CENTER FOR HEALTH LAW & POLICY INNOVATION
Harvard Law School

July 25, 2017

The Honorable Karen E. Spilka
Senate Chair, Joint Committee on Ways and Means
Massachusetts State House, Room 212
Boston, MA 02133

The Honorable Jeffrey Sánchez
House Chair, Joint Committee on Ways and Means
Massachusetts State House, Room 243
Boston, MA 02133

The Honorable James T. Welch
Senate Chair, Joint Committee on Health Care Financing
Massachusetts State House, Room 413-B
Boston, MA 02133

The Honorable Peter V. Kocot
House Chair, Joint Committee Health Care Financing
Massachusetts State House, Room 22
Boston, MA 02133

Re: Oversight hearing relative to Medicaid funding and other related issues relative to the Fiscal Year 2018 General Appropriations Act

Dear Senate Chair Spilka, House Chair Sánchez, Senate Chair Welch, and House Chair Kocot,

On behalf of the Harvard Law School Center for Health Law & Policy Innovation (CHLPI), we are grateful for the opportunity to provide input on Governor Baker's proposed MassHealth Reform Package.

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 HIV, Hepatitis C (HCV) and other chronic health conditions. As part of our work, we partner with advocates across the country and in Massachusetts to expand access to care for vulnerable populations. In particular, we frequently collaborate with the HIV and HCV communities to ensure that individuals are able to access the lifesaving treatments they need. In Massachusetts, we have helped lead the End Hep C MA Coalition and have been involved in state HIV advocacy for over twenty-five years.

With your support, Massachusetts has established itself as a national leader in the fight to end the HIV and HCV epidemics. As a state, we have reduced both reported HIV diagnoses and deaths by over 40% since 2000.[1] We have also become one of the first states in the nation to ensure that Medicaid enrollees have true and equitable access to curative, breakthrough treatments for HCV.[2]

[1] *Massachusetts HIV/AIDS Data Fact Sheet: The Massachusetts HIV/AIDS Epidemic at a Glance,* MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH OFFICE OF HIV/AIDS, http://www.mass.gov/eohhs/docs/dph/aids/2014-profiles/epidemic-glance.pdf.
[2] *See* Daniel Tsai, *MassHealth Managed Care Organization Bulletin 6* (July 2016), http://www.mass.gov/eohhs/docs/masshealth/bull-2016/mco-6.pdf.

However, we are concerned that certain policies proposed by Governor Baker to reform MassHealth would decrease both the access to and affordability of crucial services for low-income individuals living with HIV and/or HCV. The proposed policies are particularly concerning from a public health perspective, as they have the potential to deter those with limited means from getting treated, increasing the likelihood that new transmissions may occur and undercutting the significant progress that Massachusetts has made in addressing the burden of these serious chronic illnesses.

In particular, we are concerned about the proposals to:

- **Reduce MassHealth eligibility and transition 140,000 adults from MassHealth to the ConnectorCare program.**
- **Establish a closed formulary with preferred and covered drugs.**
- **Deny MassHealth eligibility to individuals with access to employer-sponsored insurance.**

Transitioning MassHealth Members to Private Insurance Will Reduce Access to the Cure for People Living with and at Risk for HCV

As part of the proposed MassHealth Reform Package, approximately 140,000 non-disabled adults with incomes above 100% of the federal poverty level (FPL) would no longer qualify for MassHealth coverage. Instead, these individuals would generally be transitioned to subsidized private health insurance plans available via the ConnectorCare program. While we appreciate that this proposal would not simply leave these individuals without access to needed care, we are concerned that it will result in increased treatment access restrictions and new and significant cost-sharing requirements for people living with HCV, ultimately resulting in decreased treatment adherence and increased likelihood of new transmissions. This proposed change is broadly concerning for four primary reasons.

First, this proposal will reverse the progress Massachusetts has made towards ensuring that its low-income citizens have true and equitable access to the cure for HCV. The Massachusetts Office of Medicaid recently mandated that all enrollees participating in MassHealth via the fee-for-service plan, primary care clinician plan, or a managed care organization be provided with the same treatment policy for HCV: open access without the imposition of restrictions related to disease severity, substance use abstinence, or prescriber specialty.[3] In adopting this policy, MassHealth eliminated the potential for arbitrary or discriminatory restrictions and created a uniform system in which low-income individuals have equal access to necessary HCV treatment. In contrast, the ConnectorCare program does not appear to share this open access policy. As a result, each participating insurer may manage their prescription drug benefits as they see fit, and,

[3] *See* Daniel Tsai, *MassHealth Managed Care Organization Bulletin 6* (July 2016), http://www.mass.gov/eohhs/docs/masshealth/bull-2016/mco-6.pdf.

in particular, limit which drugs are covered and impose far more restrictive coverage rules for HCV medications than currently allowable in MassHealth. For example, Fallon Health, one insurer currently offering ConnectorCare plans, restricts access for Harvoni to only those patients who have advanced liver disease (fibrosis) and mandates that individuals must be abstinent from drug and alcohol use for 12 months prior to initiating treatment.[4] Transitioning individuals above 100% of FPL to ConnectorCare plans that impose these types of utilization management requirements will restrict access to HCV care, undermining the progress made under MassHealth's open access policy. Once again, these vulnerable individuals will be at the mercy of private insurers and be required to navigate each insurer's treatment policy and drug coverage rather than relying on MassHealth's open access standard.

