

To: Health Advocates
From: Jane Perkins and Steve Hitov
Date: December 31, 2006

Q & A: 2006 Medicaid Litigation

Question: What were some of the most notable Medicaid cases for recipients and applicants during 2006?

Answer: During 2006, 927 published cases included at least a mention of “Medicaid.” A number of these cases concerned allegations of fraud by Medicaid-participating providers, activities by Medicaid-participating pharmaceutical companies, False Claims Act/qui tam actions, and Medicaid trusts. These cases are not listed, below Major cases from the Medicaid beneficiaries’ perspective are listed, with citation and a short summary.

Federal Court Cases:

Supreme Court Case:

Ark. Dep’t of Health & Human Services v. Ahlborn, 126 S.Ct. 1752 (2006)

This case concerned Medicaid liens on tort settlements. The Supreme Court held that, where a Medicaid recipient receives a settlement of a tort claim that covers both medical and other expenses, the state is precluded by 42 USC § 1396p(a) from recovering more than the amount of the settlement allocated to cover past medical expenses. It cannot recover the larger amount the state actually paid to the recipient in Medicaid benefits.

Private enforcement under section 1983:

Mandy R. v. Owens, 464 F.3d 1139 (10th Cir. 2006)

Plaintiffs challenged the home and community-based waiver waiting list. Held: Medicaid equal access provision, 42 U.S.C. § 1396a(a)(30)(A), is not enforceable under section 1983. Plaintiff cannot obtain relief under the reasonable promptness provision, § 1396a(a)(8), or service requirement provision, § 1396a(a)(10), because these provisions on “medical assistance” require payment only and not that the state provide the actual service.

Westside Mothers v. Olszewski, 454 F.3d 532 (6th Cir. 2006)

Plaintiffs appealed the district court holding that the Medicaid Act provisions did not create federal rights. The Sixth Circuit affirmed the dismissal of the equal access provision, § 1396a(a)(30)(A), and reversed the dismissal of the EPSDT claims, § 1396a(a)(43). The court found that §§ 1396a(a)(8) and (a)(10) apply to “medical assistance” as payment, not the actual service, and remanded to allow plaintiffs to amend their complaint.

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Watson v. Weeks, 436 F.3d 1152 (9th Cir. 2006)

Plaintiffs challenged the state's revised eligibility standards for long term care services. The Ninth Circuit held that the "reasonable standards" provision, § 1396a(a)(17), does not create federal rights under section 1983 but that § 1396a(a)(10)(A) does.

Thompson v. Roob, 2006 U.S. Dist. LEXIS 76303 (S.D. Ind. Oct. 19, 2006)

Plaintiffs challenged the disability standards for Medicaid for the Disabled benefits. The court found that MAD benefits were an "entitlement" and the failure of notices of action to clearly inform applicants of the correct eligibility standard was a due process violation, but that plaintiffs had not shown a violation of the "209(b)" rules, § 1396a(f).

Equal Access for El Paso, Inc. v. Hawkins, 428 F. Supp. 2d 585 (W.D. Tex. 2006)

Plaintiffs challenged low payment rates. The court found the equal access provision created federal rights, but noted uncertainty, and certified the case for interlocutory appeal.

Bertrand v. Maram, 2006 U.S. Dist. LEXIS 68935 (N.D. Ill. Sept. 25, 2006)

Plaintiffs claimed they should be able to obtain Community Integrated Living Arrangement (CILA) services through the home and community based waiver. The lower court held § 1396a(a)(8) to create federal rights but granted summary judgment for defendant because evidence showed that CMS knowingly approved Illinois' use of Population Priority Criteria to limit CILA residential services under the waiver and that the criteria were properly applied.

Nelson v. Milwaukee County, 2006 U.S. Dist. LEXIS 7513 (E.D. Wis. Feb. 7, 2006)

Plaintiffs charge that low payments are causing Milwaukee County group homes for the elderly to drop out of the program. The court found the equal access provision, § 1396a(30)(A), to create federal rights and that plaintiffs could also challenge the low rates as an aspect of their ADA claim.

Monez v. Reinertson, 140 P.3d 242 (Colo. Ct. App. 2006)

The Colorado Court of Appeals found that 42 U.S.C. § 1396a(a)(3) (fair hearings) is enforceable pursuant to § 1983 and that plaintiffs stated a claim under the Due Process clause of the 14th Amendment, where the defendant had terminated a person's home and community based services benefits without showing any improvement in the person's condition or other substantial change.

