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July 2, 2025

Supreme Court Decision Is Blow to Planned Parenthood and Medicaid Private Right of Action

On June 26 the Supreme Court of the United States (SCOTUS) issued its much-anticipated decision in *Medina v. Planned Parenthood*, a court case where once again, reproductive health access was at the forefront. In a 6-3 decision, the Court upheld South Carolina's prohibition on Planned Parenthood's participation in the state's Medicaid program. In allowing South Carolina to exclude Planned Parenthood from Medicaid, the Court held that Medicaid beneficiaries do not have a right to sue in federal court to enforce Medicaid's "free-choice of provider provision."

The decision has implications far beyond Planned Parenthood, limiting the ability of Medicaid enrollees to choose their providers, creating a pathway for more states to exclude Planned Parenthood from their Medicaid programs, and potentially undercutting an important civil rights protection that applies to other health care programs.

Planned Parenthood and Family Planning Services

Many of family planning covered Medicaid services are provided by Planned Parenthood clinics. One in ten female Medicaid enrollees received their family planning services from a Planned Parenthood clinic in 2021. In some states, like California, Washington, Oregon, Wisconsin and Michigan that number is over 15%, sometimes over 20%. When Texas excluded Planned Parenthood from its Medicaid family planning program Medicaid claims for contraceptives dropped and Medicaid-funded births soared. Medicaid is also a major share of many Planned Parenthood clinics' financing, meaning that being excluded from this program may cause clinics to close.

Medicaid's "Free Choice of Provider" Provision

"Free Choice of Provider" in Medicaid

Under section 1902(a)(23) of the Social Security Act, Medicaid beneficiaries have the right to obtain medical services "from any institution, agency, community pharmacy, or person" who is qualified to perform the services and has agreed to participate in the Medicaid program.

At the center of the challenge in *Medina* was a South Carolina executive order that cut off Medicaid funding for providers in the state that provide abortion services. South Carolina was one of a number of states that had taken action in recent years to exclude abortion providers (and often specifically Planned Parenthood) from participating in the Medicaid program. The federal government already has a longstanding policy that bars use of any federal funds for abortions, and many states have similar prohibitions on use of state funding. Laws like

the one at issue in *Medina* go much farther, prohibiting Medicaid reimbursement for *any* services if the provider also provides abortion services. Federal law requires Medicaid programs to cover a range of family planning services – including contraceptives, pregnancy testing, and sexually transmitted infection (STI) testing. States may also apply for family planning waivers that allows them to provide family planning services to individuals not eligible for other Medicaid categories. Family planning waivers are particularly important in non-Medicaid expansion states, providing access to preventive services for individuals without another source of coverage.

Beneficiaries argued that the South Carolina prohibition infringes on their rights under Medicaid's "free choice of provider" protections, which requires that beneficiaries have access to a network of providers who meet state provider qualifications and have agreed to participate in the program. South Carolina argued that it was well within its rights to disqualify participating Medicaid providers "for any reason that state law allows." SCOTUS agreed with South Carolina.

Right of Action to Enforce Medicaid Protections

42 USC § 1983

A federal civil rights law that confers allows private individuals to sue state actors (entities exercising power derived from state or local government authority) who violate their rights under the Constitution or federal laws.

The *Medina* decision will have impact beyond patients' ability to access their choice of family planning service providers. The enforcement of patients' legal rights under federal law also suffered a significant setback. *Medina* holds that the language of the Medicaid Act does not allow beneficiaries to enforce the "free choice of provider" protection in court. Writing for the majority, Justice Neil Gorsuch articulated a view of a very limited enforcement right under longstanding federal civil rights law, 42 USC § 1983. Section 1983 allows individuals to sue state and local governments who deprive someone of "any rights privileges or immunities secured by" federal law. Only two years ago, SCOTUS interpreted the Federal Nursing Home Reform Act favorably to allow Medicaid beneficiaries to sue a state for violating their rights in its decision in *Health and Hospital Corporation of Marion County vs. Talevski*. In that case, the Court found that beneficiaries were entitled to sue under § 1983 where federal legal protections requiring pre-discharge notice and prohibiting unnecessary restraint are violated. Justice Gorsuch seemingly ignores the reasoning in *Talevski*, finding that the Medicaid provision at issue in *Medina* does not confer a right that would allow individuals to sue under § 1983. He writes "[t]hough it is rare enough for any statute to confer an enforceable right, spending-power statutes like Medicaid are especially unlikely to do so." Advocates for Medicaid beneficiaries are especially concerned that *Medina* will be interpreted by some federal courts to shut down a wide array of lawsuits brought to protect a wide array of Medicaid rights.

What is "Private Right of Action?"

A private right of action means an individual - such as a Medicaid beneficiary - who has been harmed by governmental violation of a federal statute is allowed to sue in court. Not all federal laws allow for this type of enforcement. Over the last 30 years, the Supreme Court's view of when private individuals may sue in response to violations of federal law has gotten significantly narrower.

What's Next?

The decision will have an immediate impact on Medicaid enrollees in any state that chooses to exclude Planned Parenthood from their Medicaid programs. According to KFF, at least 14 states have attempted to block Planned Parenthood from participating in Medicaid over the past ten years. The reconciliation bill currently being debated in Congress would have an even broader impact on family planning services access by banning Medicaid reimbursement for any services to Planned Parenthood and other providers who also offer abortion care in every state. The decision may also embolden states to take aim at other providers that have come under political fire, including those that provide gender-affirming care. And finally, the decision may indicate the Supreme Court will be far less likely to recognize a private right of action for Medicaid beneficiaries to challenge state actions that deprive them of Medicaid protections.

Trump v. CASA, Inc.

On the same day as the *Medina* decision, SCOTUS issued an opinion addressing legal challenges to President Trump's Executive Order (EO) ending birthright citizenship. Following lawsuits challenging the EO, three federal judges granted nationwide injunctions against its enforcement because of its violation of the 14th Amendment. The Supreme Court did not rule on the constitutionality of the EO, but instead held that the use of nationwide injunctions by the three lower courts was an inappropriate form of relief. Rather, the Court argued, the courts should have issued narrower rulings affecting only the plaintiffs. The decision significantly limits the ability of federal judges to check the Executive Branch's actions and could leave to a patchwork of different legal interpretations depending on where the case is brought.

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