

**EXPEDITED REVIEW REQUESTED**

Form Approved: OMB No. 0990-0269.  
See OMB Statement on Reverse.



**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS (OCR)  
CIVIL RIGHTS DISCRIMINATION COMPLAINT**



|   |              |   |  |
|---|--------------|---|--|
| YOUR FIRST NAME<br>Scott                      |              | YOUR LAST NAME<br>Schoettes                                 |  |
| HOME PHONE (Please include area code)         |              | WORK PHONE (Please include area code)<br>(312) 663-4413     |  |
| STREET ADDRESS<br>105 W. Adams St. Suite 2600 |              | CITY<br>Chicago   |  |
| STATE<br>IL                                   | ZIP<br>60603 | E-MAIL ADDRESS (If available)<br>sschoettes@lambdalegal.org |  |

**Are you filing this complaint for someone else?**  Yes  No  
If Yes, whose civil rights do you believe were violated?

|   |   |
|---|---|
| FIRST NAME<br>Lambda Legal Defense & Education Fund, Inc. and | LAST NAME<br>AIDS Law of Louisiana, a program of the NO/AIDS Task Force |
|---|---|

**I believe that I have been (or someone else has been) discriminated against on the basis of:**

- Race / Color / National Origin   
  Age   
  Religion   
  Sex  
 Disability   
  Other (specify): \_\_\_\_\_

**Who or what agency or organization do you believe discriminated against you (or someone else)?**

PERSON/AGENCY/ORGANIZATION  
Blue Cross and Blue Shield of Louisiana

|                                   |              |  |
|-----------------------------------|--------------|--|
| STREET ADDRESS<br>5525 Reitz Ave. |              | CITY<br>Baton Rouge                            |
| STATE<br>Louisiana                | ZIP<br>70809 | PHONE (Please include area code)<br>2252952054 |

**When do you believe that the civil right discrimination occurred?**

LIST DATE(S)  
On or around 1/1/14 to the present

**Describe briefly what happened. How and why do you believe that you have been (or someone else has been) discriminated against? Please be as specific as possible. (Attach additional pages as needed)**

Please see attached complaint.

**Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.**

|               |                                 |
|---------------|---------------------------------|
| SIGNATURE<br> | DATE (mm/dd/yyyy)<br>02/10/2014 |
|---------------|---------------------------------|

Filing a complaint with OCR is voluntary. However, without the information requested above, OCR may be unable to proceed with your complaint. We collect this information under authority of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other civil rights statutes. We will use the information you provide to determine if we have jurisdiction and, if so, how we will process your complaint. Information submitted on this form is treated confidentially and is protected under the provisions of the Privacy Act of 1974. Names or other identifying information about individuals are disclosed when it is necessary for investigation of possible discrimination, for internal systems operations, or for routine uses, which include disclosure of information outside the Department of Health and Human Services (HHS) for purposes associated with civil rights compliance and as permitted by law. It is illegal for a recipient of Federal financial assistance from HHS to intimidate, threaten, coerce, or discriminate or retaliate against you for filing this complaint or for taking any other action to enforce your rights under Federal civil rights laws. You are not required to use this form. You also may write a letter or submit a complaint electronically with the same information. To submit an electronic complaint, go to OCR's web site at:

[www.hhs.gov/ocr/civilrights/complaints/index.html](http://www.hhs.gov/ocr/civilrights/complaints/index.html). To mail a complaint see reverse page for OCR Regional addresses.

The remaining information on this form is optional. Failure to answer these voluntary questions will not affect OCR's decision to process your complaint.

Do you need special accommodations for us to communicate with you about this complaint? (Check all that apply)

- Braille     Large Print     Cassette tape     Computer diskette     Electronic mail     TDD
- Sign language interpreter (specify language): \_\_\_\_\_
- Foreign language interpreter (specify language): \_\_\_\_\_     Other: \_\_\_\_\_

If we cannot reach you directly, is there someone we can contact to help us reach you?

|   |              |   |  |
|---|--------------|---|--|
| FIRST NAME<br>Kenneth                               |              | LAST NAME<br>Upton                                      |  |
| HOME PHONE (Please include area code)<br>2146730858 |              | WORK PHONE (Please include area code)<br>2142198585     |  |
| STREET ADDRESS<br>3500 Oak Lawn Avenue, Ste 500     |              | CITY<br>Dallas  |  |
| STATE<br>TX   | ZIP<br>75219 | E-MAIL ADDRESS (If available)<br>kupton@lambdalegal.org |  |

Have you filed your complaint anywhere else? If so, please provide the following. (Attach additional pages as needed)

PERSON/AGENCY/ORGANIZATION/ COURT NAME(S)

NO - N/A

|               |                           |
|---------------|---------------------------|
| DATE(S) FILED | CASE NUMBER(S) (If known) |
|---------------|---------------------------|

To help us better serve the public, please provide the following information for the person you believe was discriminated against (you or the person on whose behalf you are filing).

