

### **Alert for Health Care Providers: How the Courts Can Cut Medicaid Benefits**

Medicaid is the largest publicly-funded health insurance program in the United States. Medicaid covers 28 million poor and near poor children in the U.S. It pays for about half the total nursing home expenditures and more than 40 percent of total long term care expenditures in the U.S.

In the legislation creating Medicaid, Congress included many guarantees, such as the following:

- Individuals who meet the eligibility criteria are entitled to Medicaid coverage;
- A specific package of benefits will be available;
- Adequate and timely payments will be made to participating providers;
- States will assure that children receive early and periodic screening services and will arrange for needed treatment services, directly or through appropriate contracting.

Federal funding pays for at least half of the Medicaid services provided in each state (and up to 83% in poorer states). Unfortunately, the states have often taken the federal funding but not lived up to the federal Medicaid guarantees. The federal government has rarely, if ever, held the states accountable. Instead, this important task has fallen to providers and beneficiaries.

More than 200 years ago, the Supreme Court stated that where there is a legal right, there is a remedy. In other words, if the law gives people a right and someone is denied that right, he should be able to ask the courts to do something about it. Medicaid is no different. Medicaid beneficiaries have gone to court when their states are failing to comply with the requirements of the Medicaid law. There have been a number of important victories. Courts have ordered states to follow Medicaid requirements and provide such crucial services as:

- Intermediate care facilities for people with mental retardation;
- The drug Clozaril, for treating schizophrenia;
- AZT to treat patients with AIDS;
- Special communication devices for individuals with speech and hearing disabilities.

Enforcement of the Medicaid protections is critical to giving the program meaning. Unfortunately, the right to enforcement is threatened.

#### OTHER OFFICES

When Medicaid was enacted, Congress did not expressly allow participating individuals and providers to file lawsuits to enforce its requirements. But, since the program was created, providers and individuals have sued to enforce Medicaid using a civil rights law known as “Section 1983.” This law gives individuals the right to sue when state governments and officials deny them rights given to them by the Constitution and federal laws like Medicaid.

Now, some attorneys and judges are making a major push to rewrite the law. They say that Medicaid can’t be enforced by beneficiaries and providers - instead, only the federal government can enforce it. As you already know, the federal government has rarely, if ever, done so.

### **What You Can Do**

- Talk to other health care providers about this issue;
- Read news reports about judicial nominations. If nominees seem like they may be hostile to Medicaid, contact NHeLP for more information, or call your Senator and ask him or her to vote against that nominee;
- Talk to your state representatives so they will understand the importance of provider and beneficiary enforcement to protect rights;
- Monitor developments at [www.healthlaw.org](http://www.healthlaw.org). Contact Jane Perkins or Sarah Somers, (919) 968-6308.