MEDICAID ACT

Is a Civil Rights Lawsuit by Private Parties a Means to Enforce a Federal Free Choice of Medicaid Provider Provision? A Spending Clause Case with Abortion in the Background

CASE AT A GLANCE

In 2018, Planned Parenthood South Atlantic (PPSAT) and one of its patients, Julie Edwards, sued the administrator of South Carolina's Medicaid program to enforce the "free choice of Medicaid provider" provision of a federal statute. South Carolina had paid for nonabortion physician and pharmacy Medicaid services at PPSAT for decades before executive orders from the governor of South Carolina led to the disqualification of PPSAT as a Medicaid provider. The termination occurred solely because PPSAT also performs abortion services outside of the Medicaid program. Whether PPSAT will remain protected from disqualification by lower court orders will depend on whether the Supreme Court upholds Edwards' right to sue to enforce the law's choice of provider promise as allowed by the courts so far. Since the choice of provider right derives from Spending Clause legislation, the Court may disallow the private civil rights action brought by Edwards if it finds that insufficient rights-conferring language exists to justify the lawsuit.

Medina v. Planned Parenthood South Atlantic
Docket No. 23-1275

Argument Date: **April 2, 2025** From: **The Fourth Circuit**

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Issue

Does the Medicaid Act's "free choice of Medicaid provider" provision unambiguously confer a right upon a private person or litigant to sue to enforce the promised freedom to choose?

Facts

In 2018, Julie Edwards, a 31-year-old resident of Barnwell County, South Carolina, went to Planned Parenthood South Atlantic (PPSAT)'s Columbia location for some, but not all, of her health care. A pharmacy college graduate, she could not work due to type 1 diabetes and its complications. Mostly blind in one eye and with nerve damage to her feet, her conditions left her seeing "an internist and five to seven specialists at any given time." In an early lawsuit affidavit, she describes limited provider options for patients insured through Medicaid. "The hospital in Barnwell County shut down a couple of years ago so I have to go to the next county for specialist care.…I have called doctors in the past who have told me they are accepting new patients, only to have them reverse themselves when they find out I have Medicaid."

Edwards had intended to shift all of her gynecological and reproductive health-care to PPSAT before she learned that PPSAT was being terminated from Medicaid.

PPSAT's termination notification from Medicaid came about following Governor Henry McMaster's issuance of

executive orders directed at stopping funding to South Carolina Medicaid providers that performed abortions. In July 2018, the governor directed that South Carolina's Department of Health and Human Services (SCDHHS) deem abortion clinics and any affiliated physicians "unqualified" and to "immediately terminate them upon due notice and deny any future such provider enrollment applications for the same." PPSAT received its termination notice "effective immediately" on July 13, 2018.

PPSAT, along with Edwards, sued SCDHHS's then director. Edwards sued the director on her own behalf, while also seeking to represent a class of South Carolina Medicaid beneficiaries who obtain or seek to obtain covered medical services from PPSAT. They filed their lawsuit in the Charleston Division of the United States District Court of South Carolina. They sought, among other relief, temporary, preliminary, and permanent injunctions to keep the SCDHHS director from terminating or threatening to terminate PPSAT from South Carolina Medicaid.

One allegation maintains the director violated his obligation under the Medicaid Act to cover medically necessary abortions in cases of rape, incest, or life-threatening medical emergencies. Even so, the lawsuit's primary stated focus is on the reliance of Edwards and similarly situated Medicaid-insured individuals upon PPSAT for nonabortion critical medical care services and their wish not to have the PPSAT care interrupted by its clinics being terminated from Medicaid.

Their lawsuit says that SCDHHS's actions forced PPSAT to stop providing basic and preventive health-care services to the over 300 Medicaid beneficiaries who rely upon it for family planning and other preventive care. The lawsuit describes both of PPSAT's health centers as being located in high-population areas with formally recognized provider shortages.

In fiscal year 2017, the total amount of South Carolina's Medicaid Fee-For-Services and Managed Care Organization encounters paid to PPSAT came to $83,278.94. In fiscal year 2017, the South Carolina Medicaid program expended a total of more than $7 billion in state and federal funding.

PPSAT's district court evidence included proof that 56,917 South Carolina providers participated in the South Carolina Medicaid program as of August 6, 2018. South Carolina's Medicaid program had 97 percent of South Carolina pharmacies enrolled in its program at the time. Evidence also indicated there were 1,200,000 individual Medicaid enrollees.

