Supreme Court to Rule on Medicaid Cuts to Health Care Providers
California Pharmacists Initiate Lawsuits

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It’s no secret that the federal government’s deficit crisis has prompted both Democrats and Republicans to look for cuts in federal funding to Medicaid, a program that provides drug benefits to 60 million Americans. Both the federal and state governments contribute to Medicaid costs. Federal contributions are on the decline for two reasons: (1) the end of emergency federal contributions to state Medicaid budgets, enacted as part of the 2009 stimulus bill—the American Recovery and Reinvestment Act, and (2) future reductions as part of the effort to reduce the federal deficit.

The states are in a pickle and have been for three or four years now, in part because of rising Medicaid costs and, in some states like California, statewide budget crises. Although state Medicaid rolls are increasing by 5% to 10% because of the recession, the states cannot tighten Medicaid eligibility rules. In fact, the situation is quite the contrary: the Patient Protection and Affordable Care Act expands eligibility for Medicaid in 2014, although the federal government is supposed to pay 100% of the costs of those new entrants through 2016. However, it is unlikely that the federal government, given the dire deficit and the need to cut spending, will have those extra funds.

Something, then, has to give. What gave in California in 2008 was reimbursement to health care providers. The California Medicaid benefit cuts that were enacted by the legislature in 2008 drove the California Pharmacy Association to file a lawsuit, which is at the heart of a case the Supreme Court was scheduled to hear in early October. Douglas v. Independent Living Center of Southern California has been percolating up through the federal court system since 2008, when the California legislature passed a bill reducing Medicaid payments to all health care providers by 10% starting the following year.

Pharmacies in the state were the first to file lawsuits, arguing that California’s Medicaid program (Medi-Cal) could not cut rates. The California Pharmacy Association claimed that the rate cuts would force pharmacies to leave Medi-Cal, ending access to prescription drugs for many Medicaid recipients. Because that access is guaranteed by federal law, California was, in effect, pre-empting federal law, which is illegal—at least that was the argument from the pharmacists.

California, in turn, argued—and the Obama administration Justice Department has backed the Golden State—that the pharmacists had no legal standing to challenge the Medi-Cal cuts to health care providers, which also affected physicians, hospitals, and others. The Supreme Court is to decide whether the U.S. Court of Appeals for the Ninth Circuit (which handles California) correctly held, for the pharmacists, that the Supremacy Clause to the U.S. Constitution provides a private right of action to third parties to challenge state laws pre-empted by federal law.

In August 2011, four national pharmacy groups jumped into the fray. They filed a joint brief stating that a long line of Supreme Court decisions supports the right to challenge state actions that are inconsistent with federal laws. The four groups maintain that challenges to inadequate Medicaid reimbursement rates must be allowed if they threaten patient access to pharmacy care.

Steven C. Anderson, IOM, CAE, President and Chief Executive Officer of the National Association of Chain Drug Stores, says:

We are deeply troubled about the impact that such a drastic cut in Medicaid pharmacy reimbursement will have on patient access to pharmacy care. This short-sighted proposal is not the solution to cutting spending and reducing costs. We have and will continue to urge the state to work with pharmacy and other provider groups to find cost-effective alternatives that do not jeopardize Medicaid beneficiaries’ access to health care services.

The Supreme Court’s decision will have ramifications for pharmacies way beyond California. The National Association of State Budget Officers, reported last May that 33 states planned to reduce payment to Medicaid providers in fiscal 2012. For 46 states, this already began on July 1; 16 states planned to freeze provider rates, and 27 states were considering measures to reduce prescription drug spending.

It is paradoxical that the federal court in California said that the Medi-Cal provider rates would not save California money, because cuts to Medi-Cal recipients mean they would have to start using emergency departments, leading to higher Medicaid costs for the state.

As to the effect on pharmacies, the California federal court in its decision argued that the original 10% cuts would deprive “thousands, if not millions” of Medi-Cal beneficiaries of much-needed pharmaceuticals. It also found that pharmacies would limit the scope of the services they provide to Medi-Cal beneficiaries by discontinuing the provision of at least some prescription drugs, turning away new Medi-Cal patients, laying off pharmacy employees, or reducing pharmacy hours.

Pharmacies and pharmacists in every state have a lot riding on the Supreme Court’s forthcoming decision, given the number of states about to take axes to Medicaid provider rates. But even if the Supreme Court comes down on the side of the pharmacists this time, it seems inevitable that one or more states, given billowing federal and state budget problems, will be back with the newest legal assault on Medicaid reimbursement to pharmacies and other providers.