

HIV + HEP

POLICY INSTITUTE

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Good morning. As our community of advocates and clinicians prepares for a transition to a new administration, I would like to take this opportunity to thank PACHA and the Biden-Harris administration for their support and leadership over the past four years.

People living with HIV are continuing to face challenges in accessing life-saving medications which mitigate the harmful effects of the virus and prevent the transmission of the virus to others. We are still finding that private insurers are engaging in discriminatory plan design by using drug formularies which discourage enrollment of people living with HIV and not covering an adequate range of drugs necessary to treat HIV. Without proper regulation and enforcement, this discrimination will persist.

The ACA includes important patient protection and non-discrimination provisions to ensure private insurers cover the drugs that people need without discouraging enrollment by any particular population. And yet, lack of enforcement to identify insurers who violate these important patient protections is pervasive. The HIV+Hepatitis Policy Institute recently filed discrimination complaints against two insurers, Medica and Harvard Pilgrim, for offering plans that discriminate against people living with HIV by not covering treatment regimens recommended in national guidelines, and, in the case of Medica, by placing all HIV drugs, including generics, on the highest cost tier.

Under ACA regulations, it is potentially discriminatory for an insurer not to follow widely accepted treatment guidelines or to place the majority of drugs to treat a particular condition in high-cost tiers. The availability of antiretroviral medications in multiple classes and single-tablet regimens has improved the health of people living with HIV, and newer drugs have less toxicity, fewer side effects and improve adherence.

As an example, Harvard Pilgrim plans are one of two insurance options for people with HIV enrolled in the State of Maine's AIDS Drug Assistance Program. Effective January 1, 2025, Harvard Pilgrim will drop coverage for many widely used antiretrovirals, and no longer offer coverage that follows national treatment guidelines. Since most people with HIV in Maine are currently on a drug regimen that will no longer be covered, they will encounter serious treatment interruptions in the new plan year. Some will be forced to switch plans, clearly demonstrating how these substandard plans discourage enrollment by people with HIV. This is nothing short of intransigence and in no way meets the requirements of the ACA law.

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In recent years, the HIV+Hepatitis Policy Institute has filed similar complaints against North Carolina Blue Cross Blue Shield and Community Health Choice Texas. Unfortunately, with the Texas case, the CMS Center for Consumer Information and Insurance Oversight, which regulates ACA plans in the state, continues to find that sufficient HIV treatment medications are covered by Community Health Choice.

Instead of relying on consumers and patient groups to identify violations, CMS and state regulators should be conducting proactive reviews of plans as part of the plan approval process. Enforcement and the proper tools to review plans are essential to ensure that the law and its regulations are followed and people living with HIV are not discriminated against.

The HIV+Hepatitis Policy Institute again urges the Secretary to take administrative action to ensure that the ACA's non-discrimination regulations are fully enforced. In the states where CCIIO has jurisdiction, it must investigate complaints and ensure plans are in compliance. In the other states, CMS should update tools to empower states to review plans as they are filed annually to ensure that HIV drugs included in national treatment guidelines are covered, and that HIV drugs are properly tiered. CMS regulations clarifying that these practices are presumptively discriminatory were first promulgated in 2016, and further updated in 2022, but the tools CMS provides to review the plans do not yet provide adequate protections to ensure that people with HIV are not discouraged from enrollment. Finally, the HHS Office of Civil Rights should be brought to the table in this process to further assess bias and discriminatory review with regard to insurance plans and their coverage of HIV drugs.

Thank you.