ETHNICITY (select one)      RACE (select one or more)

Hispanic or Latino       American Indian or Alaska Native     Asian       Native Hawaiian or Other Pacific Islander

Not Hispanic or Latino     Black or African American     White       Other (specify): \_\_\_\_\_

PRIMARY LANGUAGE SPOKEN (if other than English) \_\_\_\_\_

How did you learn about the Office for Civil Rights?

- HHS Website/Internet Search     Family/Friend/Associate     Religious/Community Org     Lawyer/Legal Org     Phone Directory     Employer
- Fed/State/Local Gov     Healthcare Provider/Health Plan     Conference/OCR Brochure     Other (specify): \_\_\_\_\_

To mail a complaint, please type or print, and return completed complaint to the OCR Regional Address based on the region where the alleged violation took place. If you need assistance completing this form, contact the appropriate region listed below.

|   |  |   |
|---|--|---|
| <b>Region I - CT, ME, MA, NH, RI, VT</b><br>Office for Civil Rights, DHHS<br>JFK Federal Building - Room 1875<br>Boston, MA 02203<br>(617) 565-1340; (617) 565-1343 (TDD)<br>(617) 565-3809 FAX                       | <b>Region V - IL, IN, MI, MN, OH, WI</b><br>Office for Civil Rights, DHHS<br>233 N. Michigan Ave. - Suite 240<br>Chicago, IL 60601<br>(312) 886-2359; (312) 353-5693 (TDD)<br>(312) 886-1807 FAX | <b>Region IX - AZ, CA, HI, NV, AS, GU,</b><br><b>The U.S. Affiliated Pacific Island Jurisdictions</b><br>Office for Civil Rights, DHHS<br>90 7th Street, Suite 4-100<br>San Francisco, CA 94103<br>(415) 437-8310; (415) 437-8311 (TDD)<br>(415) 437-8329 FAX |
| <b>Region II - NJ, NY, PR, VI</b><br>Office for Civil Rights, DHHS<br>26 Federal Plaza - Suite 3312<br>New York, NY 10278<br>(212) 264-3313; (212) 264-2355 (TDD)<br>(212) 264-3039 FAX                               | <b>Region VI - AR, LA, NM, OK, TX</b><br>Office for Civil Rights, DHHS<br>1301 Young Street - Suite 1169<br>Dallas, TX 75202<br>(214) 767-4056; (214) 767-8940 (TDD)<br>(214) 767-0432 FAX       |   |
| <b>Region III - DE, DC, MD, PA, VA, WV</b><br>Office for Civil Rights, DHHS<br>150 S. Independence Mall West - Suite 372<br>Philadelphia, PA 19106-3499<br>(215) 861-4441; (215) 861-4440 (TDD)<br>(215) 861-4431 FAX | <b>Region VII - IA, KS, MO, NE</b><br>Office for Civil Rights, DHHS<br>601 East 12th Street - Room 248<br>Kansas City, MO 64106<br>(816) 426-7277; (816) 426-7065 (TDD)<br>(816) 426-3686 FAX    |   |
| <b>Region IV - AL, FL, GA, KY, MS, NC, SC, TN</b><br>Office for Civil Rights, DHHS<br>61 Forsyth Street, SW. - Suite 16T70<br>Atlanta, GA 30303-8909<br>(404) 562-7886; (404) 562-7884 (TDD)<br>(404) 562-7881 FAX    | <b>Region VIII - CO, MT, ND, SD, UT, WY</b><br>Office for Civil Rights, DHHS<br>999 18th Street, Suite 417<br>Denver, CO 80202<br>(303) 844-2024; (303) 844-3439 (TDD)<br>(303) 844-2025 FAX     | <b>Region X - AK, ID, OR, WA</b><br>Office for Civil Rights, DHHS<br>2201 Sixth Avenue - Mail Stop RX-11<br>Seattle, WA 98121<br>(206) 615-2290; (206) 615-2296 (TDD)<br>(206) 615-2297 FAX   |

**Burden Statement**

Public reporting burden for the collection of information on this complaint form is estimated to average 45 minutes per response, including the time for reviewing instructions, gathering the data needed and entering and reviewing the information on the completed complaint form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: HHS/OS Reports Clearance Officer, Office of Information Resources Management, 200 Independence Ave. S.W., Room 531H, Washington, D.C. 20201. **Please do not mail complaint form to this address.**



## COMPLAINANT CONSENT FORM

The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) has the authority to collect and receive material and information about you, including personnel and medical records, which are relevant to its investigation of your complaint.

