

Inequity in Healthcare: Coverage Denials for Lifesaving and Quality-of-life Improving Medications and Treatments

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I. Introduction

In 2021, more than 300 million Americans had some form of health insurance coverage, while 30 million Americans had no coverage at all.² Although uninsured Americans statistically “have less access to recommended care, receive poorer quality of care, and experience worse health outcomes,” recent surveys have shown that even the health of insured Americans is at risk.³ This increase in negative health outcomes for insured individuals is largely a result of the common practice among health insurance companies to deny coverage for certain prescription drugs and medical treatments.⁴ Research shows that these coverage denials force people to make difficult choices related

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² See *Number of People with Health Insurance in the United States from 1990 to 2021*, STATISTA (Sept. 15, 2022), <https://www.statista.com/statistics/200946/americans-with-health-insurance/> [<https://perma.cc/3VBG-ZB9R>] (providing statistics related to health insurance coverage in the United States); see also Katherine Keisler-Starkey & Lisa N. Bunch, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2021, UNITED STATES CENSUS BUREAU (2022), <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-278.pdf> [<https://perma.cc/Q365-NWCU>] (explaining health insurance coverage in 2021).

³ See J. Michael McWilliams, *Health Consequences of Uninsurance Among Adults in the United States: Recent Evidence and Implications*, 87 MILBANK Q. 2 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2881446/pdf/milq0087-0443.pdf> [<https://perma.cc/G4UR-2BDB>] (describing consequences of being uninsured); see also Doug Schoen, *Too Many Americans with Insurance are Being Denied Coverage*, THE HILL (Aug. 15, 2017, 4:20 PM), <https://thehill.com/blogs/pundits-blog/healthcare/346652-too-many-americans-with-insurance-are-being-denied-coverage> [<https://perma.cc/95Z3-9FHY>] (providing information about health insurance denials); Patti Neighmond, *When Insurance Won't Cover Drugs, Americans Make 'Tough Choices' About Their Health*, NPR (Jan. 27, 2020), <https://www.npr.org/sections/health-shots/2020/01/27/799019013/when-insurance-wont-cover-drugs-americans-make-tough-choices-about-their-health> [<https://perma.cc/E9RR-4WP6>] (explaining impact of coverage denials); Shanoor Seervai, *Health Care in America: What It Means to Be Sick*, COMMONWEALTH FUND (Nov. 29, 2018), <https://www.commonwealthfund.org/publications/podcast/2018/nov/health-care-america-what-it-means-be-sick> [<https://perma.cc/P4CD-RARH>] (describing how American healthcare system affects sick people).

⁴ See Kelsey Waddill, *Payers Denied 17% of 2019 In-Network Claims on ACA Marketplace*, HEALTH PAYER INTELLIGENCE (Jan. 21, 2021), <https://healthpayerintelligence.com/news/payers-denied-17-of-2019-in-network-claims-on-aca-marketplace> [<https://perma.cc/AF42-959D>] (presenting statistics on ACA in-network claim denials); see also Schoen, *supra* note 3 (describing high rates of coverage denials); Neighmond, *supra* note 3 (explaining how insurance plans sometimes deny coverage).

to their health which can prevent them from obtaining their prescription medications.⁵ Because most people are unable to pay out of pocket for their prescriptions, beneficiaries who receive coverage denials typically forego their prescriptions, which leaves them susceptible to severe health complications.⁶

This Note will discuss the effects of insurance companies' refusals to cover both lifesaving and quality-of-life improving prescriptions and treatments. Part II will address the history of private and public health insurance and the development of health coverage over time. Part III will discuss the ways that individuals obtain insurance coverage, the insurance approval process, and the issues that arise when insurance companies deny coverage. Part IV will analyze the differences between lifesaving and quality-of-life enhancing drugs, and how systematic insurance reform can improve the American healthcare system.

II. History

Companies offering medical care to employees dates back to the 1890s, when lumber companies paid doctors to provide care for their employees.⁷ Health insurance as we recognize it today, however, did not exist until approximately 100 years ago.⁸ The creation of health insurance plans around this time was largely a result of the Great Depression because declines in revenue and patient occupancy rates during this period forced hospital administrators to devise a way for individuals to pay for their own healthcare services.⁹ For example, in 1929, an administrator at Baylor University Hospital enrolled a group of public schoolteachers into a program where the schoolteachers paid

⁵ See Neighmond, *supra* note 3 (explaining coverage denials and patient compromises).

⁶ See Steven Reinberg, *18 Million Americans Can't Pay for Needed Meds*, U.S. NEWS (Sept. 22, 2021), [https://www.usnews.com/news/health-news/articles/2021-09-22/18-million-americans-cant-pay-for-needed-meds#:~:text=22%2C%202021%20\(HealthDay%20News\),population%20in%20the%20United%20States](https://www.usnews.com/news/health-news/articles/2021-09-22/18-million-americans-cant-pay-for-needed-meds#:~:text=22%2C%202021%20(HealthDay%20News),population%20in%20the%20United%20States) (reporting approximately 18 million Americans cannot afford prescriptions); see also Howard LeWine, *Millions of Adults Skip Medications Due to Their High Cost*, HARVARD HEALTH PUBLISHING (Jan. 30, 2015), <https://www.health.harvard.edu/blog/millions-skip-medications-due-to-their-high-cost-201501307673> [<https://perma.cc/NTU7-RXAF>]; NEIGHMOND, *supra* note 3 (explaining how inaccessibility to prescription drugs can leave people vulnerable).

⁷ See *History of Health Insurance and 2019 & Beyond Projections*, HEALTH FOR CALIFORNIA (Mar. 5, 2019), <https://www.healthforcalifornia.com/blog/history-of-health-insurance> [<https://perma.cc/4QHL-5JM8>].

⁸ See *id.* (describing why health insurance was first created in the US); see also MICHAEL MORRISEY, *HEALTH INSURANCE* at 3 (2008) (ebook) (tracing how health insurance began with the Great Depression in the 1930s); MotivHealth, *Through the Years: A Timeline of Health Insurance in the U.S.*, MOTIVHEALTH (Feb. 7, 2020), <https://www.motivhealth.com/health-insurance/through-the-years-a-timeline-of-health-insurance-in-the-u-s/> [<https://perma.cc/36P2-BQ9T>] (explaining how modern health insurance developed about 100 years ago).

