

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

**OKLAHOMA CHAPTER OF THE)
AMERICAN ACADEMY OF PEDIATRICS)
(OKAAP);¹ COMMUNITY ACTION)
PROJECT OF TULSA COUNTY, INC.)
(CAPTC); KATELYN M. WILBANKS,)
by her mother and next friend, Tracy)
Turner; JOSHUA LEE O'NEAL, ERIC)
HARMAN CAMMISO, MELISSA ANN)
PADELDFORD, and MATHEW SCOTT)
PADELDFORD, by their mother and next)
friend Lisa Padelford; CHRISTY A.)
TOWLER, KATHERINE P. TOWLER,)
and JACOB W. TOWLER, by their parents)
and next friends, Rowena Towler and Kevin)
Towler; CHARLES A. SCANLAN and)
ROBERT M. GARVIN, by their parents and)
next friends, Janice Garvin and Theodore)
Garvin; JACOB W. HERCULES and)
EVERETT L. HERCULES, by their parents)
and next friends, Regina Hercules and Gus)
Hercules; and STEPHANIE MONCRIEF,)
by her mother and next friend, Heather)
Brooke Rogers,)**

Plaintiffs,

v.

Case No. 01-CV-0187-CVE-SAJ

**MICHAEL FOGARTY, Chief Executive)
Officer of the Oklahoma Health Care)
Authority (OHCA); LYNN MITCHELL,)
State Medicaid Director; CHARLES ED)
McFALL, Chairman of the OHCA Board)
of Directors; T.J. BRICKNER, JR.,)
Vice-Chair of the OHCA Board of Directors;)
WAYNE HOFFMAN, Member of the OHCA)
Board of Directors; JERRY HUMBLE,)
Member of the OHCA Board of Directors;)**

¹ OKAAP has been dismissed from this lawsuit as a result of the Court's Findings of Fact and Conclusions of Law, issued March 22, 2005. However, OKAAP remains in the caption of this case so as to eliminate confusion.

RONALD ROUNDS, O.D., Member of the)
OHCA Board of Directors; GEORGE)
MILLER, Member of the OHCA Board of)
Directors; LYLE ROGGOW, Member of the)
OHCA Board of Directors,)
)
Defendants.)

FINAL JUDGMENT AND PERMANENT INJUNCTION

On March 22, 2005, the Court entered Findings of Fact and Conclusions of Law after having tried all issues presented before it in this matter. Consistent with the Findings of Fact and Conclusions of Law, the Court now hereby enters its Final Judgment and an Permanent Injunction.

This Court has subject matter jurisdiction under 28 U.S.C. § 1331, which confers on the federal district courts original jurisdiction over all civil suits arising under the Constitution and laws of the United States, and 28 U.S.C. § 1343(a)(3) and (4), which confers on the federal district courts original jurisdiction over all claims asserted under 42 U.S.C. § 1983 to redress any deprivation, under color of state law, of rights, privileges, and immunities guaranteed by the Constitution of the United States and the Acts of Congress. The Court retains jurisdiction of this matter for all purposes. Pursuant to 28 U.S.C. § 2201(a), the Court declares:

(a) in violation of 42 U.S.C. §1396a(a)(30)(A), defendants are not assuring that payments are sufficient to enlist enough providers so that care and services are available to Medicaid-eligible children to the extent that such care and services are available to the general population in the geographic areas served by the Oklahoma Health Care Authority (“OHCA”);

(b) defendants are not furnishing medical assistance with reasonable promptness to all eligible individuals, in violation of 42 U.S.C. §1396a(a)(8);

(c) defendants are in substantial compliance with all Early and Periodic, Screening, Diagnosis and Treatment (“EPSDT”) provisions of the Medicaid Act other than the requirement set forth in 42 U.S.C. §1396d(r)(1)(A)(i) that they establish a periodicity schedule for EPSDT screening services “after consultation with recognized medical and dental organizations involved in child health care”;

(d) defendants’ auto-assignment/default enrollment system does not constitute a violation of 42 U.S.C. §1396u-2(a)(4)(D);

(e) defendants’ cross-agency relationship with the Oklahoma Department of Human Services (“DHS”) does not constitute a violation of 42 U.S.C. § 1396a(a)(11)(A); and

(f) defendants, in compliance with federal law, may refuse to pay for experimental treatment desired by certain class members when their decisions are based upon reasonable concern for safety.

Based upon the foregoing, the Court hereby orders and permanently enjoins defendants, their successors, officers, agents, servants, and employees who receive actual notice of the Final Judgment and Permanent Injunction by personal service or otherwise, whether acting directly or through any entity, division, department, or agency, as follows:

1. As an immediate interim measure and in keeping with the OHCA budget requests for numerous years, the OHCA Board of Directors shall institute a fee schedule for fee-for-service physician (including pediatrician) reimbursement for covered, medically necessary physician services provided to minor children under the Oklahoma Medicaid Program at the rate for each Current Procedural Terminology (“CPT”) Code that equals one hundred percent (100%) of the rate paid by Medicare for physician services as soon as possible within the strictures of the Oklahoma Open Meetings Act, 25 Okla. Stat. tit. 25, §301 et seq.; the Oklahoma Administrative Procedures

Act, Okla. Stat., tit. 75, §250 et seq.; the federal Medicaid Act, 42 U.S.C. § 1396 et seq., and other relevant state or federal law, and following all approvals necessary from the United States Centers for Medicare and Medicaid Services.

