



## Class-action Medicaid lawsuit moves forward in Florida

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A lawsuit filed in 2005 against Florida officials accusing them of not providing adequate medical and dental services to more than 1 million Medicaid-eligible children will finally go to trial in December.

The suit, filed by the Florida Pediatric Society (FPS) and Florida Academy of Pediatric Dentistry (FAPD) against the secretary of the Florida Agency for Health Care Administration (AHCA), the secretary of the Florida Department of Children and Families, and the secretary of the Florida Department of Health, claims the state has failed to meet federal (Title XIX) requirements that low-income children receive periodic health screenings and routine dental checkups, "the primary, preventive, acute, and specialty care and services which are necessary to their good health and development."

The litigation was filed on behalf of the more than 1.6 million children who are enrolled in the state's Title XIX and Early and Periodic Screening, Diagnosis, and Treatment program, according to the plaintiffs, which include five of those children. It does not seek monetary damages but "declaratory and injunctive relief to end the violation of federal law taking place in Florida which denies our state's children the delivery of prompt, complete, and continuing healthcare."

### Reimbursement rates to blame

According to the complaint, from 1999 to 2004 at least 44% of children enrolled in Florida's Medicaid program failed to receive even one of the health checkups they were entitled to under federal law, and more than 75% of Florida's enrolled children received no dental care whatsoever. In addition, in 2004 more than 500,000 Medicaid-enrolled Florida children were furnished no preventive healthcare services at all.

"Statistical evidence shows that Florida is doing a terrible job of providing these individuals with dental care," said Stuart Singer, an attorney whose Fort Lauderdale firm, Boies, Schiller, and Flexner, is representing the FPS and FAPD in this case pro bono.

The lawsuit also accuses the state of not informing families of available healthcare services they are entitled to under Medicaid, of sending them to HMOs that are too full to serve new patients, and of paying Medicaid reimbursement rates that are too low to ensure that enough physicians and dentists participate in the program.

"A very important reason is certainly that reimbursement rates for physicians and dentists are far too low to get the level of access federal law requires," Singer said.

And despite repeated legislative proposals to increase the fees in the past three years, the state legislature has rejected the bills each time, said John Grant, an attorney and former Florida state senator who serves as the legislative advocate for the Florida Academy of Pediatric Dentistry.

"Florida has had such tremendous growth, which involves tremendous investment in infrastructure that must be built and paid for today, and the legislature has made that a priority," said Grant. "But in the dental area, we have not had an increase in reimbursement fees since 1992, not even a cost of living increase. What is paid to dentists today generally doesn't even cover their overhead."

For example, the [maximum](#) a dentist in Florida -- which [ranks](#) 44th among states in terms of Medicaid reimbursement rates -- can be reimbursed for a periodic oral evaluation is \$15, and the rate is \$16 for a comprehensive oral evaluation for a new or established patient. Compare this to [North Carolina](#), which ranks 14th in Medicaid reimbursement rates: A dentist performing an exam on a Medicaid patient there can expect to receive \$27.01 for a periodic evaluation and \$46.72 for a comprehensive exam. Similarly, in Florida the Medicaid

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— Stuart Singer, attorney representing the Florida Academy of Pediatric Dentistry

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reimbursement fee for prophylaxis for a child is \$14; in North Carolina, \$28.50.

The AHCA does not dispute the fact that Florida's reimbursement rates should be higher. In March 2009, in its 2009-2010 [budget recommendations](#) to Gov. Charlie Crist, the agency called for a 20% average increase in dental reimbursement rates, noting that the state's dental rates have not kept pace with provider costs and that providers cite low reimbursement as one reason for nonparticipation or limited participation in the Medicaid program.

### **Dismissal denied**

The agency does, however, take issue with the lawsuit now pending against it and moved to have the complaint dismissed, arguing that because the FAPD is a dissolved Florida corporation, it cannot, by law, sue the agencies, and that the plaintiffs lack "standing." But last week, Judge Adalberto Jordon in the U.S. District Court for the Southern District of Florida denied the AHCA's motion. He also granted the lawsuit class-action status and set a trial date of December 7.

Tiffany Vause, a spokesperson for the AHCA, said the agency is now "determining how it will proceed."

Singer says that if the lawsuit is successful, it will yield a declaration that Florida is operating in violation of federal law and will result in an injunction forcing the state to comply with the mandates of Title XIX. It would also require the state to ensure that payments to providers are sufficient to ensure that all Medicaid-eligible children in the state receive adequate access to care and quality of care.

"One thing everyone has agreed on is that this is one of the most cost-effective expenditures the state could make," Singer said. "Every dollar the state spends is matched dollar for dollar by the federal government. And this is preventive care, which means you are reducing healthcare spending in the long run."

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