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### NCAFP, NC Pediatric Society Successfully Sue Medicaid Over Vaccine Administration Fees

For more than three years the North Carolina Pediatric Society and the NC Academy of Family Physicians have advocated for the state Division of Medical Assistance (DMA) to correct an underpayment of administration fees for immunizations provided to Medicaid patients under the Vaccines For Children (VFC) program. This week, we received final word that legal action taken on behalf of our members has proved successful.

The action sought to rectify a significant underpayment on approximately half of vaccine administration payments paid by Medicaid to attested providers under the Affordable Care Act during 2013 and 2014. Superior Court Judge Beecher R. Gray ruled that the NC Division of Medical Assistance (DMA/Medicaid) shall reprocess those payments to attested primary care physicians for an extra $6.74 per affected vaccine. Furthermore, he ruled the payments must be made within 120 days.  DMA has 30 days to file an appeal.

During 2013 and 2014, all vaccines given under the VFC Program should have received the higher administration fee.  However, approximately half the administration fees were paid at a lower rate.  The amount any one practice is due will be based on how many vaccines were administered and paid at the lower level during the two years impacted by this case.  Both associations had advocated directly to Medicaid to correct the error and continued to partner on the legal case to force the issue.  Additional background information is included below.

**We would like to particularly thank a few people for their assistance in obtaining this tremendous victory for primary care.**

First, our attorney, **Joey Ponzi at Brooks Pierce**, served as a spectacular advocate on behalf of the North Carolina’s family physicians and pediatricians.  Medicaid argued that the parties lacked "standing" to bring the case, but Ponzi was able keep both the associations and some specific practices as parties to the lawsuit. He did a masterful job handling strategic and tactical court navigation as well as the complex world of Medicaid, coding, the VFC Program and the ACA. We are very lucky to have connected with such a strong advocate.  In addition, he is the son of a Goldsboro pediatrician.

Thanks to the NC Pediatric Society for their partnership and leadership in this suit.  By partnering together, the two associations provided a unified voice for primary care physicians that care for children and adolescents.  The combined effort represented more than 6,000 combined members, providing significant clout throughout the process.

We would also like to thank several specific pediatric practices that also signed on as plaintiffs and helped fund the lawsuit, along with the two associations.  They included: Blue Sky Pediatrics, Burlington Pediatrics, Cary Pediatric Center, Coastal Children’s Clinic, Goldsboro Pediatrics, Haywood Pediatric and Adolescent Medicine Group, KidzCare Pediatrics PC and Sandhills Pediatrics.  In addition, pediatricians Dr. Graham Barden, III, and Dr. Christoph Diasio researched the issue and served as technical support throughout the process.

**Background**
As you know, the Affordable Care Act (ACA) increased Medicaid rates for two classes of service: E&M codes and vaccine administrations during 2013 and 2014. The law was very specific that the vaccine rates be raised to the Regional Maximum which changed from $13.71 to $20.45 on January 1, 2013. Only about half of the administrations were paid at the correct higher rate. This affected approximately 2.5 million vaccinations in the state performed by health departments, FQHC's, pediatricians, and family physicians. (Health Departments, non-attested physicians, and FQHC's are not likely to be affected by this decision, because of the way they are paid.)

Beginning in August of 2014, the NC Pediatric Society and NCAFP had informal conversations with DMA regarding these vaccine administration issues among many other ACA related concerns.  In fact, the two organizations typically meet with Medicaid leaders at least bi-monthly now, and did so as often as once a week during the payment crisis around NCTracks.

After lengthy discussions urging NC Medicaid to correct these underpayments proved unsuccessful, the NC Pediatric Society and the NC Academy of Family Physicians joined eight private pediatric practices to retain a lawyer and request a formal ruling from DMA in hopes our members could finally be paid as required by state and federal law.   DMA’s ruling was adverse to providers, which was subsequently appealed to Superior Court Judge Beecher Gray. Judge Gray, who spent 30 years as an administrative law judge before being appointed to the Superior Court, ultimately ruled in favor of the associations.

The matter is still subject to appeal from DMA, but as of now, Medicaid has 120 days to correct the underpayments.

If you have questions or need additional information, please do not hesitate to contact NCAFP Executive Vice President Greg Griggs at ggriggs@ncafp.com or 919-833-2110.