



National
Kidney
Foundation™

30 E. 33rd Street
New York, NY 10016

Tel 212.889.2210
Fax 212.689.9261
www.kidney.org

September 4, 2015

Ms. Laura Cali, Insurance Commissioner
Department of Consumer & Business Services
Insurance Division
PO Box 14480
Salem, Oregon 97309-0405

Re: Discriminatory plan designs for end-stage renal disease patients

Dear Commissioner Cali,

It has been brought to our attention that a few insurance carriers have developed discriminatory policies based on an individual's status as having End-Stage Renal Disease (ESRD). Specifically, Regence and Moda health insurance plans contain language that coerce patients to enroll in Medicare after beginning dialysis or face high out-of-pocket costs that do not count towards the patient's out of pocket maximum.

The National Kidney Foundation (NKF) believes this is an act of discrimination as it limits plan benefits based on an individual's health status, which is prohibited by the Affordable Care Act (ACA). NKF is America's largest and oldest health organization dedicated to the awareness, prevention, and treatment of kidney disease for hundreds of thousands of healthcare professionals, millions of patients and their families, and tens of millions of people at risk. NKF has local division and affiliate offices serving our constituents throughout the U.S., including a Northern California and Pacific Northwest Division serving the 3,821 dialysis patients residing in Oregon.

While individuals are eligible to enroll in Medicare due to ESRD, regardless of age, they are not required to do so. In August, the Centers for Medicare & Medicaid Services clarified this right for ESRD patients in its frequently asked questions document, which can be found at <http://www.cms.gov/Medicare/Eligibility-and-Enrollment/Medicare-and-the-Marketplace/Overview1.html>. For group health plans, the Social Security Act, Medicare Secondary Provisions allows ESRD patients to keep their private health insurance and requires the private plan to pay primary for at least for 30 months. ESRD patients do not have to enroll in Medicare during this time frame and instead can enroll in Medicare after 30

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months to avoid having to pay Medicare premiums during a time when the patient is unlikely to receive any additional benefit from Medicare coverage.

There are many reasons patients may wish to keep their private insurance and forgo Medicare enrollment. Some of these reasons include lower copays/coinsurance versus the typical 20% under Medicare Part B, limits on out-of-pocket costs not offered under Medicare, and additional benefits not covered by Medicare.

By refusing to pay for services that would have been covered by Medicare had the patient been enrolled (as the Moda policy states) or changing the reimbursement rate to dialysis facilities to the Medicare rate and leaving patients at risk of being billed the remainder of provider charges (as the Regence policy states), patients may effectively be forced into Medicare three months after initiating dialysis. These policies specifically target ESRD patients and coerce them to enroll in Medicare. NKF respectfully requests your division to prohibit these actions and to broadly clarify that plans may not implement benefit designs that single out ESRD patients.

Sincerely,

Tonya L. Saffer

Tonya L. Saffer, MPH
Senior Health Policy Director