

Fighting Against Discriminatory Health Insurance Practices Successful Advocacy in Florida

*U.S. Conference on AIDS
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Back in 2014 . . .

- The AIDS Institute reviewed qualified health plans (QHPs) available on the ACA Marketplace in Florida
 - Goal was to inform Ryan White clients about QHP options
 - 10 Issuers/36 Silver-level plans available
 - Looked at formularies for HIV drug coverage & cost-sharing structure

Discovered Discriminatory Design

- 4 Issuers placed all HIV Rx on highest cost-sharing tier, a.k.a. “adverse tiering”
- Patient cost-sharing for all HIV Rx under these issuers’ plans was much higher than under other plans
 - 40% - 50% co-insurance
 - High deductibles
- Restrictive Utilization Management
 - Prior Authorization
 - Quantity Limits

Discrimination Complaint

- TAI & NHeLP filed Complaint with Federal Office for Civil Rights/HHS (OCR)
 - Named 4 Issuers: CoventryOne, Cigna, Humana, and Preferred Medical
 - Alleged discrimination through adverse tiering against PLWHIV in violation of ACA
 - Asked HHS to remedy the unlawful conduct & decertify any QHPs that were in continued non-compliance
- Filed in 2014 but still pending
- HHS wants states to address

The New York Times

Bias Claims for Insurers in Coverage of H.I.V.

By KATIE THOMAS MAY 29, 2014

Health care advocates said on Thursday that four insurers offering plans in the new federal marketplace discriminated against people with H.I.V. or AIDS by requiring them to pay high out-of-pocket costs for drugs to treat H.I.V., including generic medications.

Two groups, the AIDS Institute and the National Health Law Program, [filed a complaint](#) on Thursday with the Department of Health and Human Services' Office for Civil Rights, saying the insurers had violated a provision in the new health care law that prohibits discriminating against consumers because of their medical conditions. They said the insurers had subjected people infected with H.I.V. to restrictions on medications that most patients take daily to keep the virus in check.....

Miami Herald

Complainants say health insurers used high drug co-pays to discourage people with HIV/AIDS from enrolling BY PATRICIA BORNES 05.29.14

Four Florida insurance companies offering Affordable Care Act policies are discriminating against people with HIV or AIDS, according to two health-rights organizations that plan to file a formal complaint with the federal government Thursday. The complaint by the AIDS Institute and the National Health Law Program — nonprofits advocating for the health rights of the poor and those living with chronic diseases — cites CoventryOne, Cigna, Humana and Preferred Medical for creating prescription-drug policies that the groups say discourage people with HIV/AIDS from enrolling in their Florida healthcare marketplace plans.....

Results of Discrimination Complaint

- Florida Insurance Commissioner took action
 - Used two State laws:
 - Insurance plans cannot discriminate based on AIDS
 - Review plans for compliance with ACA law
 - Entered into discussions with issuers

Consent Orders

Cigna & Coventry

- Cigna signed Nov. 6, 2014
 - Said tiering based on Rx being categorized as “specialty medications”
 - But agreed to (for 2015 Florida QHPs):
 - Move generics to non-preferred generic tier
 - Cap co-pays for 4 HIV drugs at \$200 (previously 40% or 50% co-insurance)
 - Not require prior authorizations or step therapy for HIV drugs
 - Quantities available as prescribed & no limits of less than 30 days’ supply
 - Request a meeting with TAI, NHeLP, & AHF
- Coventry (Aetna) signed on November 17, 2014
 - Also denied any discrimination
 - Same conditions as Cigna Consent Order:
 - Capped \$200 co-pay for 4 HIV Rx (previously 40% co-insurance)

Humana & Preferred Medical's Agreements

- Humana went further in Dec. 15, 2014 letter:
 - Lowered patient cost-sharing:
 - from 50% co-insurance to 10% for HIV Rx >\$600
 - from 50% co-insurance to \$50 co-pay for HIV Rx <\$600
 - Agreed to meet with AIDS community reps.
- Preferred Medical in Jan. 14, 2015 letter:
 - Capped co-pay at \$200 for 4 brand HIV Rx
 - No mention of meeting w/ AIDS Community

Results? 2015 Florida Plans

- For HIV--better but still saw issues with some plans:
 - Commonly-prescribed HIV Rx not covered
 - Only 3 plans covered all 4 approved STRs (Triumeq excluded by 10 plans)
 - No plan covered Vitekta, newest integrase inhibitor
 - All HIV Rx or all branded Rx, on highest cost-sharing tiers
 - 30% to 50% coinsurance
 - High Rx deductible (\$500 to \$1,500)
- Less favorable coverage for hepatitis across plans
 - Some or all curative HCV treatments not covered
 - All hepatitis Rx on highest cost-sharing tiers with coinsurance
 - All or most hepatitis Rx subject to prior authorization
 - Quantity limits

Meeting with Cigna & Aetna

- TAI, NHeLP, AHF with Aetna & Cigna (Jan. 28, 2015)
- Discussed ACA law, HIV treatment guidelines, patient impact of high cost-sharing, comments on FLOIR agreements
- Issuers' main concern: drug pricing
 - General lack of awareness of HIV world
 - But interested in working on improving transparency

Aetna/Coventry Reassessment

- Announced on March 26, 2015
 - After HHS said it would review QHPs more closely in 2016 for discriminatory benefit design
- *Nationwide*, effective June 2015 thru 2016!
- Moved all HIV Rx (except Fuzeon) from specialty tier to either generic or non-preferred brand
- Co-payments of between \$5 and \$100, after deductible (instead of 50% co-insurance)
- Mail-order or retail pharmacy option, 90-day supply

