

# KNOW YOUR RIGHTS

A resource for people with cancer and their loved ones.

## Cancer Diagnosis and Treatment

Roughly 38 percent of women and 40 percent of men will develop some form of cancer during their lifetimes.<sup>1</sup> Approximately 1.7 million new cancer diagnoses are made in the U.S. each year, and 15.5 million people in the U.S. either have or have had cancer.<sup>2</sup>

A cancer diagnosis can leave patients and their loved ones scared for their wellbeing and bewildered at how best to pursue treatment. While cancer treatments are advancing every year with new medicines and therapies, the costs of care can be burdensome even with insurance coverage.

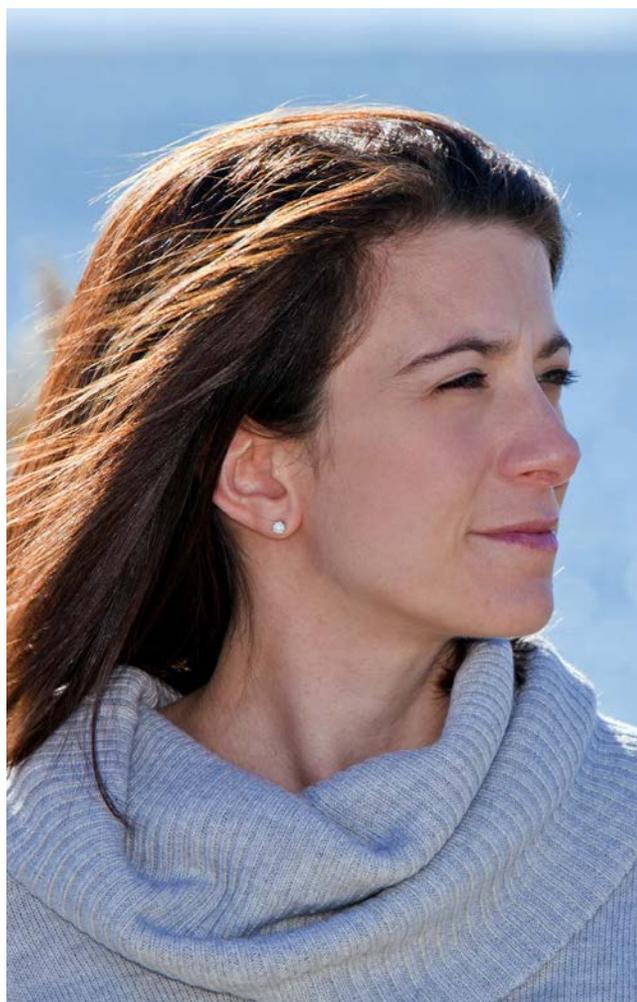
Not all cancer treatments are equally effective in persons with similar types of cancer, and individuals have varying clinical responses and side effects with particular cancer treatments and therapies.<sup>3</sup> Your cancer care team is in the best position to determine which treatment is right for you and your family. Therefore, if your health care provider prescribed a cancer treatment and your insurer denies coverage, read on. There are steps you can take to get the care you need.

Health insurance companies can take a number of steps to control their costs. This can mean your health plan may not cover certain cancer treatments prescribed by your doctor, or the plan may require you to take a number of steps before your treatment is approved.

The good news is that there are state and federal laws in place that may protect you from these practices.



To find out if your health insurer delayed or denied the cancer treatments prescribed by your doctor, ask yourself the following questions:



## Step Therapy

*Did my insurer make me try a different treatment before covering the cancer medication or therapy that my care team prescribed?*

This practice is called “step therapy” or “fail first” because it requires patients to try other treatments first and show they do not work. Your insurer may require you to try and fail on a lower-cost medication or cancer therapy before covering the one prescribed by your care team if you pause successful treatment to alleviate treatment side effects.<sup>4</sup> Step therapy policies may be against federal or state laws if your insurer treats you and others with similar cancer diagnoses differently because of your health condition.<sup>5</sup>

## Nonmedical Switching

*Is my insurer forcing me to take a different medication, even though my current cancer treatment is working, by refusing to cover it any longer or increasing my co-pay?*

This practice is referred to as “nonmedical switching.” It occurs when your insurer (not your health care professional or pharmacist) forces you to switch from your current cancer medication to a different (but not a generic equivalent) medication by either refusing to cover your drug any longer or increasing the out-of-pocket cost of your drug.<sup>6</sup> Yet, many cancer medications do not have lower-cost substitutes that provide patients with equally effective treatment.<sup>7</sup> Nonmedical switching by insurers can result in negative health impact on patients with cancer, and may violate state consumer protection laws.

