

NOW OR NEVER

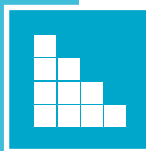
For many U.S. health care consumers, access to health insurance benefits can be a matter of life and death.

Timely and effective legal representation **can save lives.**

America's trial attorneys play a vital role in enforcing the rights of insured consumers facing injury as a result of the misconduct of powerful health insurers.

Learn the facts and claims so you can help insured individuals and families get their lives back on track.

Potential Actions To Protect Patients Against Unfair Coverage Denials



Step Therapy

The insurer denies the prescribed treatment and instead requires the consumer to try a less expensive drug.¹

When an insurer requires an individual with a substance use disorder, for example, to try an inappropriate treatment before covering a prescribed medication, the patient faces the risks of overdose and death.

- Violation of the nondiscrimination provision of the Patient Protection and Affordable Care Act (ACA)
- Violation of the Medicaid Act's Reasonable Promptness Provision
- Tort claim for interference with the physician-patient relationship
- Violation of the state's Unfair Trade Practice Act



Adverse Tiering

The insurer places all medications, including generics, that treat a particular condition in a high cost tier, discouraging individuals with that condition from enrolling in a health plan because of high out-of-pocket costs.²

More than 80 percent of silver-level marketplace insurance plans in California, Florida, Illinois, North Carolina, Texas, and Washington place most of 22 commonly used oral cancer medications into the highest-cost tier.³

- Violation of the ACA
- Violation of the Federal Rehabilitation Act
- Violation of state laws prohibiting insurers from discrimination



Nonmedical Switching

Often without the prescriber's knowledge,⁴ the insurer requires a stable patient to switch from an effective medication to a less expensive (but not necessarily a generic) drug by increasing out-of-pocket costs or dropping coverage entirely.⁵

According to a recent survey of Florida residents diagnosed with chronic or rare diseases, 84 percent experienced a general "negative physical impact" after a switch occurred, with many missing work or requiring hospitalization.⁶

- Breach of contract
- Breach of good faith and fair dealing
- Violation of state unfair trade practices acts



Prior Authorization

The insurer requires plan enrollees to obtain advance approval before it will cover a treatment.⁷

Physicians spend an average of 20 hours per week completing paperwork to satisfy prior authorization requirements.⁸ It may be weeks before a physician receives a response, thereby causing an unnecessary delay in care.⁹

- Violation of Medicaid's payment for covered outpatient drugs provision
- Violation of Medicaid's reasonable promptness provision
- Violation of state unfair trade practices acts
- Tort claim for insurer's action in bad faith



Network Inadequacy

Health plans provide access to an insufficient number of in-network primary care and specialty health care professionals or provide out-of-date information about whether a professional is in-network.¹⁰

Twenty percent of patients who visit the emergency room at an in-network hospital end up being treated by an out-of-network physician and face surprise out-of-network bills of more than \$600.¹¹

- Violation of state network adequacy laws
- Breach of contract
- Violation of state unfair trade practices acts



Insurer-Directed Clinical Pathways

The insurer dictates the course of care that health care practitioners provide their patients to treat a specific condition by offering practitioners financial incentives or disincentives.¹²

A recent survey of managed care insurers showed that 46 percent of network physicians are provided with financial incentives to follow the pathways and 23 percent are required to follow the pathways to remain in the plan's network.¹³

- Violation of commercial bribery statutes
- Tort claim for interference with the physician-patient relationship

For more information, please read "Now or Never: The Urgent Need for Action Against Unfair Coverage Denials for Quality Health Care" available at <http://bit.ly/2xM2lag>

1. Paul Sisson, Bill Would Quicken Access to Newer Meds, SAN DIEGO UNION-TRIBUNE (Oct. 3, 2015), <http://www.sandiegouniontribune.com/news/2015/oct/03/ab374-chronic-disease/>.

2. Joseph J. Hyak-Reinholtz & Jay R. Nafziger, Is It Time to Shed a "Tier" for Four-Tier Prescription Drug Formularies? Specialty Drug Tiers May Violate HIPAA's Anti-Discrimination Provisions and Statutory Goals, 32 N. ILL. U. L. REV. 22, 41 (2011-2012).

3. ACS CAN Examination of Cancer Drug Coverage and Transparency in the Health Insurance Marketplaces, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK (Feb. 22, 2017), <https://www.acscan.org/sites/default/files/National%20Documents/QHP%20Formularies%20Analysis%20-%202017%20FINAL.pdf>.

4. Id.

5. Keeping Stable Patients on Their Medications, COAL. OF STATE RHEUMATOLOGY ORGANIZATIONS, <http://www.csro.info/Switching> (last visited Jan. 14, 2016).

6. Survey Finds Insurance Companies Are Forcing Floridians off Prescribed Medications During the Plan Year, Providing a Need for New Legislation to Fix the Problem, BUSINESSWIRE, (Jan. 17, 2017), <http://www.businesswire.com/news/home/20170117005588/en/Survey-Finds-Insurance-Companies-Forcing-Floridians-Prescribed>

7. Commentary: Time to Reform Costly, Burdensome Prior Authorization and 'First Fail' Protocols, PALM BEACH POST (Mar. 2, 2014), <http://www.palmbeachpost.com/news/news/opinion/commentary-time-to-reform-costly-burdensome-prior-/nd32t/>.

8. Standardization of Prior Authorization Process for Medical Services White Paper, AM. MED. ASSN (June 2011), <http://massneuro.org/Resources/Transfer%20from%20old%20to%20AMA%20White%20Paper%20on%20Standardizing%20Prior%20Authorization.pdf>.

9. Id.

10. Network Adequacy, NAT'L ASS'N OF INS. COMM'RS, (July 14, 2016), http://www.naic.org/cipr_topics/topic_network_adequacy.htm.

11. Dan Mangan, Many Get Hit with Surprise "Out-of-Network" Bill After Emergency Rooms: Study, CNBC, (Nov. 16, 2016), <http://www.cnbc.com/2016/11/16/many-get-hit-with-surprise-out-of-network-bill-after-emergency-rooms-study.html>

12. Clinical Pathways: Overview of Current Practices and Potential Implications for Patients, Payers, and Providers, AVALERE (July 2015), <http://avalere.com/expertise/life-sciences/insights/new-study-finds-that-clinical-pathways-are-being-used-to-improve-quality-an>.

13. Clinical Pathways: An Evolutionary Approach to Cancer Care, ONCLIVE (June 14, 2013), <http://www.onclive.com/publications/oncology-business-news/2013/april-2013/clinical-pathways-an-evolutionary-approach-to-cancer-care/1>.