

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

AUG 25 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BY _____
DEPUTY CLERK

CLUSTER DANIELS, *et al.*,)
)
Plaintiffs,)
)
v.)
)
RUSSELL WHITE¹ Commissioner,)
Department of Health;)
TENNESSEE DEPARTMENT OF)
HEALTH; ROBERT GRUNOW,)
Commissioner, Department of)
Human Services; TENNESSEE)
DEPARTMENT OF HUMAN SERVICES,)
)
Defendants.)

Civil Action
No. 79-3107-NA-CV

JUDGE NIXON

SECOND CONSENT DECREE
FOR RECIPIENT INQUIRY UNIT AND TRANSPORTATION ISSUES

PREMISES

Nature of Action

1. This class action was filed on March 8, 1979. Plaintiffs alleged that the defendants' policies violate requirements of the Medicaid Act, 42 U.S.C. §§ 1396 *et seq.*, and regulations, and the equal protection and due process clauses of the fourteenth amendment to the United States Constitution in three respects:

¹Russell White succeeded J.W. Luna as Commissioner of the Department of Health. Pursuant to Fed. R. Civ. P. 25(d)(1), Russell White is substituted for J.W. Luna.

a. By failing to adequately assure transportation of Tennessee Medicaid recipients to and from needed medical care;

b. By failing to provide adequate notice and procedural protection to Tennessee Medicaid recipients when claims by Medicaid providers for reimbursement for medical care assistance is denied; and,

c. By failing to provide adequate notice and procedural protection upon termination of Medicaid eligibility following termination of cash assistance under the Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI) programs.

Proceedings

2. The court has previously certified three subclasses defined as:

a. Tennessee Medicaid recipients whose necessary use of ambulance or other transportation to and from providers of necessary medical services is neither compensated nor assured by the Medicaid program [hereinafter "Medicaid Transportation Sub-class"];

b. Tennessee Medicaid recipients, including persons who have been Medicaid recipients at any time during pendency of this case, who have not been notified when claims for Medicaid payments filed by providers have been denied, or have not been notified of the reasons for final denial of

payment, or have not been notified of their fair hearing rights [hereinafter "Medicaid Due Process Sub-class"]; and,

c. Those individuals terminated from AFDC or from SSI who have been or will be terminated from Medicaid under the Tennessee Medicaid Program [hereinafter "Medicaid/AFDC Sub-class" and "Medicaid/SSI Sub-class"].

3. This Second Consent Decree deals only with the claims of the sub-classes defined in §§ 2.a and 2.b, *supra*.

4. On February 20, 1985, the court entered an order approving the defendants' plan for Medicaid Transportation Assurance with modifications in conformity with the court's opinion.

5. On August 18, 1986, the court approved a consent decree establishing a "Recipient Inquiry Unit" [hereinafter "RIU"] within the Bureau of Medicaid [hereinafter "Bureau"] of the Department of Health and Environment [now Department of Health] [hereinafter "DHE"] and certain procedures and policies intended to protect the due process rights of Tennessee Medicaid recipients in the event of denial of provider claims for reimbursement of medical assistance provided to recipients.²

6. Plaintiffs' counsel have monitored these orders to assure compliance by the defendants.

²The consent decree will be referred to as the "First Consent Decree."

7. Certain disputes and differences have arisen and exist between the parties regarding defendants' compliance with the court's orders of February 20, 1985 and August 18, 1986.

Amended Complaint by Medicaid Transportation Sub-class

8. On May 16, 1988, the court granted a motion on behalf of the Medicaid Transportation Sub-class to amend the complaint to allege that defendants have failed to provide adequate emergency transportation assistance to Medicaid recipients.

9. The defendants dispute the allegations in the amended complaint.

**CONSENT AND WAIVER, DEFINITIONS,
STATEMENT OF INTENT, AND RESERVATIONS**

Consent and Waiver

10. The parties, through counsel, hereby enter into this Second Consent Decree.

11. The parties waive any findings of fact or conclusions of law or other formal requirements for this Second Consent Decree, or the proceedings precedent thereto, under the Federal Rules of Civil Procedure.

Definitions

12. The phrase "Tennessee Medicaid Program" refers to the joint federal/state medical assistance program administered pursuant to Title XIX of The Social Security Act, 42 U.S.C. §§ 1396 *et seq.* (hereinafter "Medicaid Act").