⁹ See *A Brief History of Private Insurance in the United States*, ACADEMIC HEALTHPLANS (Mar. 18, 2022), <https://www.ahpcare.com/a-brief-history-of-private-insurance-in-the-united-states/>. “[B]etween 1929 and 1930 Baylor University Hospital . . . saw its receipts drop from \$236 to \$59 per patient. Occupancy rates dropped from 70 to 60 percent . . .” *Id.*; see also MORRISEY, *supra* note 8. “Local hospitals were affected by the Depression like other firms.” *Id.* “[A]dministrator . . . devised a means for people to pay for hospital care.” *Id.*

a set monthly fee for future hospital care.¹⁰ This program, which later became known as Blue Cross, helped hospitals stay afloat while protecting the financial interests of patients.¹¹

Original Blue Cross plans only covered hospital services.¹² To address this limitation, a group of employers in the lumber and mining industries established a plan, later referred to as Blue Shield, to cover physician services.¹³ Eventually, many Blue Cross and Blue Shield companies joined together to provide insurance coverage for both hospital and physician services.¹⁴ Although relatively limited at their inception, Blue Cross and Blue Shield continued expanding coverage.¹⁵ The continual rise in healthcare costs and the subsequent need for employers to provide more robust insurance benefits to employees encouraged this coverage expansion.¹⁶ This advancement not only led to an increase in the number of insurance companies, it also expanded the ways that individuals obtain health insurance coverage.¹⁷

¹⁰ See MORRISEY, *supra* note 8. “[Justin Kimble] enrolled 1,250 Dallas public schoolteachers into the Baylor Plan. For 50 cents a month, he promised to provide 21 days of care in his hospital.” *Id.*; see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7. “Dallas-area teachers were some of the first to benefit from hospital expense coverage in return for a 50-cent monthly premium.” *Id.*; *A Brief History of Private Insurance in the United States*, *supra* note 9. “[T]hey would . . . pay, what would now be considered an insurance premium, to Baylor University Hospital for future medical services.” *Id.*

¹¹ See *A Brief History of Private Insurance in the United States*, *supra* note 9. “This program later became Blue Cross.” *Id.*; see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7. “Blue Cross started as a not-for-profit organization to keep hospitals open and help protect people’s finances.” *Id.*

¹² See MORRISEY, *supra* note 8. “Because of AMA opposition to insurance plans, the plan only covered the hospital, not physicians’ services.” *Id.*; see also *A Brief History of Private Insurance in the United States*, *supra* note 9; *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7.

¹³ See *A Brief History of Private Insurance in the United States*, *supra* note 9 (explaining why Blue Shield plans were created); see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7.

¹⁴ See *A Brief History of Private Insurance in the United States*, *supra* note 9 (noting that many Blue Cross and Blue Shield plans merged); see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7.

¹⁵ See MORRISEY, *supra* note 8. “The insurance functions of Blue Cross and Blue Shield plans were pretty simple in their early years.” *Id.*; see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7. “Initially, health insurance was designed to cover only major problems . . . [like] . . . [i]f you needed to go to the hospital or to get surgery” *Id.* “Over time, health insurance evolved to cover the increasing costs of health care.” *Id.*; *A Brief History of Private Insurance in the United States*, *supra* note 9.

¹⁶ See *A Brief History of Private Insurance in the United States*, *supra* note 9. “Over the years, as the costs of healthcare increased and more employers saw the need to provide greater benefits to their employers [sic], the health insurance industry ballooned.” *Id.*

¹⁷ See *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7. “[In the 1890s], [lumber] companies paid . . . doctors to offer care to their employees. *Id.* “[During the Great Depression], [t]o encourage people in the smaller workforce to come work for certain factories, the owners began offering incentives, such as health insurance with the jobs.” *Id.* “Medicaid and Medicare [were signed] into law in the 1960s.” *Id.* “Under President Nixon, health maintenance organizations (HMOs) became the new name for group health plans.” *Id.* “PPOs weren’t created until the early 1970s to give consumers more freedom in their choice for physicians.” *Id.* See generally MORRISEY, *supra* note 8; Bernadette Fernandez, *Health Insurance: A Primer*, CONG. RSCH. SERVS. (Jan. 8, 2015), <https://crsreports.congress.gov/product/pdf/RL/RL32237> [<https://perma.cc/SX6C-NSZX>].

People typically purchase health insurance in anticipation of high healthcare costs and future medical expenses or, alternatively, to protect themselves in the event of unexpected accidents or illness.¹⁸ The ways that people obtain coverage have expanded over time, and presently, individual needs and preferences determine how people obtain health insurance.¹⁹ Today, individuals may purchase private insurance, or if they meet eligibility requirements, they may obtain coverage from government-funded programs.²⁰ The two most common forms of private insurance in the United States are employer-sponsored coverage and individual market coverage.²¹ A majority of individuals obtain

¹⁸ See Fernandez, *supra* note 17. “People obtain insurance to protect themselves against the possibility of financial loss in the future.” *Id.* “Health insurance provides protection against the possibility of financial loss due to high health care expenses.” *Id.*; see also *3 Reasons to Enroll in 2019 Marketplace Coverage*, HEALTHCARE.GOV (Nov. 21, 2018), <https://www.healthcare.gov/blog/reasons-to-enroll-2019-health-insurance/#:~:text=Health%20insurance%20provides%20financial%20protection,you%20from%20high%2C%20unexpected%20costs> [<https://perma.cc/KK2P-GAC9>]. “Health insurance provides financial protection in case you have a serious accident or illness.” *Id.*; John Nyman, *The Value of Health Insurance: The Access Motive*, 18 J. HEALTH ECON. 141-152 (June 24, 1998); *Why Health Insurance Might be More Important Than You Think*, COVERED CA (Feb. 1, 2022), <https://www.coveredca.com/marketing-blog/why-health-insurance-might-be-more-important-than-you-think/> [<https://perma.cc/A8E4-K2HK>]; *Health Insurance: How It Protects You From Health and Financial Risks*, HEALTHCARE.GOV, <https://www.healthcare.gov/why-coverage-is-important/coverage-protects-you/#:~:text=Health%20insurance%20protects%20you%20from,before%20you%20meet%20your%20deductible> [<https://perma.cc/6Y5L-GXC3>] (last visited Sep. 21, 2022); Committee on the Consequences of Uninsurance, *Care without Coverage: Too Little, Too Late*, NAT’L ACAD. PRESS 1 (2002), https://www.ncbi.nlm.nih.gov/books/NBK220639/pdf/Bookshelf_NBK220639.pdf [<https://perma.cc/CX7W-P5AE>]; Gina Roberts-Grey, *A Guide to Out-of-Pocket Costs*, GOODRX HEALTH (May 19, 2020), <https://www.goodrx.com/insurance/health-insurance/out-of-pocket-costs> [<https://perma.cc/E5SF-LK2B>].

¹⁹ See *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 7. “In America, health insurance has evolved from non-existent to a luxury to an employer-provided benefit to a requirement.” *Id.*; see also Fernandez, *supra* note 17, at 8. “Americans obtain health insurance through a variety of methods and from different sources. People may get it through the private sector or from a government source. Consumers may purchase health coverage on their own, as part of an employee group, or through a trade or professional association.” *Id.*

²⁰ See Fernandez, *supra* note 17, at 12. “While most Americans with health insurance obtain it through the private sector, 107.6 million (34.3% of the U.S. population) people got health coverage through programs administered by the government in 2013.” *Id.*; see also *Leadership by Example: Coordinating Government Roles in Improving Health Care Quality*, INST. OF MED. (2003), <https://nap.nationalacademies.org/read/10537/chapter/4> [<https://perma.cc/29PC-DMX4>] (explaining who is eligible for coverage under certain federal programs); see generally *How do Most Americans Get Their Health Insurance?*, USA FACTS (Feb. 20, 2020, 4:00 PM), <https://usafacts.org/articles/how-most-americans-get-their-health-insurance-medicare-employers/> [<https://perma.cc/ARX2-UMQ7>].

