

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated August 7, 2007, is entered into by and between Plaintiffs WESTSIDE MOTHERS; FAMILIES ON THE MOVE, INC.; MICHIGAN CHAPTER, AMERICAN ACADEMY OF PEDIATRICS; MICHIGAN CHAPTER, AMERICAN ASSOCIATION OF PEDIATRIC DENTISTS; KY. L., by his next friend PATRICIA L.; KA. L., by her next friend PATRICIA L.; K. C., by her next friend ZINA C.; S. J., by her next friend NICOLE J.; M. J., by her next friend NICOLE J.; DH. W., by her next friend DAWN W.; EL. W., by her next friend DAWN W.; EM. W., by her next friend DAWN W.; DL. W., by his next friend DAWN W.; JA. E., by her next friend DEANA H.; JE. E., by her next friend DEANA H.; M. L., by her next friend DEANA H.; AND J.C., by his next friend MONICA C. (collectively, “Plaintiffs”); and Defendants JANET OLSZEWSKI, in her official capacity as Director of the State of Michigan Department of Community Health; and PAUL REINHART, in his official capacity as Deputy Director of the State of Michigan Medical Services Administration (collectively, “Defendants” or the “State”). Plaintiffs and Defendants are collectively referred to as the “Parties.”

RECITALS

WHEREAS, Plaintiffs filed an action currently pending in the United States District Court for the Eastern District of Michigan (the “Court”), entitled *Westside Mothers v. Olszewski*, Case No. 99-73442 (E.D. Mich.) (the “Litigation”).

WHEREAS, Plaintiffs’ Second Amended Complaint asserts claims for violations of the Medicaid Act under 42 U.S.C. § 1396a(a)(8), (a)(10), and (a)(43)(A), (B), and (C), which Plaintiffs allege are enforceable under 42 U.S.C. § 1983, seeking declaratory and injunctive relief on Plaintiffs’ own behalf and on behalf of a class of persons similarly situated.

WHEREAS, the Second Amended Complaint was filed after the Litigation was remanded from the United States Court of Appeals for the Sixth Circuit, which had affirmed in part

and reversed in part the Court's partial grant of Defendants' motion to dismiss Plaintiffs' First Amended Complaint.

WHEREAS, the Parties have not begun formal discovery proceedings, have not exchanged formal document requests or interrogatories, and have not conducted depositions. There has been no answer or other responsive pleading to the Second Amended Complaint, no class action discovery, and no motion for certification of the class alleged in the Second Amended Complaint has been filed. There has been no trial in the case, nor any finding of liability on the part of the State.

WHEREAS, Plaintiffs' counsel and Defendants' counsel have exchanged informal discovery and have engaged in extensive arm's length negotiations concerning the settlement of the claims asserted in the Litigation.

WHEREAS, the Plaintiffs believe that each of their claims is meritorious. The Plaintiffs nevertheless wish to secure the benefits of this settlement promptly without the further delay inherent in continuing litigation.

WHEREAS, the State denies each of the claims asserted against it in the Litigation and denies any and all liability. The State nevertheless desires to settle the Litigation and the claims asserted in the Litigation, on the terms and conditions set forth herein, for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation.

NOW THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth below, the Parties agree to settle the Litigation under the following provisions.

PROVISIONS

Section 1. Dismissal of Complaint Without Prejudice

Promptly upon execution of this settlement agreement, Plaintiffs shall dismiss without prejudice their Second Amended Complaint. Plaintiffs agree not to bring an identical or similar suit against Defendants, the Michigan Department of Community Health, and/or their successors for two years from the date of this Settlement Agreement. The parties explicitly recognize that Plaintiffs' voluntary dismissal of this action pursuant to this Settlement Agreement does not in any way affect their ability to bring a similar or an identical action against Defendants at any place and time after two years. If, after two years, any Plaintiff brings or is a named plaintiff in an action alleging claims against Defendants, the Michigan Department of Community Health, and/or their successors, that are similar or identical to those in the Second Amended Complaint, this Agreement shall be null and void.

