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Medicaid Reimbursement Rate Litigation: An Overview of *Armstrong v. Exceptional Child Center, Inc.*

name redacted
Legislative Attorney

April 8, 2015

Congressional Research Service
7-....
www.crs.gov
R43974

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

On March 31, 2015, the Supreme Court decided in *Armstrong v. Exception Child Center, Incorporated*, that private parties cannot seek an injunction from a federal court to prevent state Medicaid officials from implementing a state plan that may violate Medicaid's equal access requirement under federal law.

Medicaid is a cooperative federal-state program through which the federal government provides financial assistance to states for medical care and other services for poor, elderly, and disabled individuals. States have considerable discretion in administering their Medicaid program, which generally includes setting the payment rates at which providers are reimbursed for their services to Medicaid beneficiaries, but must comply with certain federal requirements. One such requirement, known as equal access, requires rates to be sufficient to enlist enough providers so that care and services under Medicaid will be at least comparable to those available to the general population.

In *Armstrong*, providers of certain Medicaid services challenged the state's reimbursement for those services, and sought to enjoin the state from implementing the reduced rates. A majority of the Court held that the Supremacy Clause of the Constitution did not provide a private right of action against state officials that are allegedly violating, or planning to violate, federal law. Further, the existence of an administrative enforcement scheme conducted by the Centers for Medicare and Medicaid Services counseled against allowing an action against the state to proceed in equity. Four Justices dissented, and would have permitted the plaintiffs to seek equitable relief from the courts to enjoin the state.

Without a private avenue of enforcement directly against states, future litigation will likely focus on federal actions to approve state plans, possibly as suits seeking review of a final agency action under the Administrative Procedure Act. The potential significance of *Armstrong* beyond the Medicaid program remains to be seen, but could inform future litigation brought by a private party seeking to compel state officials to comply with other federal statutes, or the drafting and consideration of legislation in Congress, insofar as the opinion clarifies the analysis and presumptions the Court will utilize when considering whether equitable relief has been foreclosed.

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On March 31, 2015, the Supreme Court decided in *Armstrong v. Exception Child Center, Incorporated*, that private parties cannot seek an injunction from a federal court to prevent state Medicaid officials from implementing a state plan that may violate federal law.[1] This report provides an overview of the decision in *Armstrong*, the potential implications of this decision for Medicaid, and the availability of equitable relief against state officers in federal courts generally.

Background

Medicaid

Medicaid is a cooperative federal-state program through which the federal government provides financial assistance to states for medical care and other services for poor, elderly, and disabled individuals.[2] Although participation in the Medicaid program is voluntary, states, as a condition of participation, are required to have a plan that complies with federal Medicaid statutes and regulations in order to qualify for federal assistance.[3] Nevertheless, states have considerable discretion in administering their Medicaid programs, which generally includes setting the payment rates at which providers are reimbursed for their services to Medicaid beneficiaries.[4] In the context of these rate-setting determinations, providers and others have argued that reductions make reimbursement rates inadequate and have turned to the courts to challenge these reductions. When challenging these reimbursement rates, plaintiffs have often claimed that the rates violate the requirements of Section 1902(a)(30)(A) of the Social Security Act, often referred to as Medicaid's "equal access provision."[5] This provision requires a state Medicaid plan to

> provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan…as may be necessary to safeguard against unnecessary utilization of such care and services *and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area*....[6]

Medicaid beneficiaries and others have claimed that because of inadequate Medicaid reimbursement rates, the requirements of the equal access provision are not met (e.g., the state did not consider, or the state plan's methods or procedures do not assure, that Medicaid payments are

[1] Armstrong v. Exceptional Child Center, Inc., ___ S. Ct. ___ (2015).

[2] *See* 42 U.S.C. § 1396 *et seq*.

[3] For a discussion of these requirements, *see* CRS Report RL33202, *Medicaid: A Primer*, by (name redacted).

[4] For the most part, states establish their own payment rates for Medicaid providers. Federal law does not establish any method for establishing rates, but sets out some general guidelines for Medicaid payments. *See id*.

[5] 42 U.S.C. § 1396a(a)(30)(A). It should be noted that some refer to the section's requirement to "provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the [state Medicaid] plan" as Medicaid's "quality of care provision, and the remainder of the section as Medicaid's "equal access provision." This report will refer to 42 U.S.C. § 1396a(a)(30)(A) in its entirety as the "equal access provision."