²¹ See Fernandez, *supra* note 17, at 9. “Private insurance, which includes both employer-sponsored (*group market*) and individual market (*non-group*) coverage, accounts for the substantial majority of Americans with health insurance.” *Id.*; see also BY Davalon, *What’s the Difference Between Group and Individual Health Insurance?*, EHEALTH (Jan. 11, 2021), <https://www.ehealthinsurance.com/resources/small-business/whats-difference-group-individual-health-insurance> [<https://perma.cc/B26Y-YEYR>] (describing the differences between group and individual insurance coverage).

their health insurance coverage through their employers.²² For people who are unemployed or who cannot get coverage through their workplace and do not otherwise qualify for public programs, however, there is the option to purchase private insurance from qualified health plans.²³

Although many Americans are covered by private insurance, a large number of individuals acquire coverage through public programs.²⁴ These government-funded programs include Medicare, Medicaid, the State Children's Health Insurance Program (CHIP), TRICARE, the Veterans Affairs (VA) system, and the Civilian Health and Medical Program of the Department of Veteran's Affairs (CHAMPVA).²⁵ To qualify for coverage under these programs, individuals must meet specific eligibility requirements.²⁶ For example, Medicare provides health insurance for individuals aged 65 and older and for certain people with disabilities, while Medicaid and CHIP offer coverage for low-income adults and children, respectively.²⁷ Further, TRICARE, the VA system, and

²² See Fernandez, *supra* note 17, at 9–10. The author notes that employer-sponsored insurance gives workers a tax advantage and that employer-sponsored coverage is typically heavily subsidized, so workers do not bear the full cost of insurance. *Id.*; see also *How do Most Americans Get Their Health Insurance?*, *supra* note 20. “More than half of all insurance coverage is employer-provided.” *Id.*

²³ See Fernandez, *supra* note 17, at 11. “The individual insurance (*non-group*) market is referred to as a *residual* market, because it provides coverage to those who either cannot obtain health insurance through the workplace (i.e., employer-sponsored insurance) or do not qualify for public programs like Medicare, Medicaid, or the State Children's Health Insurance Program (CHIP).” *Id.*; see also *Health Coverage Options if You're Unemployed*, HEALTHCARE.GOV, <https://www.healthcare.gov/unemployed/coverage/> [<https://perma.cc/H3WA-52ME>] (last visited Nov. 26, 2022). “If you're unemployed, you may be able to get an affordable health insurance plan through the Marketplace, with savings based on your income and household size. You may also qualify for free or low-cost coverage through Medicaid or the Children's Health Insurance Program (CHIP).” *Id.*; Amy Fontinelle et al., *Buying Private Health Insurance*, INVESTOPEDIA (July 19, 2022), <https://www.investopedia.com/articles/pf/08/private-health-insurance.asp> [<https://perma.cc/3PXY-RPD5>]. “If your employer doesn't offer you health insurance as part of an employee benefits program, you may be looking at purchasing your own health insurance through a private health insurance company.” *Id.*

²⁴ See Keisler-Starkey & Bunch, *supra* note 2. “In 2020, private health insurance coverage continued to be more prevalent than public coverage at 66.5 percent and 34.8 percent respectively.” *Id.* at 3; see also Fernandez, *supra* note 17, at 12.

²⁵ See *Health-Care Utilization as a Proxy in Disability Determination*, NAT'L ACADEMIES PRESS (Mar. 1, 2018), https://www.ncbi.nlm.nih.gov/books/NBK500102/pdf/Bookshelf_NBK500102.pdf [<https://perma.cc/7XKP-3BD6>] (describing how the two major public insurance systems are Medicare and Medicaid); see also Fernandez, *supra* note 17.

²⁶ See Fernandez, *supra* note 17. “[P]ublic programs . . . provide health insurance coverage to eligible persons.” *Id.* at 12; see also *Medicaid*, MEDICARE.GOV, <https://www.medicare.gov/basics/costs/help/medicaid> [<https://perma.cc/RX2P-LUR3>] (last visited Sept. 20, 2022). “The rules around who's eligible for Medicaid are different in each state.” *Id.*; Dena Bunis, *Medicare Eligibility: Do You Qualify?*, AARP (Nov. 15, 2021), <https://www.aarp.org/health/medicare-insurance/info-04-2011/medicare-eligibility.html> [<https://perma.cc/F99T-2EWL>] (explaining how Medicare qualification is not automatic).

²⁷ See Fernandez, *supra* note 17. “The Medicare program was established in 1965, and is a federal program for persons age 65 and older and certain persons with disabilities.” *Id.* at 12. “Medicaid is a joint federal and state program that finances the delivery of health care services to millions of

CHAMPVA specifically provide care for military servicemembers, veterans, and their eligible family members.²⁸ Despite this variety of private and public coverage options, however, millions of Americans remain uninsured.²⁹

Not only have coverage options developed over time, but there has also been an increase in the variety of services covered by insurance plans.³⁰ For example, original insurance plans offered under Blue Cross and Blue Shield provided coverage for a limited number of services related exclusively to hospital stays and physician treatments.³¹ Today, however, most insurance plans cover a set of preventative services and, following the enactment of the Affordable Care Act in 2010, plans must now cover at least ten essential health benefits.³² These benefits include: (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) pregnancy, maternity, and newborn care; (5) treatment for

low-income Americans . . . [CHIP] was established in 1997 to provide health coverage to uninsured low-income children who are ineligible for Medicaid.” *Id.* at 12-13; *see also Policy Basics: Introduction to Medicaid*, CTR ON BUDGET & POL’Y PRIORITIES (April 14, 2020), <https://www.cbpp.org/research/health/introduction-to-medicaid#:~:text=Each%20state%20operates%20its%20own,widely%20from%20state%20to%20state> [https://perma.cc/57JL-S99J]; *see generally* MACPAC, *Racial and Ethnic Disparities in Medicaid: An Annotated Bibliography* (Apr. 2021), <https://www.macpac.gov/wp-content/uploads/2021/04/Racial-and-Ethnic-Disparities-in-Medicaid-An-Annotated-Bibliography.pdf> [https://perma.cc/3WHQ-9NTQ].

²⁸ *See* Fernandez, *supra* note 17, at 13. “Health care services for military servicemembers and veterans are provided by the Department of Defense (DOD) through TRICARE or by the Department of Veterans Affairs (VA) through the VA system and the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).” *Id.*

²⁹ Keisler-Starkey & Bunch, *supra* note 2 (noting 28 million Americans did not have insurance in 2020).

³⁰ *See generally A Brief History of Private Insurance in the United States*, *supra* note 9 (discussing the wider range of services now covered by present-day health plans).

³¹ *See Health Insurance from Invention to Innovation: A History of the Blue Cross and Blue Shield Companies*, BLUECROSS BLUESHIELD (Nov. 11, 2012), <https://www.bcbs.com/articles/health-insurance-invention-innovation-history-of-the-blue-cross-and-blue-shield> [https://perma.cc/4FHX-DJUM]. “1929: Blue Cross Plans are established to provide pre-paid hospital care . . . 1930: Blue Shield Plans begin providing reimbursement for physician services.” *Id.*; *see also A Brief History of Private Insurance in the United States*, *supra* note 9.