Section 2. Denial of Liability; No Admissions

The Parties enter into this Agreement to resolve the dispute that has arisen among them and to avoid the burden, expense, and risk of litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they have violated or breached any duty, or violated any federal, state, or local law, any regulations or guidelines promulgated pursuant to those laws, or any other applicable laws, regulations, guidelines, or any other legal requirements; and Plaintiffs continue to contend that Defendants have violated Title XIX of the Social Security Act as alleged in the Second Amended Complaint. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected therewith or relating thereto, shall be construed as an admission or concession by the Defendants of any such violations or failures to comply with any applicable law, regulation, guideline or any other legal requirements; or as an admission or

concession by the Plaintiffs that Defendants have not violated federal law in the manner alleged in the Second Amended Complaint. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of or non-compliance with any applicable law, regulation, guideline or any other legal requirements; nor shall it be offered or received as evidence in any action or proceeding as a defense to liability on the part of Defendants or as a defense to the existence of any condition constituting a violation of or non-compliance with any applicable law, regulation, guideline or any other legal requirement.

Section 3. Definitions

For the purposes of the Agreement, the terms set forth below shall have the following meanings.

3.1 “EPSDT” means Early and Periodic Screening, Diagnosis, and Treatment.

3.2 “HEDIS” means the Health Plan Employer Data and Information Set.

3.3 “Legal Designee” means the person or law firm designated by a Party under Section 7.2 of the Agreement.

3.4 “MCIR” means the Michigan Care Improvement Registry, formerly known as the Michigan Child Immunization Registry.

3.5 “MCO” means “Managed Care Organization,” and refers to those organizations that have contracted with the State to provide Medicaid services.

3.6 “MCO Outreach Report” means the report described in Section 8.2(f) of the Agreement.

3.7 “MCO Provider Report” means the report described in Section 8.5 of the Agreement.

3.8 “Party Designee” means the person or institutional position or role designated by a Party under Section 7.1 of the Agreement.

3.9 “Physician Incentive Plan Report” means a report from the MCOs to the State that describes any compensation arrangement between the MCO and a physician or physician group that may reduce or limit services to enrollees and that must be disclosed to enrollees pursuant to Section 8.1.

3.10 “Specialty Provider Report” means a report from the MCOs to the State pursuant to Sections 6.1(p) and 8.2(e).

Section 4. Reimbursement for Medical Care for Children

4.1 Effective October 1, 2006, the State increased the published Medicaid reimbursement rates for preventive medicine visits and specific newborn care codes related to EPSDT by 47%. In connection with its increase in published Medicaid reimbursement rates, the State increased the capitated rate at which it compensates MCOs to account for the increase in published rates. In consideration of the Parties’ shared interest in improving the delivery of EPSDT services to children eligible for Medicaid, the State agrees not to reduce the 2006 published rates for a period of three years from the execution date of this Agreement, and for a period of three years not to reduce the increase in such capitated rates paid to MCOs.

4.2 For the term of the commitment stated in Section 4.1, the State shall require in its contracts with MCOs that the Chief Executive Officer or other executive of the MCO certify annually: (a) that all information provided in MCO reports to the State is truthful; and (b) that the MCO has increased its payments to Medicaid providers to account for the October 1, 2006 increase

in published Medicaid reimbursement rates either (i) by increasing capitated rates at which it compensates Medicaid providers proportionately to the State's increase in capitated rates pursuant to the October 1, 2006 increase in published Medicaid reimbursement rates, or (ii) by paying its providers for services provided based on the State's published Medicaid reimbursement rates.

4.3 Defendants will work collaboratively over the next three years with Plaintiffs to seek additional funds for children's Medicaid, but do not hereby commit to going to the legislature to seek such funds.

Section 5. Reimbursement for Dental Care for Children

5.1 The State and Plaintiffs agree that the Healthy Kids Dental Program is a successful venture, and share the aspiration of expanding it to cover all counties in Michigan. The program currently covers dental care for Medicaid eligible children in 59 counties in Michigan. The State shall continue to fund the Healthy Kids Dental Program in those 59 counties, and shall not reduce the rates at which it reimburses claims for dental services in the remaining counties, for a period of three years from the execution date of this Agreement.

5.2 The State shall expand the Healthy Kids Dental Program to the remaining 24 counties, or otherwise increase access to dental services for children, when funding becomes available and will work over the next three years with Plaintiffs to obtain the funding necessary to expand the Healthy Kids Dental Program to the remaining 24 counties, but do not hereby commit to going to the legislature to seek such funds.

