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Ruling restricts Medi-Cal lawsuits: A court says the state cannot be sued over access, quality-of-care rules in the federal Medicaid law.

By Denny Walsh -- Bee Staff Writer

An appellate court has ruled that Medicaid providers and recipients, including disabled persons and seniors, cannot sue the state to enforce the equal-access and quality-of-care provisions in the federal law that governs Medi-Cal, California's version of Medicaid.

The ruling by the 9th U.S. Circuit Court of Appeals came in a lawsuit brought in Oakland against California officials by a class of developmentally disabled persons and by a group of advocates and providers seeking to force California to increase Medi-Cal funding for community-based services to prevent unnecessary institutionalization.

But it also had the effect of reversing a 2003 ruling by Sacramento U.S. District Judge David F. Levi that kept the state from cutting by 5 percent its reimbursements to physicians and other providers of health care to poor people that qualify for Medi-Cal. The Sacramento suit was brought by the California Medical Association and other groups representing providers.

In a published opinion Tuesday, a three-judge circuit panel cited a 2002 U.S. Supreme Court decision that said a federal statute may be enforced against a state by a private entity only if the right to do so has been "unambiguously" written into the statute by Congress.

Unlike certain civil rights statutes, the text and structure of the Medicaid statute "simply do not focus on an individual recipient's or provider's right to benefits, nor is the broad and diffuse language of the statute amenable to judicial remedy," the panel ruled. "We conclude, therefore, that Congress has not spoken with an unambiguous, clear voice that would put a state on notice that Medicaid recipients or providers are able to compel state action."

The opinion was written by Judge Diarmuid F. O'Scannlain, with concurrence from Judge Carlos T. Bea and Judge Robert E. Cowen, a visiting senior judge from the Philadelphia-based 3rd Circuit.

In an unpublished memorandum issued at the same time in the case that prevented the state from cutting provider rates, the same three judges ruled that both cases were resolved by their published opinion, "in which we held that neither Medicaid recipients nor providers have a private right to

challenge California's compliance" with the Medicaid statute.

"This is a severe defeat for accountability of a major government program," Michael Churchill, an attorney for the plaintiffs in the Oakland case, said. "I guess we have to rely on the state to get its own house in order."

Asked what his next legal move will be, Churchill said, "We're looking at our options."

The plaintiffs may ask for a hearing before an enlarged circuit panel or before the U.S. Supreme Court.

"This is a tragedy for the beneficiaries, who are some of society's neediest people, and who have so few rights as it is," Byron Gross, a plaintiffs' attorney in the Sacramento case, said. "They need access to the courts to assure a level playing field.

"It's a shame if states have unlimited power to slash public health care rates with no concern for the impact on patients," he said.

Gross said that only 35 percent of physicians in California participate in Medi-Cal "because of the already low rates."

Under the Medicaid Act, the federal government distributes funds to participating states to help them provide health care services for the poor.

In 1981, Congress authorized the Home and Community Based Services waiver program, which allows a variety of noninstitutional care options for persons who would otherwise be eligible for Medicaid benefits in an institution, but who would prefer to live at home or in the community. The state must certify that the cost of placing an individual through the waiver program will be less than or equal to the cost of care in an institution.

The plaintiffs in the Oakland case said that workers staffing a network of 21 nonprofit regional centers contracting with the state to provide community-based care are paid 54 percent less than employees in state institutions.

This, the plaintiffs said, has resulted in some developmentally disabled people remaining unnecessarily institutionalized.

The wage disparity is a violation of the Medicaid Act, which mandates services are to be consistent, efficient, economical and of a quality to attract enough providers so that care is on a par with the community at large, plaintiffs allege.

The low wages to community-based workers are driving qualified people away from the program, they allege.

"The system is hemorrhaging skilled workers and replacing them with unskilled workers," Churchill said. "It's a major crisis.

"If the courts won't do anything, it's up to the governor and the Legislature to figure out how to keep community services in California from falling apart," he said.

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