



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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February 6, 2024

VIA EMAIL

Carl E. Schmid II
Executive Director
HIV+Hepatitis Policy Institute
cschmid@hivhep.org

Re: OCR Transaction Number: 04-23-518763- HIV+HEP Policy Institute vs Blue Cross
Blue Shield North Carolina

Dear Mr. Schmid:

On December 13, 2022, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), received a complaint from the HIV+HEP Policy Institute, Complainant, alleging that Blue Cross Blue Shield North Carolina (“BCBSNC”) engages in unlawful discrimination on the basis of disability (HIV). Specifically, the complaint alleges that BCBSNC discriminates against individuals with HIV by using a six-tier formulary, for the individual market plans, in which the formularies employ a discriminatory plan design known as “adverse tiering,” which places the vast majority of drugs used to treat and prevent HIV on the highest cost-sharing tiers.¹

OCR enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security and Breach Notification Rules.

OCR initiated this investigation on October 17, 2023, by providing the Covered Entity with notice of the allegations. On October 24, 2023, and January 26, 2024, the Covered Entity responded to OCR’s request for information.

BCBSNC is a fully taxed, not-for-profit company headquartered in Durham, North Carolina. The company serve more than 4.3 million members, and employs more than 5,000 people across the country.

The Covered Entity denied the allegation that its formularies employ a discriminatory plan design. The Covered Entity stated that drugs are included in tiers based on cost and the clinical effectiveness of each drug and that, in assigning drugs to drug tiers, it applied neutral principals consistently across the entire formulary.

¹ Allegations were summarized and do not include all claims made.

The Covered Entity stated that on April 1, 2023, it made changes to its formularies as part of a regular quarterly review process by a clinical team. These changes streamlined drug tiering across multiple drug and condition categories and, as a result of these changes, some members may have lower out-of-pocket costs when purchasing certain prescriptions. The Covered Entity asserted that the methodology it used to determine tiers for its members' medications remains consistent across health conditions, using clinical and cost information. The Covered Entity stated that it does not view the changes to its formularies as an admission of previous discriminatory tiering, but rather, an example of how its ongoing quarterly review process is working to achieve their goals of improving their members' health while also lowering their health care costs.

As a result of OCR's investigation, the Covered Entity took several voluntarily corrective measures as follows:

- On November 17, 2023, BCBSNC sent a notice to current enrollees highlighting changes made to the formulary and posted on its website.
- To create awareness about the changes in the formulary BCBSNC conducted targeted outreach/marketing, during open enrollment, to individuals who typically use drugs to treat HIV in December 2023.

The Complainant was satisfied with the steps the Covered Entity took to remove barriers in access to critical health services.

Based on the foregoing corrective action, OCR is closing this complaint with no further action, effective the date of this letter. OCR's determination as stated in this letter applies only to the allegations in this complaint that were reviewed by OCR.

If you have any questions regarding this matter, please contact Beatriz Romero-Escobar, Senior Investigator, at (404) 562-4680 (Voice), (404) 562-7884 (TDD) or at Beatriz.romero@hh.gov.

Sincerely,



Barbara Stampul
Regional Manager