Section 6. Information and Reporting

6.1 **Reports.** The State shall make available to Plaintiffs certain reports, including reports that the MCOs are or will be required to provide to the State ("MCO Reports"). The State shall make each MCO Report received from an MCO available within 30 days after the

latter of (1) the date such report is due from the MCO; or (2) the date upon which such report is received from the MCO. In addition, for those MCO Reports that the State consolidates on a statewide basis (“Consolidated Report”), the State shall also make such Consolidated Report available to Plaintiffs within 30 days after the Consolidated Report is finalized by the State.

The reports subject to this Section 6.1:

- a. Annual HEDIS reports (including the data submission transmission (“DST”) regarding HEDIS for each MCO);
- b. MCO Annual Performance Improvement Plans (which are not subject to consolidation on a statewide basis);
- c. Quarterly MCO Grievance/Appeal Summary Report;
- d. Monthly blood lead testing report;
- e. MDCH MCO performance monitor report;
- f. MCIR immunization report;
- g. Annual MCO Provider Reports (which are not subject to consolidation on a statewide basis), as provided in Sections 3.7 and 8.5 of this Agreement;
- h. Physician Incentive Plan Reports (which are not subject to consolidation on a statewide basis), as provided in Sections 3.9 and 8.1 of this Agreement;
- i. Annual MCO Outreach Reports (which are not subject to consolidation on a statewide basis), as provided in Sections 3.6 and 8.2(f) of this Agreement;
- j. The names and locations of participating providers by specialty for each MCO, and by January 1, 2009, where and how many Medicaid children each such

provider saw in the previous year, as provided pursuant to Section 8.2(b) and (h) of this Agreement;

k. The names and locations of participating providers by specialty for each provider paid directly by the State on a fee-for-service basis (including dentists), and where and how many Medicaid children each such provider saw in the previous year;

l. The names and county of locations of dentists in each of the 24 counties in which the Healthy Kids Dental Program has not been instituted who provided services to Medicaid-enrolled children, the number of children each dentist saw in each year, and whether the service provided was preventative or treatment;

m. Completed Form 416s (within 30 days of submission to CMS);

n. All submissions including any non-beneficiary-specific data, including such data submitted using the MSIS protocol, to CMS for the Form 416;

o. External Quality Review Reports;

and,

p. Specialty Provider Reports, as provided pursuant to Section 8.2(e) of this Agreement.

6.2 Annual Report. The State shall provide to Plaintiffs an Annual Report, due each July 1 beginning with July 1, 2008, that shall cover the following topics to the extent that they are not included in the reports provided under Section 6.1 above:

a. A list of the actions (if any) that the State has taken in the prior year to enforce or otherwise relating to provisions in MCO contracts concerning reporting and outreach;

b. Participation and Screening Progress Report. The Annual Report shall include a calculation of the Participation Ratio and Screening Ratio reported by each MCO and by

the State, including each age group reported on Form CMS-416. Each Annual Report subsequent to the first Annual Report shall include this information from prior Annual Reports in order to show the progress on these measures. Neither the State nor the MCOs will count a screen as having occurred unless all 5 elements of the mandatory EPSDT comprehensive unclothed examination are provided.

c. Plaintiffs' Recommendations. For each topic that Parties have discussed at a Consultation Meeting under Section 7.4, the State shall include in the Annual Report:

- i. The topic discussed between the State and Plaintiffs;
- ii. Specific recommendations made by Plaintiffs with regard to each topic discussed;
- iii. The actions (if any) that the State has taken with regard to each topic discussed; and
- iv. The reason(s) why any recommendation made by Plaintiffs was not implemented.

d. A description of the methods used by the State and/or by MCOs in the prior year for outreach to Medicaid-eligible persons, including methods to disseminate information about transportation and scheduling assistance.

e. Attachments. The State shall include as attachments to its Annual Report documents used by the State and/or by MCOs during the prior year to inform children and their guardians of the availability of EPSDT services, age-appropriate immunizations, and assistance from the State. Such documents shall include: "Michigan Free Health Check-ups," "Fee-For-Service Handbook," "EPSDT Letter," "Are You 11-19 Years Old?", "Protect Babies and Toddlers from Serious Diseases," "Michigan Vaccines for Children," and "Medicaid Health Plan (MHP)

Information.” If any document used in the year prior to the Annual Report was used in a prior year and was attached to a prior Annual Report, the State need not attach such document and may instead list the document in the Annual Report with a statement that it has not changed since the prior year.