13. The term "defendants" shall mean the state agency designated to administer the Tennessee Medicaid Program, DHE and its successors; the agency designated to make determinations of eligibility under the Tennessee Medicaid Program, the Tennessee Department of Human Services [hereinafter "DHS"] and its successors; and, the commissioners of DHE and DHS and their successors in office. Any requirement placed upon defendants by this Second Consent Decree may be accomplished by defendants, or their agents, employees, and representatives including defendants' general counsel, and contractors, including defendants' fiscal agent.

14. The term "medical assistance" means care, services, drugs and supplies necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with her or his capacity for normal activity, or threaten some significant handicap and which are furnished to recipient in accordance with the Medicaid Act and Tenn. Code Ann. §§ 71-5-101, *et seq.* (hereinafter "Tennessee Medical Assistance Act"). See 42 U.S.C. § 1396d(a) (1989 Supp.). Medical assistance includes the payment of the cost of care, services, drugs and supplies. Such care, services, drugs and Supplies shall include services of qualified practitioners licensed under the laws of the State of Tennessee. See Tenn. Code Ann. § 71-5-103(4) (1987 Replacement).

15. The term "covered medical assistance" or "medical assistance covered under the Tennessee Medicaid Program" refers to medical assistance in the amount, scope, and duration determined by the commissioner of DHE in accordance with Tenn. Code Ann. § 71-5-107.

16. The term "recipient(s)" shall mean any person receiving Medicaid benefits at any time since March 8, 1979 and in the future in accordance with the Medicaid Act and the Tennessee Medical Assistance Act. An authorized or legal representative of a recipient has the right to make any request for administrative review, request any hearing, receive copies of all notifications after an inquiry, and otherwise act on behalf of a recipient under the provisions of this Second Consent Decree where such right would be available to the recipient. Provided, however, the defendants must be adequately notified of such authorized representative status.

17. The term "provider" means any person, institution, agency, or business concern providing medical assistance to recipients. A participating provider must accept payment under the Tennessee Medicaid Program as payment in full for covered medical assistance. "Providers" include "vendors" as defined in Tenn. Code Ann. § 7-5-103(10).

18. A provider "participates" in the Tennessee Medicaid Program by signing a provider agreement on a form

specified by the Bureau, and/or submitting any claim for payment for medical assistance provided to any recipient to the Bureau or its fiscal agent.

a. If the Bureau requires a provider to execute a provider agreement, then such a provider participates by both executing a provider agreement and by submitting a claim for payment of medical assistance rendered to a recipient.

b. If the Bureau does not require a provider to execute a provider agreement, then such a provider participates by submitting a claim for payment of medical assistance rendered to a recipient.

Statement of Intent

19. Extensive negotiations have developed a basis for this Second Consent Decree.

20. This Second Consent Decree is intended to supersede and replace in all respects, and not intended to modify or supplement, the First Consent Decree. Provided, however, that until the mailing of the first quarterly notice as set forth in § 34, *infra*, the defendants shall comply with the provisions of the First Consent Decree [Doc. 184], which provisions are incorporated herein by specific reference.

21. Defendants recognize and acknowledge that recipients have a right to due process protections whenever defendants take action to suspend, terminate or reduce

services, including denial of provider claims for payment of medical assistance furnished to recipients and denial of provider requests for prior approval of medical assistance to recipients. See e.g., 42 U.S.C. § 1396(a)(3); 42 C.F.R. pt. 431, subpt. E. This decree is intended to assure minimum procedural due process protection for recipients when provider claims for payment for medical assistance are denied by defendants and when provider requests for prior approval of medical assistance are denied by defendants. These minimum protections include:

a. Limiting participation in the Tennessee Medicaid Program to providers who agree to accept payment for covered medical assistance under the Tennessee Medicaid Program as payment in full, consistent with 42 C.F.R. § 447.15;

b. Enhancing enforcement of the providers' agreement and obligation to accept payment for covered medical assistance as payment in full through promulgation of regulations by defendants;

c. Providing individual quarterly notice of denials and an opportunity to request a fair hearing to protest denials of claims for which the recipient can be billed by the provider; and,

d. Providing individual notice of denials of requests for prior authorization for medical assistance (when

required under the Tennessee Medicaid Program) and an opportunity to request a fair hearing.

