



# McCreary v. Offner, 172 F.3d 76 (D.C. Cir. 1999)

Topics Covered: Medicaid, Medicare and Payment Issues (for Physicians)

## **Outcome: Very Unfavorable**

A number of state Medicaid programs adopted policies that limited or denied Medicaid reimbursement of Medicare Part B copayments for patients who qualify under both Medicare and Medicaid. The issue in this case was whether, in the event of such dual qualification, the states had to pay at the higher Medicare rates, or whether they could pay at the lower Medicaid rates. All four federal circuits that considered the issue prior to 1997 found that the state programs violated federal law and they were required to pay based on the higher Medicare rates.

In January 1997, the Litigation Center, in states affected by these policies, began helping its members resolve their physician members' Medicaid reimbursement shortfalls through negotiation with Medicaid programs and through litigation in both federal court (seeking declaratory relief prospectively) and state court (seeking payment of claims retrospectively).

In August 1997, Congress passed the Balanced Budget Act of 1997 ("BBA"), which authorized Medicaid's underpayment of Medicare copayments for future medical services and which also attempted to moot any pending lawsuits filed to collect past-due reimbursement. The Litigation Center challenged Congress' retroactive application of the BBA provisions in court cases then pending in Montana and the District of Columbia. The Litigation Center also served as amicus curiae in related cases in Tennessee and Wisconsin.

The Seventh Circuit, the Ninth Circuit, and the U.S. District Court for the District of Columbia all held against the physician plaintiffs. The Litigation Center supported a petition for certiorari by the California Medical Association and filed its own amicus curiae brief. The Supreme Court denied the CMA petition as well as similar petitions by other parties in these lawsuits. In a final effort to preserve physician rights, the Litigation Center supported an appeal by the Medical Society of the District of Columbia to the D.C. Court of Appeals. The case was named *McCreary v. Offner*. The appellate court held that HHS's permitting states to limit reimbursement to health care providers was reasonable.

Interest in this Case: Physicians have provided medical services to poor and elderly patients and patients with disabilities, for which they have not been properly compensated by the Medicaid programs. The Litigation Center wants to help these physicians recover the money they were promised at the time they rendered their services, according to the law in effect when those services were rendered.

Result: Following the above-mentioned rulings in other jurisdictions, the D.C. Court of Appeals also ruled against the physician plaintiffs.