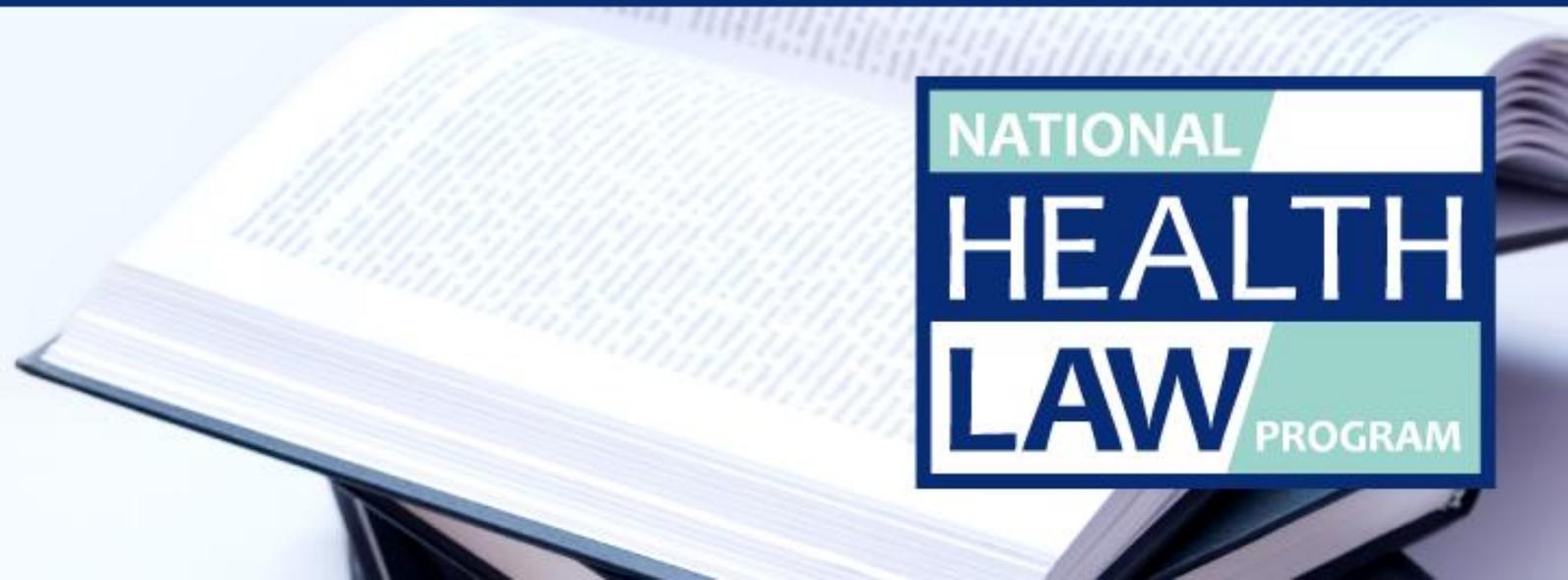


Beneficiary Enforcement of the Medicaid Act Returns to the Supreme Court

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Objectives for this session

- Summarize history of beneficiary enforcement
- Describe current state of enforcement
- Explain case pending at Supreme Court
- Discuss next steps

42 U.S.C. § 1983

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

Section 1983:

- Requires:
 - state action
 - that deprives a person of a right
 - secured by the “Constitution and laws”
- NOTE: Section 1983 does *not* create rights.

Finding a right – The traditional test

1. Did Congress intend the provision to benefit the plaintiff?
 2. Does the provision establish clear requirements for the court to enforce?
 3. Is the provision mandatory on the state?
- If so, does the statute already contain a comprehensive enforcement scheme?

Blessing v. Freestone (1997)

Gonzaga University v. Doe (2002)

- Private enforcement of spending clause enactments rare
- Unambiguous congressional intent to create a federal right
 - “Rights or duty creating language”
 - Aggregate v. individual focus
 - Federal review mechanism to investigate, adjudicate violations

Health & Hosp. Corp. of Marion Co. v. Talevski (2023)

- Spending Clause enactments can give rise to enforceable rights
- Nursing Home Reform Act restraint and unwanted transfer provisions are enforceable

Congressional Intent re: Social Security Act

- 42 U.S.C. §§ 1320a-2, 1320a-10
 - “The intent of this provision is to assure that individuals who have been injured by the State’s failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in federal courts to the extent they were able to prior to the decision in *Suter v. Artist M.*”
 - 1994 USCCAN 2901, 3257

Current state of private enforcement

- Medicaid is the most heavily litigated spending clause enactment.
- Appellate courts have decided 63 Medicaid cases since *Gonzaga*.

1st	2d	3d	4th	5th	6th	7th	8th	9th	10th	11th	DC
5	6	4	5	10	7	6*	4	10	4	1	0

- 7th Circuit vacated St. Anthony Hosp. enforcement decisions

Current state of private enforcement

- Courts know how to apply the *Gonzaga/Blessing* test
- Until 2017, no circuit court splits
- Circuits have assessed 31 Medicaid provisions
 - ✓ Fair hearing 1396a(a)(3)
 - ✓ Individual eligibility – 1396a(a)(10)(A)
 - ✓ EPSDT – 1396a(a)(43)
 - ✓ Nursing Home Reform Act residents rights – 1396r(c)

Current state of private enforcement

- The circuit split
 - Free choice of provider – 1396a(a)(23)(A)
 - Enforceable: 4th, 5th, 6th, 7th, 9th, 10th
 - Unenforceable:
 - *Does v. Gillespie* (8th Cir. 2017)
 - *Planned Parenthood Greater Texas v. Kaufman* (5th Cir.)

Medina v. Planned Parenthood of South Atlantic

- Fourth Circuit allowed enforcement of free choice provision (as *Kerr v. Planned Parenthood*)

- Certiorari granted December 18, 2024

- Question presented:

Does the Medicaid free choice of provider provision, 42 U.S.C. § 1396a(a) (23)(A), unambiguously confers a right upon beneficiaries to choose a specific provider?

Medina v. Planned Parenthood-what will the Supreme Court do?



Next steps

- Briefing schedule
- Amicus briefs
- Decision expected by Summer 2025