[6] 42 U.S.C. § 1396a(a)(30)(A) (emphasis added). It should be noted that before it was repealed in 1997, the "Boren Amendment," directed states to pay rates for certain Medicaid services that were "reasonable and adequate" to cover the cost of "efficiently and economically operated" facilities. 42 U.S.C. § 1396a(a)(13)(A) (1982 ed.) The amendment was often used to challenge Medicaid provider reimbursement rates.

consistent with efficiency, economy, and quality of care, or are sufficient to enlist providers to provide Medicaid services). In other words, plaintiffs have generally argued that the provider reimbursement rates are so low that they do not allow for sufficient care and services to be provided to beneficiaries, as compared to the care in that area that is available to individuals who do not participate in the Medicaid program.

Suing States to Enforce Federal Medicaid Requirements

In determining whether a state's provider reimbursement rates violate the equal access provision, a significant threshold question arises in these cases: whether private parties can sue to enforce these federal requirements. Because the Medicaid Act contains no express language that allows private parties to challenge reimbursement rate cuts, plaintiffs desiring to challenge cuts in Medicaid payment rates under the equal access provision have sought out other legal vehicles to bring their claims.

Section 1983 Actions

Historically, plaintiffs had brought their claims under 42 U.S.C. § 1983,[7] which allows individuals to sue local governments and state and local officers in order to redress violations of federal law.[8] Based on this cause of action, plaintiffs have alleged that state Medicaid officials violated their federal rights because the reimbursement rates did not comply with the requirements of the equal access provision. Multiple courts found that Medicaid providers and beneficiaries could enforce the equal access provision by bringing an action under Section 1983.[9] However, in 2002, the Supreme Court's decision in *Gonzaga University v. Doe* restricted plaintiffs' ability to bring an action under Section 1983.[10] As the Court explained in *Gonzaga*, "we now reject the notion that our cases permit anything short of an unambiguously conferred right to support a cause of action brought under Section 1983."[11] In the wake of *Gonzaga*, most appellate courts held that the equal access provision is not privately enforceable under Section

[7] Section 1983 provides in relevant part,

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

[8] Sean Jessee, *Comment: Fulfilling the Promise of the Medicaid Act: Why the Equal Access Clause Creates Privately Enforceable Rights*, 58 Emory L.J. 791 (2009) (citing Erwin Chemerinsky, Federal Jurisdiction 480 (5th ed. 2007).

[9] *See, e.g.,* Ark. Med. Society v. Reynolds, 6 F.3d 519, 528 (8th Cir. 1993); Methodist Hosps., Inc. v. Sullivan, 91 F.3d 1026, 1029 (7th Cir. 1996).

[10] Gonzaga Univ. v. Doe, 536 U.S. 273 (2002). In *Gonzaga*, the Supreme Court considered whether a student could enforce the provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA) by suing an institution for damages under § 1983. The Court found that FERPA creates no personal rights that may be enforced under § 1983. The Court noted that unless Congress expresses an unambiguous intent to confer individual rights, federal funding provisions like those included in FERPA provide no basis for private enforcement under § 1983. The respondent had argued that as long as Congress intended for a statute to "benefit" putative plaintiffs, the statute could be found to confer rights enforceable under Section 1983. The Court disagreed: "it is the rights, not the broader or vaguer 'benefits' or 'interests,' that may be enforced under the authority of that section." *Id*. at 283.

[11] *Id.*

1983.[12] Thus, in light of the *Gonzaga* decision, Medicaid providers and beneficiaries have sought other legal avenues for challenging Medicaid reimbursement rates.

Equitable Relief Under Ex parte Young

Plaintiffs have also sought to enforce federal laws against state officials through an equitable cause of action first recognized by the Supreme Court in *Ex parte Young*,[13] under which "federal courts may in some circumstances grant injunctive relief against state officers who are violating, or planning to violate, federal law."[14] In *Young*, the Court upheld a federal circuit court's order enjoining the Minnesota attorney general from enforcing railroad rates set by a state commission under Minnesota law.[15] The basis for the injunction in this case was the determination that the Minnesota railroad rate scheme violated the Dormant Commerce Clause, and was therefore unconstitutional.

Although actions under *Ex parte Young* are frequently permitted, the Court has found that the availability of an equitable remedy had been foreclosed by Congress. In *Seminole Tribe of Florida v. Florida*, the Court noted that "where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right, a court should hesitate before casting aside those limitations" and permitting an action against a state officer based upon *Ex parte Young*.[16] Therefore, the fact that Congress had specified a detailed process by which tribes were to enforce their rights against a state under the Indian Gaming Regulatory Act (IGRA) indicated that Congress intended to preclude tribal litigants from seeking to enforce those same provisions through *Ex parte Young*.[17]