Second, individuals transitioned to subsidized private health insurance plans available via the ConnectorCare program would see their out-of-pocket cost-sharing obligations increase dramatically, including cost-sharing for curative HCV treatments that can prevent further transmission of the virus.[5] For example, MassHealth members currently pay a maximum copayment of $3.65 to fill each prescription of their medications.[6] However, once transitioned to the ConnectorCare program, individuals with incomes between 100- 150% FPL would instead pay $40 each time they fill a prescription for their lifesaving HCV medications.[7]

Research has consistently demonstrated that imposing even minimal levels of cost-sharing on low-income populations serves as a barrier to obtaining and maintaining care and treatment.[8] Lower-income individuals are more likely to reduce their use of even essential services in the face of increased financial burdens, leading to a rise in the use of other costlier services such as emergency room visits.[9] Increasing the financial burden associated with accessing HCV treatments may therefore deter some low-income individuals from seeking or continuing treatment or force these individuals to choose between filling their prescriptions and paying for other household necessities such as food, housing, and childcare.

Third, this proposal will negatively impact the public health of the Commonwealth. When faced with greater cost-sharing and restrictive utilization management requirements, many individuals may be unable to realistically access the cure for HCV. As a result, this proposal has the potential to increase new transmissions of the virus. Treatment and cure of HCV is a highly-

[4] *See Prior Authorization Approval Criteria: Harvoni (ledipasvir and sofosbuvir),* Fallon Health, http://www.fchp.org/providers/pharmacy/~/media/Files/FCHP/Imported/harvoni_ledipasvirsofosbuvir.ashx.
[5] *FAQs about Sustained Virologic Response to Treatment for Hepatitis C*, U.S. DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, https://www.hepatitis.va.gov/pdf/sustained-virological-response.pdf.
[6] *See* MASS. EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVS., *Covered Services*, http://www.mass.gov/eohhs/consumer/insurance/masshealth-member-info/covered-services.html.
[7] *ConnectorCare Health Plans*, MASS HEALTH CONNECTOR, https://www.mahealthconnector.org/wp-content/uploads/Guide_to_ConnectorCare.pdf.
[8] *See* Samantha Artiga, Petry Ubri, and Julia Zur, *The Effects of Premiums and Cost Sharing on Low-Income Populations: Updated Review of Research Findings*, KAISER FAMILY FOUNDATION, http://www.kff.org/medicaid/issue-brief/the-effects-of-premiums-and-cost-sharing-on-low-income-populations-updated-review-of-research-findings/.
[9] *Id.*

122 Boylston Street Jamaica Plain, MA 02130 www.chlpi.org 617-390-2500

effective prevention method: once an individual achieves virologic cure, they can no longer transmit HCV to others through any means.[10] If fewer individuals are able to become cured of HCV due to the issues outlined above, more transmissions will occur, eroding the progress we have made to date towards eradicating the virus in Massachusetts.

Finally, this proposal may negatively impact the Commonwealth's financial stability as well as the individuals involved because it depends upon a federal program that is currently at significant financial risk. In order to maintain affordable coverage, many of the individuals being transitioned off of MassHealth will need to choose ConnectorCare plans that are partially funded with revenues from the Affordable Care Act's (ACA) cost-sharing reduction (CSR) subsidies and advance premium tax credits.[11] Currently, the Affordable Care Act's future is being debated in Congress, and the current Administration, regardless of efforts to repeal and replace the ACA, has consistently refused to commit to continued funding for the CSR program. Given the substantial uncertainty facing not only the CSR program but also the ACA as a whole, the future of the ConnectorCare program seems far from certain. Therefore, shifting a significant number of MassHealth enrollees into the ConnectorCare program could ultimately place either the state or individual enrollees at financial risk should federal funding end.

Establishing a Closed Formulary is Inappropriate for People Living with HIV and HCV

The MassHealth Reform Package also includes a proposal to establish a closed formulary with preferred and covered drugs across the entire program. Currently, MassHealth is required to cover any drug for which the manufacturer participates in the federal Medicaid rebate program. This requirement ensures that patients have access to the highest standard of care available and allows physicians to prescribe the course of treatment they and their patients believe is most appropriate. A closed formulary would restrict the drugs MassHealth covers, with as few as one drug available per therapeutic class.