22. This decree is also intended to provide further assurances of adequate emergency transportation assistance to Medicaid recipients.

23. All provisions of this Second Consent Decree shall be effective upon entry of the Second Consent Decree unless otherwise specifically provided herein. If any of the time deadlines herein for taking action should fall on a Saturday, Sunday, or officially recognized state holiday, then the time deadline for taking that action shall fall on the next working day.

24. Except as provided in § 25, *infra* (including fn. 3), this Second Consent Decree constitutes a final judgment as to all claims for declaratory and injunctive relief raised in this proceeding by the Medicaid Due Process and Transportation Sub-classes and may be enforced through any appropriate proceedings. Unless the Medicaid Due Process Sub-class or their attorneys of record file a motion raising an issue concerning compliance with the terms or intent of this Second Consent Order, the requirements under Sections II and III, *infra*, shall expire after two years following the first quarterly notice mailed to recipients. See § 73, *infra*. For example, if the first quarterly notice is mailed on January 1, 1992, Sections II and III shall expire as of

January 1, 1994. Although Sections II and III, *infra*, expire after two years following the first quarterly notice to recipients, defendants recognize and acknowledge their obligation to continue to provide recipients due process protection when provider claims for payment of medical assistance furnished to recipients are denied and when provider requests for prior approvals of medical assistance to recipients are denied. Prior to the expiration of the two year period referred to above, defendants shall not modify the policies or procedures required under Sections II and III, *infra*, except pursuant to the Court's order. *See e.g., Health v. Decourcy*, 888 F.2d 1105 (6th Cir. 1989).

Reservations and Exclusions

25. This Second Consent Decree is not intended to address issues that may be indirectly implicated but not raised in these proceedings. Therefore, the parties specifically reserve and expressly exclude the following issues:

a. Whether the amount, scope and duration of medical assistance under the Tennessee Medicaid Program as determined by the commissioner of DOH complies with federal law and regulations;

b. Whether defendants' administrative hearing process and procedures comply with federal law and regulations;

c. Whether defendants make timely decisions concerning requests for prior authorization for medical assistance;

d. Whether defendants provide prior, adequate notice to eligible recipients of proposed termination of certification or denial of recertification for medical assistance which may result in the reduction, suspension, or termination of covered medical assistance. See e.g. *Enright v. Fowinkle*, No. 79-2243, Findings of Fact and Conclusions of Law (W.D. Tenn. April 7, 1980) (prior notice required before termination of or denial of recertification for nursing home care); and,

e. Whether defendant's plan for Medicaid transportation assures adequate access to obstetric services for Medicaid recipients.³

26. This Second Consent Decree shall not affect the right of any individual member of the plaintiff sub-classes to seek any and all relief which is otherwise available through administrative review proceedings authorized by

³Although this issue is not addressed in this Second Consent Decree, the Court has previously approved the State's Medicaid Transportation Plan. R. 159: Memorandum, pp. 4-19 (Feb. 20, 1985); R. 160: Order (Feb. 20, 1985). By entering into this Second Consent Decree, the plaintiffs do not waive their right to raise the issue in *Brewster, et al. v. White, et al.*, No. 3-91-1066 (M.D. Tenn.) filed December 30, 1991, and the defendants do not waive their right to defend the issue in *Brewster* by relying on the Court's prior order in this case.

42 C.F.R. pt. 431, subpt. E and Tenn. Code Ann. §§ 4-5-301 et seq., 71-5-112 and 71-5-113.

27. Defendants, by entering this Second Consent Decree, do not admit liability or non-compliance with the First Consent Decree.

ORDER

The court expressly approves this Second Consent Decree and further finds that this Second Consent Decree between plaintiffs and defendants fully protects all interests of the parties and that entry of final judgment by this Second Consent Decree between plaintiffs and defendants protects the rights and is in the best interest of the Medicaid Due Process Sub-class as a whole and the Medicaid Transportation Sub-class as a whole.

NOW, THEREFORE, upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. STATE POLICY MODIFICATIONS.

