enrolled with that organization after 90 days; b) the number and percent of new members under the age of 21 still enrolled with that organization after 90 days who get medical check ups within 90 days of enrollment; c) the total number of enrollees under the age of 21 who have been enrolled continuously with that organization for 90 days or more (excluding the new enrollees); and d) the number and percent of enrollees under the age of 21 who have been enrolled continuously for 90

days or more with that organization (excluding the new enrollees) who get timely, age-appropriate medical check ups. The reports will provide common percents that are not adjusted as CMS specifies. Defendants will include the reports in their quarterly reports to the Court.

- Based on these reports and the results of the check up completeness studies performed in connection with the Check Up Corrective Action Order, Defendants will develop and implement plans to reward and/or sanction managed care organizations with high or low rates of check ups and especially complete check ups. For example, rewards and sanctions could be by means of increases or decreases to payment levels and/or by means of changes to "default" enrollments of class members. All plans for rewards and sanctions will be compliant with federal and state law and, for the remainder of any unexpired contract term, with the terms of any contract, and will not exceed $15 million all funds, annually.

II. Class Members Who Receive No Care.

- Defendants will contract for an independent, external study of class members who do not receive any form of health care covered by Defendants' contracts with their managed care organizations. 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.
- While it is the parties' expectation that a successful bidder can be selected within a year of entry of the Court's Order, without knowing the study parameters in advance it is not possible to predict how long the study itself will (or should) take. Defendants, however, will present the first no-care study to the Court and Plaintiffs within one month of its receipt of the completed report.

- After the first no-care study is complete, counsel will confer to determine whether and what kind of corrective action plans 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 with managed care organizations or others.
- Plans may include rewards and/or sanctions for managed care organizations with high or low rates of failure to provide care that class members are entitled to receive. For example, rewards and sanctions could be by means of increases or decreases to payment levels and/or by means of changes to "default" enrollments of class members. All plans for rewards and sanctions will comply with federal and state law and, for the remainder of any unexpired contract term, with the terms of any contract, and will not exceed $15 million all funds, annually.
- If the parties agree on a corrective action plan, Defendants will file it with their next quarterly report to the Court. They will implement it as soon as practicable after filing. It is understood that should the plan involve contract modifications or renegotiations with managed care organizations, the imposition of a specific deadline could result in the State having to negotiate under disadvantageous conditions, thus no deadlines are specified. If the parties do not agree on a plan, the Court will resolve the issue.
- Eighteen months after the statewide implementation of the corrective action plan, Defendants will provide to Plaintiffs' counsel a draft RFP for a second "no care" study. The second study's emphasis will be on examining the effectiveness of the new corrective action plan. In all other respects, arrangements for and the conduct of the second study will be according to the

procedures described above. Defendants will file their second study no later than 36 months after completion of the first study.

- When the two no-care studies are 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. If the parties cannot agree, either party may file a motion within 30 days of completion of discussions among counsel.

III. Acceleration of Services to Children of Migrant Farmworkers in Managed Care

- Beginning in their next renewal, amended or new contracts in 2007, Defendant HHSC will include a "children of migrant farmworkers" provision in its contracts with all of its managed care organizations that operate in areas where migrant farm workers reside. This provision will make acceleration of services to enrollees who are migrant farmworker children ("FWC") a contract requirement. The contracts will require annual reports from each managed care organization about identification of and delivery of services to these class members. The managed care organizations' annual reports will include a description of the following activities and their results:

- The managed care organizations will identify as many community and statewide groups that work with FWC as possible within their service areas. They will coordinate and cooperate with as many as possible. The managed care organizations will also encourage the community groups to assist in the identification of FWC.

- The managed care organizations will make appropriate, aggressive efforts to reach each identified FWC to provide timely medical check ups and follow up care if needed.

- The managed care organizations will maintain accurate, current lists of all identified FWC enrollees.
- Defendants and their managed care organizations will maintain the confidentiality of information about the identity of FWC and will require any other contractors (who receive the information only because they need it) to do the same.
- Defendants will develop and implement a system of rewards and sanctions for their managed care organizations based on the FWC reports. The rewards and sanctions will be consistent with the rewards and sanctions developed in connection with other sections of this Corrective Action Order. All rewards and sanctions will be in accordance with federal and state law as well as consistent with the terms of any contract then in place, and will not exceed $15 million all funds, annually.
- Defendants will report annually to Plaintiffs and to the Court about their program of rewards and sanctions for managed care organizations based on the organizations' delivery of services to children of migrant farmworkers, including Defendants' informal evaluation of the program's effects. These reports will be filed with Defendants' October quarterly monitoring report, beginning in 2008.

IV. Rewards and Sanctions

- Beginning no later than 12 months after the date this Order is entered, Defendants will post on their website timely information about the rewards and sanctions they issue to Medicaid managed care organizations based on any provision of this Order. The posted information will include at least award and sanction amounts, the managed care organization(s) to whom they are issued, and the basis for each award and sanction.

- Financial sanctions imposed against any managed care organization based on this or any other corrective action plan may not be passed down by the organization to health care providers except on an individual basis. Sanctions may be imposed individually only on the basis of inadequate individual performance, after notice and opportunity to cure the deficiencies. When a provider's performance is inadequate, managed care organizations must collaborate with the provider to try to improve performance unless the provider refuses.