AIMED ALLIANCE

March 28, 2019

The Honorable State Representative Eddie Lucio
Chairman, House Committee on Insurance
1100 Congress Avenue, Room 1W.11
Austin, TX 78701

Re: In Support of HB 2099, "Relating to modification of certain prescription drug benefits and coverage offered by certain health benefit plans"

Dear Chairman Lucio and Members of the House Committee on Insurance:

Aimed Alliance is a non-profit organization that seeks to protect and enhance the rights of health care consumers and providers. On behalf of Aimed Alliance, I am writing to you in support of Texas HB 2099, "Relating to modification of certain prescription drug benefits and coverage offered by certain health benefit plans."

Nonmedical switching occurs when an insurer requires a stable health plan enrollee to switch from his or her current, effective medication to a less costly, alternative drug by removing the medication from the formulary list, moving a drug to a higher cost tier, or increasing the out-of-pocket costs owed. Aimed Alliance is not against switching a plan enrollee from a brand medication to a generic version of a drug that exhibits the same levels of effectiveness and safety. However, we are against insurance policies that force stable plan enrollees to switch to a therapeutic equivalent medication (*i.e.*, an entirely different medication) for nonmedical reasons, thereby interfering with the health care practitioner-patient relationship.

Nonmedical switching negatively impacts plan enrollees' health. Health care providers often work with plan enrollees for years to find a therapy that helps stabilize their conditions, manage their disease, or prevent re-emerging symptoms or the development of new side effects. Often, people living with epilepsy, diabetes, immunodeficiency, AIDS, cancer, mental health disorders, and autoimmune diseases such as rheumatoid arthritis, inflammatory bowel disease, lupus, multiple sclerosis, psoriatic arthritis, and psoriasis just to name a few, must try multiple medications before finding one that is well tolerated and effective. Forcing these stable plan enrollees to switch medications simply to save on cost can disrupt that carefully achieved equilibrium. Even the slightest variation of a drug may trigger adverse responses in plan enrollees or negatively impact their quality of life.[1] Additionally, when a plan enrollee switches off of a medication and later switches back onto it after failing on other medication in between, that once effective treatment may lose its effectiveness due to built-up tolerance or immunogenicity.

A switch that occurs at the beginning of a plan year is just as harmful as one that occurs mid-plan year, and for anyone struggling to manage a complex or chronic condition, long-term stability is absolutely essential. Therefore, nonmedical switching legislation must limit switches that occur

[1] E. Nguyen, et al., Impact of Non-Medical Switching on Clinical and Economic Outcomes, Resource Utilization and Medication-Taking Behavior: A Systematic Literature Review, 32(7) CURR. MED. RES. OPIN. 1281 (2016).

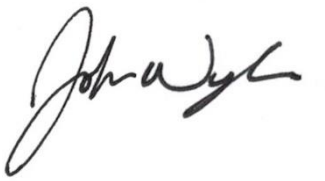
from year-to-year, as well as switches within the plan year, in order to have a meaningful impact for all Texas residents with complex or chronic illnesses.

Nonmedical switching will not save on costs in the long run. Physicians, pharmacists, and other healthcare administrators have reported that nonmedical switching increases administrative time, increases side effects or new unforeseen effects, and increases downstream costs to plans.[2] Moreover, when a stable plan enrollee is switched for nonmedical reasons, his or her care is more likely to be interrupted by a second switch.[3] These cost-motivated switches increase plan enrollees' health care utilization and disrupt their course of care, and, as a result, increase related health care costs.[4]

Nonmedical switching is a consumer protection issue. Individuals often sign up for health care plans under the belief that either their medication or their family member's will be covered at a particular rate. Yet, formulary changes that result in nonmedical switching occur after the plan year has begun, effectively serving as a bait-and-switch. While some insurance policies contain provisions that permit these unilateral modifications, such a change is nevertheless a breach of duty of good faith and fair dealing, which requires both honesty and reasonableness in the enforcement of the contract.[5] Courts have found that an insurer has an implied-in-law duty to act in good faith and deal fairly with the plan enrollee to ensure that the enrollee receives the policy benefits.[6] Nevertheless, legislation is needed to strengthen this duty.

Based on these concerns, we strongly support Texas HB 2099, which would limit nonmedical switching practices. Thank you for your efforts to improve the health care system and to protect patients from the dangers of nonmedical switching.

Sincerely,



John Wylam
Staff Attorney

[2] *E.g.*, D.T. Rubin, et al., P354 Analysis of Outcomes After Non-Medical Switching of Anti-Tumor Necrosis Factor Agents, EUR. CROHN'S & COLITIS ORGANISATION (2015), https://www.ecco-ibd.eu/index.php/publications/congress-abstract-s/abstracts-2015/item/p354-analysis-of-outcomes-after-non-medical-switching-of-anti-tumor-necrosis-factor-agents.html. Bryan R. Cote & Elizabeth A. Petersen, Impact of Therapeutic Switching in Long-Term Care, 14 AM. J. MANAGED CARE SP23 (2008).
[3] *Cost-Motivated Treatment Changes: Implications for Non-Medical Switching*, Institute for Patient Access (Oct. 2016), http://allianceforpatientaccess.org/wp-content/uploads/2016/10/IfPA_Cost-Motivated-Treatment-Changes_October-2016.pdf.
[4] Id.
[5] Florence Urgent Care v. Healthspan, Inc., 445 F.Supp.2d 871 (S.D. Ohio 2006).
[6] *E.g.*, Badillo v. Mid Century Ins. Co., 121 P.3d 1080 (Okla. 2005); Christian v. Am. Home Assurance Co., 577 P.2d 899 (Okla. 1977). In the Fifth Circuit, an insurer breaches the duty of good faith and fair dealing if it "has no reasonable basis for denying or delaying payment of a claim." Therefore, in the Fifth Circuit, a breach of the duty of good faith and fair dealing against an insurer will likely fail if there was any reasonable basis for denial of that coverage. Henry v. Mutual of Omaha Ins. Co., 503 F.3d 425 (5th Cir. 2007).