2018 ABA HIV/AIDS Law & Practice Conference  
Plenary: HIV and the Affordable Care Act

Section 1557 Nondiscrimination Protections Under the Trump Administration  
Scott Schoettes, Lambda Legal

This presentation will provide an overview of how the nondiscrimination provisions of the Affordable Care Act are being used to protect people at higher risk for HIV and how the Trump Administration is reversing course (from the course of the Obama Administration) on application of these provisions, in fact fostering provider refusals to provide care based on religious grounds.

I. Litigation Protecting Access to Gender-Affirming Care for Transgender People  
b. Seeking relief under ACA Section 1557, as well as New Jersey laws prohibiting discrimination based on sexual orientation and gender identity  
c. Current posture and significance  
d. Other cases

II. HHS Reinterpretation of Section 1557  
a. Withdrawal of guidance documents  
b. Affirmative statements narrowing scope of protections  
c. Rulemaking to narrow scope of protections  
d. HIV discrimination complaints before OCR

III. Religious Refusals  
a. Background, Hobby Lobby  
b. Franciscan Alliance v. Burwell  
c. OCR “Conscience and Religious Freedom Division”  
   i. Announcement, Letter to Medicaid Directors, Proposed Rule  
   d. Implications for PLWH

Resources  
- Conforti v. St. Joseph’s Healthcare System (Complaint)  
- HHS OCR 1557 FAQs  
- Nondiscrimination in Health Programs and Activities Final Rule  
   - Comments in response to the proposed rule (“Patient Protection and Affordable Care Act: Reducing Regulatory Burdens & Improving Health Care Choices to Empower Patients”)  
   - Lambda Legal’s Comments in Response  
- “Conscience and Religious Freedom Division” Announcement  
   - Proposed Rule “Protecting Statutory Conscience Rights in Health Care"
Private Insurance Changes: What’s at Stake for People Living With HIV
Amy Killelea, NASTAD

This session will provide an overview of the changes to private insurance under the Trump Administration – including Congressional and Administrative actions – and discuss the impact on people living with HIV and the Ryan White Program.

IV. Setting the stage: where we’ve come from and where we’re going
   a. Enrollment data on private insurance and impact on access for people living with HIV and other pre-existing conditions
   b. Intersection of Ryan White Program and private insurance
   c. Trend data from past year on Marketplace enrollment, documenting early impact of Trump Administration policy changes

V. Federal changes
   a. Regulatory changes to consumer protections and enrollment support (Market Stabilization Rule, Navigator cuts, NBPP 2019, AHP rule, pending STP rule)
   b. Congressional changes (tax bill and individual mandate repeal)

VI. State changes
   a. Waiver palooza (1332s)
   b. Idaho EO
   c. State ACA oversight and enforcement flexibility (e.g., non-discrimination, provider network)

VII. Looking ahead
   a. Forecast for RW/ADAP and the clients they serve under weakened private insurance regulations
   b. What advocates can do

Resources
- HIV Health Care Access Working Groups comments and letters
- NAIC Consumer Representatives, Promoting Access to Affordable Prescription Drugs (2016)
Medicaid Changes: What’s at Stake for People Living with HIV
Robert Greenwald, Harvard’s Center for Health Law Policy & Innovation

This session will provide an overview of the changes to the Medicaid program under the Trump Administration – including Congressional and Administrative actions – and discuss the impact on people living with HIV and other chronic health conditions.

I. Setting the Stage: Medicaid
   a. Medicaid as our nation’s long-standing health care safety net program.
   b. Significance of current entitlement structure on meeting care and treatment needs.
   c. Enrollment data and impact on access for people living with HIV and other chronic health conditions
   d. Trend data and impact of failure to expand Medicaid

II. Congressional Threats To Medicaid’s Expansion, Structure and Funding
   a. Efforts to repeal and replace the Affordable Care Act (ACA), including the law’s expansion of Medicaid
   b. Proposals to fundamentally alter the way in which the traditional Medicaid program is structured and paid for
   c. The growing deficit and its impact on the future of Medicaid funding
   d. The federalization of state waiver proposals to include a work requirement in the Medicaid program
   e. Impact of federal changes on the Ryan White Program

III. Administrative Action Undermining Medicaid’s Protections
   a. Section 1115 waivers
      i. Work Requirements
      ii. Closed Drug Formularies
      iii. Drug screening
      iv. Time-limited eligibility
      v. Premium payments with disenrollment and lockouts for nonpayment
   b. The future of Medicaid Expansion

IV. Looking ahead
   a. Overall impact of Medicaid program on people living with HIV
   b. What federal and state advocates can do to help protect the Medicaid program

Resources
- Wall Street Journal, Trump Official on Medicaid and the Able Bodied
- Healthcare.gov, Medicaid Expansion
- Medicaid.gov, Medicaid Financing and Reimbursement
- Kaiser Family Foundation, Compare proposals to replace the Affordable Care Act
- Families USA, Block Grants a Bad Idea for Medicaid
- Medicaid.gov, Section 1115 Demonstrations
- Centers for Medicare and Medicaid Services, CMS Guidance re: Opportunities to Promote Work
- Kaiser Family Foundation, Understanding the Intersection of Medicaid and Work
- Center on Budget and Policy Priorities, Medicaid Work Requirement Would Limit Health Care Access Without Significantly Boosting Employment
Local Impact: How the ACA and its Implementation affects People Living with HIV in Louisiana
Joshua Holmes, CrescentCare

This session will provide an overview of the direct effect of the passage and implementation of the Affordable Care Act—and now de-regulation and threat of repeal—on the lives of People Living with HIV in New Orleans, and throughout Louisiana.

V. Passage of the ACA and Opening the Marketplace
   a. Immediate impact of passage: celebrating the right to health care.
   b. Enrolling in coverage, and Specialty Pharmacies
   c. Broader access to health care options
   d. Ongoing lapses of coverage disrupting health care and medication

VI. Medicaid Expansion in Louisiana
   a. Consistent insurance is enabling clients to stay in care and keep viral loads down
   b. Snowball effect—less ER visits, less time off work, less likely to lose job and housing
   c. Effects of losing Medicaid: missed medication, increasing community viral loads and new HIV case rates
   d. Examples: “Roberta” from Campti, LA; “Steven” and “Ellen” from Natchitoches

VII. Desegregation and Discrimination
   a. People Living with HIV no longer limited to Ryan White care providers
   b. Non-Ryan White providers lack HIV knowledge and client experience
   c. Examples of post-ACA discrimination in health care settings
      i. “Martha” and dry-needle therapy
      ii. “Paul” and the quadruple by-pass
      iii. “Coral” and un-consented HIV testing by a faith-based health care provider

Resources
- Human Rights Campaign, Letter to Senator Cassidy of Louisiana re: American Health Care Act
- Kaiser Family Foundation, Medicaid’s Role in Louisiana
- Gambit Weekly, At second line for health care, doctors and nurses speak out for Affordable Care Act
- Kaiser Family Foundation, Becoming Healthy Louisiana: System-Assisted Medicaid Enrollment
- The Body, Marketplace Menaces: Discriminatory Practices by the ACA’s Qualified Health Plans
- The Atlantic, Louisiana Embraces Obamacare
- Reuters, Louisiana Insurers to accept funds from federal AIDS program