Substantial federal funding supports the Medicaid program. According to *The New York Times*'s Abby Goodnough, $600 billion a year nationally, presently. The program underwrites medical assistance for individuals whose income and resources are insufficient to meet the cost of necessary medical services so long as the individual meets eligibility criteria. Federal funding for Medicaid originated with the passage of the Medicaid statute in 1965. The original program beneficiaries were low-income children and their parents, the indigent elderly, and blind and disabled persons. In exchange for federal funds, states must comply with certain requirements. One of these requirements is that a state must receive federal approval of a "state plan."

Section 1396a of the Medicaid statutes includes a subsection often referred to as an "any-qualified provider" or "free-choice-of provider" provision. The provision mandates that a state plan must "provide that (A) any individual eligible for medical assistance…may obtain such assistance from any institution, agency, community pharmacy, or person qualified to perform the service or services required…who undertakes to provide him [her] such services." Regulations, since adopted, recognize a state's authority to set reasonable standards concerning the qualifications of providers.

Title 42 of U.S.C. § 1983, "is a landmark civil rights law" that enables private plaintiffs to sue state officials and others acting "under color of state law for violating rights secured by the Constitution and laws of the United States." Edwards' right to bring a Section 1983 lawsuit has been upheld to date by a federal district court and the Fourth Circuit Court of Appeals. The Court is now slated to consider the question.

Case Analysis

First filed in 2018 in the South Carolina federal district court, almost seven years will have passed before the Court will finally decide whether the Medicaid Act "unambiguously confers a private right upon a Medicaid beneficiary to choose a specific provider."

This case has come to the Court before, twice on petitions for review before the Court ruled on a third petition in December 2024 to consider the merits of the case. The Court denied a 2020 petition for *certiorari* review. The Court granted one in 2023, and in doing so vacated the

Fourth Circuit 2022 ruling in favor of Edwards' right to sue. The Court wished the appeals court to consider the Court's intervening analysis in a nursing home patient's case concerning the right to sue under Section 1983. In 2024, the Fourth Circuit, after "another round of briefing and oral argument," decided the case for the third time in favor of Edwards and her right to sue.

The United States District Court for the District of South Carolina on three occasions also adjudicated various motions on the merits of Edwards' claims and the SCDHHS's defenses, including the question of whether a right to sue allowed for the Edwards' suit. From the outset SCDHSS maintained that the Medicaid Act "fails to create a private right of action enforceable through § 1983." SCDHHS asserted that, when read in context of the whole act, the right Edwards maintained protected her choice of provider "is meant to protect patients in the aggregate, not to confer an unambiguous right upon individuals such as Ms. Edwards." It also argued that the right to choose "is the right to choose among a pool of providers determined to be qualified by a State, not the right to have a particular provider deemed qualified." After opposing Edwards' request for temporary restraining order and preliminary injunction on these grounds, among others, SCDHHS moved to dismiss Edwards' lawsuit saying the lawsuit failed to state a claim reiterating the position that the Medicaid Act did not authorize Edwards to pursue a lawsuit. SCDHHS advanced the defense, in part, this way: "the act does not authorize a private right of action under § 1983 to collaterally attack a state agency's decision to exclude a provider under the state's Medicaid program."

Throughout, the district court applied the same legal test to address the lack of private right of action defense. The test: "To create a private cause of action enforceable through § 1983, a federal statute must unambiguously confer a federal right, not simply a benefit or interest." In its ruling on Edwards' motions for a temporary restraining order and preliminary injunction order, the court cited to the decision in *Gonzaga University v. Doe*, 536 U.S. 273 (2002), as the source of this test and further evoked *Blessing v. Freestone*, 520 U.S. 329, a 1997 Supreme Court case to explain that: "To determine whether this requirement has been met, a court must examine whether Congress intended the statute to benefit the plaintiff, whether the right is so vague and amorphous that its enforcement would strain judicial competence, and whether the obligation created by the statute is mandatory." (Internal quotation marks omitted.)

The Fourth Circuit affirmed the district court's temporary restraining order and preliminary injunction rulings four and a half years ago. *Planned Parenthood South Atlantic v. Baker*, 941 F. 3d 687 (4th. Cir. 2019) (Baker served as director of SCDHHS then). The affirmance included a discussion of Spending Clause legislation. The Constitution's Spending Clause empowers Congress to pass laws "to provide for the common Defence and general Welfare of the United States." Constitution of the United States, Article 1, Section 8, Clause 1. The court of appeals noted that "courts must be especially cautious in finding that a provision in Spending Clause legislation, such as the Medicaid Act, creates a private right enforceable under § 1983."