Following the narrowing of Section 1983 remedies in the wake of *Gonzaga*, private plaintiffs have sought to enjoin state officials that they believe are in violation of federal Medicaid requirements under *Ex parte Young*. In 2012, the Supreme Court had the opportunity to consider the availability of such a remedy in *Douglas v. Independent Living Center of Southern California*.[18] While the case was pending, the Centers for Medicare and Medicaid Services (CMS) approved the modifications to California's Medicaid program. In light of this "different posture," a majority of the Court voted to remand the case to the Ninth Circuit to determine what effect, if any, the administrative action should have on the question of whether a cause of action is

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[12] *See, e.g.*, Equal Access for El Paso Inc. v. Hawkins, 509 F.3d 697, 703 (5th Cir. 2007), cert. denied, 2008 U.S. LEXIS 7278 (Oct. 6, 2008)("The Medicaid Act's Equal Access provision ... does not confer individual private rights that are enforceable under section 1983."); Mandy R. ex rel. Mr. & Mrs. R. v. Owens, 464 F.3d 1139, 1148 (10th Cir. 2006) ("We join the First, Sixth, and Ninth Circuits in concluding that [the equal access provision] does not create a federal right enforceable under section 1983."); Westside Mothers v. Olszewski (Westside Mothers II), 454 F.3d 532, 543 (6th Cir. 2006) ("[W]e are not persuaded that Congress has, with a clear voice, intended to create an individual right that either Medicaid recipients or providers would be able to enforce under section 1983… We therefore hold that § 1396a(a)(30) does not confer enforceable rights ... "); Sanchez ex rel. Hoebel v. Johnson, 416 F.3d 1051, 1059-60 (9th Cir. 2005) (same). *But see* Pediatric Specialty Care, Inc. v. Ark. Dep't of Human Servs., 443 F.3d 1005, 1015-16 (8th Cir. 2006) (finding equal access provision created an enforceable private right for recipients and providers).

[13] 209 U.S. 123 (1908).

[14] Armstrong v. Exceptional Child Center, Inc., ___ S. Ct. ___ (2015) (citing Ex parte Young, 209 U.S. at 155-156).

[15] Ex parte Young, 209 U.S. at 145.

[16] Seminole Tribe of Florida v. Florida, 517 U.S. 44, 74 (1996).

[17] *Id.* at 75 (1996) ("it is difficult to see why an Indian tribe would suffer through the intricate scheme of IGRA when more complete and more immediate relief would be available under Ex parte Young.")

[18] 132 S. Ct. 1204 (2012).

available under the Supremacy Clause.[19] Four Justices dissented from the majority opinion. In the dissent's view, the administrative actions by CMS "have no impact on the question" of the availability of a cause of action under the Supremacy Clause. Upon reaching that question, the dissent would have held that the Supremacy Clause does not provide an independent cause of action where Congress has declined to provide a private right of action to enforce a federal statute.[20]

Armstrong v. Exceptional Child Center

During the October 2014 term, the Supreme Court was again presented with the question posed by *Douglas*, namely, whether the Supremacy Clause independently provides a cause of action to prevent state officials from violating a federal statute. The facts of this case, *Armstrong v. Exceptional Child Center, Incorporated*, are similar to the facts of *Douglas*. In *Armstrong*, Idaho's reimbursement rates for providers of "habilitation services" were challenged by providers of these services. As in *Douglas*, the *Armstrong* plaintiffs argued that the rates were in violation of the equal access provision required under Medicaid. However, in contrast to *Douglas*, Idaho's rates had already received approval from CMS. Therefore, *Armstrong* presented an opportunity for the Court to squarely address the question presented in *Douglas*, but without the risk of intervening administrative action requiring a remand to the lower courts.

Majority Opinion

In answer to that question, a majority of the Court held that the Supremacy Clause did not provide a cause of action for private parties to enforce the Medicaid equal access requirement. While recognizing that federal courts are empowered to enjoin state enforcement actions that are preempted by federal law, the majority held that this power is not derived from the Supremacy Clause, but from courts' inherent equitable powers. The Supremacy Clause merely provides a "rule of decision" when courts are confronted with a conflict between state and federal law.[21] But, the authority to resolve that conflict must come from another source, such as a statutory cause of action created by Congress or the equitable powers of the judiciary.

With respect to whether the courts could enjoin Idaho's implementation of its Medicaid rates as a form of equitable relief, the majority found that Congress had foreclosed such an option for the plaintiffs. This holding was grounded on two main observations. First, a separate enforcement mechanism had been provided by Congress in the form of the withholding of federal funds from a noncompliant state Medicaid plan. Second, the majority found the terms of the equal access provision to be judicially unadministrable. In particular, the majority stated,

> It is difficult to imagine a requirement broader and less specific than §30(A)'s mandate that state plans provide for payments that are "consistent with efficiency, economy, and quality of care," all the while "safeguard[ing] against unnecessary utilization of . . . care and services." Explicitly conferring enforcement of this judgment-laden standard upon the Secretary alone establishes, we think, that Congress "wanted to make the agency remedy that it provided

[19] Douglas v. Independent Living Center of Southern California, 132 S. Ct. 1204, 1210-11 (2012).

