

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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OSCAR SALAZAR, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 ) Civil Action No. 93-452 (GK)  
DISTRICT OF COLUMBIA, et al., )  
 )  
 )  
Defendants. )  

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O R D E R

Plaintiffs have filed a Motion to Enforce the Settlement Order of January 25, 1999, and the Order of February 28, 2003, Concerning Dental Services. Upon consideration of the Motion, Opposition, Reply, the exhibits submitted, and the entire record herein, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

**ORDERED** that Plaintiffs' Motion to Enforce the Settlement Order of January 25, 1999, and the Order of February 28, 2003, Concerning Dental Services [#1010] is **granted in part** and **denied in part**; it is further

**ORDERED** that Defendants are in violation of paragraph 36 of the Settlement Order of January 25, 1999 ("Settlement Order") in that, with respect to dental services for early and periodic, screening, diagnostic and treatment ("EPSDT")-eligible children,

they have failed to provide or arrange for the provision of EPSDT services as required by 42 U.S.C. § 1396d(r) (3)<sup>1</sup>; it is further

**ORDERED** that, as remedies for Defendants' violations of paragraph 36 of the Settlement Order, Defendants shall:

(1) **By February 15, 2005**, Defendants shall develop a dental periodicity schedule which complies with the schedules for children under age 21 recommended by the American Dental Association and the American Academy of Pediatric Dentistry. **Within 45 days after promulgation of the dental periodicity schedule or modification of the schedule**, Defendants shall distribute a provider bulletin containing the schedule to all MCOs, dentists, and pediatric health care providers in the District of Columbia. At a minimum, the schedule shall include:

(a) appropriate intervals as to when primary care providers shall perform an oral risk health assessment;

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<sup>1</sup> Early and periodic, screening, diagnostic and treatment services include

[d]ental services ... which are provided ... at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and ... at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and ... which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

42 U.S.C. § 1396d(r) (3).

(b) the specific procedures that primary care providers shall perform to complete an oral risk health assessment;

(c) the appropriate age and circumstances in which a primary care provider shall refer a child to a dentist;

(d) appropriate ages as to when children are to receive prophylaxes and fluoride treatment;

(e) appropriate ages as to when children are to receive dental sealants.

(2) **By January 15, 2005, and annually on that date thereafter,** Defendants (not the managed care organizations ("MCOs")) shall develop and submit to the Court a corrective action plan ("CAP") for ensuring that all EPSDT-eligible children receive dental services. **By December 1, 2004,** Defendants shall develop and submit to the Court an interim report regarding their progress developing the CAP. The CAP shall (i) identify all problems as to EPSDT-eligible children receiving dental services and the likely causes of those problems; (ii) develop a plan of action to eliminate the causes of those problems; (iii) establish a specified time frame for implementation of the plan; (iv) develop methods to prevent the problems from recurring; and (v) develop methods to monitor the plan to verify that the changes have been successful. At a minimum, the CAP shall address the following:

(a) Provider Participation: (1) The CAP shall describe in detail the actions Defendants, in collaboration with the

District of Columbia Dental Society and other local dental associations and community groups, shall take to ensure that, **by October 15, 2005**, a sufficient number of licensed dentists in the District of Columbia are willing and able to deliver EPSDT dental services to all EPSDT-eligible children within a reasonable time period and reasonable traveling distance. (2) The CAP shall set forth the increased reimbursement rates for dental services that Defendants shall implement, **no later than October 15, 2005**, to ensure that a sufficient number of licensed dentists participate. (3) The CAP shall describe in detail the actions that Defendants shall take, **by October 15, 2005**, to streamline the administrative process for increasing provider participation. (4) The CAP shall include:

(i) As to each MCO, the name, telephone number and address of those licensed dentists available to provide pediatric preventive and therapeutic dental services to EPSDT-eligible recipients up to the age of 21, and whether those dentists are accepting new EPSDT-eligible patients;

(ii) The name, telephone number and address of those licensed dentists available to provide fee-for-service pediatric preventive and therapeutic dental services to EPSDT-eligible recipients up to the age of 21, and whether those dentists are accepting new EPSDT-eligible patients.

