



Fact Sheet

Update on Federal Court Access—Abstention

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with a grant from the Training and Advocacy Support Center (TASC)**

July 2007

Protection and Advocacy offices continue to encounter problems with state Medicaid programs that are not meeting the requirements of the federal Medicaid Act. When clients are being harmed by ongoing violations of the Act, these offices must consider federal court litigation to obtain injunctive relief. Increasingly, attorneys representing state Medicaid agencies are successful in preventing advocates from arguing their cases in the federal forum.

Because Medicaid programs are operated by the states, their advocates have argued that the appropriate forum to hear complaints is the state administrative system. This fact sheet discusses cases addressing the question of whether a federal court should abstain from hearing Medicaid claims and the abstention doctrine generally.

Background on Abstention

Generally, federal courts should decline to decide unsettled issues of state law and avoid interfering in ongoing state court and administrative proceedings. This practice is known as abstention and falls into several categories. These various types of abstention may be appropriate when state court or administrative proceedings are ongoing or available. Generally, courts are supposed to abstain only in rare circumstances. Abstention is still the exception rather than the rule, however, because of recent successes by states in this area, advocates should expect to see these arguments raised more frequently. Some of the most commonly invoked types of abstention are discussed below.

Burford Abstention

The Burford Abstention doctrine is named for *Burford v. Sun Oil*, which involved a federal court suit against a state agency responsible for oversight and

regulation of the state oil industry.¹ The doctrine holds that "where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies" in two situations: (1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'²

Burford abstention is appropriate where a case involves: (1) a complex administrative scheme; (2) supervised by state courts; and (3) addressing complicated state law questions requiring specialized knowledge and expertise.³ Adequate and timely state court review of the administration's decision must be available in order for the federal court to abstain.⁴ Abstention, however, is not required in every case involving a complex state administrative process or even where there is a potential for conflict between federal ruling and state regulatory law or policy. Instead, the primary purpose of the state's administrative system must be to achieve a uniform policy regarding an essentially local problem.⁵ "Burford abstention prevents federal courts from bypassing a state administrative scheme and resolving issues of state law and policy that are committed in the first instance to expert administrative resolution."⁶

Courts may consider a variety of factors, such as:

- The federal importance of a constitutional challenge
- The intricacy and importance of the state regulatory scheme
- Whether the state has created a central system of judicial review allowing its courts to develop expertise in interpreting the scheme and the industry;
- The speed and adequacy of state court review

¹ 319 U.S. 315 (1943).

² *New Orleans Pub. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989).

³ *Arkansas Medical Soc., Inc. v. Reynolds*, 6 F.3d 519, 529 (8th Cir. 1993); *see also New Orleans Pub. Serv. Inc. s*, 491 U.S. at 361.

⁴ *New Orleans Pub. Serv. Inc.*, 491 U.S. at 361.

⁵ *Id.* at 362.

⁶ *Arkansas Medical Soc., Inc.*, 6 F.3d at 529.

- The likelihood of delay, misunderstanding of local law and needless federal conflict with state policy.⁷

Abstention is not automatic, and is actually disfavored when federal questions are involved. It is particularly inappropriate when:

- a litigant attacks state regulatory scheme based on federal preemption;⁸
- the state forum lacks jurisdiction over federal claims and the litigant would be denied adequate and timely review of such claims;⁹
- the case involves civil rights claims.¹⁰

Younger Abstention

Younger abstention, named for the Supreme Court case *Younger v. Harris*, is invoked to prevent interference by federal court in ongoing judicial proceedings.¹¹ It is appropriate when there are ongoing judicial proceedings involving important state interests, as long as the state proceedings could afford adequate relief for the plaintiff.¹² It can also apply to administrative proceedings, as long as there is an opportunity to raise federal issues in the proceeding itself, or on court review of the administrative decision.¹³

Some cases make a distinction between “coercive” and “remedial” proceedings. This concept originated in the Supreme Court’s decision in *Ohio Civil Rights Comm’n v. Dayton Christian Schools*.¹⁴ In that case, a state civil rights commission initiated an administrative proceeding against a private school, which then filed an action in federal court under § 1983, alleging that the

⁷ *New Orleans Pub. Serv., Inc.*, 491 U.S. at 360.