6.3 Scope of Reporting Obligation. The reporting obligations herein shall continue for a period of five years from the execution date of the Agreement, or until otherwise agreed by the Parties in writing.

6.4 Plaintiff Access to Information. In addition to the information and reports to which Plaintiffs are entitled pursuant to this Settlement Agreement, the State shall produce to Plaintiffs’ counsel upon 30 days notice additional public documents otherwise available pursuant to the Michigan or federal Freedom of Information Act.

Section 7. Consultation with Plaintiffs

7.1 Party Designees. Plaintiffs and the State shall each designate a point of contact (“Party Designee”) for communications and consultations contemplated by this Agreement. Either Party may change its Party Designee at any time and in its own discretion by sending written notice to the other Party’s Party Designee. The State may designate its Party Designee by position or role within a State agency, but shall keep Plaintiffs reasonably apprised of the individual serving that role or position and any changes in personnel with regard to that role or position. The State’s initial Party Designee shall be Neil Oppenheimer, the Assistant to the Director of the Medical Services Administration of the Michigan Department of Community Health (telephone 517-241-8704). Plaintiffs’ initial Party Designee shall be Dr. Charles Barone, Chair, Department of Pediatrics – Henry Ford Health System, 4B 1 Ford Place, Detroit, MI 48202 (telephone 313-874-9591).

7.2 Legal Designees. Plaintiffs and the State shall each designate outside counsel as a point of contact (“Legal Designee”) for communications related to the Parties’ obligations under this Agreement or the interpretation of this Agreement. The State’s initial Legal Designee shall be Covington & Burling LLP, Charles A. Miller or Edward H. Rippey (telephone 202-662-6000). Plaintiffs’ initial Legal Designee shall be Dechert LLP, Richard L. Berkman (telephone 215-994-4000). Neither Party shall be required to pay, in whole or in part, for the services of the Legal Designee of the other Party.

7.3 No Other Contacts. All notices and reports required or allowed to be made by one Party to the other Party under this Agreement shall be made by and to the Parties’ respective Party Designees. In addition, the Parties agree that to avoid misunderstanding or miscommunication, each Party shall ensure that all communications between the Parties related to the Litigation, this Agreement, and the obligations, communications, and contacts contained herein are initiated only by a Party Designee or a Legal Designee, and that such communications are made only to the other Party Designee or Legal Designee.

7.4 Consultation Meeting. The State shall, at the request of Plaintiffs’ Party Designee and with appropriate advance notice, meet and confer with Plaintiffs and Plaintiffs’ appropriate consultants at a mutually convenient time at a Consultation Meeting of sufficient duration to discuss any or all of the following topics as requested by Plaintiffs, such request not to be made more than two times per calendar year, and such Consultation Meeting not to exceed eight hours unless mutually agreed to by the Party Designees:

a. **MCO Reports.** The Parties may discuss improvements that could be made to the accuracy and usefulness of the reports listed in Section 6.1, including suggestions for new reports.

b. Outreach. The Parties may discuss ways that the State, working in conjunction with Plaintiffs and the MCOs, could make improvements to outreach efforts by the State and MCOs.

c. Training. The Parties may discuss how training could be made available in the requirements of EPSDT and the benefits and goals of a true medical home to primary care physicians that provide EPSDT services to children enrolled in Medicaid. The training to be considered could include, *e.g.*, information about the content of required EPSDT screenings, techniques for assisting families with scheduling and obtaining transportation benefits, and information about other EPSDT benefits. In addition, such training to be considered could contain a more detailed session to be given to physicians who are not pediatricians but nonetheless are primary care physicians for children. The parties may discuss developing a training program in conjunction with the Michigan Chapter of the AAP, coordinating training with the Michigan Chapter of the American Academy of Family Medicine, the Michigan State Medical Society, and any other significant physician organizations in Michigan.

d. Strategies and Benchmarks for Achieving EPSDT Participation and Screening Goals. The Parties may discuss plans for and progress toward meeting specified goals for EPSDT screening and participation.

e. Extended Provider Hours. The Parties may discuss strategies by which providers, and particularly primary care physicians, may be induced to provide more weekend and extended hours in order better serve the needs of Medicaid enrollees.

