News Item

May 14, 2004

3rd Circuit Enforces Medicaid Statute

The U.S. Court of Appeals for the Third Circuit has reversed what was for Medicaid beneficiaries and advocates one of the most hostile decisions issued by any court in the aftermath of the Supreme Court's decision in *Gonzaga University v. Doe*, 536 U.S. 273 (2002). The unanimous decision in *Sabree v. Richman*, 2004 WL 1048325 (3rd Cir. May 11, 2004) marks the second time in two months that a U.S. Court of Appeals panel has rejected a state effort to restrict the private enforcement of the Medicaid statute on the basis of *Gonzaga*. See *Rabin v. Wilson-Coker*, 362 F.3d 190 (2nd Cir. 2004) (*Washington Weekly*, April 2, 2004).

In *Sabree*, a group of Pennsylvania residents with mental retardation filed suit under 42 U.S.C. §1983 alleging that the state's failure to provide them coverage under Medicaid for services in intermediate care facilities violated three separate provisions of the Medicaid Act: 42 U.S.C. §§1396a(a)(10) (identifying mandatory services); 1396d(a)(15) (intermediate care facilities included under as "medical assistance"); and 1396a(a)(8)("state plan...must...provide...for... medical assistance...with reasonable promptness to all eligible individuals").

The district court dismissed the case. *Sabree v. Houston*, 245 F.Supp.2d 653 (E.D.Pa.2003). In reaching its conclusion, the district court *did not analyze the provisions pointed to by plaintiffs* but rather relied on two other provisions: 42 U.S.C. §§1396 and 1396c (the "structural provisions"). The former provision, the statute's authorizing provision, "speaks in terms of appropriations and payments to States, not to individuals." The latter, the court emphasized, directs that a state will be sanctioned by the federal government if it is not "substantially compl[ying]" with an approved state Medicaid plan. On the basis of these two provisions, the court concluded that the Medicaid statute on the whole speaks of "the person regulated rather than the individuals protected...." *Gonzaga*, the district court pointed out, declared such a statutory emphasis fatal to a plaintiff's effort to establish a right, and it therefore granted the state's motion to dismiss. While it was not the first time a Medicaid beneficiary lost on a motion to dismiss, the district court's view that the entire Medicaid Act is unenforceable based strictly on an analysis of §§1396 and 1396c was especially troubling.

Fortunately, the court of appeals believed a more thorough analysis was required. The court began by emphasizing the import of the *Gonzaga* decision: "*Gonzaga University* provides the dispassionate lens through which this matter must be viewed." To this end, the court of appeals reviewed the relevant Supreme Court decisions which preceded *Gonzaga*, and identified the test which had been settled upon at the time the

case was heard. "[According to *Blessing v. Freestone*, 520 U.S. 329 (1997)], a statute must: (1) be intended by Congress to benefit the plaintiff; (2) not be 'vague and amorphous;' and, (3) impose an unambiguous 'binding obligation on the States.'" The Supreme Court found this unsatisfactory, the court continued, because individuals merely within "the zone of interests" of a statute were being afforded enforceable rights under this test. Thus, while the Supreme Court in *Gonzaga* "did not abandon this test," it did impose an additional requirement. "To confer rights," a statute must contain "rights-creating language" which "clearly imparts an 'individual entitlement,'" with an "unmistakable focus on the benefitted class."

The court of appeals turned to the Medicaid provisions at issue. Applying the *Blessing* test, the court of appeals found that the plaintiffs easily passed. "Plaintiffs were the intended beneficiaries of §§1396a(a)(10), 1396d(a)(15), and 1396a(a)(8); the rights sought to be enforced by them are specific and enumerated, not 'vague and amorphous;' and the obligation imposed on the states is unambiguous and binding." However, the court continued, "...[O]ur inquiry does not end because, as explained in *Gonzaga University*, the *Blessing* Test may only indicate that plaintiffs fall within the general zone of interest that the statute is intended to protect."

Comparing the language of the Medicaid provisions to the civil rights provisions certified as acceptable by the Supreme Court in *Gonzaga*, the court of appeals found it "difficult, if not impossible, as a linguistic matter, to distinguish [the provisions]." The court stated that the language of the Medicaid provisions are "mandatory rather than precatory," and that the "individual focus" of §§1396a(a)(8), 1396a(a)(10), and 1396d(a)(15) is "unmistakable." But again, per *Gonzaga*, the court did not consider the analysis complete.

"In *Gonzaga University*, the Court instructs that not only should the text of the statute be examined, but also its structure." It was on the structure of the statute, the court of appeals stated, that the district court had solely based its decision. This was where the district court erred. While recognizing that the "structural" provisions relied on by the district court (i.e., §§1396, 1396c) did not create rights, the provisions relied upon by plaintiffs "explicitly create rights." But because *Gonzaga* mandates consideration of the structural provisions, the court conceded that "...balancing the specific language of a few discrete provisions of [the Medicaid Act] against the larger structural elements is a difficult task." Nevertheless, the structural provisions of the Medicaid Act "cannot neutralize the rights-creating language of §§1396a(a)(8), 1396a(a)(10), and 1396d(a)(15)." But could the court be sure of this? It believed it could. "Our confidence rests securely on the fact that the [Supreme Court in *Gonzaga*] refrained from overruling...*Wilder [v. Virginia Hospital Ass'n*, 496 U.S. 498 (1990)], which upheld the exercise of individual rights [under the Medicaid Act]." The structural provisions were "in effect at the time of Wilder..." Indeed, "...*Gonzaga University* did not overrule *Wilder*; rather, it explained that 'Congress left no doubt of its intent for private enforcement.'"

This exhaustive and ultimately favorable analysis of the Medicaid Act in reference to *Gonzaga* is an important contribution to the Medicaid dialogue. *Gonzaga* has been relied on for at least the *narrowing* of the enforcement of provisions of the Medicaid Act. See *Long Term Care Pharmacy Alliance v. Ferguson*, 362 F.3d 50 (1st Cir. 2004), finding that *Gonzaga* required the court to "reexamine" its prior decisions regarding the private enforcement of the Medicaid Act. Even worse, state attorneys and other district courts were citing the district court's opinion in *Sabree* for support in foreclosing any enforcement of the Medicaid Act (see *M.A.C. v. Betit*, 284 F.Supp.2d 1298 (D. Utah. 2003)). The Third Circuit's decision provides a potent response, even more so in tandem with the Second Circuit's decision in *Rabin*.

More Federal Rights articles

Sign up to receive e-mail updates [privacy policy]: Submit