⁸ *New Orleans Pub. Serv., Inc.*, 491 U.S. at 362. Some circuits have even adopted a per se rule that abstention never applies to such cases. See, e.g., *American Petrofina Co. v. Nance*, 840 F.2d 840, 842 (10th Cir.), modified, 856 F.2d 128 (10th Cir.1988).

⁹ *Riley v. Simmons*, 45 F.3d 764, ___ (3d Cir. 1995).

¹⁰ *Assn. of Retarded Citizens of North Dakota v. Olsen*, 713 F.2d 1384 (8th Cir. 1983).

¹¹ *Younger v. Harris*, 401 U.S. 37 (1971).

¹² *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10-17 (1987)

¹³ *Ohio Civil Rights Comm’n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 625-28 (1986); see also *Middlesex County ethics Com. V. Garden State bar Ass’n*, 457 U.S. 423 (1982)

¹⁴ 477 U.S. 619 (1986).

proceedings would violate the First Amendment.¹⁵ The school argued that exhaustion of state administrative remedies is not required before filing an action under § 1983, citing *Patsy v. Board of Regents of the State of Florida*.¹⁶ The court distinguished *Patsy* because the administrative proceedings were well underway before the federal action, an important state interest was involved, and the proceedings were “coercive” and not “remedial.”¹⁷

The Supreme Court did not explain the difference between these two types of proceedings, but lower courts eventually established the distinction. “Remedial” state proceedings were initiated by the plaintiff to redress a wrong inflicted by the state. “Coercive” proceedings were ongoing proceedings that the plaintiffs did not initiate, but in which their presence was mandatory.¹⁸ Significantly, courts have held that a state proceeding may still be “pending” and abstention still appropriate where a plaintiff has chosen not to seek state judicial review of a final administrative ruling.¹⁹

Colorado River Abstention

The third type of abstention, *Colorado River*, allows the court discretion to stay or dismiss a suit in exceptional and limited circumstances where there is a substantially similar suit pending in state court.²⁰ Under *Colorado River*, a federal court may abstain in the interest of wise judicial administration when concurrent state and federal suits are parallel.²¹ Suits do not have to be identical to be parallel, but they must involve substantially the same parties and substantially the same claims.²² Furthermore, courts may only abstain where the state proceeding will dispose of all of the claims presented in the federal suit, even if those claims could have been raised in the state suit.²³ In other words, *Colorado River* abstention is invoked with the expectation that the state court proceeding will resolve the controversy.

In considering whether to abstain, a court should consider a number of factors, none of which are controlling.²⁴ Among them are the inconvenience of the federal forum for defendants, the desirability of avoiding piecemeal litigation in the interest of judicial economy, the order in which the state and federal courts

¹⁵ *Id.* at 625.

¹⁶ 457 U.S. 496 (1982); see also *Monroe v. Pape*, 365 U.S. 167 (1961).

¹⁷ 457 U.S. at 627, n. 2.

¹⁸ *Kercado-Melendez v. Aponte-Roque*, 829 F.2d 255 (1st Cir. 1987).

¹⁹ *O'Neill v. City of Philadelphia*, 32 F.3d 785, 791 (3d Cir. 1994); *Middlesex County ethics Com. V. Garden State bar Ass'n*, 457 U.S. 423 (1982)

²⁰ *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 818-20 (1976).

²¹ *Id.* at 817.

²² *AAR Int'l, Inc. v. Nimelias Enters. S.S.*, 250 F.3d 510, 517-20 (7th Cir. 2001).

²³ *TruServ Corp. v. Flegles, Inc.*, 419 F.3d 585, 591-93 (7th Cir. 2005).

²⁴ *Colorado River*, 424 U.S. at 818-19.

obtained jurisdiction measured in terms of the progress in each action, and whether federal or state law controls the litigation.²⁵ *Colorado River* holds that abstention is warranted only when the factors, taken together, constitute exceptional circumstances.²⁶

Significant Abstention Cases for Medicaid Advocates

There is significant variation among courts in how they apply the abstention doctrines. Courts considering seemingly identical fact situations will reach different conclusions. Thus, identifying trends in these cases is problematic. A few themes emerge, however:

- Courts appear to be more likely to abstain in cases involving children under the jurisdiction of state departments of social services because these children are frequently the subject of ongoing juvenile or family court supervision;
- Courts have abstained more frequently in cases involving Medicaid providers, perhaps because the state administrative systems for providers at issue in these cases have been more comprehensive;
- The distinction between the three types of abstention discussed here can be indefinite – in many cases, courts will consider whether more than one type of abstention is appropriate;
- Courts are more frequently abstaining in Medicaid cases than they have in previous decades.

