



December 6, 2019

Larry Deiter
Director of Insurance
South Dakota Division of Insurance
124 South Euclid Avenue, 2nd Floor
Pierre, SD 57501
sdinsurance@state.sd.us

Re: Discrimination Against Health Care Practitioners by the Sanford Health Plan

Dear Mr. Deiter:

Aimed Alliance is a 501(c)(3) non-profit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. We are writing to express our concern about recent actions that have been taken by the Utilization Management Department of the Sanford Health Plan and to request that you investigate this issue.

I. Background

Earlier this year, we were contacted by several board-certified nurse practitioners who are licensed to practice in South Dakota. These individuals notified us that Sanford Health Plan denied medically necessary medications to their patients in manner that may be inconsistent with state and federal law. Specifically, the Sanford Health Plan refused to provide coverage for the prescribed medications unless the nurse practitioners first obtained sign-off from a physician. Yet, South Dakota law grants nurse practitioners' the authority to prescribe medications without oversight from a supervising physician.¹ Furthermore, these denials may violate Section 2706 of the Patient Protection and Affordable Care Act (ACA), which states that a "group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable state law."² Guidance from the Centers for Medicare & Medicaid Services (CMS) Center for Consumer Information and Insurance Oversight (CCIIO) provides additional context for this provision of the ACA, stating that "a plan or issuer shall not discriminate based on a provider's license or certification, to the extent the provider is acting within the scope of the provider's license or certification under applicable state law."³ Yet, as noted, Sanford Health Plan has denied claims because nurse practitioners have not obtained approval or a signature from a physician, despite state law granting nurse practitioners authority to prescribe without a physician's signature.

On May 14, 2019, Aimed Alliance sent a complaint to Timothy Donelan, who is the Medical Director of the Sanford Health Plan. This complaint urged Sanford Health Plan to reverse its practices to allow nurse practitioners to receive coverage for these medications and included

¹ S.D. Codified Laws § 36-9A-12 (2019).

² 42 U.S.C. § 300gg-5 (2019).

³ https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs15

details about the harms that can befall patients as a result of this policy. Most importantly, refusing to cover these services when they are prescribed by a nurse practitioner can result in significant treatment delays for patients, which can threaten their health and outcomes. This is particularly problematic for patients living in rural areas, which may lack board-certified dermatologists altogether. Many patients have had to travel one to six hours and wait two to six months to have a visit with a board-certified physician. In the meantime, their conditions can progress, and they can experience adverse events and decreased quality of life.

On June 21, 2019, Aimed Alliance received a response from Howard Pallotta, who is the Senior Corporate Counsel of the Sanford Health Plan. This response claimed that the health plan does not discriminate against providers based upon their level of licensure and asserted that all denied claims have been approved upon appeal. However, the nurse practitioners that we have been in contact with continue to receive denials. Copies of all correspondence are attached for your convenience.

II. Request

We have attempted to obtain voluntary compliance with the law from Sanford Health Plan, but we have been unsuccessful as the health plan continues to refuse coverage for these medications without prior approval from a physician. Considering these events, we respectfully request that you investigate the Sanford Health Plan for routinely denying coverage for medications prescribed by nurse practitioners. We urge you to carefully review the documents that we have included with this letter to fully understand the issue and the harm that it is causing patients.

Thank you for your consideration of this matter. If you need additional information or if I can be of assistance in any way, please contact me at 202-559-0380 or jwylam@aimedalliance.org.

Respectfully,

A handwritten signature in black ink that reads "John Wylam". The signature is written in a cursive style with a large, sweeping initial "J".

John Wylam
Staff Attorney