For the third time in two Supreme Court terms, the Court will decide a Medicaid case. While *Delia v. E.M.A.* isn’t nearly as big of a deal as the Affordable Care Act case, it is significant for at least two reasons, from the perspective of state government. First, the case involves preemption of a state statute. Second, during a time when Medicaid costs are skyrocketing, this case will affect states’ ability to recoup some of their Medicaid costs.

Medicaid allows states to collect medical expenses from a Medicaid recipient who recovers from a tortfeasor. But how much can a state collect when a Medicaid recipient agrees to a lump sum settlement from tortfeasor, and it is unclear how much of the settlement is for medical expenses?

A North Carolina statute purports an answer to this question by allowing the state to recover the lesser of actual medical expenses or one-third of a Medicaid recipient’s total tort settlement. In *Delia v. E.M.A.* the state paid $1.9 million on behalf of E.M.A., and her parents settled a medical malpractice claim for $2.8 million. The settlement didn’t allocate between medical expenses and other damages so the state asked for one-third of the settlement, over E.M.A.’s parents’ objections. The question the Supreme Court must answer in *Delia v. E.M.A.* is whether Medicaid preempts North Carolina’s statute.

The State and Local Legal Center (SLLC) filed an *amicus curiae* brief with the Supreme Court, which CSG signed onto. The SLLC’s brief argues that Medicaid is a huge expense for states and that Medicaid grants states substantial discretion in how they pursue recovery from tortfeasors. The brief points out North Carolina’s statute encourages parties to allocate settlements and avoids states having to participate in burdensome settlement discussions or post-settlement allocation hearings. The brief also argues that allowing Medicaid recipients to keep two-thirds of their tort settlement is reasonable and fair.

Oral argument will be heard in this case on January 8, 2013. The Supreme Court will issue an opinion by June 30, 2013.

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