³² *See* Familydoctor.org Editorial Staff, *Health Insurance: Understanding What it Covers*, AM. ACAD. OF FAMILY PHYSICIANS (June 4, 2020), <https://familydoctor.org/health-insurance-understanding-covers/> [https://perma.cc/9GDA-9CWN]. “Most insurance plans will cover a set of preventive services . . . includ[ing] shots and certain health screenings.” *Id.* “[Health plans] will also cover at least 10 essential health benefits required by the Affordable Care Act (ACA).” *Id.*; *see also Preventive Services Covered by Private Health Plans under the Affordable Care Act*, KFF (Oct. 26, 2022), <https://www.kff.org/health-reform/fact-sheet/preventive-services-covered-by-private-health-plans/#:~:text=The%20services%20required%20to%20be,and%20other%20common%20health%20concerns> [https://perma.cc/Q7JB-63LX] (elaborating on preventative services covered by private health plans under the ACA); *Affordable Care Act: Coverage Terms*, SHRM, <https://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/aca-coverage-terms.aspx> [https://perma.cc/VJV9-8EHP] (last visited Apr. 2, 2022); *Affordable Care Act Preventive Items And Services*, EXPRESS SCRIPTS (2021), https://express-scripts.com/art/open_enrollment/ACA-Drug-List.pdf [https://perma.cc/QRE5-K4JH]; *What is a Pre-Existing Condition*, CIGNA (July 2018), <https://www.cigna.com/individuals-families/understanding-insurance/what-is-a-pre-existing-condition> [https://perma.cc/D5SR-MU8A] (explaining what qualifies as a pre-existing condition); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 1302(b)(1) (2010).

mental health and substance use disorders; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventative and wellness services and chronic disease management; and (10) pediatric services.³³

Although insurance providers must cover the aforementioned benefits, companies may determine which additional tests, drugs, and services their plans will cover.³⁴ Because insurers cover different services, require different types of payments, and make beneficiaries pay for non-covered care, consumers must consider many factors when choosing their health insurance providers and plans.³⁵ The complex nature of the health insurance marketplace causes confusion over which insurance plan to choose, resulting in many individuals choosing plans that do not meet their needs or the needs of their families.³⁶ Inadequate health coverage can prevent individuals from accessing necessary health services and may cost consumers significant amounts of money in the process.³⁷ Even when people make informed decisions as to their insurance coverage, companies may nevertheless deny coverage for certain treatments or prescriptions.³⁸

³³ See FAMILYDOCTOR.ORG EDITORIAL STAFF, *supra* note 32. “All private health insurance plans offered in federally facilitated marketplaces will offer the following 10 essential health benefits (EHBs)” See also Patient Protection and Affordable Care Act, § 1302(b)(1).

³⁴ See Familydoctor.org Editorial Staff, *supra* note 32. “The insurance company agrees to cover the cost of certain benefits listed in your policy.” *Id.* “The policy lists a package of medical benefits such as tests, drugs, and treatment services.” *Id.*; see also *Patient Protection and Affordable Care Act*, *supra* note 32 (requiring coverage for essential health benefits).

³⁵ See Kristina Zucchi, *What Does Health Insurance Not Cover?*, INVESTOPEDIA (Mar. 7, 2021), <https://www.investopedia.com/articles/insurance/09/services-health-insurers-do-not-cover.asp> [<https://perma.cc/6NPM-FDSK>]. “Navigating health insurance coverage is a monumental task. Consumers generally have no say in which services are rendered, which services are covered, and how much they will ultimately be responsible for paying.” *Id.*; see also *5 Things to Consider When Choosing Your Health Coverage*, MEDICINEASSISTANCETOOL.ORG, <https://medicineassistancetool.org/Health-Insurance-Resources/5-Things-to-Consider-When-Choosing-Health-Coverage> [<https://perma.cc/5AMJ-6JT6>] (last visited Nov. 26, 2022) (explaining the factors to consider when choosing an insurance plan); *How U.S. Health Insurance Works*, STANFORD, <https://vaden.stanford.edu/insurance/health-insurance-overview/how-us-health-insurance-works> [<https://perma.cc/694F-L3EV>] (last visited Nov. 26, 2022) (explaining how there are many different insurance plans with different rules and arrangements); Familydoctor.org Editorial Staff, *supra* note 32.

³⁶ See Deb Gordon, *Health Insurance Confusion Continues to Plague Americans, New Data Show*, FORBES (Feb. 8, 2021, 3:00 PM), <https://www.forbes.com/sites/debgordon/2021/02/08/health-insurance-confusion-continues-to-plague-americans-new-data-show/?sh=4513cd5c4667> [<https://perma.cc/SA9M-U9M2>]. “Confusion about health insurance is costing Americans money and preventing many from getting the care they need” *Id.* “56% of respondents reported feeling ‘completely lost’ in trying to understand health insurance specifically.” *Id.*; see also Margot Sanger-Katz, *It’s Not Just You: Picking a Health Insurance Plan is Really Hard*, N.Y. TIMES (Dec. 11, 2020), <https://www.nytimes.com/2020/12/11/upshot/choosing-health-insurance-is-hard.html> [<https://perma.cc/3WDF-Y3E7>] (explaining complexity of health insurance due to its mix of technical benefits and fees).

³⁷ See generally Gordon, *supra* note 36. The article discusses how confusion about health insurance leads people to choose more costly coverage and uncertainty about costs can result in people delaying or avoiding medical care. *Id.*

³⁸ See Elizabeth Davis, *Reasons for Health Insurance Claim Denials and What You Should Do*, VERYWELL HEALTH (Jan. 18, 2022), <https://www.verywellhealth.com/what-is-a-health->

Insurers often deny coverage for medications and treatments in the interest of profit.³⁹ Coverage denials function as a form of “healthcare rationing,” where insurance companies increase profits by reducing spending on healthcare services for beneficiaries.⁴⁰ While insurers generated profits prior to the adoption of the Health Maintenance Organization Act of 1973, the healthcare industry became more profit-driven around this time.⁴¹ In recent years, insurance providers have increasingly allocated funds toward marketing and lobbying while spending less on healthcare.⁴²

Recent studies show that health insurers denied coverage for nearly a quarter of Americans who suffer from chronic or persistent illnesses, and in a third of those cases, patients’ conditions worsened after the coverage denial.⁴³ Rising drug costs and expensive experimental procedures contribute to these coverage denials which have left many

insurance-claim-denial-1738690 [https://perma.cc/AX36-PG63]. “A health insurance denial happens when your health insurance company refuses to pay for something.” *Id.* “If this [denial] happens after you’ve had the medical service and a claim has been submitted, it’s called a claim denial.” *Id.* “Insurers also sometimes state ahead of time that they won’t pay for a particular service, during the pre-authorization process . . .” *Id.*

³⁹ See Trisha Torrey, *Why Health Insurers Deny Coverage for Care a Healthcare Provider Recommends*, VERYWELL HEALTH (Feb. 26, 2020), https://www.verywellhealth.com/health-insurer-vs-doctor-care-2615095 [https://perma.cc/U5D2-K5NQ] [hereinafter Torrey, *Why Health Insurers Deny Coverage*]. “Your insurer wants to make money.” *Id.*; see also Elisabeth Rosenthal, *Insurance Policy: How an Industry Shifted from Protecting Patients to Seeking Profit*, STAN. MED. (May 19, 2017), https://stanmed.stanford.edu/2017spring/how-health-insurance-changed-from-protecting-patients-to-seeking-profit.html [https://perma.cc/8K5Z-3RMG] (explaining how health insurance industry switched from protecting patients to seeking profit); *How U.S. Health Insurance Works*, *supra* note 35. “Insurance companies . . . have studied risk extensively, and their goal is to collect enough premium to cover medical costs of the enrollees.” *Id.*

⁴⁰ See Torrey, *Why Health Insurers Deny Coverage*, *supra* note 39. “Denial of care is a form of healthcare rationing.” *Id.* “The insurer or payer hopes to take in far more money than they pay out.” *Id.* Healthcare rationing occurs when insurers make assessments about whether a treatment is the most cost-effective before providing coverage. *Id.*; see also Trisha Torrey, *How Healthcare Rationing Works*, VERYWELL HEALTH (Mar. 4, 2020), https://www.verywellhealth.com/what-is-healthcare-rationing-2615389 [https://perma.cc/U8RU-W2NE] (defining healthcare rationing) [hereinafter Torrey, *How Healthcare Rationing Works*].

