

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION  
Case No. 3:10-cv-91-RV/EMT

State of Florida, by and through Bill McCollum,  
Attorney General of the State of Florida, et al.,

Plaintiffs,

v.

United States Department of Health and Human  
Services, et al.,

Defendants.

MOTION OF AMERICAN ACADEMY OF PEDIATRICS, AARP, AMERICAN PUBLIC HEALTH ASSOCIATION, CHILDREN'S DENTAL HEALTH PROJECT, FAMILIES USA, FLORIDA ADVOCACY CENTER FOR PEOPLE WITH DISABILITIES, FLORIDA PEDIATRIC SOCIETY/FLORIDA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS, FLORIDA ALLIANCE FOR RETIRED AMERICANS, FLORIDA COMMUNITY HEALTH ACTION INFORMATION NETWORK, GRAY PANTHERS, HUMAN SERVICES COALITION OF DADE COUNTY, JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, NATIONAL ALLIANCE ON MENTAL ILLNESS, NAMI FLORIDA, NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS, NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE, NATIONAL DISABILITY RIGHTS NETWORK, NATIONAL HEALTH LAW PROGRAM, NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES, SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE FLORIDA LOCAL 1991, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, AND VOICES FOR AMERICA'S CHILDREN  
(THE *AMICI*)  
TO FILE AMICUS BRIEF AND ACCOMPANYING MEMORANDUM IN SUPPORT

Motion

The *Amici* move the Court to participate as *amici curiae* in connection with the pending Motions for Summary Judgment in this case. *Amici* seek to assist the Court with deciding Count Four of the Amended Complaint, which alleges coercion and commandeering as to the Medicaid program. As required by the Order on *Amicus Curiae* Filings (Jun. 14, 2010) (Docket Entry (DE) 50), the accompanying memorandum shows that (1) the *Amici* will not duplicate information already in the parties' memoranda; (2) *Amicis'* brief will assist the Court as it considers Count Four; and (3) the *Amicis'* interests will be affected by the Court's decision.

Memorandum in Support of Motion

Count Four of the Amended Complaint challenges provisions of the Patient Protection and Affordable Care Act (ACA) that expand Medicaid to childless, non-disabled adults whose incomes are below 133% of the federal poverty level. Am. Compl., Count Four (May 14, 2010) (DE 42). According to the Plaintiffs, the ACA converts Medicaid into a "federally-imposed universal healthcare regime" that, given the size of Federal Medicaid grants, they have no choice but to accept. *Id.* at ¶ 2, 54. While noting the argument "stands on extremely 'wobbly legs,'" the Court allowed Plaintiffs to proceed to summary judgment with this "coercion and commandeering" claim. *Florida ex rel. McCollum v. U.S. Dep't of Health & Human Services*, -- F. Supp. 2d --, 2010 WL 4010119, at \*30 (N.D. Fla. 2010).

1. *Amici will not duplicate information already before the Court.*

In their Memoranda in Support of Summary Judgment, the parties address the Medicaid coercion and commandeering argument using legal arguments and exhibits that focus on the costs associated with the ACA's Medicaid provisions. The Plaintiffs have submitted exhibits and affidavits from State officials to show that the ACA works such a transformation that the

States will be required to spend money and provide services in ways that are “radically changed” from what was required by the Medicaid Act before the ACA was enacted. *See* Plfs.’ Mem. in Supp. of Summ. J. at 24-44 (Nov. 4, 2010) (DE 80-1.). The Defendants provide legal argument and exhibits to show that the ACA Medicaid provisions will reduce the number of uninsured people and that any increases in State spending will be more than offset by new savings under the ACA. Defs.’ Mem. in Supp. of Summ. J. at 38-47 (Nov. 4, 2010) (DE 82-1.).

While the memoranda include brief discussions of the Medicaid Act, neither party explained how the ACA’s Medicaid provisions fit within the frame and structure of the Medicaid program or how the provisions relate to the Medicaid Act and its amendment over time. As a result, *Amici* would like to submit a brief to the Court that describes the consistent features of the Medicaid program and provides a narrative history of the Medicaid Act, from the date of its enactment through the amendments made by the ACA.

