



# Florida Chapter

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## American Academy of Pediatrics

On April 5, 2016, The Florida Chapter of the American Academy of Pediatrics, the Florida Academy of Pediatric Dentistry, Boies Schiller & Flexner LLP and the Public Interest Law Center announced a settlement agreement surrounding the 10-year-old class action suit. The settlement agreement provides for the Agency for Health Care Administration (AHCA) and other state agencies to make substantial improvements in the access of children on Medicaid to medical and dental care throughout the state, and is designed to raise Florida to at least national norms over several years. This is a work in progress, as there are details that are still being worked out, and we'll continue to communicate updates with our members as they are available. The settlement agreement also provides for remedies, including enhanced reimbursement rates for providers if AHCA does not meet those national benchmarks. The full settlement agreement and corresponding press release [can be found here](#). Below you will find answers to FAQs regarding the settlement agreement:

**How will the term “reasonable opportunity” (of providers to earn the Medicare FFS Rate) be defined?**

The Medicaid managed medical assistance (MMA) plans will propose incentive plans setting forth what they believe is a “reasonable opportunity” for eligible providers to earn the equivalent of Medicare FFS rates. AHCA will also propose a plan with what it believes constitutes a “reasonable opportunity.” The proposed plans will be reviewed by the plaintiffs, FCAAP and AHCA.

**How will measures be developed?**

The MMA plans and AHCA have the right, with input from FCAAP and plaintiffs’ counsel, to develop objective measures that providers must meet to earn the equivalent of the Medicare FFS rate. FCAAP will be working with the State to ensure the plans develop appropriate measures and to ensure that those measures are clearly communicated to practitioners.

We will be meeting with AHCA and other state agencies monthly prior to the new contract year that begins on October 1, 2016 and quarterly thereafter to ensure this settlement agreement is implemented in a manner consistent with the terms of the settlement agreement. This settlement agreement also includes provisions for these agencies to be held accountable for meeting specific health outcome measurements and quality metrics by 2019.

**How will this settlement agreement be funded?**

The State believes that efficiencies in the managed care program will result in cost savings that can be used to increase provider reimbursements. If the savings are not sufficient to permit board certified pediatricians to have a “reasonable opportunity” starting in October 2016 to earn the equivalent of the Medicare FFS rate, while maintaining the capitation rates paid to the MMA plans on an actuarially sound basis, then AHCA must take other steps to obtain the necessary funding including going to the legislature if needed.



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### **Who qualifies as “Board Certified Pediatricians” within this settlement agreement?**

Board certified pediatricians are those who are currently recognized as such by the American Board of Pediatrics or by the American Osteopathic Board of Pediatrics and for the purpose of this settlement agreement are providing primary care.

### **Will specialists who act in the capacity of pediatricians for children with special needs qualify as “Board Certified Pediatrician” within this settlement agreement?**

Specialists who are board certified physicians and are recognized by MMA plans as providing primary care for particular children with special needs will qualify for enhanced rates under this settlement agreement for treating those children.

### **Why are obstetricians included in this settlement agreement?**

While FCAAP did not include obstetricians in the lawsuit, they are in the settlement agreement as a result of negotiations. AHCA insisted that the reasonable opportunity to earn the equivalent of Medicare FFS rates starting in October 2016 extend to Obstetricians as well as board certified pediatricians.

### **How are specialists engaged in this settlement agreement?**

The settlement agreement requires that board certified pediatricians be provided with a reasonable opportunity to earn the equivalent of the Medicare FFS rates, starting with the October 1, 2016 contract. The settlement agreement calls for extending that reasonable opportunity, as funding permits, to providers in the following tiers: providers that are primary care providers, including pediatricians who are not board certified; general practitioners or family practitioners; pediatric specialists and sub-specialists.

Under the settlement agreement, all the program savings from Florida’s statewide Medicaid managed care (SMMC) MMA program must be dedicated to increased provider reimbursements for the 2016, 2017, and 2018 contract years, other than the amount the MMA plans are currently allowed to retain by statute. The settlement agreement also calls for enforcement of network adequacy ratios for primary care providers and specialists, as well as monitoring and reporting on whether MMA plans are complying with those ratios. To meet the ratios, plans will have to work with specialists and should have to pay market rates.

### **Does a pediatrician have to be certified as Patient Centered Medical Home (PCMH) in order to qualify for Medicare equivalent rates?**

No. PCMH certification is one way that AHCA has said a board certified pediatrician may earn the equivalent of the Medicare FFS rate. However, this is not a requirement of the settlement agreement and was not an issue raised by or endorsed by FCAAP.

### **Why is the Physician Incentive Program largely focused on primary care?**

All physicians are important to the overall health of the individual. Primary care services, however, are the type of services that drive success in the quality and access metrics that are being measured in this settlement agreement. Therefore, primary care is the first area to which the physician incentive payments are targeted. As the MMA program matures and as additional funding from program savings



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becomes available, AHCA will add providers in the order listed in the settlement agreement. In addition, and wholly apart from the Physician Incentive Program, any provider can negotiate with the MMA plans to receive a rate higher than the Medicaid fee schedule. And, as explained below, if AHCA does not achieve certain metrics on a statewide basis within 30 months from when the incentive plans take effect on October 1, 2016, then AHCA is required to develop a corrective action plan that will provide for pediatricians, whether board certified or not, and pediatric specialists and sub-specialists to earn the equivalent of the Medicare FFS rate for taking care of children on Medicaid under the age of 21 through an MMA plan.

