

Section 30(A) of the Medicaid Act requires that state Medicaid plans contain procedures to ensure that reimbursement rates for healthcare providers “are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers” to meet the need for care and services in the geographic area. 42 U.S.C. § 1396a(a)(30)(A). The statute does not include an express right of action for Medicaid providers to challenge whether a state plan complies with Section 30(A). Today, the Supreme Court granted certiorari in *Armstrong v. Exceptional Child Center*, No. 14-15, to decide whether the Supremacy Clause of the U.S. Constitution gives providers an implied private right of action to enforce § 1396a(a)(30)(A) against a State.

A group of Medicaid providers in Idaho sued that State’s Department of Health and Welfare, alleging that the State’s reimbursement rates for certain supported-living services failed to comply with Section 30(A). The district court granted judgment in favor of the providers, finding that they had an implied private right of action under the Supremacy Clause to enforce Section 30(A). The Ninth Circuit affirmed. Its ruling is consistent with those of the First, Second, Third, Fourth, Fifth, and Sixth Circuits, but conflicts with a Tenth Circuit decision holding that a Supremacy Clause right of action does not exist in the absence of congressionally created rights or remedies.

The Supreme Court previously granted certiorari in *Douglas v. Independent Living Center, Inc.*, 132 S. Ct. 1204 (2012), to resolve this circuit split, but post-argument procedural events produced a remand in that case, so the Court did not reach the issue. The Chief Justice, joined by three other justices, dissented from the remand and stated that the Supremacy Clause does *not* supply a right of action of its own force where Congress has not created an enforceable right.

The Supreme Court’s resolution of this circuit split will be of significant interest to Medicaid providers who wish to challenge state plans. Depending on the scope of the decision, it may also have larger implications regarding the availability of private rights of action against state officials for violations of federal law.

Absent extensions, amicus briefs in support of the petitioners will be due on November 24, 2014, and amicus briefs in support of the respondents will be due on December 24, 2014. Any questions about this case should be directed to Lauren R. Goldman (+1 212 506 2647) in our New York office.