2. *Amici* will assist the Court with its consideration of Count Four of the Amended Complaint.

A. Discussion of Medicaid’s constant features

Medicaid was added to the Social Security Act in 1965. Since its enactment, Congress has amended the Medicaid Act on numerous occasions. *Amici* will show the Court that these amendments have not changed Medicaid’s core framework, structure or purpose. *Amici* will discuss four constant programmatic features. First, Medicaid is and always has been a means-tested program that provides health insurance coverage to people who generally cannot afford to purchase private health insurance. The Medicaid Act does not establish a “government run” health system but rather creates a health insurance program that enables Medicaid enrollees to

gain access to private health care providers, including doctors and nurses, community health clinics, pharmacies, home health aides, hospitals, and nursing homes.

Second, the Medicaid Act creates an entitlement for States that ensures that all eligible expenditures qualify for Federal funding at the appropriate Federal matching rate.

Third, State participation in the Medicaid program is voluntary. A State can opt out by withdrawing its Medicaid plan.

Fourth, while different and changing obligations have been enacted over time, the Medicaid Act has always set a minimum floor of requirements while allowing States flexibility in how to attain the floor and/or exceed it, including with respect to the amount and mix of services they will cover, provider payments, and procedures regarding eligibility and enrollment. In addition, the law has always required participating States to assure some protections in the manner by which people qualify for and receive services and how participating providers are to be treated.

As will be explained, such provisions and framing are integral programmatic features of Medicaid that are not changed by the ACA.

B. Narrative history of the Medicaid program

The *Amici* will also describe the history of the Medicaid program, beginning with the program's enactment in 1965 and continuing through to the ACA. As will be seen, many of the past amendments parallel or foreshadow the changes made by the ACA. Placed in context, it will be clear that the ACA builds upon the well-accepted and well-understood structure of the Medicaid program.

For example, although Medicaid began by confining its minimum eligibility requirements to the standards set by State cash welfare programs—which varied dramatically from State to

State—it was changed in 1972 to encourage States to extend Medicaid to any elderly or disabled person who was eligible for the newly-enacted Federal Supplemental Security Income program. States were given the option to go further. Currently, all 20 of the Plaintiffs’ States have taken up options to cover some elderly people or people with disabilities with incomes up to or above 300% of the SSI level (which is about 224% of Federal poverty level). The ACA’s Medicaid coverage for childless adults uses a national financial eligibility floor with options to cover more people, just as Congress introduced in 1972 for elders and people with disabilities.

Similarly, between 1984 and 1990, Congress enacted legislation that in fundamental respects parallels the ACA’s extension of coverage to poor adults. Over this time period and through a series of incremental reforms, Congress established a national floor of coverage for children and pregnant women. This floor is accompanied by State options to reach higher, but a solid floor remains, nonetheless. More specifically, prior to 1984, States were required to extend Medicaid to children and pregnant women receiving AFDC cash assistance (with options to cover more). In 1988, these options began to be transformed into requirements, through phased in coverage tied to the Federal poverty level, rather than the AFDC program, ultimately reaching all children birth to age 5 and pregnant women with family incomes under 133% of the federal poverty level and, in the case of children aged 5-18, with family incomes under 100% of the poverty level. During this time, Congress allowed States, as it had during the previous 25 years, to extend benefits to needy children and pregnant women with incomes above the minimum coverage floors. Currently, 17 of the Plaintiffs’ States provide, at the States’ option, Medicaid coverage for at least some groups of children and/or pregnant women that exceeds the 133% and 100% Federal poverty-level minimums. The ACA’s Medicaid coverage for childless adults uses

a national financial eligibility standard, just as Congress did in the 1980s for children and pregnant women.

Moreover, a narrative history of Medicaid is needed to address some general, misleading statements made by the Plaintiffs. For example, Plaintiffs state that “Medicaid originally was supposed to address healthcare needs of the *poor*, [but] the ACA requires that States cover virtually anyone who applies and whose income is up to 38 percent *above* the federal poverty line.” Plfs.’ Mem. in Supp. of Summ. J. at 26. This statement is not correct, but showing this requires references to different statutes and codifications, some going back to the original Medicaid Act, which have allowed States to cover individuals whose incomes have been well above the poverty line.

