

MEMORANDUM

To: Reporters and Editors
Re: Potential Medicaid rate changes
Da: Wednesday, March 16, 2011

Today in a hearing before the Senate Finance Committee, Senator Chuck Grassley called on Health and Human Services Secretary Kathleen Sebelius to provide information to Congress regarding a potential rule that could have a tremendous impact on the Medicaid program. A Justice Department filing indicates that the Health and Human Services Department is preparing a rule providing guidance on Medicaid reimbursement rates to providers in anticipation of a potential Supreme Court ruling that could allow providers to challenge Medicaid reimbursement rates. It's not clear what the guidance might entail, such as whether it would lead to different reimbursement rates. The Justice Department filing is available [here](http://www.justice.gov/osg/briefs/2010/2pet/6invit/2009-0958.pet.ami.inv.pdf) (<http://www.justice.gov/osg/briefs/2010/2pet/6invit/2009-0958.pet.ami.inv.pdf>). Grassley is a senior member of the Finance Committee and former chairman and ranking member. He made the following comment on the issue.

“This part of the law has been in statute since 1968 and hasn't been amended in 22 years. For the government to decide now, facing litigation, to write regulations that could significantly impact payments to providers in Medicaid and therefore state budgets, demands transparency from the government. Congress, states and the public need to be well-informed about these plans.”

Background information from a new Medicaid and Chip Payment Access Commission report, page 168:

As states increasingly turn to provider payment rate reductions to address budget issues, providers are turning to the courts to assert that these reductions are not consistent with requirements under Section 1902(a)(30)(A) of the Social Security Act. In many cases, courts have noted that providers did not have the right to sue under this section, but several federal appellate courts have found that the providers were entitled to challenge these payment reductions.

A consistent theme among most cases is that state rate-setting based solely on budget constraints is particularly vulnerable to challenge under Section 1902(a)(30)(A). Many of these cases address whether the reductions adversely affect enrollees' access to care and meet the “equal access” requirement that payments “are sufficient to enlist enough providers.” Court decisions are split as to whether Section 1902(a)(30)(A) requires states to demonstrate that the payment rates produce a certain result (e.g., sufficient provider supply) or to follow a certain process to assure that payments are consistent with this provision. The focus of these cases has been on whether overall payment levels, and not payment methods, meet these requirements.

Recently, the Supreme Court has agreed to hear arguments in a case involving Medicaid provider payment reductions, *Independent Living Center of Southern California v. Maxwell-Jolly* (2010). The court will consider whether the Supremacy Clause confers on beneficiaries and providers the right to challenge the sufficiency of Medicaid provider payments under Section 1902(a)(30)(A).

The full report is available [here](http://www.macpac.gov/reports). (<http://www.macpac.gov/reports>)