



North Carolina
Department of Health and Human Services
Division of Medical Assistance
Recipient Services EIS

1985 Umstead Drive – 2512 Mail Service Center - Raleigh, N.C. 27699-2512
Courier Number 56-20-06

Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

Nina M. Yeager, Director
919-857-4019

March 21, 2002

Re: Order to Dismiss Alexander Consent Order

Dear County Director of Social Services:

As you are aware, Judge Graham C. Mullen, Chief Judge, United States District Court for the Western District of North Carolina, dismissed the Alexander Consent Order on February 5, 2002. Some changes in policy have already been implemented. The Division of Medical Assistance is continuing to pursue systems and policy changes that will allow full implementation.

Several counties have requested a copy of the Order to Dismiss. Attached is a copy of that order.

We will keep you informed as system and policy changes are implemented. If you have any questions regarding the dismissal of the order, please contact your Medicaid Program Representative.

Sincerely,

Nina M. Yeager

Attachment

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
FILE NO. C-C-74-183-M**

CLARA ALEXANDER, et al.,)
)
 Plaintiffs,)
)
v.)
)
)
DAVID BRUTON, et al.)
)
 Defendants.)

ORDER

This case, filed in 1974, is a class action against North Carolina officials for declaratory and injunctive relief on behalf of applicants for public assistance. The plaintiffs alleged violations of the federal law and regulations concerning the taking and processing of public assistance applications submitted under the North Carolina Aid to Families with Dependant Children (AFDC) and Medical Assistance (Medicaid) programs. Social Security Act, Titles IV-A and XIX; 42 U.S.C. § § 60 1, et seq. and §§ 13 96, et seq. The class was certified as a subclass on May 7, 1975.

The Defendants over the years have been subject to a series of court orders and settlement agreements pertaining to the taking and deciding of public assistance applications. The duty of the Defendants and their agents in the county departments of social services to process these applications in a timely fashion without improper discouragement or denial has been well established. Alexander v. Hill, 707 F.2d 780 (4th Cir. 1983).

In February of 1992 the parties entered into a Consent Order the requirements of which were essentially designed to assure that applications for the assistance programs were administered in conformity with applicable federal law and regulations. The

Consent Order also included a "sunset provision" by which the parties agreed that this Court would retain jurisdiction "for a period of six years from entry of this order", i.e., until August 1, 1998. Tangentially, effective January 1, 1997, AFDC was eliminated as a program of public assistance by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). Hence, after that date, this action proceeded solely with respect to the Medicaid Program in North Carolina.

In a January 16, 1997 hearing the Court instructed the Defendants' counsel to prepare an exit strategy for ending this quarter century old litigation. On March 20, 1998, the Defendants filed a Motion to Terminate Class Action Pursuant to Federal Rule of Civil Procedure 60 (b). The Defendants' Motion was based on a "Plan to Assure Timely and Quality Services to Applicants for Medicaid" (hereinafter referred to as the "Exit Plan") which was the exit strategy developed pursuant to this Court's instructions.

The Plaintiffs then filed a Motion to Continue the 1992 Consent Order or, In the Alternative, for Other Relief Prior to Termination which, inter alia, attacked various provisions of the Defendants' Exit Plan as incompatible with federal regulations governing the taking and processing of Medicaid applications. The Defendants in their Response to the Plaintiffs' Motion vigorously defended their Plan as consistent with the federal regulations.

Accordingly, in a hearing on November 17, 1999, this Court directed the Defendants to submit the Exit Plan for review by the Health Care Financing Administration of the United States Department of Health and Human Services (hereinafter referred to as "HCFA" although recently renamed the "Centers for Medicare & Medicaid Services"), the agency which supervises and regulates the Medicaid Program throughout the United States. The Defendants submitted the Exit Plan to HCFA on December 1, 1999 requesting that it address the following question of the Court:

Does the Exit Plan violate the applicable federal law or regulations controlling acceptance and processing of Medicaid applications?

After making several revisions to the Exit Plan in response to HCFA comments and concerns, the Defendants were notified by HCFA, by letters dated May 31 and June 20, 2001, that "the Exit Plan now meets all federal statutory and regulatory requirements" and "is now in compliance with all federal law and regulations." (emphasis supplied).

On July 3, 2001 the Defendants filed a Renewal Motion to Terminate Class Action Pursuant to Fed. R. Civ. P. 60(b) based exclusively on HCFA's conclusion that the Exit Plan meets all statutory and regulatory requirements and is in compliance with all federal laws and regulations.

As the supervising and regulatory agency for the Medicaid Program throughout the country with the responsibility for developing, implementing and interpreting the regulations pertaining to the Program, HCFA's conclusion regarding the Defendants' Exit Plan is entitled to considerable deference. In this situation, where HCFA has worked with the State administrators of the Medicaid Program to insure that the Exit Plan complies with all federal laws and regulations and now categorically concludes that the Plan does so comply in response to the direct inquiry posed by this Court, such deference may even be greater.

Consequently, the Court is of the opinion that it is now time to end this 27 year old litigation based upon the Defendants' HCFA approved Exit Plan.

By Order entered October 24, 2001, the Court directed the Defendants to provide specific notice to class members of the proposed dismissal of this case prior to the entry of a final order of dismissal in order to afford an opportunity for class members to object. On January 24, 2002 the Defendants filed a Declaration of Compliance with Court Order Respecting Class Action Notice of Proposed Dismissal of Litigation

declaring that all elements of the notice requirements as set out in the Order of October 24, 2001 had been satisfied. Attached to this Declaration were affidavits of publication from the five (5) newspapers into which the notice had been placed for the requisite period of time as well as correspondence from an official of the Division of Medical Assistance, North Carolina Department of Health and Human Services attesting to compliance with the other notice provisions of the October 24, 2001 Order. The Plaintiffs have not contested the Defendants' Declaration in any manner nor have they brought to the Court's attention any objection submitted to the proposed dismissal of this litigation.

Accordingly, the Court is satisfied that there has been reasonable and adequate notice to the class members of the proposed dismissal of the instant action. Additionally, there has been no objection filed by any class member with respect to the dismissal of the case.

Therefore, it is hereby, ORDERED, ADJUDGED and DECREED that the Defendants' Renewal Motion to Terminate Class Action Pursuant to Federal Rule of Civil Procedure 60(b) is granted and the Defendants' Exit Plan is accepted as the State plan to assure timely and quality services to applicants for Medicaid.

This the 5th day of February, 2002

Graham C. Mullen
United States District Judge