(b) Training of Providers: The CAP shall describe in detail the actions Defendants shall take, **by October 15, 2005**, so that both licensed dentists and pediatric health providers have the training, skills and knowledge necessary to deliver EPSDT dental services. **By April 15, 2005**, and **annually on that date thereafter**, Defendants shall distribute a provider bulletin for licensed dentists and pediatric health care providers describing (1) dental health education, (2) the importance and methodology for establishing a dental "home" and urging dentists and pediatric health care providers to provide such education and anticipatory guidance to their EPSDT-eligible patients and (3) anticipatory guidance activities, see subparagraphs (i)-(v) below. **By February 15, 2005**, Defendants shall provide a draft of the provider bulletin to Plaintiffs' counsel for review and comment. Any such comments of Plaintiffs' counsel shall be considered by Defendants in good faith. The provider bulletin shall include discussion of:

(i) age-appropriate oral hygiene, including anticipatory guidance;

(ii) the importance of oral health during and after pregnancy, including research findings regarding the contagious nature of dental caries in the mother being passed on to the infant;

(iii) the provision of dental services to children with disabilities;

(iv) information concerning early childhood caries or "baby bottle tooth decay;"

(v) information concerning the impact that tooth decay has on a child's development.

(c) Coordination of Dental Services: (1) The CAP shall describe in detail the actions Defendants shall take to coordinate activities and communication between the officials at the Medical Assistance Administration ("MAA"), the MCOs, dentists, pediatric health care providers, and the Oral Health Program concerning activities that relate to the delivery of EPSDT dental services. (2) The CAP shall describe in detail the actions Defendants shall take to establish working relationships with the District of Columbia Dental Society and other local dental associations and community groups.

(d) Outreach: (1) The CAP shall describe in detail the outreach activities Defendants and the MCOs shall perform to assist enrollees to make and keep EPSDT dental appointments, including incentive payments that Defendants and/or the MCOs will make to families of EPSDT-eligible children. (2) **By February 15, 2005**, Defendants shall establish a dental inquiry hotline which will (i) answer basic questions concerning oral health, (ii) provide assistance in scheduling dental appointments and (iii) provide outreach to ensure that parents and children keep their dental appointments and make the necessary follow-up appointments. (3) **By**

**April 15, 2005**, Defendants shall develop a methodology by which to measure the efficacy of these outreach activities on an annual basis.

(e) Goals: The CAP shall include the specific interim goals and deadlines that Defendants shall meet, with the first interim goal and deadline being **no later than October 15, 2005**, to achieve the following final goals no later than **September 30, 2007**:

(i) At least **80 percent** of EPSDT-eligible children in the 6-12 months-old age-category receive at least one oral risk health assessment by a primary care provider as part of the Health Check visit;

(ii) At least **80 percent** of EPSDT-eligible children in the 12-24 months-old age-category receive at least one oral risk health assessment by a primary care provider as part of the Health Check visit;

(iii) At least **85 percent** of EPSDT-eligible children entering school programs for the first time receive an oral health screening by a licensed dentist;

(iv) At least **70 percent** of all EPSDT-eligible 8-14 year-olds receive protective sealants on their permanent teeth;

(v) At least **80 percent** of EPSDT-eligible children 3 years old and older receive "any dental services" as reported in line 12a of the CMS Form 416;

(vi) At least **80 percent** of EPSDT-eligible children 3 years of age and older receive "preventive dental services" as reported in line 12b of the CMS Form 416.

(3) Annual Assessment of Oral Health: **By April 15, 2006**, and **annually on that date thereafter**, Defendants shall submit a report, as to the most recently concluded calendar year, setting forth the number of EPSDT-eligible children in the District of Columbia in the same age categories reported on the CMS Form 416 who received:

(a) the application of dental sealants to prevent the development of caries;

(b) at least one periodic oral examination and prophylaxes;

(c) two or more periodic oral examinations and prophylaxes;

(d) orthodontic treatment;

(e) restorations (fillings) on carious teeth;

(f) treatment for early childhood caries ("ECC" or "baby bottle tooth decay").

November 15, 2004

/s/  
GLADYS KESSLER  
U.S. District Judge

**Copies to:** attorneys on record via ECF and



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