

medicaid and the uninsured

September 2011

**Explaining *Douglas v. Independent Living Center*:
Questions about the Upcoming United States Supreme Court Case
Regarding Medicaid Beneficiaries and Providers' Ability to Enforce the Medicaid Act**

Introduction

Medicaid is the primary source of health insurance for low-income and other vulnerable populations in the United States today and will serve as the foundation for coverage of people with low incomes under health reform. The program is governed by the federal Medicaid Act, which sets out the basic legal framework that states that elect to participate must follow when administering their programs. When state actions appear to violate the federal law, Medicaid beneficiaries and/or providers historically have brought suit seeking to enforce specific provisions of the Medicaid Act, which itself does not speak to the role of the federal courts. Over the years, federal courts have taken a closer look at the legal criteria that beneficiaries and providers must establish before being permitted to pursue these cases. This issue -- whether the parties may maintain a cause of action -- has become an important procedural test that must be satisfied before a court will consider the underlying substantive claims in such lawsuits.

The United States Supreme Court will begin its 2011-2012 term with a case that has the potential to impact the future ability of Medicaid beneficiaries and providers to bring suit against states in federal court to enforce the requirements of the Medicaid Act. On October 3, 2011, the Court is scheduled to hear oral argument in a group of three cases, *Douglas v. Independent Living Center of Southern California*,¹ *Douglas v. California Pharmacists Association*,² and *Douglas v. Santa Rosa Memorial Hospital*³ (referred to collectively in this brief as "the *Douglas* case"). All three cases raise the same issue: whether Medicaid beneficiaries and providers can challenge a state law in federal court on the basis that it violates the federal Medicaid Act and therefore is "preempted" by the Supremacy Clause of the U.S. Constitution.

This policy brief explains the major issues raised by the *Douglas* case, answers some key questions about the parties' legal arguments, and considers potential effects of a U.S. Supreme Court decision.⁴

¹ U.S. No. 09-958.

² U.S. No. 09-1158.

³ U.S. No. 10-283.

⁴ For an earlier summary of the Supreme Court's decision to review the *Douglas* case, see Sarah Somers, National Health Law Program, *Supreme Court Grants Review of Medicaid Cases* (Jan. 2011), available at http://www.healthlaw.org/images/stories/2011_01_1_NHeLP_Independent_Living.pdf; see also Sara Rosenbaum,

Key Questions

1. What started the *Douglas* case? Who are the parties?

In response to the significant budget crisis in California, the state legislature passed a law reducing reimbursement rates by 10 percent for a variety of Medicaid providers, including pharmacy, physician, dental, adult day health, clinic, and non-emergency transportation. The Legislature enacted the rate cuts to save money necessary to balance the state budget. Because Medicaid reimbursement rates already are generally lower than private insurance reimbursement rates, Medicaid providers and beneficiaries asserted that the rate reductions would cause providers to stop participating in the Medicaid program and make it more difficult for beneficiaries to obtain necessary medical services. Consequently, a group of California Medicaid providers and beneficiaries sued the California state Medicaid agency to stop the cuts.

2. What do the providers and beneficiaries want from the federal courts?

The providers and beneficiaries' lawsuit asks the federal courts to enjoin California's new rate reduction law by issuing an order preventing its implementation. The providers and beneficiaries also want the federal courts to rule that California's rate reduction law violates the "equal access" provision of the federal Medicaid Act,⁵ which requires that states ensure payments are sufficient to attract enough providers so that services are available to Medicaid beneficiaries to the same extent that they are available to the general population in the geographic area. Finally, the beneficiaries and providers want the federal courts to recognize that they have established a cause of action to enforce the Medicaid Act in this manner.

3. Why are the providers and beneficiaries asking the federal courts for help?

Historically, Medicaid providers and beneficiaries, and not the Secretary of the U.S. Department of Health and Human Services (HHS, the federal agency that oversees the Medicaid program), have been the parties to enforce the Medicaid Act in court when states seek to reduce provider payments in ways that allegedly violate the "equal access" provision. As the providers and beneficiaries point out in their Supreme Court briefs, federal courts have heard and decided these cases for years. The providers and beneficiaries argue that the federal courts should hear their case under a "preemption" theory, which is a long-standing basis on

Medicaid and Access to the Courts, 364 New England J. of Med. 1489-91 (March 30, 2011), available at <http://www.nejm.org/doi/full/10.1056/NEJMp1100991>. The briefs filed in the *Douglas* case are available at http://www.americanbar.org/publications/preview_home/09-958.html.

⁵ 42 U.S.C. § 1396a(a)(30). CMS recently proposed a rule that would, for the first time, provide federal regulatory guidance on what states must do to demonstrate their compliance with the "equal access" provision. See Kaiser Commission on Medicaid and the Uninsured, *Provider Payments and Access to Medicaid Services: A Summary of CMS' May 6 Proposed Rule* (July 2011), available at <http://www.kff.org/medicaid/upload/8207.pdf>.

which private parties have gotten into court to enforce federal laws. Preemption theory is based on the Supremacy Clause of the U.S. Constitution, which invalidates state laws that conflict with federal laws. In the providers and beneficiaries' view, California's payment rate reductions exceed the authority granted to the state under federal law and violate the standards for establishing provider payments under the "equal access" provision of the Medicaid Act. Because the lower reimbursement rates will result in moneys withheld from providers and reduced beneficiary access to Medicaid services, the providers and beneficiaries argue that injunctive relief – preventing enforcement of the law going forward – is appropriate. The providers and beneficiaries are asking the federal courts for help because injunctive relief is only available from the courts. (The HHS Secretary only can withhold federal funds from the state.)