## Prior Authorization

*Do I need to get my insurer’s approval before I can begin or continue my prescribed cancer treatment?*

This practice is called “prior authorization.” It happens when your insurer requires you or your health care professional to contact your insurer and get approval before the treatment is covered. Prior authorization policies can delay or interrupt care, waste time, and complicate medical decisions, as well as negatively impact clinical outcomes.<sup>8</sup> Prior authorization requirements may delay diagnostic testing and a cancer diagnosis, causing a delay in treatment and possible progression of the cancer.<sup>9</sup> These policies can violate state and federal laws if applied in a certain manner.

## Adverse Tiering

*Do I have to pay a high copay for most, if not all, medications that treat my condition?*

This practice is called “adverse tiering.” It can be used by insurers to shift a lot of the costs for newer cancer drugs to patients or to discourage individuals with cancer from enrolling in the health plan.<sup>10</sup> These policies may also violate certain federal and state laws if used in a discriminatory way.

## Copayment Accumulators

*If I receive coupons or discounts to help pay for my medication copays, does my insurer prohibit those coupons or discounts from counting toward my annual deductible?*

This policy is known as a “copayment accumulator.” Increasingly, insurers are refusing to apply drug manufacturer coupons used by cancer patients to help pay for their medication out of pocket against a patient’s annual deductible.<sup>11</sup> Copayment accumulators force patients to pay more out-of-pocket when copayment assistance runs out and the insurance deductible has not been met. These policies are frequently buried in the fine print of insurance contracts and may violate state unfair and deceptive trade practice laws.

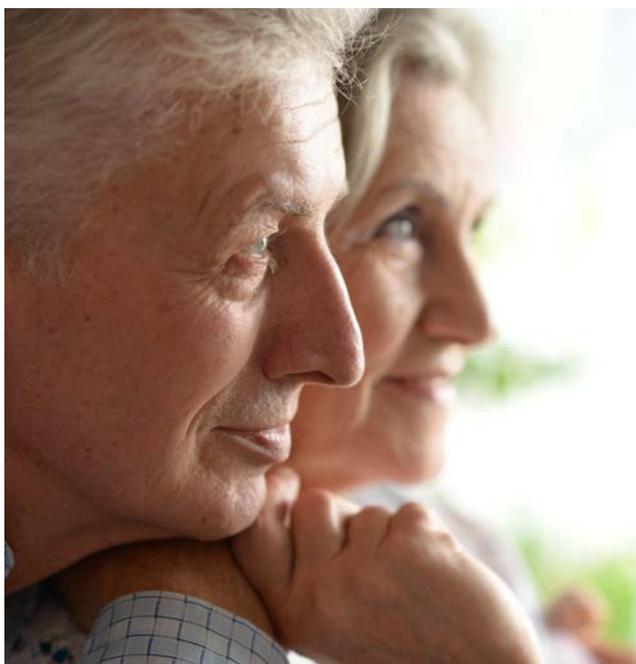
## Oral Parity

*Does my insurer make me pay more out-of-pocket for cancer treatments that are in pill form as opposed to those that my doctor administers?*

Some insurers will require you to pay more for cancer medications that are taken orally, such as pills, than for medications that your doctor administers to you, such as injections. This may force patients with cancer to travel to medical offices for administration of their prescribed therapy, rather than allowing the patient to take their medicine at home.<sup>12</sup> Certain insurance policies that do not provide for oral parity in coverage of cancer medications may violate state laws.



## My insurer refuses to cover a cancer treatment or therapy that my health care professional prescribed to me. **What can I do?**



If your insurer refuses to cover your treatment, here are three steps you can take to change your insurer's decision:

- Appeal the decision;
- Request an external review; or
- File a complaint.

### **How do I appeal the decision?**

If your insurer denies your claim, you have the legal right to an internal appeal.<sup>13</sup> This means you can ask your insurer to conduct a full and fair review of its decision. To appeal the denial, you should do the following:

**Review the determination letter.** Your insurer should have sent you a determination letter to tell you that it would not cover your claim. Review this document so you can understand why your insurer denied your claim and how you can appeal the denial.

