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## **SUPREME COURT JUSTICES WORRY CALIFORNIA MEDICAID CASE COULD UNLEASH LAWSUIT FLOOD**

The Sacramento Bee -

Oct. 4, 2011: Washington - A challenge from physicians to California's proposed Medicaid reimbursement cuts prompted Supreme Court justices Monday to worry about a flood of similar lawsuits in the future. The prospect that courts could get swamped alarmed several justices across the ideological spectrum. Their questions during oral argument suggested that physicians might have a hard time prevailing in their efforts to stop the California reductions through legal action.

"The practical problem is millions of rate (decisions) and ... lots of judges," Justice Stephen Breyer said, adding that "a mess" could result from so many legal challenges. The California Pharmacists Association, Santa Rosa Memorial Hospital and the Independent Living Center of Southern California all challenged the state's reimbursement cuts. The Supreme Court won't decide on the reductions themselves, but whether the medical professionals had a right to sue under the Constitution.

Breyer's fears seemed to be shared by Justice Antonin Scalia and Chief Justice John Roberts, among others, and they aligned at times with the arguments made on California's behalf by state Supervising Deputy Attorney General Karin S. Schwartz.

"It is not more efficient to have 700 federal judges interpreting a federal statute," Schwartz said during the hourlong oral argument. At the same time, Breyer acknowledged that the three consolidated California cases that kicked off the court's new term are "difficult" ones with complicated consequences, and several justices raised doubts about the state's position.

California spends more than \$41 billion a year on the Medicaid program, which the state operates under the name Medi-Cal. It consumes about 13 percent of the state's budget. Faced with what the state's attorneys described as a "devastating, ongoing and deepening financial crisis," the California Legislature approved reimbursement cuts in 2008 and 2009 of between 1 and 10 percent.

Hospitals sued, joined by unions and organizations that include the Gray Panthers of Sacramento. The 9th U.S. Circuit Court of Appeals blocked the reductions from taking effect. Customarily, private parties can sue to enforce a federal law only if Congress has explicitly authorized them to. The Medicaid law doesn't include such authority.

"Congress has not created a cause of action for the private parties," Deputy Solicitor General Edwin S. Kneidler noted Monday, echoing California's argument.

The medical professionals, though, argue that they have the power to sue under the supremacy clause of the Constitution, which declares that congressional acts are the "supreme law of the land" and take precedence over state laws.

Under this reasoning, the California laws imposing reimbursement cuts violated the



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1965 Medicaid law's requirement that state payments remain "consistent with efficiency, economy and quality of care" and be "sufficient" for medical professionals.

On the other side, 31 states allied with California to warn in a legal brief that "a whole host of other federal-state programs" might be unsettled if the court allows the Medicaid reimbursement challenge to proceed.

A court decision is expected before the new term expires next June; as the first case heard, it's likely to be decided well before then.