

HIV+HEP
POLICY INSTITUTE
PRESS RELEASE

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**Insurers Warned that Excessive Utilization Management of
Prescription Drugs Is Potentially Discriminatory**
Proposed HHS Rule Expands Scope of Discrimination in Healthcare

Washington DC... As part of the Biden administration's [proposed rule](#) to implement the Affordable Care Act's nondiscrimination provisions, excessive use of utilization management for prescription drugs, including prior authorization, step therapy, and durational or quantity limits could be deemed discriminatory. Additionally, the proposed rule adds back protections that prohibit insurers and other health programs from engaging in marketing practices and benefit design that discriminate on the basis of certain conditions, including disability.

"We appreciate the Biden administration's attention to the growing use of utilization management techniques that block access to the medications patients need to stay healthy," commented **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**. "Patients, along with their providers, are complaining more and more about roadblocks such as prior authorization and fail first policies insurers are instituting that make it sometimes impossible for people to access their drugs. We look forward to the rule's finalization and enforcement."

The proposed rule states that "utilization management techniques must be applied in a neutral, nondiscriminatory manner." It continues, "Prescription drug formularies that place utilization management controls on most or all drugs that treat a particular condition regardless of their costs without placing similar utilization management controls on most of all drugs used to treat other conditions may be discriminatory in this section."

The proposed rule reinstates the scope of those healthcare programs that are subject to the nondiscrimination provisions, including Medicaid and insurers that receive federal financial assistance. It also affirms that discrimination based on sex includes sexual orientation and gender identity.

The HIV+Hepatitis Policy Institute will continue to review the proposed rule and work with other patient organizations in providing comments.

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The **HIV+Hepatitis Policy Institute** is a national, non-profit organization whose mission is to promote quality and affordable healthcare for people living with or at risk of HIV, hepatitis, and other serious and chronic health conditions.

HIV + HEPATITIS POLICY INSTITUTE

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