**Collect information.** Collect the determination letter and all other documents the insurance company sent you. This includes your insurance policy and your insurer's medical necessity criteria. "Medical necessity criteria" refers to your insurer's policy for determining whether a treatment or service is necessary for your condition.<sup>14</sup>

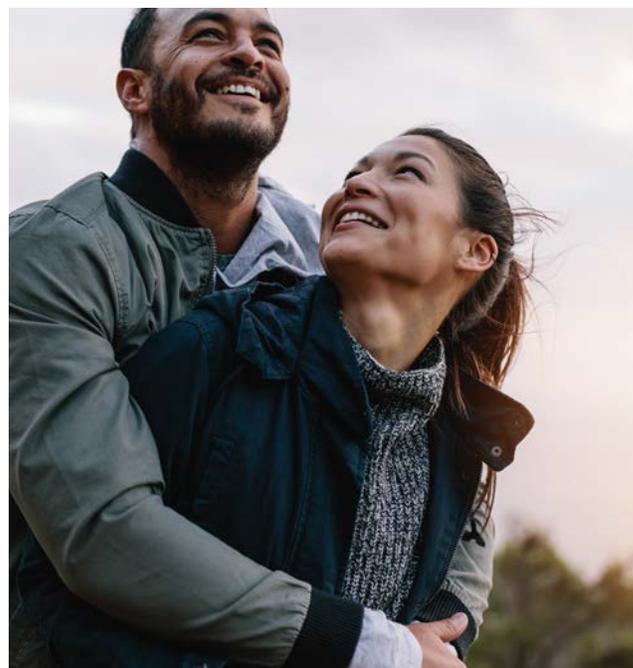
**Request documents.** If you did not receive the determination letter or do not have your policy, the medical necessity criteria, or the instructions and forms for filing an appeal, call the insurer's customer service representative and ask for these documents. The company website will list the toll-free telephone number to call.

**Call your health care provider's office.** The health care professional's office or clinic has people on staff to help with the appeal process. They will tell you how to fill out the forms to request an appeal, write an appeal letter on your behalf, or handle the appeal request for you.

**Submit the appeal request.** It is important for you or your health care professional's office to submit the appeal request as soon as possible along with the letter from the health care professional and all additional information the insurer requested.

Once you file an appeal request, expect to wait up to 30 days to hear back from the insurance company regarding a treatment you hope to receive. It can take up to 60 days for a response if you received the treatment and are waiting for reimbursement.

**Follow up.** Follow up with your insurer regularly until you hear back. Be sure to keep a record of the name of any representative you speak with about the appeal, the date and time you spoke with that person, a confirmation number for the call, and a summary of your discussion.





## What if my insurer denies my appeal?

Under law, you are entitled to take your appeal to an independent third party for an “external review,” which means the insurance company no longer gets the final say over whether to approve a treatment or pay a claim. The situation applies if the insurer denies your appeal or if your medical situation is urgent and waiting would jeopardize your life or ability to function.

## How do I request an external review?

To trigger an external review, file a written request with the independent organization within 60 days of the date your insurer sent you a final decision. The process should take no more than 60 days. However, in urgent situations requiring an expedited review, the process should take no longer than four business days. To find out whom to contact in your state to request an external review, please go to [www.CoverageRights.org](http://www.CoverageRights.org).

## How do I file a complaint?

If your insurer denies your coverage after the external review process, you can file a complaint with the insurance commissioner or attorney general in your state. To determine whom to contact and how to submit the complaint, please go to [www.CoverageRights.org](http://www.CoverageRights.org).

Your complaint should include the following information:

- The name, address, email address, and telephone number of the person filing the complaint (“Complainant”);
- The name of the insured individual, if different from the Complainant;
- The names of any other parties involved in the claim (for example, the plan administrator);
- The name of insurance company and the type of insurance;
- The state where the insurance plan was purchased;
- Claim information, including the policy number, certificate number, claim number, dates of denial, and amount in dispute;
- The reason for and details of the complaint; and
- What you consider to be a fair resolution.

You should also submit the following documents as supporting information:

- A copy of your insurance card;
- Copies of coverage denials or adverse benefit determinations from your insurer;
- Copies of any determinations made by internal and external reviewers;
- Any materials submitted with prior appeals and complaints;
- Supporting documentation from your health care provider;
- A copy of your insurance policy; and
- All responses from your insurer.<sup>15</sup>

## What happens after the insurance commissioner or attorney general receives my complaint?

The insurance commissioner or attorney general will assign someone to research, investigate, and resolve your complaint.<sup>16</sup> That person will examine your account, records, documents, and transactions.<sup>17</sup> He or she may question witnesses, request additional documents from other parties, and hold a hearing.<sup>18</sup> If the insurance commissioner or attorney general determines that the insurer violated laws or regulations, he or she may order the insurer to give you the requested coverage or compensate you.<sup>19</sup>

## Whom should I call if I have any questions about filing a complaint?

To determine whom to call in your state, please go to [www.CoverageRights.org](http://www.CoverageRights.org).