Humana Reassessment

- Quietly “announced” (March 27, 2015)
- Continuing 10% cap for HIV drugs through 2016 *in Florida*
- *Nationwide*, moved *all specialty drugs* below a \$600 monthly threshold to lowest tiers (generic or brand) e.g. preferred brand co-pay is \$50

Consent Order with Humana

- Florida Office of Insurance Regulation conducted market examination of Humana
- Resulting Consent Order (Feb. 2016)
 - Humana agreed to “maintain procedures to ensure that it does not by effect or design treat people living with HIV/AIDS less favorably than any other condition.”
 - Fined \$500,000 for failing to cooperate with investigators

FL Ins. Commissioner Memo to Issuers

Instructions/Cautions for 2016 Plan Review

- find plans discriminatory if cost-sharing for HIV Rx not as favorable as benchmark plan (\$40, \$70 or \$150 and \$200 for Fuzeon)
- review all plans for all Rx for discrimination through formula design, benefit design, or medical management techniques and decertify plans that engage in these practices
- require all plans to attest to non-discrimination

Officer or Director Attestation Non-Discrimination of Formulary Drug List

For Policy Form(s) _____

Pursuant to Section 624.26, Florida Statutes, this is an attestation of the policy form's compliance with:

- **45 CFR 156.122 (Prescription Drug Benefits)**
- **45 CFR 156.125 (Prohibition on Discrimination)**
- **Section 627.429 or Section 641.3007, Florida Statutes (Prohibition on Discrimination regarding HIV/AIDS)**

as they relate to the Policy Form's Drug Formulary. More specifically, the Formulary Drug List:

- (1) Covers a range of drugs across a broad distribution of therapeutic categories and classes and recommended drug treatment regimens that treat all diseases where a drug treatment regimen is appropriate, and does not substantially discourage enrollment of any group of enrollees.
- (2) Provides appropriate access to drugs that are included in broadly accepted treatment guidelines and are consistent with general best practice formularies currently in widespread use.
- (3) Does not discourage enrollment of individuals with chronic health needs.
- (4) Does not use a benefit design that discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.
- (5) Does not place most or all drugs that treat a specific condition on the highest cost tiers.
- (6) Does not have drugs that are "mail order only;" all drugs are available through retail (brick-and-mortar or non-mail order) pharmacies.
- (7) Does not discriminate on the basis of HIV or AIDS as required by Section 627.429 or Section 641.3007, Florida Statutes.

The Company:

- (8) Has procedures in place that allow enrollees to request and gain access to clinically appropriate drugs not covered by the plan.
- (9) Has developed and documented procedures to ensure appropriate drug review and inclusion on the formulary drug list, as well as make clinical decisions based on scientific evidence, such as peer-reviewed medical literature, and standards of practice, such as well-established clinical practice guidelines.

Results! 2016 Florida Plans

- HIV Rx Improvement across all plans!
 - No 2016 Florida plans placed *all* HIV Rx in highest tier
- But still have concerns:
 - Some plans not covering all HIV Rx (e.g., new single-tablet regimens)
 - Deductibles are increasing → coinsurance more burdensome
 - Prior authorization for almost all HIV Rx (Florida Blue)
 - Prior authorization for Truvada (several issuers)
 - High co-insurance for other non-HIV Rx
- Hepatitis Rx Coverage Issues Persist
 - 6 of 9 insurers charge 20-50% coinsurance for all or most HBV & HCV Rx
 - Excessive Prior Authorization, Step-Therapy, Quantity Limits
 - Limited coverage of new curative HCV Rx

Florida 2017 Plan Review

- FL Insurance Commissioner issued another memo:
 - Renewed 2016 requirements for HIV coverage & benefit design, limited cost-sharing
 - Added review of multiple conditions for formulary adequacy & adverse tiering:
 - HIV
 - hepatitis C
 - breast & prostate cancers
 - rheumatoid arthritis
 - bipolar disorder & schizophrenia
 - Diabetes
 - Multiple Sclerosis

Florida 2017 Plan Review

of Rx covered in each tier

List all Rx on formulary to treat each condition

Chronic Conditions Template for Plan Year 2017 Filings

Company Name: _____
 IC Company Code: _____
 NAIC Group Code: _____
 HIOS Issuer ID: _____
 Formulary ID: _____

*Please read instructions completely before completing this template.

Chronic Conditions*	Prescription Tiers					Available Drugs
	Enter the number of drugs covered in each tier.					Please list all drugs (by their RXCUI) which are available in this formulary for the treatment of each of the specified chronic conditions and separate entries with commas. The information entered into this column is not required to be differentiated by tier.
	Tier 1	Tier 2	Tier 3	Tier 4	Tier 5+	
Bipolar Disorder						
Breast Cancer						
Diabetes						
Hepatitis C						
HIV						
Multiple Sclerosis						
Prostate Cancer						
Rheumatoid Arthritis						
Schizophrenia						

Conclusion

- We have seen improvement, but room for more
- Filing 2014 Discrimination Complaint made significant impact:
 - Even though no decision by Office for Civil Rights
 - Florida State Insurance Commissioner's role critical
 - Press coverage
 - Moved Issuers in Florida to improve HIV Rx coverage
 - Prompted change by some issuers nationwide & for other non-HIV Rx
 - Reflected in federal regulations & guidance re nondiscrimination & benefit design
- Advocacy is Key:
 - Filing complaints in other states and for conditions other than HIV
 - Involve state insurance commissioners
 - Meet with Issuers

Thank you!

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All presentations will be available online at:

<http://bit.ly/TAI-USCA2016>

Get Involved:

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