

## Health Care At Risk: How the Courts Can Cut Medicaid Benefits

### Did You Know?

#### Medicaid:

- ✓ Insures more than one in every seven people - nearly 51 million;
- ✓ Pays for almost half of the total nursing home expenditures and more than 40% of total long term care expenditures in the U.S.;
- ✓ Insures 40% of all children in the U.S.;
- ✓ Insures more than one quarter of all elderly people and about one-fifth of all people with disabilities;
- ✓ Covers one-third of all births in the U.S. and over half of all publicly funded family planning services.

In the legislation creating Medicaid, Congress has included many consumer protections:

- ▶ A list of the benefits that are covered by Medicaid (such as physician services, hospital services and nursing homes)
- ▶ Descriptions of those who are entitled to receive benefits
- ▶ Requirements that all individuals have eligibility determined and receive benefits in a reasonable amount of time

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. For example:

- ✓ Arlo is a six-year-old boy eligible for Medicaid who lives with his grandparents. Although both grandparents work full time, they can't afford private insurance. When Arlo needed emergency dental care, his grandparents could not find any dentists to accept Medicaid, because dentists said that the reimbursement from the state was too low for them to cover costs. A suit was filed on behalf of Arlo. Rather than arguing whether Arlo's claims were true, the state attorneys simply argued that Medicaid beneficiaries could not sue the state. Both the trial court and the court of appeals disagreed, ruling that Arlo could bring his suit. The Supreme Court refused to reverse these decisions. As a result of these rulings, the state agreed to settle the case. Since the settlement, children's use of Medicaid dental services has increased significantly.

In other cases, 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.

When Medicaid was enacted, Congress did not expressly allow individual beneficiaries and providers to file lawsuits to enforce its requirements. But, since the program was created, 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 this means today is that courts are poised to declare that individuals can't sue to force states to comply with important legal protections established by the Medicaid. This could be disastrous for people who need Medicaid benefits because they have no way to require states to follow federal laws.

### What You Can Do

- ✓ 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. (Note: You should do this even if the nominee is not from your state);
- ✓ Talk to your state representatives so he or she will understand the importance of beneficiary enforcement to protect important rights;
- ✓ Monitor developments at [www:healthlaw.org/courtwatch.shtml](http://www.healthlaw.org/courtwatch.shtml).

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