

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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Ronnie Maurice STEWART, et al.,)
)
<i>Plaintiffs,</i>)
)
v.)
)
Alex M. AZAR II, in his official capacity as)
Secretary of the United States Department of Health)
and Human Services, et al.,)
)
<i>Defendants.</i>)
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Civil Action No. 1:18-cv-152 (JEB)

**MOTION OF AARP, AARP FOUNDATION, JUSTICE IN AGING,
NATIONAL ACADEMY OF ELDER LAW ATTORNEYS, AND DISABILITY RIGHTS
EDUCATION AND DEFENSE FUND FOR LEAVE TO FILE *AMICI CURIAE* BRIEF
IN SUPPORT OF PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

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AARP, AARP Foundation, Justice in Aging, the National Academy of Elder Law Attorneys, and Disability Rights and Education Fund seek leave of this Court, pursuant to District Court of the District of Columbia Local Civil Rule 7(o), to file an amicus curiae brief in support of Plaintiffs' Motion for Summary Judgment. The proposed brief has been submitted for filing along with this Motion. Counsel for the federal Defendants has indicated they consent to our proposed leave to participate as amici in this matter. Defendant Intervenor, the Commonwealth of Kentucky, takes no position on our proposed leave to participate in this matter.

In support of this Motion, Amici declare:

1. All Amici are national organizations that are affected by Defendants' actions in this case. While this case concerns Defendants' waiver of Medicaid requirements in Kentucky, as reflected in HHS's Kentucky HEALTH waiver (hereafter, "Waiver"), at least nine additional states have requested similar waivers.¹ The Court's ruling will have a nationwide impact on the extent to which low-income persons have access to health care, and whether such health care will be subject to the types of restrictions established by Defendants' waiver of Medicaid provisions.

2. Defendants' waiver applies to Medicaid coverage for Kentuckians from ages 19 to 64.² As organizations that focus on the interests of older Americans and persons with disabilities, Amici have a particular interest in how the Waiver will harm Kentuckians from ages 50 to 64 and Kentuckians with functional limitations and chronic conditions who are not

¹ These nine states are Arizona, Arkansas, Indiana, Kansas, Maine, New Hampshire, North Carolina, Utah, and Wisconsin. Judith Solomon, Ctr. on Budget and Pol'y Priorities, *Kentucky Waiver Will Harm Medicaid Beneficiaries*, at 2 (Jan. 16, 2018), available at <https://www.cbpp.org/research/health/kentucky-waiver-will-harm-medicaid-beneficiaries>.

² State of Kentucky Application for Demonstration Waiver, *Kentucky HEALTH: Helping to Engage and Achieve Long Term Health*, at 9 (2016) (waiver excluding Medicaid beneficiaries whose eligibility is based on a being age 65 or older, or having a disability).

administratively classified as disabled by the Defendant. Amici also have a substantial interest in how this Court's orders will affect Defendants' ability to grant similar waivers in other states, and their potential impact on the viability of Medicaid coverage for low-income persons across the country.

3. AARP is a nonprofit, nonpartisan organization dedicated to fulfilling the needs and representing the interests of people age fifty and older. AARP fights to protect older people's financial security, health, and wellbeing. AARP's charitable affiliate, AARP Foundation, creates and advances effective solutions that help low-income individuals aged 50 and older secure the essentials. Among other things, AARP and AARP Foundation advocate for access to quality health care across the country, through members and affiliates, and frequently appear as friend of the court on issues affecting older Americans. *See, e.g., Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

4. Justice in Aging is a national, nonprofit law organization that fights senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources. Justice in Aging provides training and advocacy regarding Medicare and Medicaid, and provides technical assistance to attorneys and others from across the country on how to address problems that arise under these programs. Justice in Aging frequently appears as friend of the court on cases involving health care access for older Americans.

