

For Boies Schiller, Florida Medicaid Win Was 10 Years in the Making

By **Scott Flaherty**

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When Stuart Singer first heard from another lawyer that thousands of poor children were struggling to access health and dental care under Florida's Medicaid system, it made an immediate impression.

"I remember thinking, this is a case that needs bringing," said Singer, a partner at Boies, Schiller & Flexner based in Fort Lauderdale. He soon approached the firm's chairman, David Boies, about getting involved on a pro bono basis.

"His response was, 'This is exactly the kind of case we should be doing,'" Singer recalled.

That was more than 10 years ago. In the time since, Singer, fellow Fort Lauderdale partner Carl Goldfarb and others at the firm have worked steadily alongside the Public Interest Law Center of Philadelphia to pursue a sweeping class action against Florida agencies involved with the state's Medicaid system.

Now, after a decade of litigation, the state has committed to bringing key aspects of its Medicaid program in line with nationwide standards.

"It was certainly as complex as any case that I've attempted to litigate in my 30 years," said Singer, a seasoned trial and appellate lawyer.

Since the litigation began in 2005, lawyers in supporting roles left Boies Schiller, only to come back and work on the case some more; associates became partners; and the presiding federal judge, Adalberto Jordan, was elevated from the district court to the U.S. Court of Appeals for the Eleventh Circuit, though he kept the case on his docket anyway.



Stuart Singer, left, and Carl Goldfarb of Boies, Schiller & Flexner.

Melanie Bell

A breakthrough came earlier this month, when the state signed on to a wide-ranging settlement expected to bring reforms to Florida's Medicaid system. Within days, Singer and Goldfarb expect to submit the agreement to Jordan for formal approval.

Boies Schiller worked the case in partnership with former Public Interest Law Center lawyer James Eiseman Jr., who had first put Florida Medicaid issues on Singer's radar. Public Interest Law Center staff attorney Benjamin Geffen took a prominent role after Eiseman retired.

They sued on behalf of two professional groups—now known as the Florida chapter of the American Academy of Pediatrics and the Florida Academy of Pediatric Dentistry—and individual children in the Florida Medicaid system. The suit, eventually certified

as a class action, alleged widespread deficiencies in the state's Medicaid program.

Those issues ranged from the reimbursement structure for paying doctors and dentists to obstacles that kept children from receiving preventive care and imposed long delays to see specialty doctors. The suit also alleged that administrative issues led to many eligible children being dropped from enrollment, and that Florida maintained a needlessly complex application process that deterred low-income patients.

The state denied the allegations—contending that children who needed care received it—and fought from the case's earliest stages to try to shut it down for lack of standing, among other grounds. As the years passed, Florida, led by the state's Agency for Health Care Administration (AHCA), argued that improvements in the state's system rendered much of the case moot.

"On everything, they took as many bites at the apple as they could," said Goldfarb.

The complaint largely survived a motion to dismiss in 2007, setting off roughly two years of discovery and then a bench trial that lasted almost as long. All told, the litigation included some 116 depositions, 94 trial sessions between December 2009 and January 2012, and a 153-page ruling that came down squarely against the state on Dec. 31, 2014.

"Approximately one-third of Florida children on Medicaid are not receiving the preventative medical care they are supposed to receive," Jordan wrote in his 2014 findings of fact and conclusions of law. The judge found other aspects of the state's Medicaid system equally lacking.

Singer said he remembers sitting at his computer when he received word of the judge's ruling. "It was

a sweeping affirmation of what we spent 10 years litigating about," he said.

The work, however, wasn't over. There were further proceedings on mootness issues that the state raised in its defense, and the parties also entered a mediation process overseen by a federal magistrate judge.

Finally, on April 5, the two sides announced a settlement that sets specific benchmarks designed to put Florida's Medicaid system on par with national norms within the next several years. Among other things, the deal calls for Florida to offer increased reimbursement rates for doctors who meet certain standards—a provision meant to encourage pediatricians to treat more Medicaid patients. The agreement also lays out goals for increasing the percentage of children on Medicaid who receive preventive medical and dental care.

In addition to the Medicaid improvements, Florida agreed to pay \$12 million that Boies Schiller will share with co-counsel to cover litigation fees and expenses. The amount, Singer said, would cover about 60 percent of Boies Schiller's investment in the case.

Singer acknowledges that the plaintiffs didn't get every single thing they asked for in the agreement, and stressed that Florida has made real progress in some areas over the years. For instance, the state has simplified its application process since the case started and has taken steps to make sure eligible children aren't dropped from the program—and the settlement reflects those improvements. Still, Singer said he's extremely satisfied with the result.

"That settlement—like any settlement—involves certain compromises," he said. "But I think, in terms of scope and approach, it addresses every issue we litigated."

BOIES, SCHILLER & FLEXNER LLP