4. What does the state Medicaid agency want from the federal courts?

California's state Medicaid agency is asking the federal courts to rule that Medicaid beneficiaries and providers cannot sue to enforce the Medicaid Act. The state Medicaid agency argues that only Congress can determine when private parties, such as Medicaid beneficiaries and providers, can enforce federal funding statutes, such as the Medicaid Act. To do so, Congress must indicate an "unambiguous" intent to confer individual rights" to sue, and the state Medicaid agency argues that Congress has not done so in this case. The state Medicaid agency also argues that the providers and beneficiaries cannot bring suit based on a preemption theory under the Supremacy Clause. The state Medicaid agency's argument distinguishes between instances "where a state seeks to exercise regulatory power in an area that Congress has taken exclusively for itself" and cases involving the Spending Clause, which create a "quasi-contractual arrangement" between the federal and state government. In the former instance, the Supremacy Clause serves to invalidate state laws that conflict with federal laws that regulate in the same area. In the latter case, the state Medicaid agency asserts that there is no "conflict" if a state fails to comply with a federal condition to receive federal funding. Instead, the remedy is the loss of federal funding for the state, imposed by the agency, not by the court. The state Medicaid agency argues that private enforcement of federal funding statutes in court is not appropriate because it disrupts "national unity, consistency, and predictability in interpretation and administration of federal law," interferes with the states' ability to plan and budget for their Medicaid programs, and is at odds with CMS's administrative enforcement procedures.

5. What did the lower courts decide in this case?

The federal district court that initially heard the case ruled that the providers and beneficiaries did not establish a cause of action, meaning that their case could not be decided by the court. The Ninth Circuit Court of Appeals reversed this decision, holding that the

Medicaid beneficiaries and providers had met the necessary requirements to bring suit, and directed the lower court to decide the case. The district court then determined that California's law conflicted with the federal Medicaid Act's "equal access" provision because there was no evidence that the state legislature had considered how the reduced payment rates would affect factors such as efficiency, economy or quality of care. The Ninth Circuit affirmed that decision. Subsequently, the Supreme Court granted certiorari, agreeing to hear the case.

6. What is the issue that the Supreme Court will consider?

The Supreme Court will not consider whether California's rate reduction law actually violates the federal Medicaid Act. Instead, the Court will decide a procedural issue: whether the Medicaid providers and beneficiaries should be allowed to bring this lawsuit seeking to enforce this provision of the federal Medicaid Act.

7. What are the implications if the Supreme Court rules for the providers and beneficiaries?

If the Supreme Court decides that the providers and beneficiaries have established a cause of action under a preemption theory, the lawsuit can go forward, and the federal courts will rule on the substantive issue in the case: whether California's proposed provider rate reductions violate the "equal access" provision of the Medicaid Act. The providers and beneficiaries argue that courts that have considered that issue before have all held that the "equal access" provision of the Medicaid Act prevents a state from basing provider payment rate reductions solely on state budgetary considerations, as they allege is the case with California's recent law. If the Supreme Court rules in favor of the providers and beneficiaries, they also can proceed with their request for injunctive relief, asking the federal court to prevent implementation of the rate reductions while the lawsuit is pending.

8. What are the implications if the Supreme Court rules for the state Medicaid agency?

If the Supreme Court rules in favor of the California state Medicaid agency, Medicaid providers and beneficiaries will not be able to bring suit under a preemption theory to enforce the Medicaid Act's "equal access" provision. Courts generally have not recognized another basis for private party enforcement of the "equal access" provision; consequently, if the Supreme Court invalidates a preemption theory as a basis for these lawsuits, Medicaid beneficiaries and providers are unlikely to be able to ask a court to prevent enforcement of future state rate reductions that negatively impact beneficiary access to services.

If Medicaid providers and beneficiaries cannot go to federal court, the only way to enforce the Medicaid Act will be through the state Medicaid plan administrative approval

process. The HHS Secretary must approve state Medicaid plans and plan amendments as consistent with federal requirements. If a state disagrees with the Secretary's determination, it can request an administrative hearing for the federal agency to reconsider its decision and then seek review in federal court. In the interim, the state can keep in place the policy that is in dispute, because this administrative process does not provide for injunctive relief through which courts can stop enforcement of state laws that violate the Medicaid Act immediately, while the issue is argued on the merits. In the *Douglas* case, the court's injunction has meant that the provider cuts cannot be imposed while HHS is deciding whether they meet the requirements of the "equal access" provision.

The Supreme Court's decision in the *Douglas* case also has the potential to clarify the existing standards or establish new law regarding when private parties can sue to enforce the Medicaid Act more generally, beyond enforcement of the "equal access" provision. The Medicaid Act contains numerous provisions that structure how the program is administered, from who is eligible for benefits to what services must be provided to how states oversee the program. None of these protections are meaningful if they cannot be enforced, and thus the ability of Medicaid beneficiaries and providers to initiate lawsuits seeking to invalidate state laws that conflict with federal law is an important area to watch. Although there is no set timeframe within which the Supreme Court must act after the October 3, 2011 oral argument, the Court is likely to issue a written opinion before the close of the current term in June, 2012.

This policy brief was prepared by MaryBeth Musumeci of the Kaiser Family Foundation's Commission on Medicaid and the Uninsured.

1330 G STREET NW, WASHINGTON, DC 20005
PHONE: (202) 347-5270, FAX: (202) 347-5274
WEBSITE: WWW.KFF.ORG/KCMU

This publication (#8240) is available on the Kaiser Family Foundation's website at www.kff.org.



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