The court of appeals remarked that: "As a matter of black letter law, inferring a private right of action is a matter of statutory interpretation. If Congress is silent or ambiguous, courts may not find a cause of action 'no matter how desirable that might be as a policy matter.'" (Some internal quotation marks omitted.) The court, invoking principles voiced by Justice Lewis Powell in 1979, referred to the impropriety of freely implying authority for individuals to bring lawsuits to enforce the laws as interfering with Congress's power to "set the jurisdiction of the lower federal courts." Additionally, Justice Powell recognized that "an expansive approach to implied private rights of action cannot be squared with the doctrine of the separation of powers." *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979) (Powell, J. dissenting).

The court of appeals acknowledged that the private right of action black letter law it recited "was not always this way." A "doctrinal about face" took place leading to a focus on the specific statutory text at issue and whether the statute that Congress has passed "displays an intent to create not just a private right but also a private remedy." In the court's rendition of the developments of this aspect of the law, *Gonzaga* and *Blessings* were seminal cases that articulate the rule that Section 1983 creates a private right of action to enforce a federal statute "only when the underlying statute itself unambiguously 'confers an individual right' on the plaintiff." The court's opinion adopts the reasoning that "because Spending Clause legislation is in the nature of a contract, we should not construe it so as to ambush states with terms that states did not foresee or bargain for."

By 2019, the Fourth Circuit could cite to five out of the six other circuits to consider the issue upholding the use of Section 1983 to enforce the free choice of provider provision. These circuits included the Fifth, Sixth, Seventh,

Ninth, and Tenth. Only the Eighth Circuit had concluded otherwise. When the Fourth Circuit became the sixth to uphold the use of Section 1983 to enforce the Medicaid Act's free choice of provider promise, South Carolina petitioned the Court to accept its appeal of the temporary restraining order and preliminary injunction decisions.

The Court declined to accept the appeal. In September 2020, the district court rejected the nine arguments pursued by SCDHHS in defending against Edwards' motion for a final judgment based on the controlling law and undisputed facts. SCDHHS was asking the court to rule that the Fourth Circuit incorrectly decided the free choice of provider private right of action and Section 1983 claims. The district court ruled the request was directed to the wrong court and decided the case in favor of Edwards and granted her request for permanent injunction.

SCDHHS then returned to the Fourth Circuit. Once again, the court ruled against SCDHHS. In its opinion, affirming the lower court, the appeals court stated that "[l]ike other Spending Clause legislation, Medicaid offers States a bargain: Congress provides federal funds in exchange for the State's agreement to spend them in accordance with congressionally imposed conditions." The court rejected a newly voiced claim that Edwards faced no concrete injury if SCDHHS terminated PPSAT's Medicaid enrollment since she had not used PPSAT's services since before the filing of the 2018 complaint. The court found Edwards' stated intentions to seek care in the future sufficient to establish that she faced concrete injury if PPSAT was again excluded from Medicaid. According to the court, "[i]t is commonplace for patients to see multiple providers and equally routine to defer care until the need arises or until symptoms in some way manifest themselves….The fact that she did not require such care in the time between the outset of this litigation and the present may simply reflect the happenstance of medical need, coupled with the unique hindrances of the Covid pandemic."

Asked to reconsider its 2020 decision, the court noted that: "While law is indeed not static, it is also not open to reversal in the manner that appellant suggests. After all, the question at issue here is identical to the legal question we resolved in the prior case…." Quoting Justice Benjamin Cardozo, Circuit Judge Wilkinson's opinion notes that "[w]hat has once been settled by a precedent will not be unsettled overnight, for certainty and uniformity are gains not lightly to be sacrificed." In March 2022, the court again decided in favor of Edwards, reaffirming the reasoning contained in its 2020 opinion. SCDHHS once again sought review by the Court.

This time, the Court accepted SCDHHS's request and vacated the Fourth Circuit's decision. The Court's order remanded the case to the Fourth Circuit for further consideration in light of a 2023 decision in *Health and Hospital Corporation of Marion Cty. v. Talevski*, 599 U.S. 166. In *Talevski*, the Court held that an individual could bring a Section 1983 action to enforce unnecessary restraint and predischarge notice rights provisions of the federal Nursing Home Reform Act.

On remand, the Fourth Circuit concluded *Talevski* did not require the court to change its previous determinations on Edwards' right to pursue her case. This time, SCDHSS maintained that under *Talevski*, *Gonzaga*, not *Blessings*, is the crucial precedent. Finding that the *Blessings*' facts are "considerations to be taken into account by the courts rather than rigid conditions," the circuit court still found the *Gonzaga* text and structural analysis precedent appropriate to employ. It did so acknowledging that, under *Talevski*, a private enforceable right "constitutes the atypical case" and that *Talevski* sets a "demanding bar" for such actions.