28. Within 12 full calendar months from entry of this Second Consent Decree (which time may be extended for good cause shown), defendants shall have promulgated state administrative rules, policies and/or provider contracts which:

a. Require participating providers to accept payment under the Tennessee Medicaid Program for covered medical assistance rendered to recipients as payment in full;

b. Prohibit participating providers from seeking, collecting or accepting payment in full, in part, or in addition from recipients for covered medical assistance;

c. Authorize sanctions against participating providers who fail or refuse to accept payment under the Tennessee Medicaid Program as payment in full for covered medical assistance rendered to recipients; and,

d. Nothing in this § 28 shall be construed or interpreted to limit the defendants' authority to implement and require, by lawfully promulgated rules, any co-payment for medical assistance by recipients authorized and permitted under the Medicaid Act.

29. State rules and regulations required under § 28, *supra*, shall be (or have been) promulgated in accordance with the provisions of the Tennessee Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-201, *et seq.*, and all interested entities, whether or not parties to this suit, will be (or have been) allowed to participate in the rule making process as provided by state law.

30. As to any rules, regulations, policies and provider contracts required under § 28, *supra*, which have not already been promulgated, defendants shall give plaintiffs' counsel of record:

- a. Actual notice of proposed rules and regulations;
- b. Copies of proposed rules and regulations;
- c. Actual notice of rulemaking hearings preceding adoption of rules and regulations; and,
- d. Copies of final policies and provider contracts.

II. NEW NOTICE REQUIREMENTS.

A. Notice of provider claims for medical assistance under the Tennessee Medicaid Program.

31. Defendants shall provide a quarterly written notice to each recipient for whom a provider's claim for payment for medical assistance has been denied.

32. The written quarterly notice shall, at a minimum, contain the following:

- a. The name of all providers whose claims for reimbursement for medical assistance rendered to the recipient have been denied;
- b. The medical assistance which was provided to the recipient;

c. The date the medical assistance was provided;

d. For each claim denied, a statement whether or not the recipient can be billed for the medical assistance by the provider;

e. For each claim denied for which the recipient may be billed, a statement of the reason that payment for the medical assistance was denied, including the rule or regulation relied upon to deny payment;

f. A statement that the recipient may request a fair hearing to contest the denial of payment of any provider's claim for payment of medical assistance for which the provider can bill the recipient;

g. How the recipient may request a hearing;
and,

h. A statement that the recipient can request a hearing within 30 days from receipt of the notice. Receipt shall be presumed to be within five days of the date of mailing unless the recipient can show otherwise.

33. The first quarterly notice period shall begin on the first day of the second full calendar quarter following the entry of this Second Consent Decree. [For example, if this Second Consent Decree is entered before March 1, 1991, the first quarterly notice period shall begin July 1, 1991.] Subsequent quarterly notice periods shall begin on the first day of the month following the end of the previous quarterly

notice period. [For example, if the first quarterly notice period ends September 30, 1991, the next quarterly notice periods will be October 1, 1991 January 1, 1992, etc.]

34. The first quarterly notice shall be mailed to recipients no later than the first day of the third month following the first quarterly notice period as set forth under ¶ 33, *supra*. [For example, if the first quarterly notice period ends September 30, 1991, the first quarterly notice shall be mailed to recipients on or before December 1, 1991.] Subsequent quarterly notices shall be mailed no later than the first day of the second month following the end of the previous quarter. [For example, if the second quarterly notice period begins October 1, 1991 and ends December 31, 1991, the second quarterly notice must be mailed by February 1, 1992.]

B. Notice of Denial of Requests for Prior Authorization.

35. Defendants shall furnish recipients written notice when defendants deny a provider's request to render medical assistance for which prior authorization is required.

36. The written notice of denial of prior authorization shall, at a minimum, contain the following:

a. The medical assistance for which a request for prior authorization was denied;

b. The name and address of the provider which requested prior authorization to render medical assistance;

c. The date the request for prior authorization was made;

d. A statement of the reason that the request for prior authorization was denied;

e. The rule or regulation relied upon to deny the request for prior authorization;

f. A statement that the recipient may request a hearing to protest denial of prior authorization;

g. How the recipient may request a hearing;
and,

h. A statement that the recipient can request a hearing within 30 days from the receipt of the notice.

Receipt shall be presumed to be within 5 days of the date of mailing unless the recipient can show otherwise.

37. Written notice of denial of requests for prior authorization shall be implemented on or before the first day of the third full calendar month following entry of this Second Consent Decree.