[20] *Id.* at 1213-15 (Roberts, C.J. dissenting).

[21] Armstrong, ___ S.Ct. ___, slip op. at 3.

> exclusive," thereby achieving "the expertise, uniformity, widespread consultation, and resulting administrative guidance that can accompany agency decisionmaking," and avoiding "the comparative risk of inconsistent interpretations and misincentives that can arise out of an occasional inappropriate application of the statute in a private action."[22]

Dissent

Four Justices dissented in *Armstrong*, arguing that while the Supremacy Clause may not provide the plaintiffs with a cause of action, the evidence of congressional intent to foreclose equitable relief was insufficient.[23] In particular, the dissent argued that the agency enforcement mechanism in Medicaid was not the type of "detailed remedial scheme" that had previously been relied upon by the Court to deny equitable relief.[24] In addition to concerns about the weight given to alternative enforcement mechanisms in this case, the dissent may also have disagreed with the burden the majority required the plaintiffs to meet before they would be allowed to seek equitable relief.[25] Specifically, the dissent observed that

> equitable preemption actions differ from suits brought by plaintiffs invoking 42 U. S. C. §1983 or an implied right of action to enforce a federal statute. Suits for "redress designed to halt or prevent the constitutional violation rather than the award of money damages" seek "traditional forms of relief." By contrast, a plaintiff invoking §1983 or an implied statutory cause of action may seek a variety of remedies—including damages—from a potentially broad range of parties. Rather than simply pointing to *background equitable principles* authorizing the action that Congress presumably has not overridden, such a plaintiff must demonstrate specific congressional intent to create a statutory right to these remedies.[26]

In other words, the dissent would appear to view equitable relief as a "traditional" and "background" form of relief that Congress must affirmatively foreclose, rather than a legislatively created cause of action that Congress must affirmatively create.[27] The dissent further stated that "For these reasons, the principles that we have developed to determine whether a statute creates an implied right of action, or is enforceable through §1983, are not transferable to the *Ex parte Young* context."[28]

Concluding Observations

The immediate effect of the *Armstrong* decision would appear to be the insulation of state Medicaid programs and officials from suits brought by private parties, such as beneficiaries or providers, alleging violations of federal Medicaid requirements. Without a private avenue of

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[22] *Id.* at 7. Four justices in the majority further opined that the Medicaid statute itself did not provide a private cause of action. Justice Breyer, who was part of the five-justice majority, did not join this part of the opinion. *Id.* at 10-11.

[23] Armstrong, ___ S.Ct. ___, slip op. at 1 (Sotomayor, J., dissenting).

[24] *Id.*

[25] *Id.* at 4-5.

[26] *Id.*

[27] *Id.* at 4 ("because Congress is undoubtedly aware of the federal courts' long-established practice of enjoining preempted state action, it should generally be presumed to contemplate such enforcement unless it affirmatively manifests a contrary intent.")

[28] *Id.* at 4-5.

enforcement directly against states, future litigation will likely focus on federal actions to approve state plans, possibly as actions seeking review of a final agency action under the Administrative Procedure Act. Though the availability of such a cause of action may not be in doubt, whether the level of review in the context of such an action is sufficient may be a topic of future debate. As noted by Justice Breyer in his concurrence in *Armstrong*,

> The law may give the federal agency broad discretionary authority to decide when and how to exercise or to enforce statutes and rules. As a result, it may be difficult for respondents to prevail on an APA claim unless it stems from an agency's particularly egregious failure to act. But, if that is so, it is because Congress decided to vest broad discretion in the agency to interpret and to enforce §30(A).[29]

The potential significance of *Armstrong* beyond the Medicaid program also remains to be seen. The Court's decision could inform future litigation brought by a private party seeking to compel state officials to comply with other federal statutes, particularly where those statutes provide mechanisms for federal agencies to enforce their requirements. Additionally, the decision may inform the drafting and consideration of legislation in Congress, insofar as the opinion clarifies the analysis and presumptions the Court will utilize when considering whether equitable relief has been foreclosed.

Author Contact Information

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

Acknowledgments

This report is based in large part on an earlier report, *Medicaid Reimbursement Rate Litigation: An Overview of Douglas v. Independent Living Center of Southern California*, by Jennifer Staman.

[29] Armstrong, ___ S. Ct. ___, slip op. at 5 (Breyer, J., concurring).