

Congress of the United States

Washington, D.C. 20515

October 17, 2017

Mr. Roger Severino
Director, Office of Civil Rights
Department of Health and Human Services
200 Independence Avenue, S.W. Room 509F
Washington, D.C. 20201

Dear Director Severino:

We are writing to urge the Office of Civil Rights (OCR) to carefully review and respond to administrative complaints filed by AIDS organizations in eight states regarding potentially discriminatory behavior by Marketplace insurers. As members of Congress, we are very concerned that insurers may be using their prescription drug formularies in their Qualified Health Plans (QHPs) to avoid risk, shift costs, and discourage enrollment by our constituents living with HIV and AIDS.

The administrative complaints detail troubling evidence that insurers are likely in violation of anti-discrimination laws. For example, some examples listed in the complaints identify ACA plans where the majority of HIV/AIDS medications (including, in some instances, all single-tablet regimens) are placed in tier 5, the highest cost-sharing tier. In other instances, insurers listed Truvada, the only pre-exposure prophylaxis (PrEP) drug available in the United States, on the highest cost-sharing tier. In contrast, many insurers operating ACA plans list HIV/AIDS drugs on intermediate tiers. By way of further example, the administrative complaints catalog an instance where all of the silver level offerings – over multiple years - from a given insurer require 50% coinsurance for each and every drug regimen necessary under the Department of Health & Human Services' Guidelines for the Use of Antiretroviral Agents in HIV.

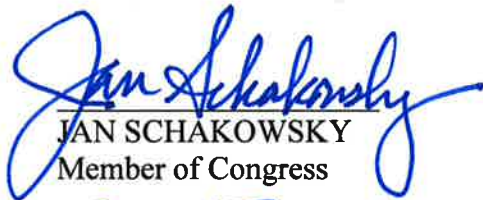
Limited formulary design and adverse tiering practices described in these complaints appear to be textbook cases of what has been described as “risk avoidance by a plan,”^[1] using discriminatory benefit packages to discourage the enrollment of consumers with significant health care needs. The result of “risk avoidance by a plan” is to raise costs for other insurers, who are thereby forced into the difficult choice between accepting disproportionate numbers of high-cost enrollees and joining in the unfair business practice that discourages their enrollment. On the other hand, those individuals living with HIV or AIDS who do enroll with the insurers practicing risk avoidance will face exorbitant co-insurance requirements, which could lead many to forego prescribed medications. That

^[1] “Stabilizing the Individual Market: Risk Adjustment and Risk Mitigation,” Urban Institute and American Action Forum, September 2017.

result would be increased costs for medical care that could have been avoidable with proper adherence, creating burdens for individuals faced with higher out-of-pocket costs, businesses that provide health insurance to employees, and taxpayers who help provide premium and cost-sharing assistance. In short, it is manifestly evident that the enforcement of a fair playing field among insurers – free from discrimination against vulnerable, chronically ill people – promotes Marketplace stability during a time when such efforts are a priority for Congress.

Moreover, we recognize that the practices described in the administrative complaints are not limited to the specific offerings included in the administrative complaints filed with your office. As Open Enrollment for 2018 quickly approaches, we find the silence of OCR on these insurance practice troubling. It is important for OCR to take a public stand against discrimination and to send a clear signal to all insurance carriers that such behavior will not be tolerated. The administrative complaints were filed over a year ago, and we are concerned about the delay in responding to them. We would appreciate hearing back from you within the next two weeks about your office's timeline for reviewing and acting upon these pending administrative complaints.

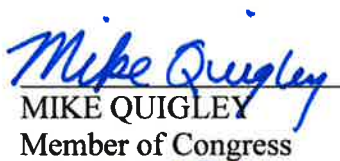
Sincerely,



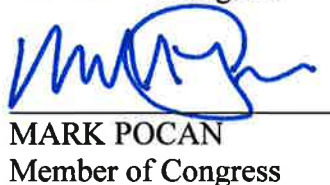
JAN SCHAKOWSKY
Member of Congress



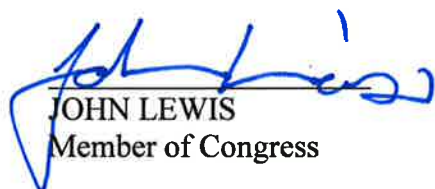
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