38. Written notice of denial of requests for prior authorization shall be mailed to recipients within five working days after the prior authorization is denied.

39. Defendants need not give separate notice of denial of a request for prior authorization or approval on

the quarterly notice required under Section II.A, *supra*, if notice is given under this Section II.B.

III. REQUESTS FOR FAIR HEARINGS.

40. Recipients will be allowed to request hearings to contest denials of provider claims for which recipients may be billed by the provider and denials of requests for prior authorization within 30 days from receipt of the notices required under Section II, *supra*. Receipt of the notice shall be presumed to be within 5 days of the date of mailing unless the recipient can show otherwise.

41. Recipients may request a hearing from the Bureau:

- a. By writing to an address which shall be provided to recipients;
- b. If defendants opt to establish a toll free telephone line for hearing requests, by calling the toll free number provided on the notices to recipients;
- c. By making a written request in person at his or her county DHS office; and,
- d. Paragraph 41.b shall not be construed or interpreted to require the Bureau to accept the telephone appeals on the toll-free line now existing in the RIU, nor shall the inclusion in any notices of the current toll-free number of the RIU be construed as an election by the

defendants to allow telephone appeals, unless expressly stated in the notice.

42. Written requests for hearings made at a county DHS office shall be stamped, logged, and promptly submitted to the Bureau by the county DHS office.

43. Hearings shall be provided to recipients in accordance with 42 U.S.C. § 1396a(a)(3), 42 C.F.R. pt. 431, subpt. E, Tenn. Code Ann. § 71-5-113(a), (b) or (c), and the Tennessee Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, *et seq.*

IV. **INFORMAL RESOLUTION OF DISPUTES.**

A. **Recipient Inquiry Unit.**

44. The due process notice rights of recipients are intended to be protected through the issuance of written notices and fair hearings pursuant to Sections II and III, *supra*. The role of the RIU shall be as follows:

a. From the date of entry of this Second Consent Decree until the mailing of the first quarterly notice described in § 34, *supra*, (hereinafter "interim period"), the RIU shall be maintained at a level at least equivalent to its current level of staffing and resources as described in § 45, *infra*, so that recipients may inquire orally or in writing concerning the payment of a provider's claim, to protest the denial of a provider's claim, or to protest the denial of prior authorization;

b. During the retroactive notice relief period, as set forth in Section V, *infra*, the RIU shall be maintained at a level equivalent to at least its current level as described in § 45, *infra*, in order to receive, process, and take appropriate action on all requests for review received pursuant to the provisions of Section V, *infra*.

c. After the completion of the interim period and the retroactive notice relief period, the defendants may, at their option, maintain a RIU within the Bureau in order to assist recipients with inquiries or comments concerning claims for medical assistance, and to informally resolve disputes, and/or investigate denials of prior authorization, as specified in Section IV.B and C, *infra*; and,

d. The parties recognize that, even during the interim period and retroactive relief period, the level of staffing of the RIU may temporarily fall below its current level of staffing due to unforeseen personnel changes or other exigent circumstances. However, defendants will maintain the current commitment of full-time equivalent (FTE) positions and resources to the RIU throughout the interim period and retroactive notice relief period.

45. For purposes of § 44, the current level of staffing and resources committed to the RIU is:

a. One-half FTE supervisor position whose responsibilities include receiving all incoming written correspondence, sorting correspondence, assigning control numbers, batching and distributing correspondence to appropriate inquiry workers;

b. Six FTE inquiry worker positions;

c. Toll free telephone number with three rotating lines manned by three inquiry workers;

d. One local telephone line manned by one inquiry worker;

e. An answering device when all lines are busy instructing callers to hold for the next available worker; and,

f. Inquiry workers not answering telephones are responsible for incoming written correspondence and follow-up correspondence to daily phone calls.

B. Informal Resolution of Disputes Following Implementation of Quarterly Notice System.

46. Following the interim period, upon receipt of an inquiry by a recipient concerning a provider claim, the RIU may investigate the inquiry and attempt to informally resolve the inquiry and/or dispute.

47. If defendants determine that the recipient received covered medical assistance from a participating

provider for which payment was erroneously denied, in whole or in part, and it was not already paid for by defendants, the claim will be re-processed for payment and the recipient informed in writing.