f. Scheduling Facilitators. The Parties may discuss strategies by which providers may be induced to employ individuals to help beneficiaries schedule appointments and to

remind beneficiaries when appointments are needed according to the State's periodicity schedule, and reminder calls when appointments are actually scheduled.

g. Standardized Medical Reporting Forms. The Parties may discuss the State and MCOs requiring (through a phase-in process) that providers use standardized medical reporting forms that document each element of the EPSDT screen and include information about referrals for dental care and referral and receipt of corrective treatment.

h. Increases to Medicaid Funding. The Parties may discuss strategies for increasing Medicaid funding for children and funding for the Healthy Kids Dental Program.

i. Standards for reporting the number, distribution, and availability of specialty care providers, as specified in Section 8.2(e) of this Agreement.

j. Other topics raised by either Party.

During such Consultation Meeting the State shall receive Plaintiffs' recommendations on the topics discussed, and include the information specified in Section 6.2(c) regarding the topics discussed in its next Annual Report.

7.5 Payment for Plaintiffs and their Designee and/or Consultants to Implement the Settlement. The State shall pay Plaintiff Michigan Chapter, American Academy of Pediatrics \$25,000 per year for 3 years to fund Plaintiffs, their Designees and/or consultants to participate in the implementation of this Settlement Agreement. The payments due under this Section 7.5 shall be made in accordance with Section 11.3 of this Settlement Agreement.

7.6 Changes to MCO Reports and Consolidated Reports. In the event that the State eliminates, replaces, or otherwise substantially modifies any MCO Report or Consolidated Report in Section 6.1, except the reports provided pursuant to Sections 6.1(g) through 6.1(l) and 6.1(p) which may not be eliminated, replaced or otherwise substantially modified except

by agreement of the Parties, the State shall provide notice to Plaintiffs of such change no later than the time at which the State notifies the MCOs of the change. Plaintiffs may submit written comments and recommendations on the revised Report within 30 days of receiving the State's notification under this Section. If Plaintiffs submit comments and recommendations, the State shall consider those comments and respond to Plaintiffs in writing within 60 days. The response shall include: (a) a list of any recommendations made by Plaintiffs; (b) a statement of whether Plaintiffs' recommendations will be implemented; and (c) if any recommendation is not implemented, the reason(s) why it was not implemented.

Section 8. MCO Relationship

8.1 Physician Incentive Plans. The State shall require in its contract with each MCO that the MCO disclose upon request from an enrollee any compensation arrangement between an MCO and a physician or physician group that may reduce or limit services to enrollees, by requiring that each MCO include the following language in the MCO's Member Handbook:

“You are entitled to ask if the plan has special financial arrangements with our physicians that can affect the use of referrals and other services that you might need. To get this information, call our Member Services department at (telephone number) and request information about our physician payment arrangements.”

The State shall require that each MCO annually attest that this language is included in its Member Handbook, and that it provides the requested information in response to enrollee requests.

8.2 Outreach. The State shall require in its contract with each MCO that the MCO:

a. Document that it has offered information to enrollees about EPSDT appointment scheduling and transportation assistance;

b. Document how many children were seen by each participating provider in the previous year with the data to be provided pursuant to Section 8.2(h) (and the State shall provide this information annually as specified in Sections 6.1 and 8.5 of this Agreement);

c. Provide the State with the waiting times to get appointments with primary care providers, the length of time actually spent waiting to see the provider, and the MCO's established criteria for monitoring appointment scheduling for routine and urgent care and for monitoring waiting times in provider offices, as described in Section II-L.7(i) of the current form contract with the MCOs (and the State shall provide this information annually as specified in Sections 6.1(g) and 8.5 of this Agreement);

d. Make available to enrollees and potential enrollees the names and location of participating primary care providers who are available to accept appointments with enrollees with reasonable promptness (and the State shall provide this information annually);

e. Report annually regarding the availability and accessibility of specialty care providers ("Specialty Provider Report"). The State shall define a set of high-incidence medical specialties that shall be the subject of such report, which set shall include, unless good cause is shown by the State not to include: allergy/immunology, cardiology, dermatology, nephrology, neurology, orthopedics, otolaryngology, psychiatry/psychology, pulmonology, urology, and surgery. The Specialty Provider Report shall include the number, distribution, and availability to Medicaid enrollees within the geographic region served by the MCO of providers within such set of specialties. The Specialty Provider Report also shall include, by specialty care provider, the waiting times to get appointments, and the length of time actually spent waiting to see the provider. The State shall define measurable standards by which the number, distribution, and availability to Medicaid enrollees of such specialty care providers shall be reported, and shall

consult with Plaintiffs regarding such standards. Such standards shall include the means to determine wait times. The State shall provide such reports to Plaintiffs under Section 6.1(p) of this Agreement. The State shall require that the initial reports pursuant to this section shall be due no later than one year from the date of this Agreement.

