STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. CV-18-__

MAINE EQUAL JUSTICE PARTNERS, CONSUMERS FOR AFFORDABLE HEALTH CARE, MAINE PRIMARY CARE ASSOCIATION, CASSIE STEIMLOSK, DONNA WALL, CHARLES McDANIEL, ANN AVERY, GINA ZAMELLO, AND PENOBSCOT COMMUNITY HEALTH CARE,	)	
Petitioners,	)	**PETITION UNDER RULE 80C FOR JUDICIAL REVEW OF FAILURE OR REFUSAL OF AGENCY TO ACT**
v.	)	
RICKER HAMILTON, COMMISSIONER MAINE DEPARTMENT OF HEALTH & HUMAN SERVICES,	)	
Respondent.	)	

INTRODUCTION

1. This is an action brought by Petitioners pursuant 5 M.R.S. §§11001 *et.seq* and Me. R. Civ. P. Rule 80C to remedy the Commissioner's failure and refusal to submit to the Centers for Medicare and Medicaid Services ("CMS") by April 3, 2018, a State Plan Amendment ("SPA") "ensuring Medicaid eligibility" for certain adults, as required by "An Act To Enhance Access to Affordable Health," 2017 Me. Legis. Serv. Initiated Bill Ch. 1 (I.B. 2) (L.D. 1039) (WEST) (the " Medicaid Expansion Act"), enacted by the citizens of Maine on November 7, 2017. 22 M.R.S. § 3174-G(1)(H).

2. The Medicaid Expansion Act requires that: "No later than 90 days after the effective date of this paragraph, the department shall submit a state plan amendment to the

United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ensuring MaineCare eligibility for people under 65 years of age who qualify for medical assistance pursuant to 42 United States Code, Section 1396a(a)(10)(A)(i)(VIII)." Medicaid Expansion Act at § A-3; 22 M.R.S. § 3174-G(1)(H) (attached hereto as **Exhibit A**).

3. The effective date of the Medicaid Expansion Act is January 3, 2018.

4. The date "90 days after the effective date" of the Medicaid Expansion Act is April 3, 2018.

5. The Medicaid Expansion Act provides for no conditions precedent to the statutory mandate that the department submit the state plan amendment to CMS.

6. The Commissioner has failed or refused to submit the state plan amendment to CMS by April 3, 2018, as required by the Act.

PARTIES

7. Petitioner Maine Equal Justice Partners ("MEJP") is a non-profit corporation organized under the laws of the State of Maine and whose principal place of business is in the City of Augusta, County of Kennebec, State of Maine. The mission of MEJP is to find solutions to poverty and improve the lives of people with low income in Maine.

8. MEJP provides legal representation to individuals who are applying for or who are enrolled in Maine's public assistance programs, including: MaineCare, Food Supplement, Temporary Assistance to Needy Families ("TANF"), State Supplemental Security Income ("SSI"), etc. The scope of that representation ranges from providing advice regarding eligibility, to intervening with a state agency, to pursuing a claim before an administrative hearing officer or in court.

9. MEJP also acts as a resource for various social service organizations and providers of services who work with people with low incomes who encounter barriers to maintaining or obtaining benefits from Maine's public assistance programs. MEJP responds to organization and provider inquiries and provides training to organizations and providers on a range of issues, including MaineCare eligibility.

10. MEJP develops materials for other providers, such as medical providers and others, as well as for the individuals who are eligible for its services. These materials include information, instructions, and forms to assist individuals in obtaining the benefits of Maine's public assistance programs, including MaineCare. These materials are available on MEJP's web site and in other venues.

11. MEJP was the lead organization in the successful ballot initiative that resulted in passage of the Medicaid Expansion Act. It has been actively engaged in counseling and working with clients who are eligible for Medicaid as a result of the Expansion Act in order to assure that those clients can be enrolled at the earliest possible date and receive the benefits to which they are entitled.

12. Petitioner Consumers for Affordable Health Care ("CAHC") is a non-profit organization whose principal place of business is located in the City of Augusta, County of Kennebec, State of Maine.