To investigate your complaint, OCR may need to reveal your identity or identifying information about you to persons at the entity or agency under investigation or to other persons, agencies, or entities.

The Privacy Act of 1974 protects certain federal records that contain personally identifiable information about you and, with your consent, allows OCR to use your name or other personal information, if necessary, to investigate your complaint.

Consent is voluntary, and it is not always needed in order to investigate your complaint; however, failure to give consent is likely to impede the investigation of your complaint and may result in the closure of your case.

Additionally, OCR may disclose information, including medical records and other personal information, which it has gathered during the course of its investigation in order to comply with a request under the Freedom of Information Act (FOIA) and may refer your complaint to another appropriate agency.

Under FOIA, OCR may be required to release information regarding the investigation of your complaint; however, we will make every effort, as permitted by law, to protect information that identifies individuals or that, if released, could constitute a clearly unwarranted invasion of personal privacy.

Please read and review the documents entitled, *Notice to Complainants and Other Individuals Asked to Supply Information to the Office for Civil Rights* and *Protecting Personal Information in Complaint Investigations* for further information regarding how OCR may obtain, use, and disclose your information while investigating your complaint.

**In order to expedite the investigation of your complaint if it is accepted by OCR, please read, sign, and return one copy of this consent form to OCR with your complaint. Please make one copy for your records.**

- As a complainant, I understand that in the course of the investigation of my complaint it may become necessary for OCR to reveal my identity or identifying information about me to persons at the entity or agency under investigation or to other persons, agencies, or entities.



- I am also aware of the obligations of OCR to honor requests under the Freedom of Information Act (FOIA). I understand that it may be necessary for OCR to disclose information, including personally identifying information, which it has gathered as part of its investigation of my complaint.
- In addition, I understand that as a complainant I am covered by the Department of Health and Human Services' (HHS) regulations which protect any individual from being intimidated, threatened, coerced, retaliated against, or discriminated against because he/she has made a complaint, testified, assisted, or participated in any manner in any mediation, investigation, hearing, proceeding, or other part of HHS' investigation, conciliation, or enforcement process.

**After reading the above information, please check ONLY ONE of the following boxes:**

**CONSENT:** I have read, understand, and agree to the above and give permission to OCR to reveal my identity or identifying information about me in my case file to persons at the entity or agency under investigation or to other relevant persons, agencies, or entities during any part of HHS' investigation, conciliation, or enforcement process.

**CONSENT DENIED:** I have read and I understand the above and do not give permission to OCR to reveal my identity or identifying information about me. I understand that this denial of consent is likely to impede the investigation of my complaint and may result in closure of the investigation.

Signature: Scott Schoettes Date: 02/10/2014  
*\*Please sign and date this complaint. You do not need to sign if submitting this form by email because submission by email represents your signature.*

Name (Please print): Scott Schoettes

Address: 105 W Adams St, Ste 2600, Chicago, IL 60603

Telephone Number: 312-663-4413

**EXPEDITED REVIEW REQUESTED**

**Complaint Against BlueCross BlueShield of Louisiana  
by Lambda Legal Defense and Education Fund, Inc. and AIDS Law of Louisiana**

We are national and Louisiana legal organizations that advocate and litigate on behalf of individuals living with HIV. Lambda Legal Defense and Education Fund, Inc., a national organization with members in Louisiana, is committed to achieving full recognition of the civil rights of people living with HIV and of lesbians, gay men, bisexuals and transgender people through impact litigation, education and public policy work. AIDS Law of Louisiana provides free legal services to low-income persons living with HIV and AIDS and is a program of the NO/AIDS Task Force, a Louisiana not-for-profit corporation.

