



U.S. Supreme Court Issues *Douglas v. Independent Living Centers* Decision

February 22, 2012: The Supreme Court this morning issued its decision in *Douglas v. Independent Living Centers*. The issue in this case is whether providers may sue state officials to challenge Medicaid rate cuts because the cuts result in rates that are so inadequate that they violate the requirement of federal law that rates be consistent with quality of care and sufficient to ensure that beneficiaries have equal access to services (the "equal access provision"). The Court, in a 5 to 4 decision, indicates that beneficiaries and providers likely may challenge these types of rate cuts in federal court.

Hooper, Lundy, and Bookman represents the California Hospital Association, the California Medical Association and other provider associations in *Independent Living Centers* and the plaintiffs in one of the consolidated cases, *Douglas v. California Pharmacists Association*. We are also handling many other Medicaid rate cases filed both before and after the Supreme Court heard arguments in *Independent Living Centers*.

The Court remanded the cases to the Ninth Circuit. The Court concluded that the circumstances had changed since the cases were presented to the Court because the federal Centers for Medicare and Medicaid Services ("CMS") approved certain state rate cuts in October 2011 well after the Ninth Circuit's decisions before the Court, and after the cases had been briefed and argued.

California had implemented significant cuts to Medi-Cal rates without first obtaining federal approval. The 9th Circuit upheld preliminary injunctions against the rate cuts on the ground that they violated the equal access provision. The plaintiffs, including beneficiary and provider representatives and associations, sued the Director of the California Department of Health Care Services under the Supremacy Clause of the Constitution, arguing that the rate cuts were pre-empted by federal law. The Ninth Circuit agreed.

The Supreme Court granted certiorari to decide whether the plaintiffs could sue under the Supremacy Clause. After the cases were briefed and argued, CMS approved the rate cuts retroactively, even though it had previously disapproved the same cuts. Due to the changed posture of the case, the Court did not decide whether the plaintiffs could maintain a claim against the state under the Supremacy Clause.

The majority opinion, authored by Justice Breyer, held that the posture of the cases had significantly changed, warranting a remand to the Ninth Circuit. Very significantly, the Court indicated that the plaintiffs' claim may now be one directly against CMS under the Administrative Procedures Act ("APA") to challenge the agency's approval of the rate cuts. The Court state "...the APA would likely permit respondents to obtain an authoritative judicial determination of their claim."

We are very pleased that the Supreme Court appears to have recognized the ability of beneficiaries and providers to challenge Medicaid rate reductions under the APA **and** did not bar challenges under the Supremacy Clause. We think this is an incredibly significant ruling that will preserve the ability of beneficiaries and providers to ensure rates are minimally adequate so that Medicaid recipients will have access to services.

The ability of beneficiaries and providers to hold states' and CMS's feet to the fire to ensure adequate rates is critical. Without this ability, states faced with financial pressure will continue to make substantial cuts, and patients will be denied access to services. This situation will be exacerbated as more individuals are moved into Medicaid under health care reform.

We are handling several Medicaid rate cases now in which we challenge CMS's approval of rate cuts, as the Supreme Court suggests. We have received preliminary injunctions from the Central District of California in two of these cases staying federal approval, because it was invalid under the APA in that the approval was arbitrary and capricious and enjoining California from implementing the cuts. Our view is that this approach is a viable one to obtain judicial review of rate cuts.

If you would like to discuss this case, please contact us as follows:

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