f. Issue annually a report listing the methods used in the prior year for outreach and indicating whether scheduling nurses or similar persons were used (and the State shall provide this information annually as specified in Section 6.1(i) of this Agreement).

g. Include in its Annual Performance Improvement Plan a description of any beneficiary incentive or other incentive plans designed to improve the quality of care and the provision of EPSDT screens. In addition to this requirement, the State shall use incentives with MCOs to encourage MCOs to provide incentives to beneficiaries and their parents to meet all EPSDT guidelines.

h. By January 1, 2008, require on each claim and encounter data submitted the submission of (i) a unique individual identifier for each individual providing the service, such as the provider's Michigan license number or National Provider Identifier (NPI), and (ii) where the service is provided (e.g., hospital, office, emergency room), to allow the State and MCOs to track where and how many Medicaid children each individual provider sees annually.

i. Make the certifications required by Section 4.2 above.

8.3 Training for EPSDT Providers. The State shall disseminate to the MCOs, and shall require that the MCOs disseminate to each participating provider, an annual bulletin that describes the EPSDT "correct or ameliorate" standard and that lists the Medicaid-coverable services found in 12 U.S.C. § 1396d(a). The bulletin also shall inform participating providers of opportunities for training in the requirements of EPSDT and the benefits and goals of a true

medical home. The State need not send a separate communication to the MCOs, but may fulfill its obligation under this section by including the bulletin in another scheduled communication. The obligation to disseminate the bulletin to participating providers may be fulfilled if the MCOs include the bulletin in their newsletter or other similar communication with participating providers.

8.4 Assignment to Providers. The State shall continue requirements of contracted MCOs to assign eligible children to a primary care provider with whom the child has an established medical relationship.

8.5 Treatment. The State shall enforce the provisions in its contracts which require MCOs to ensure that there are a sufficient number and types of providers to accommodate the needs of enrollees within each enrollment area, subject to the current exceptions specified in the State's contracts with MCOs for rural enrollment areas; and that such providers accommodate the needs of enrollees within each enrollment area with reasonable promptness. The State shall provide a report to Plaintiffs on an annual basis which shows, by MCO, the number and types of providers available to serve Medicaid enrollees in each enrollment area ("MCO Provider Report"). The MCO Provider Report also shall include the information to be provided by each MCO to the State pursuant to Section 8.2(b) and (c) of this Settlement Agreement.

8.6 Third Party Beneficiary Rights. The State will not insert a provision in its contracts with MCOs that Plaintiffs, including patients, are not third party beneficiaries of the contracts. While complying with the preceding sentence, the State reserves its right to take a position in the future regarding whether its contracts with MCOs provide third party beneficiary rights.

Section 9. Information System

9.1 MCIR. The State's experience with the MCIR has demonstrated that the availability of patient-specific information to healthcare providers can dramatically increase the number of children who receive needed medical services. To be most effective, the MCIR is not limited to Medicaid-eligible children, but instead covers all children in the State. To build upon the MCIR's successful improvement of Michigan's immunization rates, the State is currently in the process of expanding the system to cover blood screening for lead exposure. Once this expansion is complete, the State shall implement a project to expand further the system to include EPSDT information and shall use best efforts to implement this expansion by the end of 2010.

Section 10. Class Action Allegations

10.1 In light of the posture of the Litigation, the lack of class action discovery, and the absence of class certification, Plaintiffs dismiss their class action allegations.

10.2 The Class Action Fairness Act, 28 U.S.C. § 1715, does not apply to this Agreement.

Section 11. Monetary Obligations

11.1 In consideration of the obligations of this Settlement Agreement, the State shall pay to Plaintiffs a total of \$250,000, to be paid as specified in Section 11 of this Settlement Agreement.