Thus, *Amici* seek leave to file their brief because, in the context of covering America’s uninsured, they want to show the Court that the ACA’s Medicaid provisions are a step towards expanded health care coverage for low-income people, and that this is merely another step along the same path Medicaid has followed for the past 45 years. The Medicaid bargain remains much the same on March 23, 2010, after enactment of the ACA, as it was on March 22.

3. *Amicis’* interests will be affected by the Court’s decision

*Amici* are national and Florida-based health care provider and consumer organizations that have worked with the Medicaid program over its 45-year history. While, as described below, each *Amici* has its particular interests in the Medicaid program, they collectively bring to the Court an in-depth understanding of how the Medicaid Act has been amended and/or implemented over time.

A number of the *Amici* work with and for health care and community providers who treat Medicaid and uninsured individuals. Founded in 1930, the **American Academy of Pediatrics**

(AAP) is a national, non-profit organization dedicated to furthering the interests of children's health and the pediatric specialty. The majority of people who are covered by Medicaid are children, and pediatricians interact with Medicaid more than any other leading physicians' society. The **Florida Pediatric Society/Florida Chapter of the American Academy of Pediatrics** (FPS) is a non-profit professional organization of pediatricians and pediatric specialists. In the most recent Federal fiscal year, more than 1.6 million children were enrolled in Florida's Medicaid program. A substantial proportion of FPS's approximately 2100 members are enrolled as Medicaid providers in Florida and provide primary care and specialty services to children enrolled in Florida's Medicaid program.

Established in 1872, the **American Public Health Association** (APHA) aims to protect families and communities from preventable, serious health threats and strives to assure that community-based health promotion and disease prevention activities and preventive health services are universally accessible. APHA represents a broad array of health professionals and others who care about the health of their communities, many of whose residents are uninsured or depend on Medicaid for their health care. The **National Association of Community Health Centers** (NACHC) is the membership organization for federally qualified health centers (FQHC). There are more than 1200 FQHCs with more than 7000 sites serving close to 20 million patients nationwide. Approximately 35% of health center patients are Medicaid recipients, and approximately 40% are uninsured. NACHC estimates that the Medicaid expansions contained in ACA will result in health centers serving approximately 18.4 million Medicaid recipients by 2015. **Service Employees International Union (SEIU), Healthcare Florida, Local 1991** represents the 5000 registered nurses, physicians, and health care professionals who work in Jackson Health Systems (JHS), the largest public hospital in Florida

and the Southeast. Approximately 33% of the patients served by the medical professionals of SEIU Local 1991 are covered by Medicaid, and nearly 28% are without insurance of any kind and unable to pay for medical services they receive. JHS provided more than \$700 million of uncompensated medical care in 2009 and has been placed in financial jeopardy by the growing numbers of uninsured patients.

Other *Amici* organizations exist to improve consumer access and health status. **Families USA** is the national organization for health care consumers. For the past 28 years, Families USA has led various coalition efforts designed to expand health coverage for low-income families, including the National Medicaid Coalition that it chairs. **Florida Community Health Action Information Network** (CHAIN) is a statewide consumer health care advocacy organization. Priorities of Florida CHAIN include ensuring that Medicaid beneficiaries are protected against barriers to access and working to obtain coverage for Florida's estimated 4.1 million uninsured. The **Human Services Coalition of Dade County** works with low-income Miami-Dade residents and community-based organizations to enroll individuals and families in health care programs, including Medicaid, and to help them navigate the health care system.

Over its 40 year history, the **National Health Law Program** has engaged in legal and policy advocacy to improve health access of Medicaid enrollees and uninsured people. The **National Partnership for Women and Families** is a nonprofit, nonpartisan organization that uses public education and advocacy to promote access to quality, affordable health care, work and family policies, and fairness in the workplace. Medicaid is a particularly vital source of health care for women of reproductive age (15-44). The **Sargent Shriver National Center on Poverty Law** is a non-profit law office that uses policy development and advocacy to ensure that eligible people are actually enrolled in Medicaid and that they have access to care.