13. Consumers for Affordable Health Care's mission is helping all Maine people obtain quality, affordable health care. Their activities include:

i. Helping people understand coverage options and find affordable, quality health care in Maine;

ii. Helping people advocate for more affordable health care;

iii. Helping people to know and exercise their rights;

iv. Providing training and education to consumers and policy makers; and

v. Producing research and policy analysis.

14. CAHC operates a "help-line" that offers advice and advocacy to people seeking MaineCare, seeking to keep their MaineCare, or seeking other coverage options. CAHC also conducts trainings for consumers, providers, and social service agencies regarding the MaineCare program.

15. Petitioner Maine Primary Care Association ("MPCA") is a membership organization representing all of Maine's Community Health Centers – including Maine's nineteen (19) federally qualified health centers (FQHCs) and 1 FQHC Look-Alike. MPCA provides technical assistance and training to its members and oversees certain health programs and services that support operational excellence and access to care at the 75+ FQHC sites across the State. MPCA advocates on behalf of Maine's health care safety net providers and the thousands of patients it serves to ensure that there are adequate resources to meet the complex needs of its patients.

16. Across the state, FQHCs provide care to 1 in 6 Maine people. FQHCs are community-based organizations that provide comprehensive primary and preventive care—including medical, oral, and mental health/substance abuse services—to persons of all ages, regardless of their ability to pay or health insurance status. Services, for those under 200% of the federal poverty limit, are provided on a sliding fee scale, as is mandated by the federal government.

17. Maine's Community Health Centers also assist patients with applying for and obtaining health insurance; primarily this is done through the federal Marketplace ("ObamaCare") and through MaineCare, Maine's Medicaid and SCHIP program. In order for

patients to be eligible for MaineCare, they must meet certain financial qualifications and meet certain non-financial qualifications, including the requirement that they fit within a "category" such as being 65 or older, disabled, pregnant, a parent or a child. Under the voter approved Medicaid Expansion this eligibility process will become not only much simpler, but also much more expansive since people will not need to fit within a category but will be eligible solely based on income. This simplification not only relieves the administrative burden on FQHC staff but will also greatly increase the number of people the centers serve who will have insurance coverage.

18. Petitioner Cassie Steimlosk is an adult resident of the Town of Raymond, County of Cumberland, State of Maine. She is between the ages of 19-64. She resides with her husband and four (4) children. The countable income for the household is above 100% of the Federal Poverty Level but below 138% of the Federal Poverty Level. While Cassie does have private insurance coverage at this time, the cost is high and given her household's limited income, it is unaffordable. It is important that Cassie have access to affordable health care since she is the primary provider of care for her extremely disabled son who requires round-the clock nursing care. Cassie meets all the requirements for eligibility under 22 MRS 3174-G(1)(H) and will enroll in MaineCare at the earliest opportunity.

19. Petitioner Donna Wall is an adult resident of the City of Lewiston, County of Androscoggin, State of Maine. She resides with her three adult disabled children for whom she provides extensive care and support. She was employed, part-time, before breaking her ankle in December, 2017. Since then she has struggled to access affordable health care and is relying primarily on hospital free care to meet some of her health care needs. She is not disabled, and her income is less than 138% of the federal poverty level. Accordingly, she will be eligible for

MaineCare once expansion is implemented and will enroll in MaineCare at the earliest opportunity so that she can get the treatment she needs and return to work.

20. Petitioner Charles McDaniel is an adult resident of the City of Waterville, County of Kennebec, State of Maine who is married and between the couple they earn about $1200 per month through employment. He suffers from a nerve problem in his hands that limits his ability to work and is without health insurance or access to affordable health care. If properly diagnosed and treated, it is possible that he could work more hours and would experience less pain and discomfort. He is eligible for MaineCare under the Medicaid Expansion Act and will enroll at the earliest opportunity.

