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ACLU Files Class Action Complaint Challenging State's Treatment of Medicaid Beneficiaries with HCV

OVERLAND PARK, KS --- The ACLU of Kansas today announced the filing of a class action complaint against Jeff Andersen, in his official capacity as the Acting Secretary of the Kansas Department of Health and Environment, and Jon Hamdorf, in his official capacity as the Director of the Kansas Division of Health Care and Finance, on behalf of Kansas Medicaid beneficiaries infected with the Hepatitis C virus (HCV).

The plaintiffs in the case are individuals enrolled in KanCare, the Kansas Medicaid program, who are infected with HCV but have been denied coverage for medically necessary treatment due to arbitrary and improper policies set by the State of Kansas that restrict treatment to only the sickest beneficiaries.

HCV is a serious and communicable disease that can cause severe liver scarring, liver damage, cancer, and death. The plaintiffs in this case have all been prescribed a prescription medication that has been proven to effectively cure the disease in over 90% of individuals who are treated with it. KanCare, however, refuses to cover the cost of the prescription for the plaintiffs, claiming that they are not "sick enough" to need the treatment.

Current KanCare guidelines refuse to cover the medication for Medicaid enrollees unless they meet a long list of complex, severe and highly specific conditions. If an enrollee fails to meet even one of those conditions, he or she is denied coverage for the medication and is forced to continue enduring the painful and potentially life threatening effects of the infection.

"KanCare's denial to provide essential medical care to individuals suffering from HCV is grossly negligent and nonsensical. Depriving sick individuals of medication that has been proven to cure their infection is not only cruel, but it completely denies logic," said Lauren Bonds, Legal Director of the ACLU of Kansas. "No person in this country should be forced to get sicker before they are allowed to get better."

Because KanCare receives federal funding to help pay for the cost of Medicaid services, it must adhere to federal guidelines and standards of care. The current coverage criteria used by the State

of Kansas is much more restrictive than national policies and puts the Kansas Department of Health and Environment in violation of federal law.

On January 22, 2018, Shook, Hardy & Bacon, co-counsel in this case, contacted Darian Dernovish, Interim Secretary and Assistant General Counsel to the Kansas Department of Health and Environment, relaying these concerns and urging the State of Kansas to voluntarily revise its policy. Included in that correspondence was a copy of the formulary that was adopted in Missouri to settle similar litigation filed in the Western District of Missouri.

The ACLU of Kansas and Shook, Hardy & Bacon request preliminary and permanent injunctions that prohibit the State of Kansas from enforcing its current coverage criteria that prevents HCV Medicaid enrollees from receiving medically necessary treatment and asks that the defendants develop criteria policies that are aligned with federal standards of treatment and allow all Medicaid beneficiaries access to necessary medication.