



AIDS Research Consortium of Atlanta

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Working Together for a Cure

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AIDS Research Consortium Of Atlanta and Center For Health Law And Policy Innovation Of Harvard Law School File Civil Rights Complaints Against Insurers Alleging Discrimination Against People Living With HIV in Georgia and Six Other States

Complaints Against Cigna and Humana in Georgia Under Section 1557 of the Affordable Care Act

(Atlanta, GA – September 6, 2016) Today the AIDS Research Consortium of Atlanta (ARCA) and the Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) filed formal Administrative Complaints with the Office of Civil Rights (OCR) of the U.S. Department of Health and Human Services alleging discrimination against people living with HIV in Georgia by health insurers Cigna and Humana. The complaints document highly restrictive and discriminatory health insurance plans offered by these companies under the federal Patient Protection and Affordable Care Act (ACA) Marketplace in Georgia. In particular, these plans obstruct the ability of people with HIV to access affordable life-saving medications to fight HIV, in violation of anti-discrimination provisions of the ACA.

One of the strengths of the ACA is its anti-discrimination provisions, set out in Section 1557. The OCR is charged with adjudicating complaints of discrimination pertaining to health plans under the ACA. Although the ACA provides that no person can be denied health insurance on the basis of preexisting conditions, some insurers have devised restrictive plans with high consumer cost sharing to discourage participation by people with expensive chronic conditions including HIV.

In 2015, after observing that people with HIV were having difficulty obtaining their medications under some ACA plans, ARCA convened a group of advocates who analyzed all of the ACA Qualified Health Plans in Georgia using a tool developed by CHLPI and ARCA. The tool was designed to target issues affecting access to HIV medications such as lack of coverage of medications recommended by federal guidelines, requirements for high out of pocket costs for consumers, and burdensome obstructions like prior authorization and restrictions on the number of pills that could be dispensed at one time (quantity limits). The analysis by ARCA and CHLPI showed that many insurers were able to provide guideline-recommended HIV therapies with reasonable cost sharing by patients. However, plans by Cigna and Humana placed all of the federally-recommended treatments for HIV at the top of a tiered cost system, making them virtually unaffordable. For example, both Cigna and Humana placed all of these medicines on Tier 4 or Tier 5, requiring high co-insurance (up to 50% of the drug's cost) and often prior authorization requirements and strict quantity limits.

“Advances in HIV treatment mean that people living with HIV can lead long and productive lives, but only if they have continuous and uninterrupted access to HIV medications,” said Dr. Melanie Thompson, ARCA’s Principal Investigator who led the local effort. “Lapses in HIV medications can lead to lifelong viral resistance and ultimately medication failure. Likewise, we should not forget that effective HIV treatment also prevents HIV transmission, so obstructing access to medications is a public health issue.”

Brigid Scarborough, a Certified Application Counselor at The Health Initiative in Atlanta agrees. “A significant portion of the ACA consumers that we work with are individuals living with HIV/AIDS,” she

said. "Their biggest concern, by far, is trying to cover the cost of the HIV medications. Ensuring affordable access to medication is vital to keeping them in care."

ARCA and CHLPI seek to protect ACA-guaranteed healthcare rights by exposing discriminatory plan benefit design. "When an insurer requires chronically ill patients to pay a disproportionate share of the cost of medication it violates federal law" says Robert Greenwald, CHLPI's Faculty Director and Clinical Professor of Law at Harvard Law School. "These are landmark Complaints that will benefit everyone looking to receive equitable, comprehensive health care through the Marketplaces by helping to define anti-discrimination law at a time when insurers are covering less and less."

Dr. Thompson sees these OCR complaints as a means of protecting insurers that offer reasonable drug plans for all people with serious conditions. "Some insurers try to discourage patients with expensive diseases from joining their plans, thus undercutting the ACA's ban on restrictions around pre-existing conditions," she explained. "Insurers that discriminate destabilize the Marketplace by cherry-picking less expensive patients and driving up costs for other insurers. We see the repercussions of this unfair competition as some insurers opt to leave the federal Marketplaces entirely, reducing consumer choice and leaving patients at the mercy of insurers whose plans are less affordable."

Cindy Zeldin, Executive Director of Georgians for a Healthy Future, supported the action. "Georgians living with HIV/AIDS rely on life-saving medications every day," she said. "However, the affordable prescriptions many people need to stay alive and expect to obtain through their health insurance have proven illusory due to discriminatory benefit design. This complaint process is a critical tool to challenge this practice and ensure equitable access to health care for those who need it most."

In addition to the Complaints filed by ARCA in Georgia, CHLPI partnered with six other state partners, including AIDS Alabama, AIDS Foundation of Chicago, CrescentCare (formerly the NO/AIDS Task Force in Louisiana), Nashville CARES, AIDS Resource Center of Wisconsin, and AIDS Law Project of Pennsylvania to file complaints against the following insurers:

- Humana: Alabama, Georgia, Illinois, Louisiana, and Texas
- Cigna: Georgia and Texas
- Highmark: Pennsylvania
- Independence Blue Cross: Pennsylvania
- UPMC Health Plan: Pennsylvania
- Community Health Choice: Texas
- Anthem Blue Cross Blue Shield: Wisconsin

The campaign also includes an education and media initiative to increase public pressure on federal and state government regulators and insurers via social media, traditional press, and other outreach activities to ensure that people living with HIV, their allies, and others with serious medical conditions understand the patterns of discrimination found in their local insurance markets and know how to advocate for an end to health insurance discrimination.

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AIDS Research Consortium of Atlanta (ARCA) is a 501(c)(3) non-profit research center founded in 1988 whose mission is to improve the quality and length of life for people living with HIV and to prevent new HIV infections through treatment and prevention research, education for healthcare providers and patients, and access to new therapies.

The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses. CHLPI works to expand access to high-quality healthcare; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective healthcare systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health and public health law and policy.