21. Petitioner Ann Avery is an adult resident of the Town of Old Town, County of Penobscot, State of Maine. She is unmarried, and her sole source of income is through workers compensation. She has numerous health issues and does not have access to affordable health insurance or access to affordable care, so she is currently foregoing necessary medical care. She recently applied for MaineCare based upon disability but was denied. She is eligible to enroll under the Medicaid Expansion Act, however, and will enroll at the earliest opportunity.

22. Petitioner Gina Zamello is an adult resident of the Town of Oakland, County of Kennebec, in the State of Maine. She lives alone and is between the ages of 10-64. She works, part-time, and her monthly income is below 138% of the federal poverty level. She is also being laid off at the end of May 2018. Gina has multiple medical issues, including a heart condition and a neurological disorder that limit her ability to work and do other activities. She is currently without health insurance, unable to see the heart specialist, and unable to afford her medications. She does see a primary care physician on a sliding scale. She is eligible to enroll in the expanded MaineCare program and will do so at the earliest opportunity.

23. Petitioner Penobscot Community Health Care ("PCHC") is a federally qualified health center, serving over 65,000 patients with practices in Bangor, Brewer, Old Town, Winterport, Belfast, and Jackman. PCHC is the largest and most comprehensive of the 19 FQHC organizations in Maine and the 2nd largest of the 100 in New England, providing integrated primary care services including medical, dental, pharmacy, physical therapy, pediatrics, audiology, care management, walk-in care, specialty, mental health, and substance abuse services among other services to persons of all ages, regardless of their ability to pay or health insurance status. Patients with income up to 200% of the federal poverty level may apply to receive services on a sliding fee scale.

24. PCHC assists patients with applying for and obtaining health insurance. Primarily this is done through the federal marketplace and through MaineCare, Maine's Medicaid and Children's Health Insurance Program (CHIP). For patients to be eligible for MaineCare, they must meet certain financial qualifications and meet certain non-financial qualifications, including the requirement that they fit within a "category" such as being 65 or older, disabled, pregnant, a parent or a child. Under Medicaid Expansion this eligibility process will become not only much more simple, but also much more inclusive, because people will not need to fit within a category—they will be eligible solely based on income. This simplification will relieve administrative burden on PCHC staff and increase the number of PCHC's patients who will have insurance coverage.

25. Providing insurance coverage to patients who otherwise do not have it will impact patients' ability to access care regularly. The simple reality is that when patients are insured, PCHC's health care practitioners find that patients are more likely to seek care for illness or injury at an early stage, when care can be most effective and adverse health outcomes can be

prevented, reducing the total cost of delivering health care and increasing the productivity and quality of life of those patients. When patients are insured they are more engaged with their care, more optimistic about their outcomes, feel more in control and, of course, have more options when it comes to choices of medications, diagnostic evaluations, consultations, etc. When patients are uninsured the opposite is true. They are much more likely to defer seeking care until a symptom or illness is no longer tolerable. Even if they seek care they have fewer options and are less likely to engage in their own care. Although PCHC has programs and resources to provide integrated primary care services regardless of a person's ability to pay, that does not hold true for the rest of the health care system. Moreover, patients who are uninsured often cannot pay for the costs associated with their care, which has a direct impact on what PCHC's writes off in bad debt year over year. The limited resources PCHC allocates to its affordable care/sliding fee programs are used judiciously. When more patients are insured, PCHC's ability to be fairly compensated for the work it performs improves, thereby allowing it to allocate resources that would otherwise have been used to offset uncompensated care to innovation, expanded services, new services, expanded collaboration models and more robust support for those at risk.

26. Respondent Ricker Hamilton is Commissioner of the Maine Department of Health and Human Services (DHHS) and, as such, he is responsible for Maine's overall administration of the state Medicaid Program. His principal office is located in the City of Augusta, County of Kennebec, State of Maine. He is sued in his official capacity only.