We file this complaint against BlueCross BlueShield of Louisiana (“BCBS”) to challenge BCBS’s recent decision to stop accepting federal Ryan White HIV/AIDS Program (“RWHAP”) third-party premium subsidies for qualified low-income individuals living with HIV. This policy violates critical non-discrimination provisions of the Affordable Care Act (“ACA”).<sup>1</sup> As BCBS is well aware, the premium subsidies are provided by the federal RWHAP to assist low-income individuals living with HIV to purchase health insurance they could not otherwise afford. RWHAP funds are a critical safety net to permit people living with HIV to obtain health coverage for essential, life-saving medical care. Beginning in January 2014, BCBS abruptly began refusing to accept RWHAP premium subsidies paid on behalf of existing policyholders with HIV, and has returned RWHAP premium checks to HAART. These policyholders now cannot afford their BCBS premiums and face the prospect of being dropped from BCBS’s rolls and losing their health insurance. BCBS is also refusing to accept RWHAP premium subsidies from new enrollees, thus effectively blocking eligible low-income Louisianians living with HIV from enrolling in BCBS plans.

By refusing to accept RWHAP premium subsidies, BCBS has made its insurance unaffordable for thousands of eligible individuals living with HIV, who will have no choice but to go uninsured or search for other insurance options. BCBS’s alarming new policy strikes at the majority of Louisiana’s HIV-affected residents, a large percentage of whom are low-income and eligible for RWHAP subsidies. *See* HRSA, Dep’t of HHS, *Louisiana: Client Characteristics, Ryan White HIV/AIDS Program – State Profiles* (2011), <http://hab.hrsa.gov/stateprofiles/Client-Characteristics.aspx>. BCBS’s new policy is a powerful and effective tool for keeping people living with HIV off of BCBS’s insurance rolls. We are aware of no legitimate basis for BCBS’s refusal to accept RWHAP subsidies. We sent BCBS a letter on January 27, 2014 (copy attached) raising the

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<sup>1</sup> Through RWHAP, the federal government functions as the payer of last resort, making grants to states, cities and nonprofit organizations to provide premium subsidies, treatment and medication to people with HIV who have no alternative sources for coverage. The Health Resources and Services Administration (“HRSA”) of the U.S. Department of Health and Human Services (“HHS”) administers RWHAP at the federal level. The Louisiana Ryan White Health Insurance Program administers RWHAP within Louisiana, and the HIV/AIDS Alliance for Region II (“HAART”) serves as the third-party administrator, sending health insurance premium subsidy checks to insurers on behalf of eligible participants within the state. *See* <http://new.dhh.louisiana.gov/index.cfm/page/1119>.

same concerns expressed in this letter and asking BCBS to rescind its policy or at least offer a legitimate explanation for its policy. We received no response, and can only surmise that BCBS's purpose in refusing to accept Ryan White subsidies is an unlawful and discriminatory one—to keep people with HIV from BCBS's rolls.

BCBS's apparent strategy is consistent with years of insurance industry practices aimed at excluding those with HIV from coverage. People with HIV historically have faced enormous hurdles to obtaining health insurance coverage and have been victims of notoriously unethical insurance company tactics. Members of Congress were acutely aware of the need to rectify this problem when enacting the ACA. For example, Representative McDermott noted that at least one major insurer had routinely raised unfounded allegations against people diagnosed with HIV:

Fortis designed a computer program that would automatically flag any policyholder with HIV-AIDS and trigger an automatic fraud investigation. Knowing the treatment was expensive, the executives were looking for anything they could use to revoke health insurance policies for people with HIV. Then, when nothing turned up, they would essentially invent a reason.

156 Cong. Rec. H1716-17 (daily ed. Mar. 19, 2010) (statement of Rep. McDermott); *see also* Murray Waas, *Insurer Targeted HIV Patients to Drop Coverage*, Reuters (Mar. 17, 2010), <http://www.reuters.com/article/2010/03/17/us-insurers-idUSTRE62G2DO20100317>. Senator Feinstein commented that, when people “get sick with HIV [insurance companies] just simply cancel their policies and throw them out.” 156 Cong. Rec. S1953 (daily ed. Mar. 24, 2010) (statement of Sen. Feinstein); *see also* 156 Cong. Rec. H1800-01 (daily ed. Mar. 20, 2010) (statement of Rep. T. Ryan). It appears that BCBS's abrupt decision to reject RWHAP premium subsidies at this critical juncture in implementation of the ACA is yet the latest manifestation of a troubling pattern of insurance companies' efforts to deter coverage of people with HIV.

