



Oklahoma Chapter of the American College of Pediatrics v. Fogarty, 472 F.3d 1208 (10th Cir. 2007)

Topics Covered: Medicaid, Payment Issues (for Patients)

Outcome: Favorable

Issue

The issue in this case was whether the Oklahoma Medicaid Program violated the “equal access” provision of the federal Medicaid law and deprived Medicaid recipients of their civil rights. The suit maintained that the State of Oklahoma, if it were to continue the program, had to increase its funding and reduce the bureaucratic barriers to access.

AMA Interest

The AMA believes that all Americans should have access to necessary medical care, regardless of ability to pay.

Case Summary

The Oklahoma Chapter of the American Academy of Pediatrics (OKAAP), the Community Action Project of Tulsa County, and several patients (but no individual physicians) sued the individuals responsible for running the Oklahoma Health Care Authority (OHCA). The first named defendant, Michael Fogarty, was the Chief Executive Officer of OHCA.

The principal claim was that Oklahoma Medicaid funding was so low that physicians were unwilling or financially unable to treat qualifying children. In addition, OHCA imposed bureaucratic requirements on Medicaid recipients, which made their continued participation in the program more difficult and induced some of them to cease using its benefits, even though they were substantively eligible. Thus, the care available to these children was less than the care available to the general population of children.

The complaint alleged that the equal access violation deprived the plaintiffs of their civil rights under 42 U.S.C. § 1983. The suit asked the court to certify a plaintiff class, to consist of those Oklahoma children who were currently or in the future would be eligible for certain services under Medicaid. Ultimately, the complaint sought an injunction to require that OHCA meet the federal equal access requirements and otherwise comply with Medicaid standards.

One irony of the lawsuit was that, to an extent, the defendants sympathized with the plaintiffs who, after all, were asking that the defendants receive additional funding from the State of Oklahoma, so they could discharge their statutory duties. On January 26, 2002, the Tulsa

World reported that Dr. T.J. Brickner, OHCA Chairman, acknowledged that Medicaid payments were insufficient to cover physicians' costs: "We've got to solve the access problem. The pediatricians have a point."

The trial court certified a plaintiff class of patients, found that OHCA had substantially violated the Medicaid equal access requirement, and referred the case to a United States Magistrate Judge for submission of a proposed injunctive order. The trial judge also found that OKAAP lacked standing as a plaintiff and dismissed it from the lawsuit.

The trial court entered a final judgment and injunction, ordering the largest and broadest reimbursement rate increase in any case of its kind in United States history. The court ordered that, on an immediate interim basis, the Oklahoma Medicaid Program reimburse covered, medically necessary physician services for minor children at 100% of the Current Procedural Terminology (CPT) rate paid by Medicare for such services. The court also required the Oklahoma Medicaid Program to hire a consulting firm to determine the reimbursement rate needed to comply on a long term basis with the Medicaid equal access provision.

The plaintiffs appealed from the final judgment and injunction, contending in particular that the trial court erred in applying a "substantial compliance" standard in determining whether defendants met their statutory obligations to provide medical assistance to the plaintiff class. The defendants cross-appealed.

On January 3, 2007, the Tenth Circuit Court of Appeals reversed the trial court decision and remanded the case with instructions to enter judgment for the defendants. The ruling was based on the appellate court's conclusion that there was a lack of a private (i.e., non-governmental) right of action and a failure of evidence on the merits.

Although the court result appears to have been ultimately unfavorable, during the approximately year-and-a-half that the trial court order was in effect the Oklahoma Legislature substantially increased Medicaid funding. Moreover, notwithstanding the Tenth Circuit's reversal, those funding levels were, to an extent, carried forward. Thus, this lawsuit significantly benefited thousands of physicians and hundreds of thousands of needy children in Oklahoma.

On June 7, 2010, the plaintiffs asked the Tenth Circuit to reverse its 2007 decision. They cited to a Congressional report, promulgated in connection with the Patient Protection and Affordable Care Act (Pub.L. 111-148), which stated that several court holdings, including this one, were based on a misunderstanding of the law. However, this motion was denied.

Litigation Center Involvement

The Litigation Center contributed substantially toward the plaintiffs' litigation expenses. Also, the Litigation Center, along with the American Academy of Pediatrics (the national organization), filed a brief as amici curiae to the Tenth Circuit.

United States Court of Appeals for the Tenth Circuit brief