### **What metrics must the MMA plans and the statewide MMA program meet?**

Within 30 months of implementation of the incentive plans, which will commence on October 1, 2016, the statewide MMA program must meet the following metrics:

The Participation Ratio, as measured on line 10 of the CMS-416 report, which is submitted to the federal government, must be at least equivalent to the national norm for the prior fiscal year. The Participation Ratio measures the percentage of children enrolled in Medicaid for at least 90 days who receive any preventive care.

The Participation Ratio, as measured on line 10 of the CMS-416 report, for children below the age of 10, must be at least equal to 75% on a weighted average.

For eight of nine specified HEDIS measures, all of which are independently audited, the statewide program must perform at least at the national Medicaid mean, for the prior calendar year.

### **How will pediatric dentists be engaged in this settlement agreement?**

The settlement agreement provides for a series of steps to increase access to and utilization of pediatric dental services and bring Florida's Medicaid program up to national norms in preventive dental care and dental treatment by no later than 2021.

### **How will the Department of Children and Families (DCF) be engaged in this settlement agreement?**

DCF will be required to continue to reduce administrative obstacles to receiving care and continue efforts to minimize wrongful terminations of Medicaid eligibility for children. FCAAP will also be engaged in regular ongoing meetings with DCF.

### **How will AHCA be held accountable surrounding this settlement agreement?**

The settlement (pending court approval) is a binding agreement with firm commitments from AHCA. For example, plans are required to offer all Board Certified Pediatricians a reasonable opportunity to earn Medicare-equivalent rates starting in October 2016. Additionally, if objective benchmarks are not met by 2019, reimbursement rates for pediatricians and pediatric specialists and sub-specialists will be increased, as noted above, and plans will no longer be able to rely on the Medicaid fee-for-service rate schedule as a baseline to determine rates to be paid to providers. Finally, while we expect that AHCA will fully implement the settlement, if there is a material and uncured breach, plaintiffs and their counsel can seek declaratory and injunctive relief, resuming the litigation.

### **Will MMA plans have different criteria for physicians to earn the Medicare FFS rate?**



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All plans must, at a minimum, include board certified pediatricians and obstetricians in the group of providers who have a “reasonable opportunity” to earn the rate incentive starting with the October 1, 2016 contract year. The plans may establish different quality-of-care prerequisites or other objective criteria for what a provider must do to earn the Medicare FFS equivalent rate. The MMA plans’ proposals will be subject to review and discussion with FCAAP, and final approval by AHCA over the summer in accordance with our settlement agreement.

### **Who is keeping the MMA plans accountable?**

There are several levels of accountability. Under the settlement agreement, both individual MMA plans and the statewide program must meet certain access to care metrics or else additional requirements are triggered. AHCA has an incentive to hold the plans accountable because their performance will determine whether the statewide program meets its required performance standards. FCAAP and plaintiffs’ counsel will also monitor the MMA plans performance, and work with AHCA to improve their performance.

### **Are there any requirements relating to the Children’s Medical Services plan?**

The settlement includes the following information as it relates to Children’s Medical Services’ involvement in the agreement terms:

*AHCA, DOH, and Plaintiffs’ Representatives will meet and collaborate in good faith on the best methods of servicing the needs of CMS children. The parties understand that DOH may identify one or more third parties to administer the CMSN Managed Care Plan on an at-risk capitated basis. If DOH contracts with one or more third-party capitated managed care plans to administer to the CMSN Plan, the third-party plans will be obligated, upon the commencement of the contract with DOH, to comply with the same contractual provisions relating to Rate Incentives for MMA Plan Providers as set forth in the Incentive Program above, including reasonable opportunities to earn the Medicare FFS Rate. AHCA will seek federal approval as necessary to facilitate the changes contemplated by this section.*

### **How does this impact Healthy Kids?**

This settlement agreement does not have a direct impact on Healthy Kids. This settlement only impacts children on Medicaid (Title XIX). Healthy Kids are under Title XXI.

### **When will we know what changes are being made?**

We are committed to keeping our members updated as decisions and processes are better established.

### **Does this settlement agreement need to be approved by the court? If so, when?**

Yes, any class action settlement has to be approved by the court. Plaintiffs recently filed a motion for preliminary approval of the settlement agreement and for approval of the plan to provide notice to class members regarding the settlement agreement. On April 29, 2016, the court granted preliminary approval of the settlement agreement and approved the notice plan and scheduled a hearing on final approval of the settlement agreement for June 28, 2016

### **Would it have been better to let a judge issue a binding judgment rather than reaching this settlement agreement?**



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All settlements involve compromise and this settlement is no exception. FCAAP and plaintiffs' counsel determined that this settlement agreement was in the best interest of children on Medicaid. This settlement agreement sets forth a process that should lead to substantially improved access to medical and dental care for the approximately the 2.3 million children in our state's Medicaid program.

### **What happens after 2019?**

This settlement agreement is intended to create long-term solutions. FCAAP can seek to resume this litigation if AHCA materially breaches the agreement or the legislature fails to fund obligations under the settlement agreement, and the metrics established by this settlement agreement are not met.

### **I have a specific inquiry, concern or comment regarding my plan or a situation with a patient. Who should I contact?**

If you have specific questions about your patients or your contract, please contact your MMA plan. In addition, if at any time you are dissatisfied with the resolution achieved by working with the MMA plan, you may contact AHCA's centralized complaint operations center at 1-877-254-1055 or online at: [http://apps.ahca.myflorida.com/smmc\\_cirts/](http://apps.ahca.myflorida.com/smmc_cirts/). If you have a serious, continuing problem, which you believe is indicative of a system wide problem, please contact us and we will relay that information to our counsel in this matter.