We see no legal basis for BCBS's refusal to accept RWHAP premium subsidies and adoption of a strategy effectively barring low-income people living with HIV from participation in BCBS plans. In fact, RWHAP premium subsidies to permit qualified low-income individuals to purchase critical health insurance are explicitly allowed and encouraged by HRSA. *See, e.g.*, HRSA HIV/AIDS Bureau Policy Clarification Notice 13-05, *Clarifications Regarding Use of Ryan White HIV/AIDS Program Funds for Premium and Cost-Sharing Assistance for Private Health Insurance* (revised 9/13/2013), <http://hab.hrsa.gov/manageyourgrant/pinspals/pcn1305premiumcostsharing.pdf>. While HHS's Centers for Medicare and Medicaid Services issued guidance in November 2013 discouraging third-party payments of premiums for Qualified Health Plans from certain *healthcare providers* and *commercial entities*, this guidance obviously does not apply to HHS's own RWHAP premium subsidies for low-income people living with HIV. We understand that HRSA representatives have advised BCBS that HHS has not sought to suggest that insurers should not or cannot accept RWHAP premium subsidies. Indeed, no other private insurance issuer in Louisiana has adopted BCBS's policy to refuse federal RWHAP premium subsidies, and we are aware of virtually no other issuer in the nation taking this radical step. On February 7, 2014, CMS issued guidance confirming that there is no impediment to insurer acceptance of RWHAP premium subsidies. *See* Dept. of Health and Human Servs., Centers for Medicare and Medicaid Servs. memo regarding “Third Party Payments of Premiums for Qualified Health Plans in the Marketplace,” dated Feb. 7, 2014, available at

[www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/third-party-payments-of-premiums-for-qualified-health-plans-in-the-marketplaces-2-7-14.pdf](http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/third-party-payments-of-premiums-for-qualified-health-plans-in-the-marketplaces-2-7-14.pdf) (“The November 4, 2013 FAQ does not apply to payments for premiums and cost-sharing made on behalf of QHP enrollees by . . . state and federal government programs or grantees (such as the Ryan White HIV/AIDS Program). QHP issuers and Marketplaces are encouraged to accept such payments.”) In addition, it has been reported that BCBS representatives acknowledged that its RWHAP premium policy is motivated by “adverse selection concerns”—i.e., a motivation to deter individuals with potentially higher health care costs from signing up for BCBS coverage. See Sharon Begley and Julie Steenhuysen (Thomsen/Reuters), *AIDS Patients in Obamacare Limbo as Insurer Rejects Checks*, Feb. 8, 2014, <http://www.reuters.com/article/2014/02/08/us-usa-healthcare-obamacare-exclusive-idUSBREA170IA20140208>.

BCBS’s unfounded policy jeopardizing the lives of Louisiana residents living with HIV violates non-discrimination provisions of the ACA (as well as potentially running afoul of other federal and state laws). Under Section 1557 of the ACA, “an individual shall not, on the ground prohibited under . . . section 504 of the Rehabilitation Act of 1973 [which prohibits discrimination on the basis of disability, including HIV], be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance[.]” See 42 U.S.C. § 18116. Section 1311(c)(1)(A) of the ACA provides that “to be certified, a plan shall, at a minimum (A) . . . not employ marketing practices or benefit designs that have the effect of discouraging the enrollment in such plan by individuals with significant health needs. . . .” See 42 U.S.C. § 18031. See also, e.g., 45 C.F.R. § 147.104(e) (prohibiting insurers from “employ[ing] marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage or discriminate based on an individual’s . . . present or predicted disability . . . or other health conditions”); 45 C.F.R. § 156.125(a) (“[a]n issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual’s . . . present or predicted disability . . . or other health conditions”); 45 C.F.R. § 156.225(b) (prohibiting insurers from “employ[ing] marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs”). BCBS’s abrupt and suspect decision to reject RWHAP premium subsidies amounts to discrimination in violation of federal law and undermines the integrity of the federal insurance exchange.

### **REQUEST FOR EXPEDITED REVIEW**

We ask this office for expedited review of the allegations in this complaint and to take swift action to address the crisis that BCBS’s discriminatory conduct has precipitated for low-income Louisianians living with HIV. BCBS’s refusal to accept RWHAP premiums puts low-income people with HIV on BCBS’s rolls in imminent jeopardy of losing their health coverage and is daily deterring many others from enrolling in BCBS programs. Indeed, if BCBS is only able to stall action by OCR until the end of the ACA open enrollment on March 31, it will have accomplished its goal of shifting significant numbers of people living with HIV from its insured rolls for calendar year 2014. The situation is urgent.

We look forward to a swift response from this Office. We stand ready to assist in any way we can to end BCBS’s discrimination against Louisianians living with HIV.

Dated: February 10, 2014

**Lambda Legal Defense and Education Fund, Inc.**  
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**AIDSLaw of Louisiana, a program of the  
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