2. At its next public meeting consistent with public notice requirements of the Oklahoma Open Meetings Act, 25 Okla. Stat. § 301 et seq., and other relevant state or federal law, the OHCA Board of Directors shall authorize OHCA administrative staff to negotiate a contract, in keeping with relevant state laws, with a nationally recognized economic consulting firm to conduct a study to determine the fee-for-service reimbursement rate necessary to assure reasonably prompt access to health care for minor children in the Oklahoma Medicaid Program while also complying with the utilization and efficiency requirements of 42 U.S.C. §1396a(a)(30)(a).

3. The rates to be studied are those for covered, medically-necessary services billed by the following physicians: primary care physicians, pediatricians, neurologists and pediatric neurologists; ear, nose and throat (ENT) specialists/otorhinolaryngologists; orthopedic specialists; child psychiatrists/child psychologists; electrophysiologists; urologists; nephrologists; pediatric cardiologists; allergists/immunologists; pediatric surgeons; dermatologists; dentists and pedodontists.

4. The study shall also include a determination and analysis of physician costs and overhead data in comparison with Medicaid reimbursement rates. It shall also include a determination and analysis of commercial payer rates paid to providers. The contract shall require a final report within six months of the date that the contract is executed by both parties. OHCA shall update this reimbursement and cost study and report as needed for its own use in ensuring compliance with the statute.

5. As soon as possible within the strictures of the Oklahoma Open Meetings Act, 25 Okla. Stat. § 301 et seq., the Oklahoma Administrative Procedures Act, 75 Okla. Stat. §250 et seq., the federal Medicaid Act, 42 U.S.C. §1396 et seq., and other relevant state or federal law, and following all approvals necessary from the United States Centers for Medicare and Medicaid Services, the OHCA Board of Directors shall institute a fee-for-service fee schedule determined by the consulting firm as necessary to assure reasonably prompt access to health care for minor children in the Oklahoma Medicaid Program. The schedule shall be adjusted as needed in accordance with the updated report.

6. In the event that OHCA is unable in good faith to negotiate the contract contemplated by this Final Judgment and Permanent Injunction by August 15, 2005, or if the study contemplated by the contract is not completed within six months of the date the contract is executed by the parties, the OHCA shall adjust all Medicaid rates paid to providers so that the rates for covered, medically necessary physician services provided to minor children under the Oklahoma Medicaid Program are sufficient to ensure equal and reasonably prompt access to health care for such minor children.

7. The OHCA Board of Directors shall use its best efforts to attempt to obtain increased funding from the Oklahoma Legislature for the reimbursement changes mentioned herein; however, a lack of such funding shall not excuse compliance with this Permanent Injunction. This Permanent Injunction shall not prohibit or otherwise prevent OHCA from reducing the population, including children, eligible for Medicaid services to the statutory minimums provided by federal law or some higher number allowed by law on the basis of age, income, or other characteristic permitted by federal law. This Permanent Injunction shall not prohibit or otherwise prevent OHCA from discontinuing any optional Medicaid program, including waiver programs. This Permanent

Injunction shall not prohibit or otherwise prevent OHCA from discontinuing the Oklahoma Medicaid program in its entirety temporarily or permanently.

8. Defendants shall assure that OHCA immediately adopts and implements new periodicity schedules (for periodic comprehensive medical screening examinations, dental screening examinations and vision screening examinations) after consultation with recognized medical and dental organizations involved in child health care, including OKAAP, Oklahoma State Medical Association, and the Oklahoma Dental Association. In this regard, the OHCA Board of Directors shall invite OKAAP, the Oklahoma State Medical Association, the Oklahoma Dental Association and/or other recognized medical and dental organizations involved in child health care to appoint members to an advisory committee that will meet with the OHCA EPSDT Unit (recently renamed Child Health) staff at least annually to consult on a periodicity schedule for EPSDT services. This advisory committee shall meet no later than forty-five days after the date of this Permanent Injunction.

9. The OHCA Board of Directors shall file notice of the following with the Court within seven days of occurrence:

(a) the Board's action approving the rate increase ordered in Paragraph 1 of this Final Judgment and Permanent Injunction, including the agenda for and public minutes of the Board meeting in which such took place;

(b) the Centers for Medicare and Medicaid Services' approval or denial of the rate increase ordered in Paragraph 1, including the actual correspondence;

(c) the Board's action implementing Paragraph 2 of this Final Judgment and Permanent Injunction, including the agenda for and public minutes of the Board meeting in which such took place;

(d) execution of the contract required in Paragraph 2, including a copy of the contract;

(e) the Board's action approving the rate increase ordered in Paragraph 5 or 6 of this Final Judgment and Permanent Injunction, including the agenda for and public minutes of the Board meeting in which such took place;

(f) the Centers for Medicare and Medicaid Services' approval or denial of the rate increase ordered in Paragraph 5 or 6, including the actual correspondence;

(g) invitation to organizations as provided in Paragraph 8 of this Final Judgment and Permanent Injunction, with a copy of each such invitation; and

(h) the meeting of the advisory group provided in Paragraph 8, including the agenda for and public minutes of the meeting.

10. Counsel for defendants shall provide a copy of this Final Judgment and Permanent Injunction to, and obtain and file with this Court a signed and dated acknowledgment of receipt of same from, each defendant named herein.

11. The Court retains jurisdiction of this matter for a period of one (1) year from this date, or until conclusion of a compliance determination one year from this date. In that regard, **on May 19, 2006 at 9:30 a.m., the parties shall appear before the undersigned for a hearing to determine defendants' compliance with the mandate of this Final Judgment and Permanent Injunction.**

The parties shall be permitted to conduct discovery from February 20, 2006 until April 30, 2006 on

the issue of such compliance. **By May 15, 2006**, the parties shall be permitted to submit separate statements of compliance issues, if any, for the Court to address at the May 19, 2006 hearing.

IT IS SO ORDERED this 19th day of May, 2005.



CLAIRE V. EAGAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT