



September 1, 2023

Mr. Gary Anderson
Commissioner of Insurance
Massachusetts Division of Insurance
1000 Washington Street, 8th Floor
Boston MA 02118

Subject: Consumer Complaints with Insurance Coverage of PrEP in Massachusetts

Dear Commissioner Anderson,

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 vulnerable to HIV, hepatitis, and other serious and chronic health conditions. **We are writing to express our concern that several Massachusetts insurance plans continue to charge out-of-pocket costs for HIV pre-exposure prophylaxis (PrEP) in violation of the ACA preventive services mandate.**

As you know, preventive services given an A or B rating by USPSTF are required to be covered by commercial insurance plans without cost-sharing. The USPSTF PrEP [recommendation](#) encompasses not just PrEP medications, but medical visits and a suite of required ancillary services, including laboratory testing and counseling. The ACA preventive service requirements for PrEP have been in effect for all non-grandfathered plans since January 1, 2021.

To clear up any confusion on what needs to be covered without cost-sharing, the federal Departments of Labor, Health and Human Services, and the Treasury issued a [Frequently Asked Questions](#) document in July 2021 to clarify these coverage requirements. A number of state insurance regulators, including [Massachusetts](#), have also published guidance reiterating these requirements, and in some cases taking enforcement [actions](#) to compel compliance.

Despite these measures, insurers have continued to impose illegal cost-sharing on PrEP patients, including many cases in Massachusetts. As of December 2022, we had heard of at least a dozen cases, including two cases in which a state-regulated Health Connector plan consistently charged copays for PrEP services, leading to PrEP discontinuation and subsequent seroconversion. We shared information about these cases with Kevin Beagan, Deputy Commissioner of the Massachusetts Division of Insurance, in December as well.

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These problems with Massachusetts-based health insurance plans were extensively documented in a *Boston Globe* [article](#) in January 2023. In March 2023, the Massachusetts Attorney General's Office issued an [advisory](#) for Massachusetts consumers with information about the right to PrEP and associated services. The AGO also led a coalition of 22 state attorneys general in [writing](#) to the CDC to emphasize the importance of this problem and to support changes in diagnostic coding for PrEP services that would reduce coding ambiguity.

Though we commend DOI and AGO for these vitally important state actions to address this issue, we regret that we have continued to hear of PrEP users in Massachusetts being charged cost-sharing.

Here are five examples we have learned of in the past few weeks from people who are in ACA-compliant plans:

- A patient with Tufts Health Plan coverage was charged cost-sharing for PrEP visits and laboratory testing over many months despite persistent self-advocacy. The patient eventually filed a complaint with DOI, which after many months informed the patient that the insurer wasn't doing anything wrong. Contacted about this patient's story by the *Boston Globe* in January, Point32Health, the parent company of Tufts Health Plan, admitted to the *Globe* in January that it had billed the patient in error and committed to "implementing a comprehensive review" to ensure that such cases do not recur. Despite this commitment, the patient contacted us a few months later to report that he had begun to receive bills for cost-sharing for PrEP services again, meaning that he was charged \$100-\$300 copays quarterly for well over two years despite energetic advocacy and widespread press coverage of his case. He has recently changed insurance coverage, and it has taken him multiple calls and months of follow-up time after his insurance termination date before the insurer would remove the new charges.
- A second patient with Tufts Health Plan employer-based coverage reported a similar experience. As with the previous patient, he was told by Tufts Health Plan that gonorrhea and chlamydia testing is covered without cost-sharing only for female patients, which is not the case.
- A patient at a community health center in Boston reported being charged out-of-pocket costs for PrEP visits on two separate commercial plans before and after a change of employer (Harvard Pilgrim Health Care from January-October 2022; Blue Cross Blue Shield of Massachusetts from March 2023 to the present). Despite months of triage with both health insurance plans involving the patient, PrEP navigation staff, and billing staff, and multiple conflicting explanations/guidance documented in the patient's medical record, patient has not been able to resolve either case. The patient sees the provider in question only for PrEP visits, and he states he has absolute certainty that no services other than PrEP services were provided. The patient submitted a complaint to DOI (on his problems with BCBSMA alone) which has been pending for over three months.

- A patient receiving PrEP care at a large hospital reports receiving multiple charges for PrEP labs and visits for about a year. He is on a state-regulated Wellsense work insurance plan for small businesses through the Health Connector. Despite frequent follow-up with the insurer and the hospital billing office, he has yet to stop receiving these copay charges. In this case, the patient is also pursuing a complaint with the AGO against the hospital's billing office for lack of follow-up with regards to coding PrEP visits. This case highlights not just the lack of insurer compliance with ACA preventive coverage mandates, but the importance of federal and state coding guidance for insurers.
- We have also recently received a report of a Massachusetts resident who is facing a prior authorization requirement to access generic oral PrEP at \$0 copay (rather than a \$10 copay) on her BCBS of Massachusetts plan. Though most ACA preventive service non-compliance cases concern visit copays or lab testing, this highlights the need to ensure that insurers comply with the rules by charging no copays for PrEP drugs as well.

These cases show that insurance plan non-compliance with coverage mandates is not rare in Massachusetts. We are concerned that without further Division of Insurance action, PrEP users in Massachusetts will continue to be charged cost-sharing in violation of the ACA mandate, and that those who cannot afford these copays will be in danger of PrEP discontinuation and seroconversion. We believe that the cases we have described are but the tip of the iceberg: only people with time, information, resources, and persistence come forward to pursue lengthy complaint processes with insurance regulators. We should also note that insurance regulators have occasionally wrongly denied complaints, as in one of the cases highlighted by the *Boston Globe*.

We should note that one way to address this matter is for federal and state insurance regulators to require newer, simpler billing and coding requirements for PrEP. The CDC's National Center on Health Statistics is expected to finalize a new ICD-10 code for PrEP for implementation in October. Attorneys-general from 22 states [wrote](#) the CDC in March (led by Massachusetts' AGO) to support the creation of this new code.

PrEP is safe and over 99 percent effective in preventing HIV when taken as prescribed. A new long-acting PrEP medication is now available, which the USPSTF has just included in a [new PrEP recommendation](#), and novel forms of PrEP are anticipated to become available in the years to come. Insurance company non-compliance prevents Bay Staters from protecting their health and threatens to delay the end of HIV epidemic. We believe that the Division of Insurance can take additional steps to ensure that state-regulated plans in Massachusetts come into compliance with PrEP coverage mandates.

If you have any questions, comments, or would like to discuss these issues further, please contact Carl Schmid, HIV+Hepatitis Policy Institute at cschmid@hivhep.org or (202) 462-3042 or Kevin Herwig, HIV+Hepatitis Policy Institute at kherwig@hivhep.org or (617) 666-6634.

Sincerely,



Carl E. Schmid, II
Executive Director
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cc: Kevin Beagan, Deputy Commissioner, Massachusetts Division of Insurance
Andrea Joy Campbell, Attorney General of Massachusetts
Dr. Robert Goldstein, Commissioner, Massachusetts Department of Public Health (MDPH)
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