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JUDGE ALLOWS MEDICARE PRESCRIPTION DRUG CASE TO PROCEED

SAN FRANCISCO, CA -. A federal judge in San Francisco has ruled that a class action lawsuit, *Situ v. Leavitt*, filed on behalf of 6.4 million low income Medicare beneficiaries against the federal government for its failure to protect Medicaid beneficiaries in the Medicare prescription drug program, can proceed. "We are delighted that the rights of Medicare's most vulnerable beneficiaries, who have been endangered by the government's callous failure to properly implement its Part D system, can now be enforced," said Jeanne Finberg, Directing Attorney, National Senior Citizens Law Center, lead counsel in the case.

The Centers for Medicare & Medicaid Services (CMS), which is the responsible agency within the federal Department of Health and Human Services, contended that the court had no jurisdiction to hear the case and that the numerous problems cited by the plaintiffs were not attributable to the federal government, but, rather, to a particular private plan, a pharmacist, or the plaintiffs themselves. The Court rejected most of the government's arguments, upholding the right of eight of the individual plaintiffs to proceed and to prove their claims. The court has not yet ruled on plaintiffs' pending motion to certify the nationwide class of affected beneficiaries.

The case raises the systematic failures of CMS's computer system set up for Medicare Part D beneficiaries and for its inadequate safety net for low income people struggling to navigate the system to obtain their drugs. Dual eligibles, individuals who are eligible for both Medicare and Medicaid, are poorer and sicker than the average Medicare beneficiary and rely on an average of ten more prescriptions than other elderly and disabled Medicare beneficiaries. In rejecting CMS's attempts to avoid responsibility for system failures, the court noted that CMS is responsible for enrolling dual eligibles and must allow them to change plans. The court noted that CMS' computer system, even when working correctly, can take up to 76 days to relay low income subsidy information to a pharmacist's computer.

"Now that this challenge to CMS' implementation of Part D has been allowed to proceed, we hope that the agency will take more seriously its obligation to ensure that low income people can obtain the medicine they need," commented Gill Deford of the Center for Medicare Advocacy, co-counsel in the case. Vicki Gottlich and Patricia Nemore, also of the Center for Medicare Advocacy, are also co-counsel.

For further information on Medicare Part D or for a copy of the order, see <http://www.nslc.org/areas/medicare-part-d>.