⁴¹ See John Kruzel, *No, it was Not Illegal to Profit off U.S. Healthcare Before a Nixon-era Law*, POLITIFACT (May 1, 2019), https://www.politifact.com/factchecks/2019/may/01/blog-posting/no-it-was-not-illegal-profit-us-healthcare-nixon-e/#:~:text=%22Did%20you%20know%20that%20before,passed%20by%20Nixon%20changed%20everything.%22 [https://perma.cc/57TZ-QX8X] (explaining how HMO Act of 1973 made healthcare industry more commercially driven).

⁴² See Rosenthal, *supra* note 39 (describing how insurers have spent less on care and more on marketing and lobbying).

⁴³ See Ed Leefeldt, *Health Insurer Denials May be Making Americans Sicker*, CBS NEWS (Aug. 23, 2017, 5:30 AM) https://www.cbsnews.com/news/health-insurer-denials-may-be-making-americans-sicker/ [https://perma.cc/VES7-X5KC] (discussing how coverage denials can worsen health conditions).

individuals without medications or treatment.⁴⁴ As a result, disagreements between doctors, pharmaceutical companies, and insurers have intensified over the level of involvement insurance companies should have in determining appropriate patient care.⁴⁵

III. Facts

A. Insurance Coverage and Denials

Insurance companies affect patient care through their influence on drug and treatment prices and their ability to determine which prescriptions and procedures to cover.⁴⁶ Insurers often weigh factors such as effectiveness, safety, quality, and cost-effectiveness when deciding whether or not to provide coverage.⁴⁷ Despite companies' consideration of the same aforementioned factors, out-of-pocket costs and coverage vary

⁴⁴ See Anastassia Gliadkovskaya, *Study Examines Differences in Coverage Denials for Traditional Medicare*, *MA*, FIERCE HEALTHCARE (Jan. 7, 2022, 10:35 AM), <https://www.fiercehealthcare.com/payer/health-affairs-study-medicare-coverage-denials-more-common-than-medicare-advantage> [<https://perma.cc/7RZU-YQZY>] (explaining some reasons for coverage denials); see also Leefeldt, *supra* note 43.

⁴⁵ See *id.*

[There is an] ongoing tug of war between doctors, pharmaceutical companies and insurers over just how much insurers should be involved in the decision-making role for patient care. Doctors often argue that they should decide a course of treatment, but insurers say they have to pay the bills and they can't make money in the current health-exchange market.

Id.

⁴⁶ See Rachel Garfield et al., *The Uninsured and the ACA: A Primer – Key Facts About Health Insurance and the Uninsured Amidst Changes to the Affordable Care Act*, KFF (Jan. 25, 2019), <https://www.kff.org/report-section/the-uninsured-and-the-aca-a-primer-key-facts-about-health-insurance-and-the-uninsured-amidst-changes-to-the-affordable-care-act-how-does-lack-of-insurance-affect-access-to-care/> [<https://perma.cc/Q8QH-YQC9>]. “Health insurance makes a difference in whether and when people get necessary medical care, where they get their care, and ultimately, how healthy they are.” *Id.*; see also Familydoctor.org Editorial Staff, *supra* note 32. “Insurance companies determine what tests, drugs and services they will cover.” *Id.*; Grace-Marie Turner, *Studies Show U.S. Patients Are Being Denied Access to Life-Saving Drugs*, *FORBES* (Mar. 30, 2017, 3:27 PM), <https://www.forbes.com/sites/gracemarieturner/2017/03/30/studies-show-u-s-patients-are-being-denied-access-to-life-saving-drugs/?sh=277afd182102> [<https://perma.cc/JM2X-E8DC>]. “Whether patients are required to ‘fail first’ on generic drugs before newer and better drugs can be prescribed or because of convoluted prior authorization requirements, patients are being denied treatments their doctors believe would be best for them.”

Id.

⁴⁷ See Tom Murphy, *How Do Insurers Decide What Medicines to Pay For?*, *AP NEWS* (Mar. 17, 2017), <https://apnews.com/article/0a94d0c12137470eb1787db87fabd75f> [<https://perma.cc/3EX3-MEML>]. “Insurers . . . look first at how well the drug works—not its cost—when they decide whether to cover the latest treatments . . .” *Id.*; see also Ana Gascon Ivey, *A Guide to Medication Formularies*, *GOODRX* (May 19, 2020), <https://www.goodrx.com/insurance/health-insurance/medication-formulary> [<https://perma.cc/4MMH-DHQQ>]. “Typically, a team of medical professionals approves . . . drugs . . . based on safety, quality, and cost-effectiveness.” *Id.*; Familydoctor.org Editorial Staff, *supra* note 32.

among insurance providers.⁴⁸ For example, some insurance companies may choose not to cover a certain drug while other companies do, or some companies may require that individuals meet specific qualifications before the company will provide coverage for a drug or treatment.⁴⁹ In addition to coverage differences based on insurance provider, drug prices also vary between providers as costs depend on each plan's premiums, deductibles, and coinsurance rates.⁵⁰ Given the significant control that insurance companies exercise over coverage and cost decisions, insurers can essentially dictate who does, and who does not, have access to certain medications and treatments.⁵¹

⁴⁸ See Laura Entis, *Why Does Medicine Costs So Much? Here's How Drug Prices Are Set*, TIME (Apr. 9, 2019, 10:00 AM), <https://time.com/5564547/drug-prices-medicine/> [<https://perma.cc/XXK7-4PAG>] (explaining what consumers pay based on the terms of an insurance plan); see also *What Is Prior Authorization & Why Do Insurance Companies Require It?*, AHP (May 22, 2021), <https://www.ahpca.com/what-is-prior-authorization-why-do-insurance-companies-require-it/> [<https://perma.cc/9LM7-JFUC>] (describing how requirements vary by insurer and pre-authorization requirements vary by treatment and medication).

⁴⁹ See *Understanding Prescription Coverage*, OWN YOUR HEALTH, <https://www.ownyourhealthwa.org/selecting-a-health-plan/understanding-prescription-coverage/> [<https://perma.cc/4JNZ-6MU6>] (last visited Nov. 27, 2022). "Every health insurance plan comes with prescription drug coverage, but not every plan covers every medication." *Id.*; see also Ivey, *supra* note 47. "Sometimes health plans choose not to cover a prescription drug. They do this if: the drug has a generic version; the drug is considered less effective than other, similar drugs; the drug is as effective as other, similar drugs but costs much more." *Id.*; Murphy, *supra* note 47. "Some payer coverage decisions come with qualifications like a requirement that patients meet specific requirements or try other treatments first." *Id.*

⁵⁰ See Entis, *supra* note 48; see also Jamison Chung et al., *Regulating Prescription Drug Costs*, THE REGULATORY REVIEW (Oct. 17, 2020), <https://www.theregreview.org/2020/10/17/saturday-seminar-regulating-prescription-drug-costs/> [<https://perma.cc/X23L-BW3T>] (describing how drug companies set prices but insurers determine how much patients pay); *Understanding Drug Tiers*, PATIENT ADVOCATE FOUNDATION, <https://www.patientadvocate.org/explore-our-resources/understanding-health-insurance/understanding-drug-tiers/> [<https://perma.cc/7ELV-MQV9>] (last visited Nov. 27, 2022). "Many plans determine what the patient costs will be by putting drugs into four tiers." *Id.*

Tier 1 . . . offer the lowest co-payment and are often generic version of brand name drugs; Tier 2 . . . offer a medium co-payment and are often brand name drugs that are usually more affordable; Tier 3 . . . have the highest co-payment and are often brand-name drugs that have a generic version available; Tier 4 . . . are considered specialty drugs that are typically used to cover serious illness.

