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Administration Opposes Challenges to Medicaid Cuts

By ROBERT PEAR

WASHINGTON — Medicaid recipients and health care providers cannot sue state officials to challenge cuts in Medicaid payments, even if such cuts compromise access to health care for poor people, the Obama administration has told the Supreme Court.

States around the country, faced with severe budget problems, have been reducing Medicaid rates for doctors, dentists, hospitals, pharmacies, nursing homes and other providers.

Federal law says Medicaid rates must be “sufficient to enlist enough providers” so that Medicaid recipients have access to care to the same extent as the general population in an area.

In a friend-of-the court brief filed Thursday in the Supreme Court, the Justice Department said that no federal law allowed private individuals to sue states to enforce this standard.

Such lawsuits “would not be compatible” with the means of enforcement envisioned by Congress, which relies on the secretary of health and human services to make sure states comply, the administration said in the brief, by the acting solicitor general, Neal K. Katyal.

In many parts of the country, payment rates are so low that Medicaid recipients have difficulty finding

doctors to take them.

But, the Justice Department said, the Medicaid law's promise of equal access to care is "broad and nonspecific," and federal health officials are better equipped than judges to balance that goal with other policy objectives, like holding down costs.

The administration expressed its views in a set of cases consolidated under the name *Douglas v. Independent Living Center of Southern California*, No. 09-958.

In 2008 and 2009, the California Legislature passed several laws reducing Medicaid payment rates. Recipients and providers challenged the cuts in court, arguing that the California plan violated — and was pre-empted by — the federal Medicaid statute.

The law does not explicitly allow such lawsuits. But the United States Court of Appeals for the Ninth Circuit, in San Francisco, said beneficiaries and providers could sue under the supremacy clause of the Constitution, which makes federal law "the supreme law of the land." In reducing payment rates, the appeals court said, California violated the requirements of federal Medicaid law and threatened access to "much-needed medical care."

California appealed to the Supreme Court, which is likely to hear oral arguments in the fall, with a decision by next spring.

Consumer advocates were dismayed by the administration's position, which they said undermined Medicaid recipients' rights and access to the courts.

"I find it appalling that the solicitor general in a Democratic administration would assert in a Supreme Court brief that businesses can challenge state regulation under the supremacy clause, but that poor recipients of Medicaid cannot challenge state violations of federal law," said Prof. Timothy S. Jost, an expert on health law at Washington and Lee University, who is usually sympathetic to the administration.

Representative Henry A. Waxman of California, the senior Democrat on the Energy and Commerce Committee and an architect of Medicaid, said the administration's brief was "wrong on the law and bad policy."

"I am bitterly disappointed that President Obama would accept the position of the acting solicitor general to file a brief that is contrary to the decades-long practice of giving Medicaid beneficiaries and providers the ability to turn to the courts to enforce their rights under federal law," Mr. Waxman said. He said that he and other Democratic lawmakers planned to file a brief opposing the administration's view.

By contrast, many state officials agree with California and the Obama administration.

The National Governors Association and the National Conference of State Legislatures filed a friend-of-the-court brief endorsing California's position that Medicaid recipients and providers could not sue.

In a separate friend-of-the-court brief, Michigan and 30 other states went further. "Allowing 'supremacy clause lawsuits' to enforce federal Medicaid laws will be a financial catastrophe for states," they said.

Medicaid is financed jointly by the federal government and the states. The number of recipients and the costs increased sharply in the recent recession and will increase further with the expected addition of 16 million people to the rolls under the new federal health care law.



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