

January 2015 | Issue Brief

# Explaining *Armstrong v. Exceptional Child Center*: The Supreme Court Considers Private Enforcement of the Medicaid Act

MaryBeth Musumeci

Medicaid is the primary source of health insurance for people with low-incomes and other vulnerable populations in the United States today. 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 sued, 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 private parties, such as 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.

On January 20, 2015, the United States Supreme Court will hear oral argument in *Armstrong v. Exceptional Child Center*, a case that has the potential to impact the future ability of private parties to sue states in federal court to enforce the requirements of the Medicaid Act.<sup>1</sup> The case raises the issue of whether Medicaid 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 issue brief examines the major questions raised by the *Armstrong* case, explains the parties' legal arguments, and considers potential effects of a U.S. Supreme Court decision.

## Key Questions

### 1. WHAT STARTED THE *ARMSTRONG* CASE? WHO ARE THE PARTIES?

In 2005, the Idaho state legislature passed a law requiring the state Medicaid agency to implement a new methodology to determine provider reimbursement rates, and in 2009, the state Medicaid agency published new, higher rates based on cost studies conducted under the new methodology. The Centers for Medicare and Medicaid Services' (CMS) approved the state's new methodology in a waiver amendment. However, the new rates never were implemented because the state legislature failed to appropriate sufficient funding. A group of Idaho residential habilitation providers serving people with intellectual and developmental disabilities sued the Idaho state Medicaid agency, alleging that the state's failure to implement the new rates conflicted with federal law.

## 2. WHAT DO THE PROVIDERS WANT FROM THE FEDERAL COURTS?

The providers' lawsuit asks the federal courts to order Idaho to implement the new reimbursement rates that were established according to the new methodology approved by CMS. The providers want the federal courts to rule that Idaho's failure to implement the new rates violates the equal access provision of the federal Medicaid Act, 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.<sup>2</sup> The providers also 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 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 set provider payment rates in ways that allegedly violate the equal access provision. The courts are uniquely positioned to provide injunctive relief – ordering the state to do or not do something. By contrast, the HHS Secretary only can withhold federal funds in administrative actions to enforce state compliance with the Medicaid Act.

The Idaho providers argue that the federal courts should hear their case under a preemption theory. Preemption is based on the Supremacy Clause of the U.S. Constitution, which invalidates state laws that conflict with federal laws. In the providers' view, Idaho's failure to implement payment rates consistent with the methodology approved by CMS exceeds the authority granted to the state under federal law and violates the standards for establishing provider payment rates under the Medicaid Act's equal access provision. Because the existing reimbursement rates fail to “substantially reimburse providers their costs” and remain in place for “purely budgetary reasons,”<sup>3</sup> the providers argue that injunctive relief – ordering the state to implement the new rates – is appropriate.

The providers assert that the Supreme Court has decided numerous cases over the years in which private parties have sought relief from preempted state laws under the Supremacy Clause, and the founders understood that private parties would be able to seek injunctive relief in court against government officials who exceed Constitutional limits on their authority by seeking to enforce state laws that conflict with federal law.

## 4. WHAT DOES THE STATE MEDICAID AGENCY WANT FROM THE FEDERAL COURTS?

Idaho's state Medicaid agency is asking the federal courts to rule that providers cannot sue to enforce the Medicaid Act. The state Medicaid agency argues that only Congress can determine when private parties, such as Medicaid providers, can enforce federal funding statutes, such as the Medicaid Act. To do so, Congress either must expressly authorize private lawsuits, or the statute must indicate Congress' clear and unambiguous intent to create a private right and remedy for its violation; Idaho argues that neither condition is met in this case.

The state Medicaid agency also argues that the providers cannot bring suit to enforce the Medicaid Act based on a preemption theory under the Supremacy Clause. Idaho argues that the Supremacy Clause is not a source of federal rights but rather a rule of decision-making to resolve conflicts between federal and state laws. The

state contends that private parties only can raise preemption claims as a defense to a suit where the state seeks to regulate a private party's conduct or as an anticipatory defense in a suit challenging state law that interferes with a private party's independent federal right.

The state also argues that the Medicaid Act's equal access provision sets out a number of competing factors that must be balanced to determine compliance, which is an appropriate determination for CMS as the federal agency expert in this area, not the courts. The state asserts that the equal access provision does not entitle providers to anything, but rather conditions federal payments on the state's compliance with its terms. Idaho contends that failure to comply with a federal condition to receive federal funding under Spending Clause legislation is not a violation of federal law; instead, the remedy is the loss of federal funding for the state, imposed by the agency, not by the courts. The state points out that CMS has not initiated a compliance action based on Idaho's failure to implement the new payment rates and alleges that allowing private parties to sue in this case would change the terms of the deal to which the state agreed when it accepted federal Medicaid funds.

