

Lawrence Kissner
Chief Executive Officer
Aetna Better Health of Illinois
333 W. Wacker Dr., Suite 2100
Chicago, IL 60606

January 18, 2017

cc: Mollie Zito
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield, IL 62763

Re: Aetna Better Health's Discriminatory Prior Authorization Policy

Dear Mr. Kissner:

We are writing to assist Aetna Better Health and the Illinois Department of Healthcare and Family Services (HFS) in preventing discrimination against people with HIV/AIDS. Specifically, we are concerned that Aetna Better Health's (ABH) newly-implemented prior authorization policy for all anti-retroviral (ARV) medications used to treat HIV/AIDS impermissibly discriminates against people with HIV/AIDS and people at risk of HIV infection. We respectfully request that ABH reverse this policy immediately, while engaging in a discussion of what, if any, utilization controls should apply to specific ARV medications.

SUMMARY

We are concerned that ABH's newly-implemented prior authorization policy impermissibly and unwisely obstructs patient access to ARVs. Based on correspondence from ABH to providers on or around December 15, 2016, ABH implemented a new prior authorization policy for the entire class of ARV medications. Under this new policy, all patients (including those who previously received ARVs from ABH without prior authorization) must receive prior authorization to access any ARV medication. This policy interrupts continuity of care for patients already on a treatment regime, delays care for patients requiring a change in medications to respond to side effects or resistance, and creates obstacles to care for individuals on more than one medication. Additionally, it places people seeking to avoid contracting HIV at greater risk for infection.

This policy creates unreasonable and discriminatory burdens for patients, treating providers, and pharmacists. We fear that numerous Illinois Medicaid beneficiaries living with HIV or a high risk of HIV infection are not receiving medically necessary treatment under this policy. We respectfully request that ABH immediately reverse this policy change.

ABH'S POLICY REQUIRING PRIOR AUTHORIZATION FOR THE ARV DRUG CLASS VIOLATES FEDERAL ANTI-DISCRIMINATION LAWS.

Discrimination in health care plans contributes to increased health disparities, unequal resource distribution, and poor health outcomes. Because of this, the federal Medicaid Act and Section 1557 of the Affordable Care

Act (ACA) prohibit discrimination on the basis of race, color, national origin, *disability*, age, sex, gender identity, and sexual orientation.¹ ABH's policy on ARVs contravenes the Centers for Medicare and Medicaid Services's (CMS) finding that "requiring prior authorization ... for most or all medications in drug classes such as anti-HIV protease inhibitors ... regardless of medical evidence" is one example of prohibited discriminatory benefit design.² ABH's discriminatory policy improperly risks irreparable harm to individuals living with HIV/AIDS and individuals who are at a substantial risk of contracting HIV.

DELAYS CAUSED BY ABH'S PRIOR AUTHORIZATION POLICY RISK THE HEALTH OF ILLINOIS MEDICAID BENEFICIARIES WHO ARE HIV POSITIVE.

Doctors combat the HIV virus by prescribing a combination of ARV medications. This multi-drug therapy is called highly active antiretroviral therapy (HAART). HAART has proven remarkably successful in preventing deaths from HIV/AIDS. Many individuals living with HIV develop strains that are resistant to a particular HIV drug. Even when initially effective, treatment may stop working due to viral mutations, and many types of HIV drugs may cause certain people to suffer toxic side effects, so that patient must be allowed to quickly obtain substitute drugs. Based on these considerations, best practices in HIV care generally include the following:

- HAART should begin as early as possible after diagnosis, using the HIV regimens designated by HHS;
- To ensure adherence, patients must be prescribed the most convenient regimen, which is usually a one-a-day pill that combines more than one class of HIV drugs; and
- Interruptions in HAART treatment must be avoided.

Because the HIV virus adapts so quickly, even minor interruptions in a patient's medication regimen (such as those inevitably caused by the completion of a prior authorization) can result in drug resistance, increased viral replication, immune system damage, and higher infection rates. Furthermore, medical providers need the flexibility to quickly modify a patient's medication regimen, if a patient develops resistance or adverse side effects to a certain ARV. By obstructing best practices in prescribing for HIV care, ABH's prior authorization policy obstructs a medical provider's ability to provide medically necessary care and promote public health.

ABH'S NEW POLICY REQUIRING SEPARATE PRIOR AUTHORIZATIONS FOR PATIENTS RECEIVING MORE THAN ONE ARV IS MEDICALLY INAPPROPRIATE.

ABH is also requiring that patients receiving more than one ARV complete a separate prior authorization form for each drug. This is not practical, and dangerously obstructs patient's ability to comply with an HIV regimen that may include a combination of prescriptions. Doctors combat the HIV

¹ See 42 U.S.C. § 18116; *see also*, 42 C.F.R. § 92.101(b)(2)(i), 45 C.F.R. § 84(b)(4) (stating that a recipient of federal funding may not use criteria or methods of administration that have the effect of discriminating on the basis of disability. Cases interpreting the Americans with Disabilities Act and Section 504 of Rehabilitation Act of 1973 (as well as implementing regulations) have consistently recognized HIV/AIDS as a qualifying disability.

² CMS, *Qualified Health Plan Master Review Tool, Non-Discrimination in Benefit Design* (2017).

virus by prescribing a combination of antiviral drugs (HAART.) By reducing the amount of virus in the body, HAART reduces the risk of transmission from infected individuals to their sexual partners by 92%. Similarly, HAART prevents pregnant HIV+ woman from transmitting the virus to fetuses and newborns. Obviously, HAART often requires prescribing more than one HIV medication at a time. A PA requirement that targets multiple prescriptions to treat the same condition is not appropriate in the case of ARVs.

ABH'S DISCRIMINATORY PRIOR AUTHORIZATION POLICY INCREASES THE RISK OF HIV INFECTION.

Not only does ABH's new policy risk irreparable harm to the health of HIV positive Medicaid recipients, it increases the risk of HIV infection. ARVs are also used as an extremely effective prevention strategy.

Known as Pre-exposure prophylaxis (PrEP), ARV therapy helps prevent new cases of HIV infection before someone is exposed to HIV. In addition, post-exposure prophylaxis (PEP) is an emergency course of ARV medication given within 72 hours after someone has been exposed to HIV to prevent infection. In order to provide effective protection, it is crucial that a patient has consistent (and in the case of PEP, immediate) access to ARV medication, without unnecessary interruptions. Delays caused ABH's prior authorization approval could reduce the effectiveness of PrEP and PEP, leading to new HIV infections, needlessly increasing costs for Medicaid and ABH. Furthermore, the prior authorization policy is an improper and harmful barrier, which could impair or delay the PrEP and PEP therapy for at-risk patients. ABH's discriminatory policy risks irreparable harm to individuals living with HIV and those who can be protected from HIV infection through PrEP and PEP.

CONCLUSION

ABH's onerous, duplicative, and unnecessary prior authorization policy is inappropriate and illegal. It acts as a discriminatory barrier to life-saving medications. Furthermore, ABH's policy, either by design or in practice, has the effect of discriminating against individuals living with HIV and those trying to prevent HIV infection. We respectfully request that you reverse this policy immediately. We thank you for your attention to this important matter.

Sincerely,

Tom Yates
Executive Director
Legal Council for Health Justice

John Peller
President/CEO
AIDS Foundation of Chicago