Obama administration seeks to block legal challenges to Medicaid cuts

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The Obama administration is seeking to block lawsuits challenging state budget cuts to Medicaid, the joint state- and federal-funded health care program for the poor and disabled. Many states are slashing already inadequate reimbursement rates for medical providers serving Medicaid recipients, even as the economic crisis has caused enrollment in the program to soar.

Medicaid serves low-income children, pregnant women, the elderly, blind and disabled—an enormous but politically disenfranchised segment of the population. Currently, some 60 million Americans receive health care through the program, including one in three children, four in ten pregnant women, and 70 percent of nursing home residents.

Coupled with skyrocketing health care costs, low state reimbursement rates over the past decade have created acute provider shortages in many areas of the country. Under-compensated for their services by state health departments, providers are forced to turn away Medicaid patients, making basic care increasingly inaccessible for enrollees. Medicaid patients may have to travel hundreds of miles, wait for weeks to see a doctor, or resort to crowded emergency rooms for treatment.

The consequences are a violation of the Medicaid program's mandates, a number of lawsuits argue. Federal law stipulates that reimbursements must be "sufficient to enlist enough providers" to ensure enrollees have the same level of health care access as the general population. The Obama administration insists the law is "broad and nonspecific" and lawsuits against state officials "would not be compatible" with its federal enforcement.

The Justice Department's solicitor general spelled out the administration's position in a friend-of-the-court brief filed with the Supreme Court May 26 in answer to multiple suits against inadequate state reimbursement rates, which have been consolidated under a single lead case, *Douglas v. Independent Living Center of Southern California*, expected to be taken up later this year.

That the Obama administration has preemptively weighed in on the case brought by medical providers reveals both its contempt for the plight of the poorest Americans, as well as its reliance on state governments to carry out some of the severest cuts to social programs.

The attack on Medicaid is of a piece with the targeting of Medicare, public education, and other fundamental social programs upon which tens of millions of working class families depend. Bipartisan budget talks headed by Vice President Joe Biden are preparing trillions of dollars in cuts to the social safety net.

The budget plan adopted by the Republican-controlled House would slash Medicaid spending by $1.4 trillion over ten years. It would convert the program into a block grant to the states, limiting federal spending to preset amounts regardless of states' needs, thus forcing the states to do the dirty work of tightening eligibility, benefits and provider reimbursements.

While the Obama administration has rebuffed the Republican proposal to phase out Medicare entirely, it has been relatively low-key in its response to the equally destructive proposal to block-grant Medicaid, which one study forecast would render 44 million more people uninsured over the coming decade.

Douglas v. Independent Living Center of Southern California consolidates a series of legal challenges to cutbacks in payments to physicians, hospitals, and pharmacies by the state of California in 2008 and 2009. Reimbursement rates for prescription medications were

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cut below costs, forcing pharmacists to stop dispensing to Medicaid recipients. Providers and recipients argued that the cuts violated federal law, under which state statutes on Medicaid were subordinate.

The US Court of Appeals for the Ninth Circuit in San Francisco ruled in favor of the health providers in three separate cases, citing the supremacy clause of the Constitution, which makes federal law "the supreme law of the land." The California Department of Health Care Services appealed to the Supreme Court, which agreed in January that it would hear the case, primarily to address whether providers can challenge state budget cuts in the federal court system.

"I find it appalling that the solicitor general in a Democratic administration would assert in a Supreme Court brief that businesses can challenge state regulation under the supremacy clause, but that poor recipients of Medicaid cannot challenge state violations of federal law," Washington and Lee University health law professor Timothy Jost commented to the *New York Times* May 28.

The National Governors Association, National Conference of State Legislatures, and 31 states have endorsed California's appeal with friend-of-the-court briefs. State officials argue, "Allowing 'supremacy clause lawsuits' to enforce federal Medicaid laws will be a financial catastrophe for states."

Numerous states are currently pushing through billions of dollars in cuts.

Last week, the Democratic governor of Oregon, John Kitzhaber, endorsed a plan to cut Medicaid payment rates by 19 percent beginning July 1, and an additional 15 percent beginning in July 2012. The proposal would cut $735 million, and result in the loss of $676 million more in federal matching funds. The consequences will be dire for enrollees and providers alike. Currently Oregon reimburses doctors for only 60 percent of costs for treating Medicaid patients.

Similar cuts are being inflicted in the Massachusetts Medicaid program. The Democratic-controlled state legislature passed a budget plan last week underfunding the health program by $750 million and cutting WIC, the Women, Infants and Children nutritional support program by $2.7 million. Some $8 million more in direct benefits for the poor are to be cut. (See "Massachusetts residents react to budget cuts")

Other states are purging the Medicaid rolls with excessively tight eligibility requirements. New Jersey Governor Chris Christie, a Republican, proposed last week to save $300 million by denying coverage to adult enrollees who earn more than $5,317 per year for a family of three. This is one-fifth of the current income eligibility level, already absurdly low.

Ohio Governor John Kasich, also a Republican, released a budget plan last week outlining Medicaid funding cuts to nursing homes totaling $222 million. The state's Department of Job and Family Services had already cut over $600 million in Medicaid expenditures in the first quarter of 2011.

Following the model established in Florida, Ohio is also privatizing case management. Kasich's plan calls for moving 37,000 disabled children into managed-care plans that will base determinations of payment not on medical need but on cost savings. "To me, it's good old-fashioned market competition," the governor's "Office of Health Transformation" director Greg Moody told the *Columbus Dispatch*.

The American working class overwhelmingly opposes cuts to the program. A recent poll by the Kaiser Family Foundation found that more than half of respondents reported having a personal connection with Medicaid, with either themselves or loved ones having received benefits. The poll found 60 percent of people wanted Medicaid to remain as an entitlement program, as opposed to a block grant program; only 13 percent of respondents said they would support cuts to Medicaid in the name of "deficit reduction."

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