HISTORY OF LEGISLATIVE ATTEMPTS TO IMPLEMENT MEDICAID EXPANSION IN MAINE

27. Medicaid is the nation's public health insurance program for people with low incomes, disabilities, and those needing long term care. 42 U.S.C. §§ 1396 *et. seq.*

28. MaineCare is Maine's combined Medicaid and State Children's Health Insurance Program.

29. The federal and state governments each share in the cost of Medicaid.

30. The federal Affordable Care Act ("ACA") authorizes states to expand Medicaid eligibility to adults with incomes below 138 percent of the federal poverty level. 42 U.S.C. §1396a(a)(10)(A)(i)(VIII)

31. The ACA provides for substantial increases in federal funds to states that expand Medicaid eligibility to adults with incomes below 138 percent of the federal poverty level. 42 U.S.C. §1396d(y)

32. Five times in the past five years the Maine Legislature has approved an expansion of the state Medicaid program to cover more low-income Mainers, but had insufficient votes to overcome a gubernatorial veto.

33. In 2013, the 126th Legislature passed LD 1546 "An Act To Strengthen Maine's Hospitals, Increase Access to Health Care and Provide for a New Spirits Contract," which was vetoed by the Governor. A vote to override the veto failed in the Senate by a vote of 20 in the affirmative and 15 in the negative.

34. In 2013, the 126th Legislature passed LD 1066 "An Act To Increase Access to Health Coverage and Qualify Maine for Federal Funding," which was vetoed by the Governor.

A vote to override the veto failed by a vote of 95 in the affirmative and 52 in the negative in the House, with 4 being absent.

35. In 2014, the 126th Maine Legislature passed LD 1640 "An Act To Expand MaineCare for Veterans and Low-income Residents," which was vetoed by the governor on April 29, 2014. A vote to override the veto on May 1, 2014 failed by a vote of 21 in the affirmative and 10 in the negative in the Senate with 4 being absent.

36. In 2014, the 126th Maine Legislature passed LD 1578, "An Act To Increase Health Security by Expanding Federally Funded Health Care for Maine People" on April 16, 2014, which was vetoed by the Governor on April 29, 2014. A vote to override the veto failed by a vote of 94 in the affirmative and 53 in the negative in the House, with 4 being absent.

37. In 2016, the Maine House passed LD 633, "An Act to Improve the Health of Maine Citizens and the Economy of Maine by Providing Affordable Market-based Coverage Options to Low-income Uninsured Citizens," on April 13, 2016, which failed to become law when the Senate adjourned *sine die* on April 29, 2016.

MAINE VOTERS PASS MAINE'S MEDICAID EXPANSION ACT

38. Frustrated by the failure to enact Medicaid expansion because of the Governor's exercise of his veto power, MEJP and other organizations initiated a citizen referendum to adopt Medicaid expansion that could not be subject to a gubernatorial veto under the Maine Constitution.

39. On November 7, 2017 Maine voters passed the citizens' initiative to implement Medicaid expansion with over 59% of the vote.

40. Pursuant to the Maine Constitution, the Governor lacks the authority to veto a law passed by citizens' initiative. Me. Const. Art. IV, Part Third, Section 19.

41. The Medicaid Expansion Act became effective on January 3, 2018, and requires the Commissioner, no later than April 3, 2018, to submit a SPA to CMS.

42. The SPA, once approved by CMS, enables Maine to receive federal funds for the MaineCare services that it is required to provide under the Medicaid Expansion Act.

43. The SPA is a simple submission that can be as short as a few pages of filled out boxes on a form.

44. For example, Connecticut received approval of a very simple state plan amendment for Medicaid expansion, a true copy of which is attached here as **Exhibit B**.

45. The Commissioner can and should comply with the mandate of the Act by submitting a state plan amendment substantially similar to the state plan amendment approved for the State of Connecticut (and for many of the 31 states that have implemented Medicaid expansion pursuant to 42 U.S.C. §1396a(a)(10)(A)(i)(VIII)). He lacks any lawful basis for refusing or failing to do so.