This proposal is particularly concerning for continued access to HIV and HCV medications. Physicians choose which drugs to prescribe their HIV and HCV patients based on a wide range of factors, including co-occurring illnesses, medical history, and previous treatment tolerance.[12] It is important to note that HIV and HCV drug regimens are not interchangeable. HIV and HCV are complex diseases and treatment options must take into account several individualized

[10] *FAQs about Sustained Virologic Response to Treatment for Hepatitis C*, U.S. DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, https://www.hepatitis.va.gov/pdf/sustained-virological-response.pdf.

[11] Jaimie Bern, Stephanie Chrobak & Tom Dehner, *Implementing the Affordable Care Act in Massachusetts: Changes in Subsidized Coverage Programs*, BLUE CROSS BLUE SHIELD OF MASS. FOUND. 8-10, 13-14 (2015), http://bluecrossmafoundation.org/sites/default/files/download/publication/Changes%20in%20Subsidized%20Coverage%20Programs_final.pdf.

[12] *See generally Guidelines for the Use of Antiretroviral Agents in HIV-1 Infected Adults and Adolescents*, DEPARTMENT OF HEALTH AND HUMAN SERVICES, https://aidsinfo.nih.gov/contentfiles/lvguidelines/adultandadolescentgl.pdf; *HCV Guidance: Recommendations for Testing, Managing, and Treating Hepatitis C*, American Association for the Study of Liver Diseases and the Infectious Diseases Society of America, http://www.hcvguidelines.org/.

medical factors as well as concerns regarding a patient's medication adherence. Before initiating treatment, physicians must consider drug interactions, coexisting comorbid conditions, and side effect profiles. Therefore, it is important that doctors are able to provide treatment based on patients' needs, not on availability in MassHealth.

Implementing an exceptions process to such a closed formulary through which an individual can attempt to access coverage for a drug not on the formulary would also fall far short of ensuring that people living with HIV or HCV and their providers can access the appropriate treatment regimen. This is true because of the uncompensated cost to providers of going through the exceptions process, because this coverage is not guaranteed, and because the process of obtaining this coverage is often opaque.[13]

Eliminating MassHealth Eligibility for Individuals with Access to Employer-Sponsored Insurance Will Leave Low-Income Individuals Living with HIV/HCV Behind

The Proposed Reform Package would preclude non-disabled adults with access to "affordable" employer-sponsored insurance from being eligible for MassHealth coverage. This eligibility "gate" would force some individuals to forego insurance coverage altogether, as they would not be able to relinquish even a modest amount of their paycheck to pay the cost of premiums. Further, many of the concerns applicable to the ConnectorCare program are echoed in the context of employer-sponsored insurance. As compared to MassHealth, employer-sponsored insurance may provide far less robust coverage of HIV/HCV medications, restrict access to treatment through utilization management techniques, and impose greater cost-sharing. These concerns may deter some individuals from getting treated, increasing the likelihood that new HIV/HCV transmissions will occur.

Process Concerns

Beyond the proposals we find concerning for access to care for people living with HIV/HCV, we would also like to respectfully voice our concerns with the process by which this package of changes is being considered. The proposed reforms are only being considered in response to Governor Baker's veto and proposed amendment of portions of the FY2018 budget, which did not include any significant changes to MassHealth when passed by the Massachusetts General Court. These sweeping changes are also being considered with little stakeholder input, as notice of the hearing on these proposals allowed for less than five days' time to engage the community that will be adversely affected. We strongly believe that changes to MassHealth of this magnitude warrant deliberation through regular order with robust opportunity for committee consideration and public comment, and we hope that you will take these concerns into

[13] *See* James L. Raper et al., *Uncompensated Medical Provider Costs Associated with Prior Authorization for Prescription Medications*, 51 CLINICAL INFECTIOUS DISEASES 718, 720 (2010).

consideration as you determine how best to address the MassHealth Reform Package moving forward.

The Harvard Law School Center for Health Law & Policy Innovation thanks you for the opportunity to provide input on the proposed MassHealth reform package. For all of the reasons included here, we urge you to reject the policies we have outlined above, as they will negatively impact access to care for low-income individuals living with HIV and HCV and ultimately undermine our ability to end these epidemics in Massachusetts. Should you have any questions, please contact Robert Greenwald at (617-877-3223 or rgreenwald@law.harvard.edu or Phil Waters at (617) 390-2568 or pwaters@law.harvard.edu.

Thank you for your time and consideration.

Sincerely,

Robert Greenwald
Clinical Professor of Law
Faculty Director, Center for Health Law and Policy Innovation
Harvard Law School