

Howard Zucker MD, JD, LLM
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Dear Commissioner Zucker:

On July 11 2017, a New York State resident was denied access to Truvada™ (tenofovir disoproxil fumarate\emtricitabine [TDF\FTC]) for HIV pre-exposure prophylaxis (PrEP) by his insurance company — UnitedHealthcare — due to the resident’s “[h]igh risk homosexual behavior”. Annexed hereto, please find an anonymized copy of the resident’s denial letter from UnitedHealthcare.

There is no medical, regulatory, or biological justification for denying a patient access to Truvada due to their sexual orientation or gender identity. In fact, the use of TDF\FTC PrEP for populations vulnerable to HIV infection — including gay, bisexual and other men who have sex with men (MSM), and transgender people — is one of the three pillars which Governor Andrew M. Cuomo’s “Blueprint on Ending the AIDS Epidemic” relies upon to dramatically reduce the number of new HIV infections within our State¹. Furthermore, the usage of TDF\FTC PrEP for MSM at risk of HIV acquisition is explicitly recommended by the United States Centers for Disease Control and Prevention (CDC)², as well as your department’s AIDS Institute³. UnitedHealthcare’s denial letter itself makes clear that they cover the the use of TDF\FTC PrEP to “reduce the risk of sexually acquired HIV-1 infection in adults at high risk”, as long as those patients are not queer.

UnitedHealthcare’s blatant homophobia is endangering the health of at least one New Yorker. As our State’s Health Commissioner, it is your responsibility to ensure that all New Yorkers have the right to access effective and competent medical care, regardless of their sexual orientation or gender identity. We therefore ask you to:

- Investigate how many other patients have been denied TDF\FTC PrEP by UnitedHealthcare due to their sexual orientation or gender identity. Furthermore, we

¹ New York State Department of Health. “Blueprint on Ending the AIDS Epidemic.” URL: https://www.health.ny.gov/diseases/aids/ending_the_epidemic/docs/blueprint.pdf

² Centers for Disease Control and Prevention (CDC). “Preexposure Prophylaxis for the Prevention of HIV Infection in the United States – 2014 Clinical Practice Guideline”. URL: <https://www.cdc.gov/hiv/pdf/prepguidelines2014.pdf>

³ New York State AIDS Institute. “Guidance for Use of PrEP”. URL: <http://www.hivguidelines.org/prep-for-prevention/guideline/>

believe it would be prudent to extend this investigation to other insurers.

- Contact UnitedHealthcare and demand an end to their discriminatory practices regarding the provision of TDF\FTC PrEP.
- If UnitedHealthcare refuses to end their discriminatory practices, remove all UnitedHealthcare plans from the New York “State of Health” Health Plan Marketplace. Discrimination against patients based upon patient sex, sexual orientation or gender identity is prohibited by Section 1557 of the Patient Protection and Affordable Care Act (ACA)⁴.

We would like to discuss this issue with you and your team at your earliest convenience.

We thank you for your prompt attention to this matter.

Sincerely,

⁴ Department of Health and Human Services. “Nondiscrimination in Health Programs and Activities” 81 Fed. Reg. 31375 (Codified at 42 C.F.R. 92.)