

## Beyond the Medi-Cal Payment Lawsuits: The Supremacy Clause Opens the Door to Provider Challenges to State Laws that Conflict with Federal Laws

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The recent successful federal court challenges to the State of California cuts to Medi-Cal reimbursement rates are notable not only because they have offered providers relief from the rate cuts, but also because they have established the viability of provider challenges to California state laws on the grounds that they conflict with federal health care laws.

While States may enact laws governing Medicaid and Medicare program standards and administration requirements beyond those created by federal law, such laws are subject to challenge if they are inconsistent or in conflict with federal Medicaid or Medicare laws. In such a case, providers can claim that the State law or conduct violates federal rights secured by the Supremacy Clause of the United States Constitution. Under the Supremacy Clause, federal law (such as the Medicaid or Medicare statute) takes precedence over state law (*i.e.*, the state's interpretation or application of federal Medicaid or Medicare law) to the extent that they conflict.

In a series of Medi-Cal reimbursement rate cases, providers alleged that the State of California violated the "equal access" provision of the federal Social Security Act when it enacted legislation that cut Medi-Cal fee-for-service rates by 10 percent. The equal access provision requires States to establish provider reimbursement rates that "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available [to the population served by Medicaid] at least to the extent that such care and services are available to the general population in the geographic area." The federal courts have found that providers can bring a legal action to challenge the rates cuts as violating the Supremacy Clause. The courts also found that even though federal Medicaid law vests States with considerable discretion over Medicaid payment rates, federal law requires that rate cuts must be supported by responsible cost studies that consider the impact of rate cuts on efficiency, quality and access to care. Since the State did not support the rate cuts with such cost studies, the courts have prevented the State from implementing the cuts. (*See Independent Living Center of Southern California ("ILC") v. Shewry* (9<sup>th</sup> Cir. 2008) 543 F.2d 1047, *cert den. Maxwell-Jolly v. ILC* (2009) 129 S.Ct. 2828.)

The Medi-Cal rate cut cases have paved the way for providers to challenge other State action that is taken contrary to the federal Medicaid or Medicare laws, or other federal laws. For example, the Supremacy Clause theory also provided the basis for a provider lawsuit challenging the State's implementation of the so-called Rogers Amendment, in which the State issued guidelines purporting to set rates for non-contracted emergency services provided to Medi-Cal patients. (*California Hospital Association v. Maxwell-Jolly*, United States District Court, Central District of California, Case No. CV09-3694.) In another case, an air ambulance company used the Supremacy Clause theory to challenge the application of workers' compensation rates to air ambulance services, alleging that the State's regulations conflicted with the federal government's exclusive right to regulate the prices of air carriers under the Federal Aviation and Airline Deregulation Acts. (*California Shock Trauma Air Rescue v. State Compensation Insurance Fund*, United States District Court, Eastern District of California, Case No. 2:09-cv-00090.) These actions are still pending.

Relief in these actions can come in the form of an injunction, which is a court order requiring the State to stop enforcement of a challenged law. A court can also order that the state revise its actions or laws.

Relief in these actions does not necessarily come quickly or easily. The State has a strong incentive to defend its actions and has often mounted early

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**Past President, HFMA Northern California Chapter**  
**Years in Healthcare: 13**  
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*“Great friendships are formed while acquiring education in HFMA”*



**How did you end up in Healthcare? Did you choose it or did it choose you?**

*Genetics? It runs in the family. So when I ran away from the East Coast winters to California, I joined the fun.*

**Tell us about yourself**

*I look a lot like ex-MLB player Wally Joyner, throw and bat left-handed but do everything else right-handed, enjoy writing and unwind with 6-mile runs after work. Plus, I never turn down pizza.*

**There's no right or wrong answer, but if you could be anywhere in the world right now, where would you be?**

*Parma, Italy, playing for pizza (with family in tow).*

**What do you like to do for fun in your spare time?**

*I coach Little League baseball and CYO basketball, read my 6-year-old daughter Gabbie's numerous mini-novels, work very little at keeping my golf handicap in the low 20-neighborhood and cut my small California lawn with an electric mower (because using clippers would look too silly).*

**What's the last book you read?**

*“Are You Kidding Me” by Rocco Mediare and John Feinstein (although I just began*

*Schultz to learn about the man behind Peanuts).*

**What would you do if you won the lottery?**

*Fall down laughing because the only time I buy a ticket is when it is ridiculous jackpot.*

**What is your greatest achievement outside of work?**

*First, being a Dad/Husband. Second, getting my book published. Third, passing the California Bar in one try. Fourth, learning to juggle cats (relax, they are my daughter's stuffed animals).*

**If you could be a superhero, who would you be and why?**

*Batman because he is super rich and has a butler*

**What's the best movie you've seen in the last three years?**

*Up!*

**Who are your heroes?**

*My Mom and Dad followed very closely by Brooks Robinson.*

**The best advice I ever had was**

*“If you wanna dance, you've got to pay the fiddler.” A close second was “Hell's fire” by*

*my Catholic high school baseball coach and spiritual wiseman Steve Walker.*

**The best part of my job is**

*Bringing resolution to health care chaos on a daily basis. Working right across the street from the Stoneridge Mall ain't bad either.*

**My favorite food is**

*New York Pizza (Ray's ... any of the originals will do)*

**My first car was**

*1973 Chevy pick-up that got 3 mpg*

**My favorite car was**

*1983 Jeep CJ Ragtop*

**Favorite quote**

*“You'll Shoot Your Eye Out!” (I have a soft spot for Christmas)*

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challenges to such lawsuits on procedural grounds. The State has previously challenged the providers' legal standing to bring the action or whether the action is properly brought in federal court (as opposed to State court). The State has also appealed decisions favoring providers to the Ninth Circuit Court of Appeals and even the United States Supreme Court.

On the other hand, victories by providers in the early stages of these legal proceedings can also lead to negotiated resolutions with the State. For these reasons, providers should consider a Supremacy Clause challenge to be a viable option in response to State action that is inconsistent with federal law. ☒

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