5. The National Academy of Elder Law Attorneys, Inc. (NAELA), is a professional organization of attorneys concerned with the rights of the elderly and disabled, providing a professional center, including public interest advocacy, for attorneys whose work enhances the lives of people with special needs and of all people as they age. Its member attorneys represent Kentuckians who are affected by the Waiver.

6. The Disability Rights Education and Defense Fund (DREDF) is a national law and policy center that protects and advances the civil and human rights of people with disabilities through legal advocacy, training, education, and development of legislation and public policy. DREDF is committed to increasing accessible and equally effective healthcare for people with disabilities and eliminating persistent health disparities that affect the length and quality of their lives. DREDF has significant experience in Medicaid law and policy, given that disabled individuals disproportionately live in poverty and depend on Medicaid services and supports.

7. This Court has wide discretion in deciding whether to grant leave to file an amicus curiae brief. *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 519 F.Supp.2d 89, 93 (D.D.C.2007). Amicus curiae briefs have been permitted where “the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *In the Matter of the Search of Information Associations with [redacted]@mac.com that is Stored at the Premises Controlled by Apple, Inc.*, 13 F. Supp. 3d 157, 167 (D.D.C. 2014) (citing *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir.2003)). Courts consider several factors when deciding whether or not to permit the filing of an amicus curiae brief, and have permitted such filings in a wide variety of situations, including when “‘a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case,’ ” or in cases where “‘the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Jin v. Ministry of State Sec’y*, 557 F.Supp.2d 131, 137 (D.D.C.2008).

8. Here, Amici are uniquely positioned to can provide helpful information and perspectives to the Court about the impact of the Defendants’ waiver of critical provisions of the

Medicaid Act on which older adults and persons with functional limitations and chronic conditions rely.

9. In addition, Amici have an interest in the potential effect of this Court's decision in other jurisdictions, including the potential for the Defendants' Waiver in Kentucky and other states (which are seeking similar treatment) to undermine access to healthcare coverage and services for low-income older adults and persons with functional limitations and chronic conditions across the country.

10. Amici are in a unique position to provide the Court with information regarding the effect of Defendants' Waiver on older adults and persons with functional limitations and chronic conditions. In particular, Amici can present the Court with a wealth of information reflecting the needs of older adults in the years leading up to Medicare eligibility, the financial vulnerability of older adults and persons with chronic conditions and the impact of their uncovered medical care in terms of financial ruin, unmet healthcare needs, and increased risk of ultimately being placed in an institution.

11. Amici believe that this brief will bring to the Court pertinent information regarding the challenges that persons aged 50–64 and persons with chronic conditions face in accessing publicly funded health care and the environment in which they strive to comply with the Defendants' and Intervenor's ever increasing administrative and bureaucratic demands.

12. The brief Amici seek leave to file is relevant to the disposition of this case. The brief explains that the loss of health care coverage as a result of Defendants' waiver will be particularly harmful for persons aged 50–64 and persons with chronic conditions and functional limitations. The elimination of Medicaid mandated retroactive benefits and imposition of harsh lock-out provisions will create particular risks for people with chronic conditions and functional

limitations. Similarly, eliminating non-emergency transportation will have detrimental effects on persons aged 50–64 or living with a chronic condition or functional limitation. Amici seek to provide the Court with relevant information regarding the health care needs of this population, and to challenge Defendants’ assumption that they are “able bodied adults” who would suffer no harm from the changes to the program.

13. Accordingly, Amici respectfully request leave to file their brief in support of Plaintiffs’ Motion for Summary Judgement to facilitate the full consideration by the Court of the legal and public policy issues presented in this case.

Dated: April 6, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2018, I electronically filed the foregoing Motion Of AARP, AARP Foundation, Justice in Aging, National Academy of Elder Law Attorneys and Disability Rights Education and Defense Fund For Leave To File Brief *Amicus Curiae* In Support Of Plaintiffs Motion for Summary Judgment with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Lisa S. Blatt

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