Below are summaries of some significant abstention cases that involved Medicaid beneficiaries. In several of the cases, claims under the Adoption Assistance and Child Welfare Act, 42 U.S.C. §§ 670-679a are made in addition to Medicaid claims. The cases are divided into those in which courts did abstain and those in which they did not.

Cases in which courts refused to abstain

***RioGrande Cmty. Health Ctr. v. Rullan*, 397 F.3d 56 (1st Cir. 2005).**

Plaintiff, a hospital, sought a preliminary injunction to require Puerto Rico to set up a prospective payment system for services FQHCs provide to Medicaid patients and make wraparound Medicaid payments to cover the difference the FQHCs receive from MCOs and what they are entitled to under a PPS. The

²⁵ *Id.*

²⁶ *Id.* at 820.

defendant argued that the court should abstain under *Younger* and *Colorado River* was because the hospital had filed a Commonwealth Court action seeking damages for past overdue payments and other relief. The court held that *Younger* abstention was inappropriate because the federal action was not an enforcement proceeding brought by Commonwealth, the fundamental workings of Commonwealth's judicial system were not put at risk by relief asked of federal court, and there was no interference with Commonwealth proceedings, given that the federal injunction would not stop Commonwealth Court from proceeding independently. The court also held crucial factors weighed against abstention under *Colorado River*: the case involved interpretation of a complicated area of federal law (Medicaid); even though the state court case was filed first, it was moving slowly; the federal suit was not filed as a reaction to adverse state action; and the risk of dismissal from federal court based on Eleventh Amendment immunity provided the plaintiff with a reasonable explanation for filing actions simultaneously.

***Meachem v. Wing*, 77 F.Supp.2d 431 (S.D.N.Y. 1999)**

Medicaid beneficiaries challenged denial of benefits after fair hearings that were allegedly inadequate. The defendants argued that *Burford* and *Younger* abstention were appropriate because federal action would interfere with state attempts to develop policy regarding benefits distribution. The court refused to abstain, holding that very substantial federal interests under the Food Stamp Act, Medicaid Act and Fourteenth Amendment were involved. In addition, federal funding and federal regulation were implicated. Finally, because the plaintiffs were alleging complete failure of the administrative procedures, it would be especially inappropriate to restrict them to the administrative forum.

The court also held that *Younger* abstention was not appropriate because there is no ongoing court proceeding. The court did state, in dicta, that the existence of state court appellate remedies that were not exhausted would dictate *Younger* abstention.

***Marisol A. by Forbes v. Giuliani*, 929 F.Supp. 662, (S.D. N.Y. 1996).**

Plaintiffs filed an action against state and city child welfare officials by children who had suffered severe abuse and neglect, and who alleged that defendants had mishandled their cases. The defendants argued that **Burford** abstention was appropriate because a federal ruling could conflict with the state's administrative scheme for resolving issues for children under the care of the city and because child welfare services are of substantial state concern. The court disagreed. The court noted that the plaintiffs were not asking the court to make individualized findings of fact on plaintiffs' allegations nor to interfere with or alter underlying policies of children's welfare agency. Rather, plaintiffs sought relief to ensure agency compliance with existing administrative and statutory scheme.

***Chase Brexton Health Servs. v. Maryland*, 411 F.3d 457 (4th Cir. 2005)**

Healthcare providers brought a § 1983 action against the Secretary of the Maryland Department of Health and Mental Hygiene challenging the method for reimbursement under Maryland's Medicaid plan as violating federal Medicaid law. Upon the defendant's motion for summary judgment, the court invoked **Colorado River** abstention doctrine to stay the proceedings with respect to the plaintiff's claim that the administrative cap and rate ceiling violated federal law. The court of appeals held that **Colorado River** did not apply even though administrative appeals were pending regarding the same issue because: (1) the actions were not parallel; (2) five claimants in the federal action were not parties in administrative action; (3) the administrative action challenged reimbursement for the previous three years and the federal action challenged reimbursement for more than six years, and only the federal action included a challenge to change in Medicaid law.

