

On October 21, 2002, the Supreme Court let stand a lawsuit accusing North Carolina of condemning poor children to inadequate dental care by keeping Medicaid reimbursement for dentists so low that most of the state's dentists won't see covered patients. The state had argued without success in federal district court and the court of appeal that it cannot be sued by people who claim that the state is not following federal Medicaid law. The Supreme Court on Monday declined without comment to hear the state's appeal.

Only 16 percent of North Carolina's dentists will accept patients enrolled in the health program for the poor and disabled. Had the Supreme Court reviewed the case and ruled in the state's favor, it would have prevented nursing home residents or doctors from demanding that laws governing Medicaid be enforced, said Jane Perkins, a lead attorney on the lawsuit who works at the National Health Law Program in Chapel Hill. "if states succeeded in making this argument, which is also before the Supreme Court in the Westside Mothers case, it would mean that the federal government would be the only entity that can enforce the Medicaid Act. The plaintiffs in these cases disagree with that notion; Congress has repeatedly said that it disagrees with it -- the Justice Department has filed briefs in this case as well as the Westside case saying they disagree with it, too," Perkins said.

The lawsuit was filed on behalf of Medicaid-covered children who had to endure pain and ultimately undergo extensive treatment because their dental health suffered while they tried unsuccessfully to find a doctor who would see them. One 6-year-old had to have four of his front teeth pulled and several of his remaining teeth capped by the time his grandmother found a willing dentist located a three-hour drive from the family's home. A three year-old needed extensive dental work, including three fillings and two crowns, because the closest available dentist was a two-hour drive away and he could not receive treatment before his problems became severe and painful.

Dr. Margaret E Lochary of Matthews, president of the North Carolina Academy of Pediatric Dentistry, said Medicaid fees don't cover the cost of operating a dentist's office, which makes up about two-thirds of the fee patients pay. She does accept some Medicaid cases in emergencies, she said. "I wouldn't be in business if I took all the Medicaid that would come to me," said Lochary.

A spokesman for North Carolina Attorney General Roy Cooper said his office was forced to defend the lawsuit, though Cooper had negotiated a settlement last year, because the Legislature refused to finance the settlement. The settlement would have the state spend an

extra \$7.5 million a year on Medicaid dental payments, as well as increase accessibility by opening a toll-free number to provide the names of Medicaid-accepting dentists. "The attorney general, the Department of Health and Human Services and the plaintiffs all agreed that this would be a reasonable settlement but the Legislature decided not to put the money in the budget," said attorney Adam Searing of the North Carolina Health Access Coalition, who tried to convince lawmakers to accept the deal. Similar dental access lawsuits have been successful in at least 17 other states, Searing said. The state pays about a third of Medicaid costs and the federal government picks up most of the rest.

North Carolina Special Deputy Attorney General Ronald M. Marquette told the Supreme Court in papers that "it is for the executive branch, not private litigants, to decide whether a state had deviated" from conditions required under Medicaid. Perkins disagrees, stating "While the sovereignty of the states should be recognized, we should keep in mind that states are composed of private individuals. And, unfortunately, the entity that is the "state" can sometimes take actions that violate federal laws, such as the Medicaid Act. This harms the people of the state and they should be able to go to court to stop that harm from continuing."

The state continues to try to get the case dismissed in the district court on other grounds.