Id.

⁵¹ See Garfield et al., *supra* note 46; see also Christy Ford Chapin, *Why Insurance Companies Control Your Medical Care*, THE CONVERSATION (Oct. 4, 2016, 6:10 AM), <https://theconversation.com/why-insurance-companies-control-your-medical-care-62540> [<https://perma.cc/AZ9Q-63SR>] (explaining cost and quality issues resulting from insurance companies' involvement in the healthcare system); Joanne Finnegan, *Who's Calling the Shots? Doctors Worry About Insurers Overriding Their Treatment Decisions*, FIERCE HEALTHCARE (Oct. 30, 2018, 3:27 PM), <https://www.fiercehealthcare.com/practices/who-s-calling-shots-doctors-worry-insurers-overriding-their-treatment-decisions> [<https://perma.cc/N6EL-43E8>] (describing how insurance personnel can override medical professionals' judgments).

While insurance companies typically deny coverage for some procedures and prescriptions, medical claim and coverage denials have recently increased.⁵² Many of these denials stem from insurance companies' desire for profit.⁵³ These profit-driven claim denials subsequently create barriers that render both lifesaving and quality-of-life-improving medications and treatments inaccessible.⁵⁴ Although beneficiaries may appeal adverse coverage decisions, an appeal does not guarantee the reversal of a denial.⁵⁵

⁵² See Matthew Gavidia, *Medical Claim Denial Rates Rising, Highest in Initial COVID-19 Hotspots*, AM. J. OF MANAGED CARE (Jan. 21, 2021), <https://www.ajmc.com/view/medical-claim-denial-rates-rising-highest-in-initial-covid-19-hotspots> [<https://perma.cc/QWW7-2HCV>]. "Compared with 2016, the third quarter of 2020 shows a 23% increase in total medical claim denials, marking a 11.1% increase in the national rate of claims denied upon initial submission." *Id.*; see also Maria Clark, *30+ Mind-Boggling Health Insurance Claim Denial Statistics*, ETACTICS (Dec. 28, 2021), <https://etactics.com/blog/health-insurance-claim-denial-statistics> [<https://perma.cc/QVX9-MWMV>] (explaining how the COVID-19 pandemic has led to more denials).

⁵³ See *How Are Prescription Drug Prices Determined?*, AM. MED. ASS'N (Apr. 9, 2019), <https://www.ama-assn.org/delivering-care/public-health/how-are-prescription-drug-prices-determined> [<https://perma.cc/LUZ9-CBX9>] (describing how health insurance companies make decisions based on maximizing profits); see also *Healthcare Continues to be Unaffordable as Prescription Drug Prices Rise in 2021*, PA. HEALTH ACCESS NETWORK (Mar. 30, 2021), <https://pahealthaccess.org/healthcare-continues-to-be-unaffordable-as-prescription-drug-prices-rise-in-2021/> [<https://perma.cc/VW9N-WETC>] (explaining that drug companies look to increase their profits at the expense of individuals).

⁵⁴ See Familydoctor.org Editorial Staff, *supra* note 32 (explaining how patients will have to pay for denied treatments); see also *Health and Prescription Medicine Insurance Denials*, HYPERSOMNIA FOUND.ORG, <https://www.hypersomniafoundation.org/health-insurance-denials/> [<https://perma.cc/X6US-N6PY>] (last visited Nov. 27, 2022) (noting coverage denials for hypersomnia medications); see generally Penn Today Staff, *Despite their Efficacy, Life-Saving Drug Prescriptions are Denied by Insurers*, PENN TODAY (June 7, 2018), <https://penntoday.upenn.edu/news/despite-their-efficacy-life-saving-drug-prescriptions-are-denied-insurers> [<https://perma.cc/JK7G-UWLR>] (describing inaccessibility to antiviral drugs due to denials); *Access to Life-Saving Medications is Being Denied*, THE MENDED HEARTS, INC., <https://mendedhearts.org/access-life-saving-medications-denied/> [<https://perma.cc/2ST6-LWCA>] (last visited Nov. 27, 2022) (discussing coverage denials for PCSK9 inhibitors); *Half of Hepatitis C Patients with Private Insurance Denied Life-Saving Drugs*, PENN MED. NEWS (June 7, 2018), <https://www.pennmedicine.org/news/news-releases/2018/june/half-of-hepatitis-c-patients-with-private-insurance-denied-life-saving-drugs> [<https://perma.cc/TTA6-WTYS>] (noting coverage denials for life-saving hepatitis C drugs); Matthew Bakko & Shanna Kattari, *Transgender-Related Insurance Denials as Barriers to Transgender Healthcare: Differences in Experience by Insurance Type*, 35 J. GEN. INTERN. MED. 1693 *passim* (2020) (discussing denials for gender-affirming care); Michelle Andrews, *The High Cost of Sex: Insurers Often Don't Pay for Drugs to Treat Problems*, KHN (Feb. 19, 2019), <https://khn.org/news/the-high-cost-of-sex-insurers-often-dont-pay-for-drugs-to-treat-problems/> [<https://perma.cc/W5AW-GCNS>] [hereinafter Andrews, *The High Cost of Sex*] (describing coverage denials for sex-related drugs).

⁵⁵ See *Denials / Appeals: What to Do When Your Insurance Company Denies You Coverage*, JD RF, <https://www.jdrf.org/t1d-resources/living-with-t1d/insurance/insurance-denials-appeals/> [<https://perma.cc/NH8W-JTYE>] (last visited Nov. 2, 2022); see also Michelle Andrews, *Appealing An Insurer's Denial Is Often A Good Strategy*, KHN (June 20, 2011), <https://khn.org/news/michelle-andrews-on-appealing-insurers-denial/#:~:text=Whether%20you're%20insured%20by,to%2059%20percent%20of%20cases> [<https://perma.cc/6UNF-BZS3>] [hereinafter Andrews, *Appealing An Insurer's Denial*]. "Claim denial rates vary significantly by insurer . . ." *Id.* A "[s]tudy found that consumers were successful in appeals filed with insurers in 39 percent to 59 percent of cases." *Id.*; Schoen, *supra* note 3 (presenting data on coverage denial rates).

