

How Spending Clause Ruling May Affect Medicaid Litigation

By **Paul Garcia, Erin Sclar and Kelly Carroll** (July 5, 2023)

For decades, the U.S. Supreme Court has limited when patients and providers can sue state Medicaid agencies, including under Section 1983 of the Civil Rights Act.

In *Health and Hospital Corp. of Marion County v. Talevski*, state officials sought to categorically foreclose private parties from using Section 1983 of the Civil Rights Act to challenge a state's violation of federal spending clause legislation, such as Medicaid and the Children's Health Insurance Program. The court resoundingly **rejected** that outcome in a 7-2 decision delivered by Justice Ketanji Brown Jackson.

What Was At Stake in Talevski

In *Talevski*, the court had the opportunity to reexamine — and, as advocates feared, overturn — long-standing precedent that Section 1983 provides private parties access to federal courts when states violate rights guaranteed by laws enacted under Congress' spending clause powers.

Section 1983 provides that state officials who cause "deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured."

The petitioners argued that Section 1983's reference to "laws" should exclude the Medicaid Act and spending clause legislation more broadly.

However, the court declined to "rewrite [section] 1983's plain text," and refused to categorically preclude private actors, like beneficiaries and providers, from using Section 1983 to claim that state officials violated individual federal rights conferred by federal statutes enacted pursuant to the spending clause.

This outcome was hardly guaranteed.

Coming off the heels of the *Dobbs v. Jackson Women's Health Organization* decision in 2022, in which the Supreme Court overturned the seminal *Roe v. Wade* decision from 1973, many advocates feared that the court would similarly overturn years of precedential Section 1983 case law.

Further, for decades, the Supreme Court has narrowed Section 1983's applicability to Medicaid Act causes of action.

Blessing v. Freestone, in 1997, established a three-factor test to determine whether a statutory provision creates privately enforceable rights: (1) whether the plaintiff was an intended beneficiary of the statute; (2) whether the plaintiff's asserted interest was judicially enforceable; and (3) whether the statute imposed a binding obligation on the



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state.

Then, in *Gonzaga v. Doe* in 2002, the Supreme Court explained that Section 1983 could only be used to enforce federal rights when those rights were clear and unambiguously granted.

The court separately chipped away at other avenues for private suits in the Medicaid context. Notably, in 2015, the Supreme Court ruled in *Armstrong v. Exceptional Child Center* that providers and beneficiaries could not rely on the supremacy clause of the Constitution or a court's general equity authority to enforce certain Medicaid reimbursement requirements.[1]

Talevski Ruling

Talevski involved allegations that a nursing facility violated resident Gorgi Talevski's rights under the Federal Nursing Home Reform Act to be free from chemical restraints and rights related to transfer and discharge procedures.

The nursing facility argued that no private right of action exists under Section 1983 with respect to (1) spending clause legislation more broadly and (2) the specific FNHRA provisions at issue.

Section 1983 Applies to Spending Clause Legislation

The court concluded that Section 1983 applies to rights-creating laws, and not some subset of laws. The court explained that, although the court applies "a test for determining whether a particular federal law actually secures rights for [section] 1983 purposes" the court has "not previously doubted that any federal law can do so."

To support its reasoning, the court cited its 1980 decision in *Maine v. Thiboutot*, where it declined to read "laws" as applying only to "civil rights or equal protection laws."

The court then considered whether "historical evidence" favored the interpretation that Section 1983 conferred a private right of action here. The court concluded that it did, noting that it could not flatly overrule a number of major decisions based on ambiguous historical evidence.

The court based its analysis on two principles.

First, "Congress's failure to displace firmly rooted common law principles indicates that it incorporated those established principles into [Section] 1983."

Here, the court noted that common law principles tended to support the interpretation that spending clause legislation could give rise to private rights of action, noting that the majority of American jurisdictions allowed third-party beneficiary suits at the time Congress enacted Section 1983.

While it may be contestable whether third-party beneficiaries could sue to enforce contractual obligations when Congress enacted Section 1983, the court determined this evidence was insufficient to hold there is no private right of action for spending clause legislation at all.

Second, Section 1983 "is, and was always regarded as, a tort claim."

But here, the arguments the nursing facility offered to show that spending clause legislation could not give rise to a private right of action under Section 1983 were based on contract. These contract-based arguments were therefore inapposite as to determining the common law precedent when Congress enacted Section 1983.

Section 1983 Applies to the Specific FNHRA Provisions at Issue in Talevski

After holding that spending clause legislation could give rise to a private right of action under Section 1983, the court then turned to assessing whether the FNHRA provisions at issue met the high bar to create such Section 1983-enforceable rights.

The court determined they did because of their language granting rights to nursing home residents. For example, as to rights regarding chemical restraints, the court pointed out that the FNHRA explicitly requires nursing facilities to protect and promote the "right [of residents] to be free from any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms."

What Talevski Means for Medicaid Providers and Beneficiaries

While Talevski resoundingly rejected the notion that Section 1983 is wholly unavailable for Medicaid and other spending clause programs, the court nonetheless affirmed the high bar that courts must apply in Section 1983 litigation.

This means that lawsuits alleging that a state wrongfully reduced or eliminated the rights of Medicaid beneficiaries or providers will not be precluded out of the gate. However, it remains to be seen how the court could analyze other Medicaid provisions under the high bar for Section 1983 that Talevski affirmed.

Justice Amy Coney Barrett's concurrence, joined by Chief Justice John Roberts, stressed that courts "must tread carefully before concluding that Spending Clause statutes may be enforced through [Section] 1983," reasoning that where a statute contains contextual clues such as comprehensive enforcement provisions and administrative remedies, it is less likely a court will find a private right of action under Section 1983.

The other concurring and dissenting opinions offer a glimpse at additional principles the court might address in future private right-of-action analyses.

For example, Justice Neil Gorsuch's concurring opinion stated that another issue lurking in Talevski was whether "legal rights provided for in spending power legislation like [Medicaid] are 'secured' as against States in particular and whether they may be so secured consistent with the Constitution's anti-commandeering principle."

Justice Clarence Thomas' dissent picked up on the anti-commandeering point, explicitly arguing that spending clause legislation could not give rise to private rights of action under the anti-commandeering principle.

Justice Samuel Alito's dissent raised the role of a statute's remedial provisions in a private right-of-action analysis. In Justice Alito's view, the FNHRA forecloses a private right of action, despite creating substantive private rights, because of its robust remedial provisions applicable to states.

Faced with a legal landscape that has narrowed avenues for private parties to challenge

Medicaid rate reductions and other state actions involving the Medicaid program over the last few decades, Talevski serves as a key decision in the Section 1983 lineage, preserving an important avenue for providers and beneficiaries alike seeking to enforce rights under Medicaid.

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