48. If it is determined that medical assistance was not covered under the Tennessee Medicaid Program at the time it was provided, the recipient will be notified in accordance with Section II.B supra, unless defendants have documentation that notice of denial as prescribed under Section II supra, for the same provider claim has been provided the recipient.

49. If the provider's claim was not and will not be paid for reasons other than that the medical assistance was not covered under the Tennessee Medicaid Program at the time it was rendered, the provider may be notified that the provider cannot seek, collect or accept payment in full, in part, or in addition from the recipient unless as provided by federal and state regulations.

50. If the defendants determine that proper payment was made to the provider under the Tennessee Medicaid Program, the defendants may inform the recipient in writing and may advise the provider of penalties under law and regulation for seeking, collecting or accepting payment in full, in part, or in addition to reimbursement paid under the Tennessee Medicaid Program.

C. Investigations of Denials of Prior Authorizations.

51. Following the interim period, upon receipt of an inquiry from a recipient concerning denial of a request for prior authorization, the RIU may investigate the inquiry and attempt to informally resolve the inquiry and/or dispute.

52. If defendants determine that prior authorization for medical assistance was erroneously denied, and it has not been provided, authorization will be given and the recipient and provider informed in writing.

53. If defendants determine that medical assistance for which a prior authorization determination was requested is not covered under the Tennessee Medicaid Program or that the criteria for prior authorization under the Tennessee Medicaid Program was not satisfied, the recipient will be notified in accordance with Section II.B, *supra*, unless defendants have documentation that notice of denial as prescribed under Section II, *supra*, for the same request has been provided the recipient.

V. RETROACTIVE NOTICE RELIEF.

54. Within three full calendar months from entry of this Second Consent Decree, defendants shall begin mailing to all persons who have been recipients on or after November 1, 1986, until the date of the beginning of the first quarterly notice period specified in § 33, *supra*, and for whom claims

were filed with the Bureau but not paid, the following notification:

MEDICAID MAY PAY YOUR MEDICAL AND DRUG BILLS IF:

(1) You had Medicaid when you received medical care or drugs.

(2) The medical care or drugs were covered by Medicaid.

You can request a review of your medical and drug bills. Write to:

RECIPIENT INQUIRY UNIT

BUREAU OF MEDICAID

729 CHURCH STREET

NASHVILLE, TENNESSEE 37247-6501

or call

RECIPIENT INQUIRY UNIT

1-800-523-2863

When you write or call, please give us your Medicaid number. Tell us when you were treated or when you got the drugs. Tell us who treated you or where you got the drugs.

If you want your bills reviewed, YOU MUST REQUEST IT BY [the first day of the month following twelve (12) full calendar months from entry of the Second Consent Order].

THIS NOTICE DOES NOT AFFECT MEDICARE BENEFITS YOU MAY GET FROM SOCIAL SECURITY.

55. Defendants may "stagger" the mailing of the retroactive relief notices referred to in ¶ 54, *supra*, over a reasonable period of time. However, the first mailing of notices shall be made within three full calendar months of entry of this Second Consent Decree, and each recipient or former recipient to whom the notice is sent shall be allowed at least three full calendar months from the date of mailing of the notice in which to request review.

56. Within three full calendar months of entry of this Second Consent Decree, the notice described in ¶ 54, *supra*, shall be:

a. Published by defendants, at least once, in newspapers of general circulation in the following cities: Memphis, Jackson, Nashville, Cookeville, Knoxville, Johnson City, Chattanooga, Morristown and Oak Ridge. This notice shall consist of one non-classified advertisement of a size of 6 inches down by 3.75 inches across, or larger;

b. Printed on 14 x 20 inch or larger poster paper and be displayed in all county offices of DHS and county health departments in Tennessee; and,

c. Printed on 8.5 x 11 inch paper and shall be placed in the reception or waiting areas of the county offices of DHS and county health departments in Tennessee in sufficient quantities to allow recipients to take a copy of the notice if they wish. These 8.5 x 11 inch copies of the

notice required by this section shall also contain a form for requesting review which can be mailed to the Bureau.

57. Within four full calendar months of entry of this Second Consent Decree, defendants, as are their respective responsibilities hereunder, shall provide the court and plaintiffs' counsel:

a. Copies of all notices required under this Section V with certifications from appropriate officials executed under penalty of perjury that such notices have been or have caused to be mailed, posted or delivered; and,

b. Lists of the names and addresses of recipients to whom the notice was mailed or will be mailed in accordance with this Section V.