## **5. WHAT DID THE LOWER COURTS DECIDE IN THIS CASE?**

The federal district court that initially heard the case ruled that the providers have a cause of action and went on to find that Idaho's failure to implement the new provider payment rates violated the Medicaid Act's equal access provision. The Ninth Circuit Court of Appeals upheld this decision. The Ninth Circuit observed that the providers have a private right of action to enforce the Medicaid Act's equal access provision under the Supremacy Clause, while noting that four dissenting justices would have held otherwise when the Supreme Court last considered this issue in *Douglas v. Independent Living Center* in 2012.<sup>4</sup> Subsequently, the Supreme Court granted *certiorari*, agreeing to hear the *Armstrong* case.

## **6. WHAT IS THE ISSUE THAT THE SUPREME COURT WILL CONSIDER?**

The Supreme Court will not consider whether Idaho's failure to implement the new provider payment rates actually violates the federal Medicaid Act. Instead, the Court will decide a procedural issue: whether the Medicaid providers 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?**

If the Supreme Court decides that the providers have established a cause of action under a preemption theory, the lawsuit can go forward, and the federal courts' ruling on the substantive issue in the case -- whether Idaho's failure to implement new provider rates violates the Medicaid Act's equal access provision -- can take effect. The providers argue that courts that previously have considered that issue have held that the equal access provision prevents a state from basing provider payment rate reductions solely on state budgetary considerations, as they allege is the case in Idaho.

## **8. WHAT ARE THE IMPLICATIONS IF THE SUPREME COURT RULES FOR THE STATE MEDICAID AGENCY?**

If the Supreme Court rules in favor of the Idaho state Medicaid agency, providers and beneficiaries will be unable to sue 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 compel states to set payment rates in a way that does not negatively impact beneficiary access to services.

If Medicaid providers and beneficiaries cannot go to federal court, the only way to enforce the equal access provision will be through HHS's administrative 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 HHS's administrative process does not provide for injunctive relief. By contrast, courts can stop enforcement of state laws that violate the Medicaid Act immediately, while the issue is argued on the merits. For example, in the 2012 *Douglas* case, the court's injunction meant that the provider rate cuts could not be imposed while HHS was deciding whether the requirements of the equal access provision were met.

Moreover, CMS has limited resources to oversee the Medicaid program and has relied on private parties to bring suits to enforce the equal access mandate, as noted in an *amicus* brief in *Armstrong* filed by a group of former HHS officials.<sup>5</sup> In addition, the *Armstrong* providers note that the remedy available to CMS – withholding of federal matching funds – can end up harming the beneficiaries that the program seeks to help.

The Supreme Court's decision in the *Armstrong* 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 January 20, 2015 oral argument, the Court is likely to issue a written opinion before the close of the current term in June, 2015.

# Endnotes

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1 No. 14-15 (U.S.). For additional background, see Sara Rosenbaum, Medicaid Payments and Access to Care, 371 N. Engl. J. Med. 2345 (Dec. 18, 2014), available at <http://www.nejm.org/doi/full/10.1056/NEJMp1412488>; National Health Law Program, Update on Private Enforcement of the Medicaid Act: The Supremacy Clause and 42 U.S.C. § 1983 (Oct. 13, 2014), available at [http://www.healthlaw.org/publications/browse-all-publications/Issue-brief-medicaid-supremacy-clause#.VK\\_uHE1oyUk](http://www.healthlaw.org/publications/browse-all-publications/Issue-brief-medicaid-supremacy-clause#.VK_uHE1oyUk). The briefs filed in the Armstrong case are available at <http://www.scotusblog.com/case-files/cases/armstrong-v-exceptional-child-center-inc/>.

2 42 U.S.C. § 1396a(a)(30)(A). In 2011, CMS 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 Payment and Access to Medicaid Services: A Summary of CMS' May 6 Proposed Rule (July 2011), available at <http://kff.org/medicaid/issue-brief/provider-payment-and-access-to-medicaid-services/>. To date, that rule has not yet been finalized.

3 *Exceptional Child Center v. Armstrong*, No. 12-35382, at 4 (9th Cir., April 4, 2014) (quoting from Stipulated Facts), available at <http://www.scotusblog.com/case-files/cases/armstrong-v-exceptional-child-center-inc/>.

4 In *Douglas*, Medicaid beneficiaries and providers sued the California state Medicaid agency, seeking to enjoin a number of proposed provider payment rate cuts. After the Supreme Court heard oral argument, but before it had issued its decision, CMS approved California's state plan amendment containing the rate cuts. Consequently, the *Douglas* majority held that the case should be sent back to the lower courts to consider the effect of CMS's approval of the state plan amendment, without deciding whether the beneficiaries and providers had a right to sue. *Douglas v. Independent Living Center*, No. 09-958 (Feb. 22, 2012), available at <http://www.supremecourt.gov/opinions/11pdf/09-958.pdf>.

5 A number of amicus briefs were filed, including those by the United States Solicitor General, some Members of Congress, 28 states, and beneficiary and provider advocacy groups. The Solicitor General contends that the Court should not recognize a private right of action to enforce the equal access provision, without deciding whether private parties can sue to enjoin state laws as preempted by federal law more generally.