Preemption:

Lankford v. Sherman, 451 F.3d 496 (8th Cir. 2006)

Plaintiffs challenged the elimination of most items of durable medical equipment. The appellate court found the "reasonable standards" provision, § 1396a(a)(17), could not be enforced under section 1983 but that Plaintiffs had set forth a preemption claim. The Court found that plaintiffs were likely to succeed on the merits and remanded for additional findings.

James v. Richman, 2006 U.S. Dist. LEXIS 84846 (M.D. Penn. Nov. 21, 2006)

In a case questioning state compliance with the federal Medicaid spousal impoverishment provisions, 42 U.S.C. § 1396r-5, the court found that when a state drafts a state Medicaid plan that

is not in conformity with federal law, and that plan leads to the denial of Medicaid benefits, then an adversely affected person has grounds to raise a federal question pursuant to 28 U.S.C. § 1331.

CMS state plan approval:

Harris v. Olszewski, 442 F.3d 456 (6th Cir. 2006)

Plaintiffs sought to enjoin a single-source contract for incontinence supplies. The Sixth Circuit held the freedom of choice provision, § 1396a(a)(23)(A), creates federal rights under section 1983 but that CMS approval of the state Medicaid plan containing the requirement was entitled to *Chevron* deference.

Conn. Primary Care Ass'n v. Wilson-Coker, 2006 U.S. Dist. LEXIS 62792 (D. Conn. Sept. 5, 2006)

In this case filed by health centers, the court decided this was an unusual circumstance where CMS approval of the state Medicaid plan was not entitled to deference.

Juneau v. Ctrs. for Medicare & Medicaid Servs., 2006 U.S. Dist. LEXIS 66490 (D. Alaska Sept. 15, 2006)

In this Administrative Procedure Act case, the court found the hospital had standing to challenge CMS' retroactive approval of a State Plan Amendment where that amendment violated 42 U.S.C. § 1396a(a)(13) and its implementing regulations because the state had not given CMS the required assurance that it had provided public notice of the SPA, and the record did not show any evidence of such notice.

EPSDT:

Pediatric Specialty Care v. Ark. Dep't of Human Servs., 444 F.3d 991 (8th Cir. 2006), *same case*, 443 F.3d 1005 (8th Cir. 2006) (holding §§ 1396d(a)(13) and (30)(A) create federal rights under section 1983)

Plaintiffs challenged the state's reduction in EPSDT coverage of day treatment services. The Court found that confidentiality rules precluded the disclosure of information about the Medicaid peer review deliberations or physician identification.

J.D. v. Ditmire, 2006 U.S. Dist. LEXIS 78446 (W.D. Mo. Oct. 27, 2006)

The court issued a preliminary injunction requiring coverage of a liver transplant for a child with Maple Syrup Urine Disease, citing EPSDT, medical necessity and reasonable standards requirements.

Katie A. v. Bonta, 433 F. Supp. 2d 1065 (C.D. Cal. 2006)

Plaintiffs are children with serious emotional disturbances who need wraparound services to live in the community. The court granted a preliminary injunction, finding that EPSDT includes coverage of wraparound and therapeutic foster care services.

Rosie D. v. Romney, 410 F. Supp. 2d 18 (D. Mass. 2006)

In this case filed by children with community-based behavioral health needs, the court found violations of EPSDT and reasonable promptness and ordered the parties to meet and confer to develop a remedial plan.

Ekloff v. Rodgers, 443 F. Supp. 2d 1173 (D. Ariz. 2006)

The court held Medicaid EPSDT includes coverage of incontinence briefs.

A.G. v. Arnold, 2006 U.S. Dist. LEXIS 8161 (M.D. Fla. Feb. 13, 2006)

The plaintiff child sought coverage of a wheelchair. The court held neither the comparability provision, § 1396a(a)(10)(B), nor the EPSDT provision, § 1396d(r), of the Medicaid Act created federal rights under section 1983.

C.F. v. Dep't of Children & Families, 934 So.2d 1 (Fla. Ct. App. Aug. 10, 2006)

C.F. has severe disabilities and challenged the state's restriction on coverage of personal care services. The court reversed the ALJ decision, finding that he had improperly applied the overly-restrictive state regulatory definitions of "medical necessity" and "personal care assistance" rather than the federally-required EPSDT "correct or ameliorate" coverage requirements for personal care services.

Compelling agency action:

Trs. of Masonic Hall & Asylum Fund v. Leavitt, 2006 U.S. Dist. LEXIS 37704 (N.D. N.Y. June 8, 2006)

The court dismissed this provider challenge to obtain federal funding, finding that DHHS has administrative flexibility and cannot be compelled through the APA or otherwise to act in a certain way.