11.2 **Attorneys' Fees and Costs.** The State will pay \$175,000 to Plaintiffs to compromise Plaintiffs' claim for costs advanced and attorneys' fees to date. Otherwise, each side shall bear its own costs and attorneys' fees. This amount shall be due as follows: (a) \$100,000 upon the signing of this Settlement Agreement; (b) \$50,000 on October 1, 2007; and (c) \$25,000 on October 1, 2008. The first \$100,000 will be paid to Dechert LLP for reimbursement of costs to

be distributed among Plaintiffs' counsel as agreed among themselves. The remaining payments will be made to the Public Interest Law Center of Philadelphia for reimbursement of the remaining costs and for attorneys' fees to be distributed among Plaintiffs' counsel as agreed among themselves.

11.3 Payment for Party Designee. The State's obligation under Section 7.5 to pay \$25,000 per year (a total of \$75,000) to fund participation in the implementation of this Settlement Agreement shall be due as follows: (a) \$25,000 on October 1, 2007; (b) \$25,000 on October 1, 2008; and (c) \$25,000 on October 1, 2009.

Section 12. General Provisions

a. Entire Agreement. This Agreement constitutes the full, complete and entire understanding, agreement and arrangement of and between the Parties with respect to the settlement of the Litigation. This Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Litigation. Except those set forth expressly in this Agreement, there are no other agreements, covenants, promises, representations or arrangements between the Parties with respect to the settlement of the Litigation.

b. Modification in Writing. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by all Parties to this Agreement, or by any counsel to whom such Parties have given a duly executed Power of Attorney. This Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

c. Execution in Counterparts. This Agreement may be signed in one or more counterparts. Each party may sign the agreement manually or by transmitting his or her signature page by facsimile or by sending a scan of the signed signature page by e-mail to all of the other

Parties. Each counterpart shall be considered an original if it includes signature pages signed by all parties manually, by facsimile, or by transmitting a signed signature page by email.

d. No Reliance. Each party to this Agreement warrants that he, she or it is acting upon his, her, or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

e. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of Michigan, without regard to conflict of laws rules. The Parties waive any objection that each such party may now have or hereafter have to the venue of any suit, action, or proceeding and irrevocably consent to jurisdiction in the federal or state courts of Michigan to enforce the terms of this Agreement, and agree to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding to enforce the terms of this Agreement, except as otherwise set forth herein.

f. Press Release. The Parties will collaborate on a press release to announce the settlement of the Litigation and their optimism that this Agreement and the collaboration among the Parties contemplated herein will engender improved access to and care for children eligible for Medicaid in Michigan.

g. Binding on Successors. This Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

h. Mutual Preparation. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it may have been prepared by

counsel for one of the Parties, it being recognized that because of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of this Agreement.

i. Gender Neutrality. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural and *vice versa*.

j. Recitals Incorporated by Reference. The Recitals are hereby incorporated by reference as part of the Agreement between the Parties.

k. Court Filings. No Party shall file any materials with the Court in support of the settlement that are inconsistent with the terms of the settlement agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed as of this 7th day of August, 2007.

PLAINTIFFS:

Dated: August 13, 2007

Richard L. Berkman, as Counsel
WESTSIDE MOTHERS, by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
FAMILIES ON THE MOVE, INC., by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
MICHIGAN CHAPTER, AMERICAN
ACADEMY OF PEDIATRICS, by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
MICHIGAN CHAPTER, AMERICAN
ASSOCIATION OF PEDIATRIC DENTISTS, by
Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
KY. L., and KA. L., by their next friend
PATRICIA L., by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
K. C., by her next friend ZINA C., by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
S. J., and M. J., by their next friend NICOLE J.,
by Counsel;

Dated: August 13, 2007

Richard L. Berkman, as Counsel
DH. W., EL. W., EM. W., and DL. W., by their
next friend DAWN W., by Counsel;

Dated: August 13, 2007

Richard L. Bertram, as Counsel
JA. E., JE. E., and M. L., by their next friend
DEANA H., by Counsel;

Dated: August 13, 2007

Richard L. Bertram, as Counsel
J.C., by his next friend MONICA C., by Counsel;
and

DEFENDANTS:

Dated: August 9, 2007

Janet Olszewski
JANET OLSZEWSKI, in her official capacity as
Director of the State of Michigan Department of
Community Health; and

Dated: AUG 9, 2007

Paul Reinhart
PAUL REINHART, in his official capacity as
Deputy Director of the State of Michigan Medical
Services Administration