Victory for Medicaid Dental Reform Advocacy! June 2002

Federal Appeals Court Upholds Right to Sue Medicaid Programs for Violations of Federal Law

AAPD had Joined Friends of the Court Brief Urging this Ruling

On May 15, 2002 a decision was handed down in *Westside Mothers v. Haveman* by the United States Sixth Circuit Court of Appeals. This case was an appeal from a District Court opinion dismissing Medicaid beneficiaries' claims that the state of Michigan had violated provisions of the Medicaid Act, on the grounds that states could not be sued for such violations.

The Sixth Circuit decision reversed the District Court on all counts, rejecting its arguments that Medicaid is essentially a contract between the federal government and states rather than federal law, that the Medicaid statute is not the supreme law of the land, that there is no private right of action under section (§) 1983 (of the Civil Rights statutes), and that states are immune from suit for Medicaid violations.

On December 2, 2002, the U.S. Supreme Court declined to hear the state's appeal, solidifying the beneficiaries' appellate victory. (In October, the Court also declined to hear an appeal in *Odom v. Antican*, a similar case where the state had appealed to the Supreme Court.)

This ruling is significant because in a number of states, litigation or the threat thereof has led to important improvements in Medicaid dental programs. Unfortunately, in many states Medicaid dental programs have been abysmally funded over a long period of time, resulting in lack of patient and provider participation. If such legal causes of action were not permissible, an important avenue to improving the oral health care of poor children would be lost.

The American Academy of Pediatric Dentistry (AAPD) last year had signed onto an amici curiae (friend of the court) brief urging a reversal of the District Court opinion, and along with other organizations helped to underwrite the legal costs of arguing the appeal of this case. The plaintiffs' attorneys have stressed

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1 Specifically, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions.
2 Other organizations who supported the brief and related legal costs included: National Association of Public Hospitals and Health Systems, National Association of Community Health Centers, American Hospital Association, National Association of Children's Hospitals, Association of American Medical Colleges, March of Dimes Birth Defects Foundation, and Primary Care Associations in Michigan, Kentucky, and Ohio (states that would be affected by a ruling in this federal circuit).
the importance of this court brief. The National Association of Public Hospitals and Health Systems organized the brief, which was intended to reflect organizations representing providers that treat large numbers of Medicaid patients. The legal brief was prepared by the law firm of Powell, Goldstein, Frazier and Murphy in Washington, D.C., and Sara Rosenbaum, Professor of Health Law and Public Policy, George Washington University.

**Pediatric dentistry was involved in this case from the start.** The Michigan Academy of Pediatric Dentistry (a state chapter of the AAPD) was one of the plaintiffs in the original case, a 1999 class action lawsuit brought against Michigan for denial of essential medical, dental, developmental, and mental health services for children in violation of Medicaid law that requires these services be provided to eligible children.

The 3-0 decision written by Judge Merritt can be accessed through the Sixth Circuit web site: [http://www.ca6.uscourts.gov](http://www.ca6.uscourts.gov). More details on the opinion are provided below:

As noted by the Sixth Circuit, in a "detailed and far reaching" opinion, District Judge Cleland held that Medicaid was only a contract between a state and the federal government, that spending power programs such as Medicaid were not supreme law of the land, that *Ex parte Young* was not available to the plaintiffs, and that even if it were, § 1983 did not create a cause of action available to plaintiffs to enforce the Medicaid Act. In other words, Medicaid beneficiaries and providers could never enforce the provisions of the Medicaid Act in federal court. **The Sixth Circuit reversed all of these holdings.**

- **Issue: Whether Medicaid is only a contract**

  Citing *Pennhurst State School and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) (describing spending power legislation as "much in the nature of a contract.") and Justice Scalia's concurring opinion in *Blessing v. Freestone*, 520 U.S. 329, 349 (1997) (describing the person who receives the benefit of the exchange of promises between the state and federal governments as a "third party beneficiary"), Judge Cleland had decided that Medicaid was merely a contract to pay money. (133 F. Supp. 2d at 558). But, the Sixth Circuit said:

  "Contrary to this narrow characterization, the Court in *Pennhurst I* makes clear that it is using the term "contract" metaphorically, to illuminate certain aspects of the relationship formed between a state and the federal government.... It does not say that Medicaid is only a contract.... It did not limit the remedies to common law contract remedies or suggested [sic] that normal federal question doctrines do not apply.... Binding precedent has put the issue to
rest. The Supreme Court has held that the conditions imposed by the federal government pursuant to statute upon states participating in Medicaid and similar programs are not merely contract provisions; they are federal laws. (citing Bennett v. Kentucky Dep't of Educ., 470 U.S. 656, 669 (1985))."

- **Issue:** Whether acts passed under the spending power are supreme law.

The District Court said that spending power enactments are not supreme law because "they are not statutory enactments by which States must automatically submit to federal prerogatives." (133 F. Supp. 2d at 561).

In reaching this conclusion, Judge Cleland had rejected Supreme Court opinions holding spending power enactments to be supreme law, because in "recent years ... the Supreme Court has conducted a more searching analysis of the nature and extent of the Supremacy Clause." Id. The Sixth Circuit rejected this argument, first stepping through the district court's errors in Supreme Court case analysis, and then holding:

"The well established principle that acts passed under Congress' spending power are supreme law has not been abandoned in recent decisions.... We reaffirm well-established precedent holding that laws validly passed by Congress under its spending powers are supreme law of the land."

- **Issue:** Whether the suit is barred by sovereign immunity.

The District Court held that Michigan was the real party in interest and that none of the exceptions to sovereign immunity would allow the case to proceed. (133 F. Supp. 2d at 559-60). Again, the District Court holding was rejected. Citing Justice O'Connor's concurring opinion in Coeur d'Alene, 521 U.S. at 296, the Sixth Circuit noted that when a court addresses a claim made under Ex parte Young, it should simply ask "whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." And under this analysis, the Westside Mothers complaint "fit squarely within Ex parte Young." The Sixth Circuit rejected the District Court's additional reasoning and held:

1. "Since we held above that spending clause enactments are supreme law of the land, they may be the basis for an Ex parte Young action."
2. The lower court's finding that, under Ex parte Young, a court lacks authority to compel state officers performing discretionary functions "misunderstands" Young.. "An injunction to prevent a state officer from doing that which he has no legal right to do is not an interference with the discretion of an officer."
3. Termination of federal funding is not a "detailed remedial scheme" under Seminole Tribe sufficient to preclude enforcement through Ex parte Young.

- **Issue: Whether there is a private right of action under § 1983**

  The District Court had decided the case could not proceed under § 1983 because, as third party beneficiaries of the Medicaid contract, Medicaid beneficiaries would not have been able to enforce such a contract when §1983 was enacted in the 1870s. The Sixth Circuit did not acknowledge this third party beneficiary theory. Rather, it held that the Supreme Court in Blessing set down a three prong test for deciding whether a federal provision is enforceable under § 1983: (1) whether the plaintiff is the intended beneficiary of the provision (2) whether the provision sets a binding obligation on the state, and (3) whether the interests are so vague as to strain judicial competence to enforce. The panel then applied the test to find the EPSDT provisions to be enforceable.

- **Issue: Organizational Standing**

  The Sixth Circuit reversed the District Court's refusal to grant standing to the Michigan chapters of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry. However, it affirmed the lower court's finding that the Michigan Welfare Rights Organization lacked standing.