***Arkansas Med. Society v. Reynolds*, 6 F.3d 519 (8th Cir. 1993)**

Medicaid recipients and providers challenged the state Medicaid agency's reimbursement rate reductions as violating the equal access provision of Medicaid statute. The court held that **Burford** abstention was not appropriate, reasoning that federal courts routinely interpret Medicaid laws and no specialized knowledge of state law is required and no complex administrative scheme involved. Significantly, there was no administrative proceeding underway.

***Haymons v. Williams*, 795 F.Supp. 1511 (M.D. Fla. 1992)**

Medicaid beneficiaries filed suit, alleging that the state agency had failed to provide them with notice and opportunity for hearing before terminating their home health care providers, in violation of the Medicaid Act and regulations as well as their due process rights under the Fourteenth Amendment. The defendant argued that, because state administrative hearings on termination of providers were ongoing, ***Burford*** abstention was appropriate. The Court refused to abstain, noting that plaintiffs were not seeking a determination of whether they were entitled to the terminated benefits, but rather sought notice and an opportunity to a hearing to make such a determination. It concluded that no disruption of state efforts to establish a coherent Medicaid policy will occur if the Court grants the relief sought by plaintiffs. Moreover, the court also noted that abstention is disfavored in cases brought under § 1983.

The defendants also argued that ***Younger*** abstention was appropriate, despite the fact that no state proceedings were ongoing, because children subject to the child protection system could also be subject to the state family court system.²⁷ The court also held that ***Younger*** was inapplicable.

***Moore v. Medows*, No. 1:07-CV-631-TWT, 2007 WL 1876017, at *2-6 (N.D. Ga. June 28, 2007).**

The 12 year-old plaintiff received notice that the hours of Medicaid-covered private duty nursing services were being reduced from 94 to 84 hours per week. She appealed the reduction and a hearing was scheduled. She withdrew the request for hearing and filed a § 1983 action for injunctive and declaratory relief. The defendant filed a motion to dismiss or stay based on both ***Burford*** and ***Younger*** abstention. The defendant argued that ***Burford*** abstention should be applied because the plaintiff's claims arise from a state regulatory scheme and bear upon important policy matters relating to the administration of Georgia's Medicaid program. The court held that ***Burford*** abstention was not appropriate because the case involves federal law and federal funding and state court review would be inadequate, because of the

²⁷ *Id.* at 688-689.

amount of time it would take. The defendant also argued that **Younger** abstention would apply because there was a pending administrative hearing at the time the action was filed and that the plaintiff failed to exhaust her administrative remedies. The court held that **Younger** abstention is inappropriate because the administrative proceeding was not coercive, because it was initiated by the plaintiff, nor was it ongoing since the plaintiff withdrew her appeal.

Notably, the court distinguished the holding in *Brown v. Day*, discussed below, though the facts seem quite similar.

***Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 285 (N.D. Ga. 2003).**

Foster children in the custody of the state of Georgia brought an action in state court against the governor, the department of human resources, and the counties alleging violations of their constitutional rights to substantive and procedural due process, liberty, privacy, and association, violations of statutory rights under the Adoption Assistance and Child Welfare Act, Medicaid's Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT), and violations of Georgia law. The defendants removed the action to federal court and asked the court to abstain under **Younger** because the injunctive relief sought by plaintiffs would interfere with ongoing juvenile court proceedings. The court held that by removing the action to federal court, the defendants waived their right to seek abstention under **Younger**. Even if defendants had not waived their right to seek abstention, it would not have been appropriate because the action did not interfere with ongoing state judicial proceedings. Although the foster children all had periodic reviews before state juvenile courts, the declaratory and injunctive relief they sought was not directed at their review hearings, or at juvenile courts, but rather at executive-branch officials, to remedy their alleged failures as children's custodians. Furthermore, the juvenile court proceedings did not afford children an adequate opportunity to raise their federal claims and relief could be crafted by the federal court to not interfere with state court proceedings.