## Citations

- 1 Lifetime Risk of Developing or Dying From Cancer, American Cancer Society, <https://www.cancer.org/cancer/cancer-basics/lifetime-probability-of-developing-or-dying-fromcancer.html> (last visited July 19, 2018).
- 2 Cancer Treatment & Survivorship Facts & Figures: 2016-2017, American Cancer Society, <https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/cancer-treatment-and-survivorship-facts-and-figures/cancer-treatment-and-survivorship-facts-and-figures-2016-2017.pdf> (last visited July 19, 2018); Rebecca L. Siegel, Kimberly D. Miller & Ahmedin Jemal, Cancer statistics 2018, WILEY ONLINE LIBRARY (Jan. 4, 2018 <https://onlinelibrary.wiley.com/doi/full/10.3322/caac.21442>).
- 3 Personalized Medicine: Redefining Cancer and Its Treatment, American Cancer Society, <https://www.cancer.org/latest-news/personalized-medicine-redefiningcancer-and-its-treatment.html> (last visited July 19, 2018).
- 4 Are insurance policies saving patients money, or keeping them from the treatment they need?, STAT (Aug. 22, 2016) <https://www.statnews.com/2016/08/22/steptherapy-patients-insurance-treatments/>.
- 5 American Cancer Society Cancer Action Network Applauds Governor Cuomo for Signing Step Therapy Reform Bill into Law, American Cancer Society Cancer Action Network (Dec. 31, 2016) <https://www.acscan.org/releases/american-cancersociety-cancer-action-network-applauds-governor-cuomo-signing-step-therapy>; New Mexico Passes Step Therapy Reform Legislation, National Psoriasis Foundation (Mar. 1, 2018) <https://www.psoriasis.org/media/press-releases/new-mexico-passes-step-therapy-reform-legislation-o>.
- 6 As More Biosimilars Come to Market, the FDA Must Take Steps to Ensure Patient Safety, The Hill (Oct. 25, 2017) <http://thehill.com/opinion/healthcare/357067-as-more-biosimilars-come-to-market-the-fda-must-take-steps-to-ensure>.
- 7 Payer Administrative Barriers Limit Access to Cancer Care, Patient EngagementHIT, <https://patientengagementhit.com/news/payer-administrative-barriers-limit-access-to-cancer-care> (last visited July 19, 2018).
- 8 AMA Survey: Prior Authorizations Delay Access, Negatively Impact Clinical Outcomes, AJMC (Mar. 20, 2018) <https://www.ajmc.com/focus-of-the-week/amasurvey-prior-authorizations-delay-access-negatively-impact-clinical-outcomes>.

- 9 Prior authorization: Caught in an administrative nightmare, Urology Times (Apr. 5, 2017) <http://www.urologytimes.com/modern-medicine-feature-articles/priorauthorization-caught-administrative-nightmare>.
- 10 Douglas B. Jacobs & Benjamin D. Sommers, Using Drugs to Discriminate — Adverse Selection in the Insurance Marketplace, N. ENGL. J. MED. (Jan. 29, 2015) <https://www.nejm.org/doi/full/10.1056/NEJMp1411376>.
- 11 They're Called 'Co-Pay Accumulators,' and They're a Way Insurers Make You Pay More for Meds, Los Angeles Times (Apr. 27, 2018) <http://www.latimes.com/business/lazarus/la-fi-lazarus-healthcare-copay-accumulators-20180427-story.html>.
- 12 Policy Issue Brief: Parity in Coverage for Cancer Drugs, American Society of Clinical Oncology, <https://www.asco.org/advocacy-policy/asco-in-action/policy-issue-briefparity-coverage-cancer-drugs> (last visited July 19, 2018).
- 13 How to appeal an insurance company decision, Healthcare.gov, <https://www.healthcare.gov/appeal-insurance-company-decision/appeals/> (last visited July 19, 2018).
- 14 E.g., N.M. Admin. Code. 13.10.17.7 (2018).
- 15 Complaint to Federal Government Agency: Patient, Legal Action Center, <https://lac.org/wp-content/uploads/2016/04/10-Patient-Federal-Complaint.docx> (last visited July 19, 2018).
- 16 E.g., State of Alabama, Department of Insurance, <http://www.aldoi.gov/Consumers/ConsumerServicesBio.aspx> (last visited July 19, 2019); Ala. Code Ann. § 27-2-7, 27-2-19 (2017).
- 17 Ala. Code Ann. § 27-2-20 (2017).
- 18 Ala. Code Ann. § 27-2-26 (2017).
- 19 Ala. Code Ann. § 27-2-7 (2017).

