

For Immediate Release

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**TEXAS MEDICAID ENROLLEES SUE STATE
FOR CURE TO HEPATITIS C VIRUS**

Austin, Texas – August 13, 2020 – The Texas Health & Human Services Commission (“HHSC”) has been challenged by Medicaid enrollees for instituting a policy that rations coverage of prescription drugs to cure Hepatitis C virus (“HCV”). In a [class action lawsuit](#) recently filed in federal district court in Austin, Plaintiffs Dorena Coleman, Curtis Jackson and Federico Perez allege that the HHSC has prioritized financial concerns over their health by restricting coverage of HCV cures to only those Medicaid enrollees with severe liver damage, even though the medications result in cure rates approaching 100% for all individuals infected with HCV.

The case is captioned as *Coleman v. Wilson*. The plaintiffs are represented by Edwards Law, the Center for Health Law & Policy Innovation of Harvard Law School, and Latham & Watkins LLP.

HCV is the deadliest communicable disease in the United States. The virus causes chronic inflammation throughout the body of those infected and can lead to serious liver damage, infections, liver cancer and death. However, individuals with HCV may suffer long before these advanced states of the disease, including from conditions such as diabetes, lymphoma, fatigue, joint pain, depression, myalgias, arthritis and jaundice.

Starting in 2011, the United States Food and Drug Administration (FDA) began approving a combination of drugs called direct-acting antivirals (DAAs) to treat HCV. [Treatment guidelines](#) approved by the American Association for the Study of Liver Diseases (AASLD) and the Infectious Diseases Society of America confirm that DAAs should be available for “all patients with chronic HCV infection, except those with short life expectancies that cannot be remediated by treating HCV, by transplantation, or by other directed therapy.” This clinical guidance reflects the medical standard of care in Texas and across the country. The only obstructions to treatment for patients like Ms. Coleman, Mr. Jackson and Mr. Perez are discriminatory coverage exclusions and limitations, such as those challenged here. In imposing this policy, Texas Medicaid stands in stark contrast to Medicare, the U.S. Department of Veterans Affairs, most commercial health insurers, and nearly every other state Medicaid program in the United States.

As Medicaid enrollees, Ms. Coleman, Mr. Jackson, Mr. Perez, and others like them are generally entitled to non-discriminatory health coverage. Nevertheless, because HCV treatment is costly, the HHSC has instituted a rationing policy specifically designed to withhold coverage of the cure from thousands of Medicaid enrollees who suffer from HCV, but do not yet have advanced liver disease or cirrhosis of the liver. Thus, the lawsuit states, HHSC is telling Ms. Coleman, Mr. Jackson and Mr. Perez and thousands like them, that they must wait until their health condition worsens before they are eligible for coverage for the cure. This policy is contrary to [AASLD guidelines](#), and it ignores the overall cost-effectiveness of early treatment for HCV and the public health benefit.

By withholding coverage for individuals without advanced liver scarring, the Complaint alleges that Texas Medicaid is discriminatory in at least two ways. First, the Texas policy categorically denies coverage from individuals with low fibrosis scores (the level of liver scarring), regardless of their individual circumstances. Under the medical standard of care, Medicaid enrollees blocked from coverage have comparable need to those permitted coverage under the Texas policy. Second, the Complaint alleges that Texas Medicaid singles out HCV patients for rationing on the basis of disease severity in a unique manner that no other chronically ill Texas Medicaid beneficiary in need of treatment coverage is subjected to. Under either view of the Texas policy, it violates federal law.

“Medicaid is not allowed to discriminate in its coverage of medically necessary prescription medications when someone has an infectious disease like HCV,” said Jeff Edwards of Edwards Law, in Austin. “This lawsuit simply enforces the coverage that federal and state law requires to be provided to Medicaid beneficiaries.”

For its part, the federal Centers for Medicare and Medicaid Services issued guidance in November 2015 warning states that exclusions and limitations on public insurance coverage of DAAs may violate federal law.

“At the end of the day, Medicaid coverage is supposed to be governed by medical reasons, not fiscal concerns, especially in the circumstances here where there is no other equally effective treatment available,” said Kevin Costello, Director of Litigation for the Center for Health Law and Policy Innovation of Harvard Law School. “We have strong reason to believe that HHSC’s policy is motivated by short-sighted and fundamentally unsound budget fears.”

“The policy at issue here, which deprives some of Texas’s most vulnerable of vital and curative medical treatment for a chronic illness, is contrary to the federal laws that govern critically important benefits under the Medicaid program,” said David Tolley, partner at Latham & Watkins. “We look forward to vigorously pursuing access to treatment for our clients in the State of Texas.”

“Studies have proven that payors like Medicaid do themselves a favor when they remove HCV treatment restrictions in favor of open access that avoids payment for interim health problems and eliminates the risk for serious complications down the road,” said Jeff Edwards. “And it goes without saying that the real potential of this cure is the eradication of HCV altogether, a goal that is furthered by early treatment of Medicaid beneficiaries that makes further transmission of the virus impossible in their case.”

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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 and disabilities. CHLPI works to expand access to high-quality health care; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective health care 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. For more information, visit <https://chlpi.org>.

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Edwards Law Group is a boutique personal injury and civil rights law firm headquartered in Austin, Texas, that litigates complex matters around the state. Edwards Law represents people who have been hurt in disputes with insurance companies, state and local governments, and major corporations. For more information, visit <https://edwards-law.com>.