The following *Amici* focus their work on assisting older Americans. **AARP** is a nonpartisan, nonprofit organization that addresses the needs and interests of people aged 50 and older. Medicaid is the nation's largest payer for long-term care and is critical in redirecting care from institutions to often more cost-effective home and community-based settings that older persons prefer. Although older and disabled persons make up just one-quarter of Medicaid enrollees, they account for 70% of Medicaid spending. The **Florida Alliance for Retired Americans** (FLARA), a non-profit organization comprised of over 200,000 members, actively promotes policies that are in the best interests of current and future retired Floridians, including the growing population of older Floridians who desire to remain self-sufficient. **Gray Panthers** is an intergenerational activist organization working for social and economic justice and peace. As voted on by its membership, health care has been the organization's top priority since its inception in 1970. The **National Committee to Preserve Social Security and Medicare** (NCPSSM), a not-for-profit membership organization, exists to preserve the financial security, health, and well being of current and future generations of older Americans. Over the years, NCPSSM has worked extensively with the Medicaid program because of the crucial role that program plays in the health care system, for example, covering care for about 60% of nursing home residents.

Other *Amici* focus on children's health. The **Children's Dental Health Project** is a national non-profit organization with the vision of achieving equity in oral health for children and their families, particularly for poor children upon whom the burden of dental disease disproportionately falls. For over 25 years, **Voices for America's Children**, the nation's largest network of multi-issue child advocacy organizations, has directly advocated for expansion of

Medicaid in order to improve access to high-quality, age-appropriate health care for all children in need.

Yet other *Amici* bring expert knowledge of how Medicaid and uninsured status affect individuals with chronic and disabling conditions. The **Judge David L. Bazelon Center for Mental Health Law** is a national public interest organization founded in 1972 to advocate for the rights of individuals with mental disabilities. The **National Alliance on Mental Illness** (NAMI) is the nation's largest grassroots mental health organization dedicated to improving the lives of individuals and families affected by mental illness. Founded in 1979, NAMI has over 1100 state and local affiliates that engage in research, education, support, and advocacy. **NAMI Florida**, a non-profit organization of approximately 2200 members, works to improve the quality of life of individuals and their families affected by mental illness through education, support and advocacy. Currently, many low-income Floridians living with mental illness, for example adults without minor children, cannot access essential treatment because they are uninsured and do not meet the categorical eligibility requirements for Medicaid. The **National Disability Rights Network** (NDRN) is the non-profit membership association of protection and advocacy (P&A) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the U.S. Territories. For 30 years, P&As across the country have worked with children and adults with disabilities who depend on Medicaid-funded services and supports to enable them to live in the community rather than institutions. The **Advocacy Center for Persons with Disabilities** is the designated P&A for the State of Florida. In 2009, the Advocacy Center assisted approximately 7,500 Floridians, with the largest group of requests for assistance in the area of securing access to health care supports and services.

Conclusion

For the reasons stated above, the *Amici* respectfully ask the Court to grant their motion to file a brief *amici curiae* in this case.

Dated: November 10, 2010

Respectfully submitted,

American Academy of Pediatrics, AARP, American Public Health Association, Children's Dental Health Project, Families USA, Florida Advocacy Center for People with Disabilities, Florida Pediatric Society/Florida Chapter of the American Academy of Pediatrics, Florida Alliance for Retired Americans, Florida Community Health Action Information Network, Gray Panthers, Human Services Coalition of Dade County, Judge David L. Bazelon Center for Mental Health Law, National Alliance on Mental Illness, NAMI Florida, National Association of Community Health Centers, National Committee to Preserve Social Security and Medicare, National Disability Rights Network, National Health Law Program, National Partnership for Women and Families, SEIU Florida Healthcare Local 1991, Sargent Shriver National Center on Poverty Law, and Voices for America's Children

By their counsel

/s/

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/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 10, 2010, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

s/Sarah Jane Somers  
Sarah Jane Somers