46. Additional statutory mandates of 22 M.R.S. § 3174-G(1)(H) include but are not limited to that "[t]he department shall adopt rules … in a timely manner to ensure that the persons described … are enrolled for and eligible to receive services no later than" July 2, 2018.

CLAIM FOR RELIEF

(Petition for Review Pursuant to 5 M.R.S. § 11001 *et. seq.* and Me. R. Civ. P. 80C)

47. The Commissioner has failed or refused to act pursuant to Maine's Medicaid Expansion Act, as codified at 22 M.R.S. § 3174-G(1)(H).

48. Due to the failure or refusal of the Commissioner timely to submit the required state plan amendment, each and every individual petitioner faces a delay in obtaining medically-necessary and potentially life-saving health coverage.

49. Due to the failure of the Defendant timely to implement the expansion of MaineCare pursuant to 22 M.R.S. § 3174-G(1)(H), MEJP must now divert its limited resources to education, training, and individual representation for people who are not able to timely access medically necessary health care services. This involves advising people about other programs, such as hospital based free care, prescription drug assistance programs, sliding fee scale clinics, municipal General Assistance, etc. These other programs, while helpful, are far more limited in their scope of services and eligibility criteria than the "expansion" category under MaineCare. In other words, MEJP would be spending far less of its limited time and resources assisting people with these other programs if instead expansion of MaineCare would occur as set forth in the Act. MEJP must also engage in significant efforts to keep clients, social service agencies, providers and others that assist people who otherwise would be covered through expansion with information about other options. This in turn will force MEJP to reduce the number of clients it assists with problems in programs other than MaineCare.

50. CAHC is also now re-directing its resources to address the inquiries that they are receiving about coverage through expansion and are redirecting people to other more limited options for access to health care, e.g. hospital free care, sliding fee clinics, etc. CAHC has had to do this during a time of limited resources, further diverting CAHC's resources from other parts of its mission.

51. Similarly, FQHCs have provided more than $16 million in uncompensated care in recent years, and the swift implementation of Medicaid expansion will ease financial burdens placed on the health centers, opening up possibilities for more access for others (i.e., the uninsured) to an array of high quality preventive and chronic care services. Both MPCA and PCHC are now training staff and gearing up for Medicaid Expansion. If DHHS delays

implementation of Medicaid Expansion, it will not only create confusion, but will also further drain their limited resources, as well as the limited resources of their members, and it will mean that many of their patients may go without the medical care that they need to maintain their health and well-being.

52. To the extent that the Commissioner's failure or refusal to submit the SPA indicates a refusal to take other mandatory steps, including the requirement that "[t]he department shall adopt rules … in a timely manner to ensure that the persons described … are enrolled for and eligible to receive services no later than" July 2, 2018, the Court can and should remedy that refusal as well. *See* 5 M.R.S. § 8058(1).

53. This Court can grant relief pursuant 5 M.R.S. §§ 8058, 11001& 11007.

WHEREFORE, Petitioners request that this Court:

a. Declare that the Commissioner is under an existing statutory obligation pursuant to 22 M.R.S. § 3174-G(1)(H) to submit a state plan amendment to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services ensuring MaineCare eligibility for people under 65 years of age who qualify for medical assistance pursuant to 42 United States Code, Section 1396a(a)(10)(A)(i)(VIII);

b. Order that DHHS, within 3 days, submit the required state plan amendment to CMS;

c. Declare that DHHS is under an existing statutory obligation pursuant to 22 M.R.S. § 3174-G(1)(H) to adopt rules, including emergency rules pursuant to Title 5, section 8054 if necessary, to implement § 3174-G(1)(H) in a timely manner to ensure that people under 65 years of age who qualify for medical

assistance pursuant to 42 United States Code, Section 1396a(a)(10)(A)(i)(VIII) are enrolled for and eligible to receive services no later than July 2, 2018;

d. Order that DHHS adopt the required rules in a timely manner to ensure that eligible individuals are enrolled for and eligible to receive services no later than July 2, 2018; and

e. Grant Petitioners such other and further relief as it deems appropriate.

Dated: April 30, 2018

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