58. Defendants may cease the notification procedures provided in this Section V after twelve (12) full calendar months following entry of this Second Consent Decree.

VI. MODIFICATIONS TO TRANSPORTATION ASSURANCE PLAN.

59. The Medicaid Transportation Plan submitted to and approved by the Court shall be amended as follows:

a. No prior authorization shall be required for ambulance transportation;

b. Ambulance transportation shall be covered medical assistance under the Tennessee Medicaid Plan whenever:

- (1) A recipient suffers an injury or acute medical condition that is liable to

cause death, severe injury, or illness; or

- (2) A recipient's condition is such that use of other methods of transportation is contraindicated.

c. Defendants shall not impose any additional or other criteria for ambulance transportation except as established by lawfully promulgated rules; and,

d. Defendants shall allow any licensed physician, paramedic, emergency medical technician, or registered nurse to certify that the Medicaid criteria for ambulance transportation was met.

60. Within 12 full calendar months of entry of this Second Consent Decree, (which time may be extended for good cause show), defendants shall have promulgated state rules, policies, and/or provider agreements which shall effectuate the modifications to the Tennessee Medicaid Transportation Plan required under § 59, *supra*.

61. State rules and regulations required under § 59, *supra*, shall be (or have been) promulgated in accordance with the provisions of the Tennessee Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-201, *et seq.*, and all interested entities, whether or not parties to this suit, will be (or have been) allowed to participate in the rulemaking process as provided by state law.

62. As to any rules, regulations, policies and provider contracts required by § 59, *supra*, which have not already been promulgated, defendants shall give plaintiffs' counsel of record:

- a. Actual notice of proposed rules and regulations;
- b. Copies of proposed rules and regulations required;
- c. Actual notice of rulemaking hearings preceding adoption of rules and regulations; and,
- d. Copies of final policies and agreements.

63. Within 12 full calendar months of entry of this Second Consent Decree, defendants shall mail to all ambulance companies licensed in Tennessee a packet of materials intended to familiarize ambulance services providers with the criteria, including the requirements under § 59, *supra*, for ambulance transportation of recipients.

64. For two years following entry of this Second Consent Decree, defendants shall offer free and regionally accessible training, on at least an annual basis, to all ambulance companies licensed in Tennessee intended to familiarize their employees, agents and representatives, including paramedics and emergency medical technicians, with the criteria, including the requirements under § 59, *supra*, for ambulance transportation of recipients.

65. Within 12 full calendar months of entry of this Second Consent Order, defendants shall provide plaintiffs' counsel a copy of the packet of materials mailed to licensed ambulance companies pursuant to ¶ 63, *supra*; a list of the names and addresses of ambulance companies to which the packets of materials were mailed in accordance with ¶ 64, *supra*; and, a copy of training materials, if any, produced to provide the training specified in ¶ 64, *supra*.

VII. MONITORING.

66. Defendants shall provide plaintiffs' attorneys on a continuing basis copies of all provider manuals, revisions to provider manuals and updates to provider manuals which contain the written procedures and policies issued by defendants to Medicaid providers.

67. Within three full calendar months of entry of this Second Consent Decree, the Bureau shall develop and submit to the court and plaintiffs' counsel written procedures for processing recipients' requests for hearings and review pursuant to Sections II, III, and V, *supra*.

~~68.~~ The defendants shall, within a reasonable time, respond to requests by plaintiffs' counsel, pursuant to the Public Records Act, Tenn. Code Ann. §§ 10-7-501 *et seq.*, for data concerning provider claims, provider participation, recipient hearing requests and other matters pertaining to compliance with this Second Consent Decree.

69. Upon 30 days prior notice, plaintiffs' counsel shall have access during normal business hours to any public records maintained by the Bureau. Access to such records shall not be denied on the basis of maintaining confidentiality of recipients' and providers' names. All names and addresses of recipients provided to plaintiffs' counsel shall be considered to be confidential and shall not be used for functions other than those directly related to compliance with this Second Consent Decree.

70. Within 12 full calendar months of the entry of this Second Consent Decree, defendants shall modify the Medicaid informational pamphlet entitled "Medicaid Map" so as to include the key provisions of Sections I, II, III, IV and VI of this Second Consent Decree.

