

HIV Health Care Access Working Group

July 11, 2012

The Honorable Kathleen Sebelius
Secretary
Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

We are writing on behalf of the HIV Health Care Access Working Group – a coalition of over 100 national and community-based HIV service organizations representing HIV medical providers, public health professionals, advocates, and people living with HIV who are all committed to ensuring access to critical HIV-related health care and support services.

Medicaid is currently a lifeline to care for nearly half of people living with HIV who are in regular care. Given the incredible importance of Medicaid, we are very concerned about the public response of some state governors, attorneys general, and health officials to propose immediately rolling back coverage for certain populations following the United States Supreme Court decision on the Affordable Care Act (ACA). The ACA's Medicaid Maintenance of Effort (MOE) provisions are meant to protect beneficiaries from short-sighted state decisions to drop vulnerable populations from coverage before all of the ACA reforms are in effect in 2014 (2019 for children). We strongly urge you to issue guidance and instruction on the continued applicability of the MOE provisions to ensure access to care for the thousands of people living with HIV and many other vulnerable populations who depend on Medicaid.

The Supreme Court's Medicaid holding was very narrowly written – holding only that the conditioning of federal funding for the entire Medicaid program on a state's acceptance of the expansion in 2014 was impermissible. The opinion relies on the reasoning that the Medicaid expansion is so significant a departure from current eligibility rules that it amounts to a new program. As such, the federal government cannot use its enforcement power under 42 USC § 1396c to withhold the state's Medicaid funding for the entire Medicaid program in response to failure to comply with the expansion.

The MOE provision is not connected to this holding, and the Court was explicit that its holding did not alter existing Medicaid programs. The MOE provision is designed to protect *current* Medicaid beneficiaries from state decisions to roll back coverage before many of the ACA provisions go into effect in 2014. The text of the MOE provision itself indicates that it is meant to operate separately from the Medicaid expansion provision and requires states to keep their current eligibility and application processes in place until the "*state exchange is fully operational.*" (ACA, § 2001(b)(2)). Allowing states to cut Medicaid eligibility would subvert the clear intent of the ACA and the important protections the MOE requirement is meant to provide.

As states analyze the Supreme Court's decision and continue with ACA implementation, we urge you to maintain the many protections contained in the ACA, including the Medicaid MOE provisions. Commitment to these protections is crucial to ensure that health care is available to the most vulnerable Americans, including people living with HIV.

We appreciate the commitment of HHS to implement health reform in ways that ensure access to care for vulnerable populations. Please contact Amy Killelea at the National Alliance of State & Territorial AIDS Directors (NASTAD) with any questions regarding these comments (akillelea@NASTAD.org).

Respectfully Submitted by the Steering Committee of the HIV Health Care Access Working Group,

AIDS Action Baltimore | AIDS Alliance for Children, Youth & Families | AIDS Foundation of Chicago | The AIDS Institute | AIDS Project Los Angeles | AIDS Treatment Data Network | AIDS United | American Academy of HIV Medicine | Broward House/ South Florida AIDS Network | Community Access National Network | Communities Advocating Emergency AIDS Relief (CAEAR) Coalition | Gay Men's Health Crisis | Harlem United | Health and Disability Advocates | HIV Medicine Association | HIVictorious, Inc. | HIV Prevention Justice Alliance | Housing Works | Moveable Feast | National Alliance of State and Territorial AIDS Directors | National Association of People With AIDS | National Minority AIDS Council | The National Working Positive Coalition | Project Inform | San Francisco AIDS Foundation | South Carolina Campaign to End AIDS | Treatment Access Expansion Project | Treatment Action Group | VillageCare