Without a successful appeal, many individuals must pay out of pocket to obtain their medications or receive treatment.⁵⁶ Given the prohibitively high costs of many prescriptions and care, beneficiaries frequently forego denied care altogether.⁵⁷

B. Demographics and Insurance Coverage

The structure of the American healthcare system has created wide disparities in insurance coverage.⁵⁸ These inequalities disproportionately impact people of color and low-income individuals, particularly because these population subgroups are significantly more likely than their counterparts to be uninsured.⁵⁹ While the passage of the Affordable Care Act (“ACA”) helped to narrow these coverage disparities, the ACA did not fully resolve this issue.⁶⁰ As a result, people of color and low-income individuals remain uninsured at higher rates and continue to have limited access to care, which results in members of these groups foregoing care and experiencing worse health outcomes.⁶¹ In

⁵⁶ See *Denials / Appeals: What to Do When Your Insurance Company Denies You Coverage*, *supra* note 55. “If you’ve exhausted all the levels of the appeal and are still met with a denial, the other alternative is to find help covering your out-of-pocket costs for the medication or treatment you received.” *Id.*

⁵⁷ See S. Vincent Rajkumar, *The High Cost of Prescription Drugs: Causes and Solutions*, BLOOD CANCER J. (June 23, 2020), <https://www.nature.com/articles/s41408-020-0338-x> [<https://perma.cc/5XWR-BHCY>]. “Approximately 25% of Americans find it difficult to afford prescription drugs due to high out-of-pocket costs.” *Id.*; see also *How are Prescription Drug Prices Determined?*, *supra* note 53. “Prescription drug price increases can lead some patients to not be able to afford critical medicine, causing them to skip doses of their medications or split pills, or force them to abandon treatment all together.” *Id.*; *The High Price of Life-saving Drugs Makes it Impossible for Millions of People Around the World to Afford their Medicines – While Drug Companies Make Record Profits*, HEALTH GAP, <https://healthgap.org/issues/access-to-medicines/> [<https://perma.cc/FL3Q-PL5A>] (last visited Nov. 27, 2022); Ginger Skinner, *As Drug Prices Increase, Quality of Life Goes Down*, CR CONSUMER REPORTS, (June 21, 2016), <https://www.consumerreports.org/drugs/as-drug-prices-increase-quality-of-life-goes-down/> [<https://perma.cc/CD8G-K9YC>].

⁵⁸ See James Kirby & Toshiko Kaneda, *Unhealthy and Uninsured: Exploring Racial Differences in Health and Health Insurance Coverage Using a Life Table Approach*, 47 DEMOGRAPHY 1035-1037 (2010). “Millions of people in the United States do not have health insurance, and wide racial and ethnic disparities exist in coverage.” *Id.*

⁵⁹ See De-Chih Lee et al., *The Convergence of Racial and Income Disparities in Health Insurance Coverage in the United States*, 20 INT’L J. EQUITY HEALTH 3 (2021) (discussing the associations between income level, race, and insurance status); see also Kimberly Amadeo, *Health Care Inequality in the US*, THE BALANCE (Jan. 6, 2022), <https://www.thebalance.com/health-care-inequality-facts-types-effect-solution-4174842> [<https://perma.cc/7T76-362W>].

⁶⁰ See Samantha Artiga et al., *Health Coverage by Race and Ethnicity, 2010-2019*, KFF (July 16, 2021), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-by-race-and-ethnicity/> [<https://perma.cc/8ZTV-QQBN>] (discussing how the ACA did not eliminate disparities in health coverage); see also Nicole Rapfogel et al., *10 Ways the ACA Has Improved Health Care in the Past Decade*, CAP (Mar. 23, 2020), <https://www.americanprogress.org/article/10-ways-aca-improved-health-care-past-decade/> [<https://perma.cc/88HP-33QE>].

⁶¹ See Christen Linke Young, *There Are Clear, Race-Based Inequalities in Health Insurance and Health Outcomes*, BROOKINGS (Feb. 19, 2020), <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/02/19/there-are-clear-race-based-inequalities-in-health-insurance-and-health-outcomes/> [<https://perma.cc/CP4E-WGAC>]. “People of color are far

addition to this inequity, one study also found that insurers disproportionately denied coverage to employed minorities compared to their white counterparts.⁶²

Not only do race and socioeconomic status influence insurance coverage and denial rates, but age also plays a significant role.⁶³ Although the ACA requires insurance companies to comply with state and federal premium caps, older adults continue to face higher insurance costs because of their increased healthcare needs.⁶⁴ In addition to requiring older adults to pay higher premium costs, insurers—particularly private insurers—are more likely to deny coverage to older adults based on pre-existing or chronic conditions.⁶⁵

more likely to be uninsured in America” *Id.*; see also Artiga et al., *supra* note 60. “As of 2019, nonelderly AIAN, Hispanic, NHOPI, and Black people remained more likely to lack health insurance than their white counterparts. The higher uninsured rates among these groups largely reflects more limited rates of private coverage among these groups.” *Id.*; Kirby & Kaneda, *supra* note 58, at 1037. “[I]ndividuals without health insurance have poor access to medical care . . . are more likely to forgo preventative and routine care . . . are less likely to receive care for conditions . . . [and] . . . are more frequently hospitalized for conditions that are potentially avoidable.” *Id.*; Committee on Population Division of Behavioral and Social Sciences and Education, *Understanding Racial and Ethnic Differences in Health in Late Life: A Research Agenda*, NAT’L ACADEMIES PRESS (2004), https://www.ncbi.nlm.nih.gov/books/NBK24692/pdf/Bookshelf_NBK24692.pdf [<https://perma.cc/BV2Q-KU2D>].

⁶² See Adrienne B. Lent et al., *Racial/Ethnic Disparities in Health and Life Insurance Denial Due to Cancer among Cancer Survivors*, 19 INT’L J. ENV’T RSCH. PUB. HEALTH (special issue) 4 (2022). “Employed individuals who identified as Black and Other were significantly more likely to be denied insurance compared to employed Whites.” *Id.* at 7.

⁶³ See Elizabeth Walker, *How Age Impacts Your Insurance Costs*, PEOPLE KEEP (Dec. 17, 2020, 4:00 PM), <https://www.peoplekeep.com/blog/health-insurance-explained-how-age-impacts-your-insurance-costs> [<https://perma.cc/2QN2-CHU3>] (explaining how age is the most impactful factor in health insurance coverage); see generally Philip Moeller, *Private Insurers are Improperly Rejecting Medicare Drug Claims, Watchdog Finds*, PBS (Sept. 25, 2019, 3:47 PM), <https://www.pbs.org/newshour/economy/making-sense/private-insurers-are-improperly-rejecting-medicare-drug-claims-watchdog-finds> [<https://perma.cc/LBA2-PUE7>].

⁶⁴ See Louise Norris, *How Does Your Age Affect Your Health Insurance Premium?*, VERYWELL HEALTH (May 21, 2022), <https://www.verywellhealth.com/how-age-affects-health-insurance-premium-5087610>. “Under the Affordable Care Act (ACA) and subsequent regulations issued for its implementation, premiums for older enrollees with individual/family (non-group) and small group health coverage must be capped at no more than three times the premiums that apply to a 21-year-old.” *Id.* “Health insurance gets more expensive as we age . . . and it’s due to the fact that healthcare needs – and their associated expenses – also tend to increase with age.” *Id.*; see also Robin Townsend, *How Age Affects Health Insurance Costs*, VALUEPENGUIN (Aug. 23, 2022), <https://www.valuepenguin.com/how-age-affects-health-insurance-costs> [<https://perma.cc/C3U4-QM9E>]. “Older people pay higher premiums for health coverage because they typically need more medical care.” *Id.*

⁶⁵ See *Seniors Suffering*, CENTER FOR AMERICAN PROGRESS (Sept. 30, 2009), <https://www.americanprogress.org/article/seniors-suffering/#:~:text=Insurance%20companies%20deny%20coverage%20more%20for%20older%20people&text=These%20rates%20were%20higher%20than,those%20ages%2035%20to%2039> [<https://perma.cc/SSD5-MFBT>]. “Insurance companies are more likely to deny older Americans coverage in the individual market on the basis of “pre-existing conditions” because seniors are more likely to have at least one chronic condition.” *Id.*