71. The informational pamphlet described in § 70, *supra*, shall be available in sufficient quantities at all county DHS offices to allow recipients to take a copy if they wish. The pamphlet shall be distributed to Medicaid applicants at the time of application for any public assistance administered by DHS and DHE and shall be made available, upon request, to legal aid offices and social service agencies throughout the state of Tennessee serving and assisting recipients.

VIII. NOTICE READABILITY, ENFORCEABILITY AND ATTORNEYS' FEES AND COSTS.

72. All notices, communications, and pamphlets to or for the use of recipients required under this Second Consent Decree shall be in the simplest language possible to convey the information required and shall require no greater than a sixth grade level of education as measured by Flesch Index, Fog Index or Flesch-Kincaid Index. Plaintiffs' counsel will cooperate and assist the defendants in assuring the requirements of this paragraph are met.

73. Questions of compliance with, or application of, this Second Consent Order may be heard upon the motion of any party, provided, however, that reasonable, good faith efforts are made to informally resolve any issue arising under this order prior to any motion. The parties intend that DHE be given reasonable notice of individual case problems and an opportunity to address such problems prior to filing any motion for enforcement of this order.

74. Notice of any motion or proposed motion arising under this consent order shall be provided to counsel of record.

75. Defendants shall pay all allowable costs, including plaintiffs' reasonable attorneys' fees pursuant to 42 U.S.C. § 1988, with the first Consent Decree and for services rendered which directly relate to monitoring compliance issues resolved in this Second Consent Decree,

which have accrued after December 31, 1988 and up to the date of entry of this Second Consent Decree.⁴

76. The parties shall make a good faith effort to resolve and settle the question of amounts of plaintiffs' attorneys' fees and other costs pursuant to ¶ 75, *supra*, before submitting that issue to the court for resolution. Within 60 days of entry of this Second Consent Decree, plaintiffs' counsel shall submit itemizations of fees and expenses to defendants' counsel. If the parties cannot reach a resolution and agreement, plaintiffs' counsel shall submit affidavits and itemizations of attorneys' fees and expenses to the court within 120 days of entry of this Second Consent Decree. Defendants shall file objections to the fees request within 60 days of filing the affidavits and itemizations. These time periods may be extended by the court for good cause shown.

Enter this 2nd day of September,

199 .



John T. Nixon, District Judge

⁴Plaintiffs' counsel were awarded interim attorneys' fees for services rendered through December 31, 1988. [Doc. 276]

Approved for Entry:

ATTORNEYS FOR PLAINTIFFS

By: 
Lenny L. Croce
Rural Legal Services of TN, Inc.
P.O. Box 5209
Oak Ridge, TN 37831

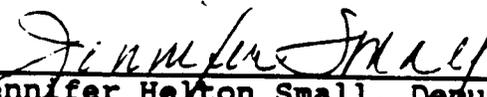
Date: 2/21/92

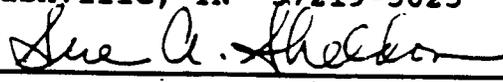
Gordon Bonnyman
Legal Services of Middle TN, Inc.
800 Stahlman Bldg.
211 Union Street
Nashville, TN 37201-1504

Jeffrey Armstrong
Martha Lionberger
Legal Services of Upper East TN
1001 W. Second North Street
Morristown, TN 37814

Gloria Samuels
Legal Services of Upper East TN
311 West Walnut Street
Johnson City, TN 37604

Charles W. Burson, Attorney General
ATTORNEYS FOR DEFENDANTS

By:  Date: 8-11-92
Jennifer Hayton Small, Deputy Attorney General
450 James Robertson Parkway
Nashville, TN 37219-5025

By:  Date: 8-11-92
Sue A. Sheldon, Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37219-5025

TENNESSEE DEPARTMENT OF HEALTH

H. Russell White
Russell White, Commissioner
344 Cordell Hull Building
Nashville, TN 37219-5025

Date: 8/1/92

TENNESSEE DEPARTMENT OF HUMAN SERVICES

Robert Grunow
Robert Grunow, Commissioner
Citizens Plaza Building
400 Deaderick Street
Nashville, TN 37219

Date: 3/3/92