Cases in which the court abstained

***Brown v. Day*, 477 F. Supp. 2d 1110 (D. Kan. 2007).**

The plaintiff, a developmentally disabled adult living at a residential care facility, filed for a fair hearing when her eligibility was terminated. She prevailed at the administrative hearing, however, the Medicaid agency reversed this decision. She subsequently brought a federal court action against the state Medicaid agency, alleging that her Medicaid eligibility was wrongfully terminated based on income. The court dismissed her claim based on ***Younger*** abstention doctrine.

The court held that a state proceeding had been “pending” when the federal action was filed because the plaintiff had not exhausted state administrative remedies, which included an appeal to state court. The court acknowledged that this conclusion created some conflict with the rule, from *Patsy v. Board of Regents*, that exhaustion of administrative remedies is not necessary before seeking relief under § 1983. The court held, however, that this proceeding was primarily “coercive” and that abstention was therefore appropriate. The court acknowledged that the proceeding had been initiated by plaintiff, which would normally mean that it was remedial. Because the original action resulted from the state enforcement of Medicaid requirements against plaintiff, however, this meant that the action was actually coercive.

The court also identified other factors in favor of ***Younger*** abstention: the state proceedings afforded the plaintiff an adequate forum in which to raise her federal claims, the state proceedings implicated important state interests, and the plaintiff could show no exceptional circumstances which suggested that abstention was improper.

A case to watch

Brown v. Day is disturbing because the logical extension of the court's reasoning is that exhaustion is required before § 1983 cases in any case where a plaintiff is aggrieved by the manner in which the state enforced a law. Thus, any Medicaid case in which the claimant had been denied eligibility or

***Bethpage Lutheran Service, Inc. v. Weicker*, 965 F.2d 1239 (2d Cir. 1992)**

Providers of services under a home and community-based waiver sued the state Medicaid agency, alleging violation of the Medicaid requirement that rates be consistent with standards of efficiency, economy and quality of care. The court held that ***Burford*** abstention was proper because state court remedies would afford adequate remedies. Moreover, the court concluded that the area of reimbursement for providers was a significant state concern. In addition, the court noted that the Medicaid Act actually required the creation of a state administrative framework to establish methods and procedures for regulating provider payments. Thus, Congress recognized that the establishment and review of reimbursement rates is a legitimate state concern

***J.B. ex rel. Hart v. Valdez*, 186 F.3d 1280 (10th Cir. 1999).**

Plaintiffs, developmentally disabled children who are or were in the custody of the state of New Mexico, alleged that defendants failed to provide them with protections and therapeutic services required by the Adoption

Assistance and Child Welfare Act, the Medicaid Act, and the Constitution. Defendants moved for abstention under **Younger** on the basis that there was an ongoing state proceeding in which plaintiffs had an adequate opportunity to raise their federal claims. The court held abstention was warranted because continuing jurisdiction of the New Mexico Children's Court to modify a child's disposition, coupled with mandatory six-month periodic review hearings, was an ongoing state judicial proceeding, the federal action would interfere with that proceeding by changing the dispositions and oversight of the children, and it was not shown that the claims could not be raised at the review hearings.

***Osteopathic Hosp. Founders Ass'n v. Splinter*, 955 F. Supp. 1351 (N.D.Okla. 1996)**

Plaintiffs sued the state Medicaid agency, alleging that the reimbursement rates state paid were inadequate and violated the Medicaid Act. The court found that **Burford** abstention was appropriate because there was nothing "exclusively federal" about the case that would counsel against abstention. The court also reasoned that the relief requested by hospital would require court to determine issues directly relevant to general administration of state Medicaid plan and rate appeal process. Moreover, the state Medicaid plan included a specific rate appeal process available to any hospital seeking to dispute its reimbursement.

***31 Foster Children v. Bush*, 329 F.3d 1255 (11th Cir. 2003)**

Foster children alleged that Florida's foster care system violated their Constitutional rights and rights under the Adoption Assistance and Child Welfare Act and Medicaid Act. The defendant argued that court should abstain on **Younger** grounds because the federal proceeding would interfere with the ongoing state dependency proceedings. The court of appeals held that the district court properly abstained from hearing these claims because the plaintiffs failed to show that their ongoing dependency proceedings did not make adequate remedies available to them. Furthermore, taking the responsibility for a state's child dependency proceedings away from state courts and putting it under federal court control would constitute federal court oversight of state court operations and could result in conflicting orders in the cases.