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RECENT DEVELOPMENT

PEE DEE HEALTHCARE, P.A. V. SANFORD: RURAL HEALTH CARE PROVIDERS HAVE A RIGHT TO ENFORCE MEDICAID REIMBURSEMENT PROGRAMS BY SUING STATE OFFICIALS PURSUANT TO 42 U.S.C. § 1983

By: Michael Gillman

In an issue of first impression, the United States Court of Appeals for the Fourth Circuit held that rural healthcare providers serving Medicaid recipients had a right under 42 U.S.C. § 1983 ("§ 1983") to sue state officials to enforce rights granted to them under the Medicaid reimbursement program. *Pee Dee Health Care, P.A. v. Sanford*, 509 F.3d 204 (4th Cir. 2007). More specifically, the Court found that a rural healthcare provider is entitled to sue under § 1983 to obtain reimbursement in accordance with federal Medicaid statutes. *Sanford*, 509 F.3d at 211-12.

Pee Dee Healthcare, P.A. ("Pee Dee") is a healthcare provider serving low-income patients in rural areas of South Carolina. Pee Dee is qualified to provide these services under the federal Medicaid Program. Medicaid service providers, like Pee Dee, are entitled to receive reimbursement payments from the state. Eligibility for reimbursement requires health care providers to enter into contracts with the agency responsible for the administration of the Medicaid Program, in this case, the South Carolina Department of Health and Human Services ("SCDHHS"). This contract must contain a forum-selection clause that provides that all reimbursement claims must be pursued through state judicial and administrative avenues. The reimbursement provisions under the Medicaid program are located in 42 U.S.C. § 1396a(bb) ("§ 1396a(bb)"). Pee Dee claimed that the state of South Carolina used a formula which was not consistent with the formula in § 1396a(bb), thus violating its right to proper reimbursement.

Pee Dee first brought its claim in South Carolina state court against the Governor of South Carolina, the Director of SCDHHS and SCDHHS itself. The case was then removed to the United States District Court for the District of South Carolina. Pee Dee then

amended its complaint to include a federal cause of action pursuant to § 1983. The district court dismissed Pee Dee's claim, noting that venue was inappropriate based on the forum-selection clause in the contract between Pee Dee and SCDHHS. Pee Dee appealed to the United States Court of Appeals for the Fourth Circuit which reviewed *de novo* the district court's dismissal based on the forum-selection clause.

The Court first examined the language of § 1983 in order to determine if Pee Dee had a right to bring a private action under that statute. *Sanford*, 509 F.3d at 210. Section 1983 imposes a liability on one who, under the color of state law, deprives any person of any rights, privileges, or immunities guaranteed by the United States Constitution or laws. *Sanford*, 509 F.3d at 209-10. A plaintiff alleging a violation of a federal statute cannot sue under § 1983 if the statute does not create enforceable rights, privileges, or immunities which fall within the meaning of the section or if Congress has explicitly prohibited such enforcement within the statute itself. *Sanford*, 509 F.3d at 210. The Court then identified a test ("*Blessing Test*") articulated in *Blessing v. Freestone* to determine whether a statute creates an enforceable right. *Sanford*, 509 F.3d at 210 (citing *Blessing v. Freestone*, 520 U.S. 329 (1997)). In the first part of the test, the Court looks at Congress' intent to ensure that the provision benefits the plaintiff. *Id.* at 210. In the second part of the test, the Court looks to see that the right protected was not too vague. *Id.* Finally, the Court looks at the statute to see if it imposed a binding obligation on the state. *Id.* The Court declared that its greatest task when performing this analysis was to ensure that the statute has "rights-creating language" and that it is not phrased in terms of general policy or practice, but rather in terms of the persons who are benefited by that right. *Id.* (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002)).

The Court first considered its decisions prior to its current enactment of the Medicaid statute. *Id.* at 210. In *Va. Hosp. Ass'n v. Baliles*, the Court held that a healthcare provider had a right under § 1983 to challenge a method of reimbursement for healthcare providers participating in Medicaid programs. *Sanford*, 509 F.3d at 210 (citing *Va. Hosp. Ass'n v. Baliles*, 868 F.2d 653 (4th Cir. 1989)). In *Baliles*, the Court reasoned that the intent and legislative history of the act was to allow health care providers a right of action against the state when they felt they were not compensated according to Medicaid requirements. *Sanford*, 509 F.3d at 210. The Court then identified another recent decision, *Doe v. Kidd*, which dealt with another

Medicaid waiver program. *Sanford*, 509 F.3d at 210-11 (citing *Doe v. Kidd*, 501 F.3d 348 (4th. Cir. 2007)). In that instance, the Fourth Circuit allowed a health care provider to pursue a claim using § 1983. *Sanford*, 509 F.3d at 210. However, in *Doe*, the Court found a right of action under § 1983 only while interpreting a specific portion of § 1396. *Sanford*, 509 F.3d at 210-11. Pee Dee urged the Court to consider for the first time whether § 1396, read as a whole, created the rights necessary to be actionable under § 1983. *Sanford*, 509 F.3d at 211.

The Court looked at the plain language of each individual subsection of § 1396a(bb). *Sanford*, 509 F.3d at 211. The Court acknowledged that §§ 1396a(bb)(1)-(bb)(4) repeat the phrase that "a state plan *shall* provide for payment for services." *Sanford*, 509 F.3d at 211 (emphasis in original). The Court also looked at the language of 1396a(bb)(6)(B), which provided that an alternative payment methodology must be at least equal to the amount required by the section. *Sanford*, 509 F.3d at 211.

The Court then applied the *Blessing* Test to determine if this section as a whole created an enforceable right. *Sanford*, 509 F.3d at 212. The Court began by examining the language in § 1396a(bb)(1), requiring a state's plan to provide for payment of services provided by rural health care clinics. *Sanford*, 509 F.3d at 212. The Court reasoned that this language indicated Congress' intent for the statute to benefit rural health care providers such as Pee Dee. *Id.* Next, the Court decided that the phrase "shall provide payment" is judicially enforceable because it is not amorphous or unduly vague. *Id.* In addition, the Court noted that the provision clearly required states to reimburse rural health care providers such as Pee Dee for services provided to Medicaid patients. *Id.* Lastly, the Court viewed the repeated use of "shall" as unambiguously binding the states. *Id.*

Finally, the Court determined, that the statute contained "rights-creating language" and that the statute was not phrased in general terms, but rather phrased in terms of the persons who are benefited by that right. *Id.* (citing *Gonzaga*, 536 U.S. 273). The Court determined that the language in § 1396a(bb) contained "rights creating language" because it specifically designated the Rural Healthcare Providers as beneficiaries. *Sanford*, 509 F.3d at 212 (citing *Gonzaga*, 536 U.S. 273). The Court also noted that the language mandated action on the part of the states. *Id.* at 212. The Court then recognized that § 1396a(bb) did not have an aggregate focus, but rather a very individualized focus. *Sanford*, 509 F.3d at 212. In light of these

factors, the Court recognized that the language of § 1396a(bb) created an enforceable right under § 1983. *Sanford*, 509 F.3d at 212.

The Court shows a willingness to interpret a statute, such as § 1396a(bb), broadly. Maryland, much like South Carolina, also has rural healthcare providers that serve Medicaid recipients. This decision is important because it shows clinics and providers that they have an additional avenue of redress should the state deprive them of their statutorily defined compensation. In addition, this decision will put Maryland and other states on notice that should they attempt to deprive clinics of their statutory right to proper payment, there is another manner by which clinics and providers may obtain adequate compensation.