Now the Court has the case before it with SCDHHS arguing, among other points that (1) the any-qualified-provider provision lacks clear rights-creating language, (2) the Medicaid Act's statutory scheme reinforces that conclusion, (3) common sense confirms this, and (4) reversal would "respect separation of powers and enable states to better steward scarce Medicaid resources." According to SCDHHS, "Congress *wanted* states to have substantial discretion to innovate with their Medicaid programs. So it made the Act a substantial compliance regime." According to SCDHHS, such a regime gives the federal government discretion to withhold funding "when a state's administration of its plan deviates from the Act's specifications."

SCDHHS highlights that the any-qualified-provider provision is "nestled in a list labeled 'Contents' setting out 87 disparate items that plans must include." The lack of a mention of rights according to SCDHHS is another reason the provision is not rights-creating.

The petitioner leans heavily on the proposition that allowing private enforcement of the provision would subject states to expensive lawsuits not anticipated when they took Medicaid funding from the federal government. It asserts the requirement that states have administrative

remedies for providers such as PPSAT and that there is another provider where Edwards could receive care, also that a beneficiary is protected by a provider's exercise of its state administrative appeal rights. SCDHHS argues, too, that allowing South Carolina to disqualify providers like PPSAT "ensures that South Carolina's Medicaid funding goes toward improving access to necessary medical care…rather than improving Planned Parenthood's ability to free up funding to pay for abortions."

Edwards and PPSAT can be counted on to continue to counter propositions that rights-creating language is missing from the Medicaid Act. They can point to "unmistakably clear" language that "any individual eligible for medical assistance…may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service required.…" They have stated that Congress has reiterated the importance of this right when it comes to family planning services by providing that, even when a state utilizes a managed care system, the state cannot limit a patient's freedom of choice of a provider. 42 U.S.C. 1396a(a)(23)(B). Additionally, Congress has not "created a comprehensive enforcement scheme showing a congressional intent to preclude private enforcement." They can also point to the fact that the Congressional-created scheme for enforcement of the Medicaid Act provisions is not incompatible with Section 1983 enforcement.

Significance

As an amicus supporting SCDHHS, the United States says: "In the past 40 years, this Court has found Spending Clause provisions to be sufficiently clear to create federally enforceable rights under Section 1983 only three times." The 2023 *Talevski* decision written by Justice Ketanji Brown Jackson and joined by six other justices counted as the third time. According to the government, Congress did not put states on notice that any qualified provider rights could be enforced by Section 1983 lawsuits against them. The United States warns that misclassifying the asserted choice of provider right would invite private enforcement of numerous Spending Clause statutes.

Nine other amicus briefs support SCDHHS. This includes some whose involvement stems from the case arising as a result of the termination of a Medicaid provider who also offers abortion services. Among these is a brief submitted by nine U.S. Senators and some 58 members of the House of Representatives. They state directly that "Congress knows how to create a private right of action, but did not do so here."

Although the central question that the Court may be asking in deciding the case may not be what Congress knows. Instead, the justices might look to determine whether the Medicaid Act, if read like a contract, overlooking none of its terms, puts states on notice that, in return for federal Medicaid funds, they have voluntarily and knowingly agreed to comply with the condition that Medicaid beneficiaries have a free choice of provider. That is because Spending Clause legislatively-created obligations are considered to be "in the nature of a contract."

Given the amount of dollars expended by the federal government and the states in the Medicaid program, the cost of private enforcement through Section 1983 actions directed at the states may be a legitimate concern of the states. However, in opposing the SCDHHS's most recent petition for the Court's review, Edwards and PPSAT remarked on the infrequency with which the any-qualified-provider issue arises. They also have asserted those cases involved pretextual termination attempts lacking any legal basis or evidentiary support.

Few would likely dispute that Americans have long-treasured the right to choose their physicians and other medical providers. It would therefore be understandable for Congress to want to guarantee that right to patients with Medicaid. It would also be understandable that in 1967, when Congress added the free choice of provider provision to the Medicaid Act, it did not have the same notion of what Spending Clause legislation jurisprudence would expect of its legislation in order to put states on notice of the newly adopted obligation. The three spending clause provisions found in the past 40 years identified by the United States as having clauses sufficiently clear to create Section 1983 rights were decided in 1987, 1990, and 2023. Notably, the Court's doctrinal about-face in Spending Clause legislation jurisprudence that the Fourth Circuit addressed in its 2019 decision occurred after 1979.

Whether that doctrinal about-face impacts this Court's examination of the provider-of-choice provision remains to be seen.

Conclusion

We should not assume that the Court will be predisposed against finding a right to bring a Section 1983 action to enforce Medicaid's any-qualified-provider provision. Already in 2025, the Court has reversed an Alabama Supreme Court ruling that it found improperly immunizes the Alabama secretary of labor from Section 1983 due process suits alleging