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ALERT

Court Holds that 'Supremacy Clause' Does Not Create a Private Right of Action to Enforce the Provisions of Medicaid

On Tuesday, March 31, 2015, in *Armstrong v. Exceptional Child Center*, Inc., No. 14-15 (U.S. March 31, 2015), the Supreme Court ruled 5-4 that private parties do not have the right under the U.S. Constitution's Supremacy Clause to sue states over low Medicaid reimbursement rates. Plaintiffs argued that State of Idaho's Medicaid reimbursement scheme, which capped certain rates at their 2006 levels, was inadequate to assure equal access to care for Medicaid beneficiaries. As a result, plaintiffs argued that the state scheme was inconsistent with the Medicaid Act and as such, it was preempted by the Act. The Court, though, held that whether a state's implementation of its Medicaid state plan is inconsistent with federal law is not subject to review through a private right of action under the Supremacy Clause.

Justice Scalia, writing for the Court, concluded that the Supremacy Clause does not confer a private right of action, and that Medicaid providers may not sue for an injunction under Section 1902(a)(30)(A) of the Social Security Act to force states to increase payments. Section 1902(a)(30)(A) requires states to "assure payments are consistent with efficiency, economy, and quality of care." Scalia, joined by Justices Breyer, Roberts, Thomas, and Alito rejected the Medicaid providers' claim that reimbursement rates provided to them by the state were inadequate and that Section 1902(a)(30)(A) offered them remedy. Rather, the majority opinion held that the Supremacy Clause offers no such remedy.

Next the providers contended that, apart from any cause of action under the Supremacy Clause, they were entitled to relief in equity. The majority also rejected this argument, stating

> *[i]n our view the Medicaid Act implicitly precludes private enforcement of § [1902(a)(30)](A), and respondents cannot, by invoking our equitable powers, circumvent Congress's exclusion of private enforcement. Slip. Op. at 6.*

The Court held that providers must first seek relief from the Department of Health and Human Services (HHS), not the courts, and the Department can withhold funds if it determines that a state is not complying with the law.

However, the Court declined to hold that the Medicaid Act itself provided no private right of action. In so doing the Court declined to overrule its rationale in *Wilder v. Virginia Hospital Assn.,* 496 U. S. 498 (1990), where the Court had held that one provision of the Medicaid Act, the so-called Boren Amendment which has since been repealed, authorized a private right of action. The Chief Justice and Justices Scalia, Alito, and Thomas would have held that the Medicaid Act provides no private right of action.

The dissent, written by Justice Sotomayor and joined by Justices Kennedy, Kagan, and Ginsburg, did not agree with the majority that HHS's enforcement of the statute would ensure adequate provider pay, or that such an administrative remedy was the most effective way to address reimbursement levels. Sotomayor predicted that the decision will have "very real consequences," stating

> *[n]ow, it must suffice that a federal agency, with many programs to oversee, has authority to address such violations through the drastic and often counterproductive measure of withholding the funds that pay for such services.* Id. *at 12.*

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