Constitutionality of the DRA:

All cases decided to date have dismissed plaintiffs' challenge to the constitutionality of the DRA of 2005. The cases are being appealed. See:

Cookeville Reg'l Med. Ctr. v. Leavitt, 2006 U.S. Dist. LEXIS 68961 (D.C.D.C. Sept. 26, 2006)

Public Citizen v. Clerk, 2006 U.S. Dist. LEXIS 55740 (D.C.D.C. Aug. 11, 2006)

Cal. Department of Social Services v. Leavitt, 444 F. Supp. 2d 1088 (E.D. Cal. 2006)

Conyers v. Bush, 2006 U.S. Dist. LEXIS 80816 (E.D. Mich. Nov. 6, 2006)

OneSimpleLone v. Sec. of Educ., 2006 U.S. Dist. LEXIS 38714 (S.D.N.Y. June 9, 2006)

Miscellaneous federal court cases:

Indep. Living Ctr. of S. Cal. v. Leavitt, 2006 U.S. Dist. LEXIS 44312 (E.D. Cal. June 28, 2006), same case, 2006 U.S. Dist. LEXIS 44316 (June 29, 2006)

In this case of first impression regarding dual eligibles in the Part D system, the court held that the Eleventh Amendment bars a suit against California seeking to enjoin it from discontinuing its Medi-Cal drug coverage for dual eligibles, because the relief sought by plaintiffs constituted money damages, not prospective equitable relief.

Edmonds v. Levine, 417 F. Supp. 2d 1323 (S.D. Fla. 2006)

Plaintiffs' coverage of the drug, Neurontin, was eliminated. The district court held coverage is required because the drug was being prescribed for "medically accepted indications" within the Medicaid Act, § 1396r-8(k). The case has been appealed.

Beeker v. Olszewski, 415 F. Supp. 2d 734 (E.D. Mich. 2006)

The court enjoined the state's provision allowing pharmacists to withhold services due to "bad debt" consisting of past-due copayments from Medicaid recipients who could not afford them. The court found that a cost sharing provision, § 1396o(e), conferred federal rights under section 1983, but the notice provision of 42 C.F.R. § 435.905 did not.

Due process:

Reiff v. Colo. Dep't of Health Care Policy & Fin., 2006 Colo. App. LEXIS 1476 (Ct. App. Sept. 7, 2006)

In an appeal of a decision finding that a Medicaid recipient no longer met the severity requirements for HCBS benefits, the court held the Administrative Law Judge could consider evidence that was not available to the person who made the initial determination.

Miscellaneous state court cases:

Sikand v. Wilson-Coker, 276 Conn. 618; 888 A.2d 74 (2006)

The court held that "medical services covered by Medicaid," as used in state regulation, meant services for which the Medicaid program actually would pay, not services of a type that were covered by Medicaid. Thus, the court upheld the agency's refusal to cover non-emergency transportation to psychological services that were not covered by Medicaid.

Diaz v. Div. of Soc. Servs., 360 N.C. 384, 628 S.E.2d 1 (S.Ct. 2006)

The court found that the chemotherapy needed by an undocumented immigrant did not qualify as an "emergency medical condition" under § 1396b(v), once the patient's condition was stabilized.

Gasper v. DSHS, 132 Wash. App. 42; 129 P.3d 849 (Wash. Ct. App. Sept. 6, 2006)

Plaintiff challenged a rule that reduced coverage of nursing care hours in a HCBW for recipients who live with paid caregivers. The court found the rule violated comparability requirements, § 1396a(a)(10)(B). The court refused to defer to "boilerplate language" in waiver, finding that it did not "give states complete freedom to provide different services to different people." 132 Wash. App. at 56.

Jensen v. Mo. Dep't of Health & Senior Servs., 186 S.W.3d 857 (Ct. App. Mar. 28, 2006)

The state reduced Plaintiff's personal care services to five days a week because she did not document that it would be an "undue hardship" for her parents to meet her needs on the additional two days. On appeal, the court determined that the "undue hardship" requirements were preempted by federal law, § 1396a(a)(17)(D), to the extent that they considered family resources of adult aid recipients.

Smallwood v. Central Peninsula Gen. Hosp., 2006 Alas. LEXIS 178 (Alaska 2006)

This important ruling found that the Medicaid recipient has a contract cause of action as a third party beneficiary of the provider agreement between the hospital and the Medicaid agency to enforce the balance billing prohibition of the Medicaid regulations, as reflected in the provider agreement.