Large Insurer Not Penalized for Placing Most HIV Meds on Costliest Tiers

Federal civil rights office "gives pass" to Blue Cross and Blue Shield of North Carolina for alleged HIV discrimination in drug pricing.

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Blue Cross Blue Shield of North Carolina will not be penalized for placing most HIV drugs on its highest and costliest tier in 2022 and 2023, a policy that the health insurer has since modified.

The controversial pricing tiers led the HIV+Hepatitis Policy Institute (HIV+Hep) and the North Carolina AIDS Action Network to file a discrimination complaint with the Department of Health and Human Services' Office for Civil Rights (OCR) on December 13, 2022.

In a February 6, 2024, letter responding to the HIV+Hep complaint, the OCR wrote that it had investigated the claims and was satisfied with the voluntary steps that Blue Cross Blue Shield of North Carolina had taken to change its tiered drug formulary and to "remove barriers in access to critical health services. Based on the foregoing corrective action, OCR is closing this complaint with no further action, effective the date of this letter."

"While it is reassuring that OCR formally investigated our complaint, the harm to people living with HIV has been going on for years," said HIV+Hep executive director Carl Schmid in a press release from the institute. "This was blatant discriminatory plan design, and the entities charged with enforcing ACA's [the Affordable Care Act's] patient protections let Blue Cross Blue Shield North Carolina off with not even a slap on the wrist. This is further proof that insurers are allowed to get away with as much as they can. And even when they are caught, there is no penalty. For insurance to work for people living with HIV and all patients, we need better federal and state regulation, oversight, and enforcement."

In August 2023, HIV+Hep and AIDS Action Network announced that the health insurer "released a new mid-year drug formulary that leaves not a single HIV drug on the highest and most costly drug tiers. Instead of 48 HIV drugs, including many generics, on Tiers 5 and 6, there are now none. As a result, depending on the plan, patients will be paying more reasonable and affordable costs."

Blue Cross Blue Shield of North Carolina, the state's largest health insurer, has denied allegations of discrimination and claimed the changes made in the formulary were a result of its regular quarterly review process and not an admission of discriminatory tiering.

Sara Lang, a spokesperson for the health insurer, told The News&Observer, that the company “is committed to ensuring our members have access to safe, effective and affordable prescriptions when they need them.” She added that the insurer is “against discrimination of any kind, including discrimination based on health status, sexual orientation or gender identity and works with state and federal regulators to ensure our plans are in compliance with the law each year.”

Such comments and the OCR decision have not sat well with the groups that filed the complaint.

“I don’t understand how anyone with a straight face can say this drug tier placement was made based on cost and clinical effectiveness when among the drugs on the highest tiers were 19 low-cost, rarely used generic drugs. And on top of it, the regulators bought it,” said Veleria Levy, executive director of the North Carolina AIDS Action Network, in the HIV+Hep press release.

“Thanks to our formal complaint,” she added, “people living with HIV in North Carolina now can better afford their lifesaving medications, but these types of discriminatory insurance plans should have never been approved in the first place. And bad actors need to be punished.”
