

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:
TRANSPORTATION PROGRAM

Decree References:

¶ 223: “Defendants will conduct annual assessments of the effectiveness of the transportation program...”

¶ 224: “The assessments will be specific and comprehensive enough to validly evaluate the transportation program in each Standard Metropolitan Statistical Area and the rural area in each of the 8 TDH regions. The assessments will determine where services are needed, the amount of services that are needed and if existing services meet the need for transportation assistance.”

¶ 225: “Each assessment will evaluate:

- unmet need for transportation assistance;
- recipient and provider satisfaction with the transportation program;
- the reasons for recipient and provider dissatisfaction with the transportation program;
- whether transportation times are reasonable; and
- whether recipients missed or did not schedule EPSDT services because of transportation

problems, including those attributable to medical transportation program deficiencies.”

¶ 226: “Over time, the results of the evaluations will improve.”

¶ 227: “Defendants’ method for evaluating the transportation system will be subject to Plaintiffs’ approval...”

¶ 228: “Defendants will take corrective action wherever the assessment indicates that transportation services are inadequate. ‘Inadequate’ means problem(s) exist that Defendants can reasonably be expected to correct.”

¶ 229: “Upon completion of each annual transportation assessment, the parties will determine a method to decide where corrective action is needed, how quickly it is needed and what actions will be taken.” See also, Decree ¶¶ 2, 3.

Citation to Finding of Decree Violation: *Frew*, 109 F.Supp.2d at 616-618; 401 F. Supp.2d at 685. Over the past few months, counsel have conferred about Defendants’ proposed assessment of the Medicaid Transportation Program. If properly implemented, the agreed protocols should result in a study that complies with the decree. Defendants are currently contracting with Texas A&M University for this study, as they have in the past.

IT IS ORDERED:

- Defendants will contract with an independent, external evaluator to conduct the Medical Transportation Program (“MTP”) study required by the decree. The studies will use professionally valid methods of assessment. The MTP study being performed by Texas A&M Public Policy Research Institute is scheduled to yield study results in staggered intervals: November 2007, and then six smaller sample group results spaced one every four months thereafter through 2009 [the “first study”]. Study results will be presented to the Court and Plaintiffs as they are received by Defendants, and a second study will be commissioned no sooner than 12 months after the statewide implementation of the corrective action plan described below and no later than 18 months from the end of the first study.

- Defendants will draft specifications and requirements for a Request for Proposal ("RFP") for independent evaluating services to conduct the second study. The specifications will include parameters for prospective independent evaluators to use in proposing independent, unbiased, and statistically valid methodologies to conduct the study or studies described in this Corrective Action Plan.
- The specifications will emphasize the independence of the evaluator in assessing the areas of study described in this Corrective Action Plan. The independent evaluator should have demonstrated expertise in the particular area of study as evidenced by published studies by either the research team/organization or principle investigator in peer refereed journals.
- Defendants will ensure Plaintiffs receive a meaningful opportunity to provide input into the development of the study, including providing Plaintiffs' counsel draft solicitation documents (including Requests for Information, if any) for review and comment prior to publishing the RFP for public comment and, if required, federal agency approval. 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.
- 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 the evaluator(s) for services properly and timely rendered, as required by the Court's order or Defendants' agreement with the evaluator(s).

Defendants will further require the independent evaluator(s) to provide timely reports of their activities and interim as well as final results of their work. Defendants will periodically report on the status of the independent evaluator's work to Plaintiffs' counsel. Completed studies 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 present their second study to evaluate the effectiveness of the transportation program no later than 36 months after completion of the first study. The second study will be prepared by an independent evaluator, selected in the manner as described above, unless the parties agree otherwise.
- Defendants will draft a Medical Transportation Program corrective action plan within six months of receipt of the initial study results in November of 2007. Defendants will develop the plan, which will be subject to the review and input of Plaintiffs. See Decree ¶229. If the parties agree about the plan, Defendants will present it to the Court and Plaintiffs in their next quarterly report. If the parties cannot agree about the plan, Defendants will present the dispute to the Court by motion to be filed within six months of receipt of the initial study results.
- Defendants will begin to implement their Medical Transportation Program corrective action plan within three months of its completion or order of the Court, if disputed. They will file progress reports concerning the implementation of the corrective action plans with their January and July quarterly reports each year.
- When the two studies are complete, counsel will confer to determine what further action is required, if any. Counsel will begin to confer no later than 30 days following completion of the second study ("completion"). If the parties agree, they will so report to the Court within 120 days of completion. If the parties cannot agree within 90 days of completion, the dispute will be

resolved by the Court upon motion to be filed by either party. If the parties cannot agree, either party may file its motion within 30 days of completion of discussions among counsel.