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United States Senate

December 10, 2018

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Julie Mix McPeak
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National Association of Insurance Commissioners
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Suite 700
Washington, DC 20001

Susan K. Neely
President and CEO
American Council of Life Insurers
101 Constitution Avenue, N.W.
Suite 700
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Dear Ms. McPeak and Ms. Neely:

I am writing to you regarding a disturbing report that insurance companies are denying applications for life and other insurance by applicants who have prescriptions for the opioid antagonist naloxone. These prescriptions allow the applicants to carry naloxone — frequently referred to by its brand name Narcan — in order to provide life-saving treatment to overdose victims, not because they are at risk of an opioid overdose themselves. I am concerned that if good Samaritans are denied insurance coverage because they carry naloxone to promote public health and safety, this will have a chilling effect on efforts to make naloxone widely available and accessible, and will ultimately cost lives.

According to a report by WBUR in Boston and information my office has obtained from the Boston Medical Center Grayken Center for Addiction, there appears to be a growing number of instances in which applications for life and disability insurance were denied on the grounds that naloxone was on the applicants' list of medications.¹ These were applicants who do not need the drug for themselves, but rather carry it to be in a position to save others, whether it be family members, friends, co-workers, or even strangers. Although I understand that use of prescription drugs is a factor insurers consider in assessing a policy application, no applicant who carries naloxone to save others should be denied insurance solely for that reason.

Further complicating the matter is the fact that Massachusetts and other states hit hard by the opioid epidemic have issued a "standing order" for naloxone, permitting it to be sold over-the-counter at a pharmacy without an individual prescription. Therefore, it is highly problematic when — as the WBUR report describes — an insurance company informs a policy applicant that

¹ Martha Bebinger, *Why You May Be Denied Life Insurance For Carrying Naloxone*, WBUR (Dec. 5, 2018), <https://www.wbur.org/commonhealth/2018/12/05/narcan-insurance-prescription>.

it might reconsider a denial if the applicant provides a copy of the prescription from the prescribing physician. That physician is often the doctor who would have signed the pharmacy-specific or statewide order for naloxone and would not be known to or have a relationship with the applicant.

I understand that the Boston Medical Center Grayken Center for Addiction wrote to the U.S. Surgeon General about this matter, and the Surgeon General in turn reached out to the National Association of Insurance Commissioners (NAIC). According to the WBUR report, NAIC told the Surgeon General that there is “no indication this is a widespread issue.”

Given NAIC’s role in establishing standards and overseeing state insurance regulators, and the American Council of Life Insurers’ (ACLI) representation of life insurance companies, your organizations are uniquely situated to help elucidate and respond to this issue. In order to understand the extent and scope of this potential problem, I ask that, by December 21, 2018, you respond to the following questions:

1. Does ACLI or its members track denials of insurance applications based on applicants’ medications, and, specifically, prescriptions for naloxone? Can ACLI provide a summary of insurer policies for approving or denying insurance applications based on a naloxone prescription?
2. Do state insurance commissioners collect information on denials of insurance applications based on applicants’ medications, and, specifically, prescriptions for naloxone? If so, does NAIC collect this information from states?
3. Are insurers made aware of standing orders for the prescription of naloxone in the states where those orders have been issued? Who is responsible for sharing this information with insurers?
4. If available, please provide any data from the last five years that shows whether insurance policy applications were denied because the applicant had a prescription for naloxone.
5. Please explain how NAIC was able to tell the Surgeon General that there is “no indication this is a widespread issue.”
6. How do insurers distinguish between those with a prescription for naloxone because they are at risk of an overdose and those who carry the drug to save others?
 - a. Has ACLI issued guidance to members on how to distinguish these prescriptions, as well as how to respond if an applicant for insurance cannot identify the prescriber because naloxone was prescribed through a standing order?
 - b. Has NAIC issued guidance to states to help prevent wrongful denials in this situation? If so, please provide that guidance.

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- c. Is NAIC aware of any state insurance commission that has issued guidance on this matter? If so, please provide that guidance.

Thank you in advance for your attention to this important issue. If you have any questions about these requests, please contact Andrew Cohen or Nikki Hurt of my staff at 202-224-2742.

Sincerely,

A handwritten signature in blue ink that reads "Edward J. Markey". The signature is written in a cursive, flowing style.

Edward J. Markey
United States Senator