C. Examples of Coverage Denials

Given the individualized reasons why patients may require specific medications or procedures, coverage denials affect patients in a variety of ways.⁶⁶ Some people may need a prescription drug or treatment to address a life-threatening disease or disability, while others may require care to manage medical issues that affect their quality of life.⁶⁷ Regardless of the reasons why a patient requires a medication or treatment, coverage denials can have devastating effects on a person's health and wellbeing.⁶⁸

In some situations, legislation prevents providers from denying insurance coverage to certain individuals.⁶⁹ For example, the ACA prohibits certain plans from denying coverage for pre-existing conditions, such as diabetes, and prevents insurers from

⁶⁶ See Gliadkovskaya, *supra* note 44 (discussing coverage denials for traditional Medicare); *see generally* COLO. COVERAGE DETERMINATIONS (2021), https://cdn1.brighthealthplan.com/docs/commercial-resources/2021_Annual_Colorado_Reporting.pdf [<https://perma.cc/J9T4-GQDR>] (last visited Sept. 19, 2022) (reporting coverage denials in Colorado during 2021).

⁶⁷ See Jen Christensen, *Family Can Sue Walgreens Over Woman's Death After Insurance Denial*, *Court Says*, CNN HEALTH (June 8, 2018, 9:10 AM), <https://www.cnn.com/2018/06/08/health/massachusetts-walgreens-lawsuit-bn/index.html> [<https://perma.cc/QW8U-R8GW>] (describing case in which patient was denied seizure medication); *see also* David Brushwood, *Patient Sues Over Denial of Coverage for Linezolid, but Case is Dismissed*, ONTHEDOCKET (May 2018), [https://www.pharmacytoday.org/article/S1042-0991\(18\)30587-5/pdf](https://www.pharmacytoday.org/article/S1042-0991(18)30587-5/pdf) [<https://perma.cc/M8XV-HKYP>] (discussing case in which a man was denied coverage for an antibiotic); Kate Ussin, *Daughter Fights Back After Her Father Was Denied Life-Saving Brain Surgery*, NEWS 5 CLEVELAND (Oct. 7, 2019, 7:51 AM), <https://www.news5cleveland.com/news/local-news/investigations/diagnosis-debt/daughter-fights-back-after-her-father-was-denied-life-saving-brain-surgery> [<https://perma.cc/XPZ5-UP7U>] (explaining situation where someone was denied life-saving brain surgery); Gianelli & Morris, *Insurance Denial of Reconstructive Surgery*, GMLAWYERS (Jan. 18, 2019), <https://www.gmlawyers.com/when-insurance-companies-deny-coverage-for-reconstructive-surgery/> [<https://perma.cc/NB2V-W9WT>] (discussing denials for reconstructive surgery); Helen Santoro, *The Pandemic Forced My Transgender Wife to Fight Our Insurer Over Hormones*, KHN (Oct. 5, 2021), <https://khn.org/news/article/transgender-care-hormone-treatment-insurance-battles-pandemic/> [<https://perma.cc/B89K-LESJ>] (addressing denial for hormone coverage); Elsabé Brits, *Stockout of Testosterone Injections Used By Transgender People*, GROUND UP (Feb. 7, 2019), <https://www.groundup.org.za/article/stockout-testosterone-injections-used-transgender-people/> [<https://perma.cc/M5JT-EJCR>] (discussing inaccessibility to hormone medication); *Sucraid*, RXLIST (June 6, 2018), <https://www.rxlist.com/sucraid-side-effects-drug-center.htm> [<https://perma.cc/Z3Z9-ZKA3>] (explaining a medication used to improve quality of life).

⁶⁸ See Christensen, *supra* note 67 (explaining how coverage denial led to death); *see also* Brushwood, *supra* note 67 (discussing coverage denial that led to partial amputation).

⁶⁹ See *Health Insurance Update*, AMERICAN DIABETES ASSOCIATION, <https://www.diabetes.org/tools-support/health-insurance/health-insurance-update#:~:text=Health%20insurance%20protections,existing%20condition%2C%20such%20as%20diabetes> [<https://perma.cc/N7LG-GQNK>] (last visited Nov. 27, 2022); *see also Court Affirms Affordable Care Act's Protections for Transgender Individuals Seeking Gender-Affirming Treatment*, CORREIA & PUTH, <https://www.correiaputh.com/news/court-affirms-affordable-care-acts-protections-for-transgender-individuals-seeking-gender-affirming-treatment/> [<https://perma.cc/8SHU-CQ79>] (last visited Nov. 27, 2022); Patient Protection and Affordable Care Act, *supra* note 32.

denying transgender individuals gender-affirming medical treatment.⁷⁰ While these protections are specifically beneficial to people with pre-existing conditions and transgender individuals, these protections do not extend to coverage for all types of prescription drugs or treatments that beneficiaries may require.⁷¹ Due to the limited application of these protections, many insured and uninsured Americans face adverse health outcomes due to insurance providers' refusals to provide coverage for all necessary prescriptions.⁷²

These coverage denials often result in devastating consequences.⁷³ In one instance, a woman named Yarushka Rivera was denied coverage by her insurer, MassHealth, for Topamax, a drug that managed her life-threatening epileptic seizures.⁷⁴ The woman's family could not afford to pay the out-of-pocket cost to obtain the drug following the denial.⁷⁵ After going without her medication, the woman had three seizures—the last of which was fatal.⁷⁶ In another case, an insurer denied a patient coverage for Linezolid, an antibiotic used to treat bacterial infections.⁷⁷ As a result of this denial, the individual's infections worsened, which led to the partial amputation of his feet.⁷⁸ In both of the aforementioned situations, the patients required prescriptions to treat their serious ailments, yet their insurers denied them coverage based on pre-

⁷⁰ See *Health Insurance Update*, *supra* note 69. "Starting in 2014, job-based plans and new individual plans aren't allowed to deny coverage, charge more, or refuse to cover treatments due to a pre-existing condition, such as diabetes." *Id.*; see also *Court Affirms Affordable Care Act's Protections for Transgender Individuals Seeking Gender-Affirming Treatment*, *supra* note 69. "[T]he Affordable Care Act (ACA) prohibits health care providers from denying transgender individuals gender affirming medical treatment." *Id.*

⁷¹ See *Affordable Care Act Preventative Items and Services*, *supra* note 32. "The Affordable Care Act (ACA) makes certain preventative medications available . . . at no cost." *Id.*

⁷² See Christensen, *supra* note 67; see also Brushwood, *supra* note 67.

⁷³ See Christensen, *supra* note 67; see also Brushwood, *supra* note 67.

⁷⁴ See Christensen, *supra* note 67. "Yarushka Rivera . . . had epilepsy and took a drug called Topamax to manage her life-threatening seizures. Her insurer, MassHealth, covered the drug . . . until June 2009 without any trouble. A month later . . . MassHealth wouldn't cover the cost of the drug without a doctor's pre-authorization for insurance coverage." *Id.*

⁷⁵ See *id.* "[T]hey would have to pay \$399.99 out of pocket for the crucial medication – money they did not have" *Id.*

⁷⁶ See Christensen, *supra* note 67. "Without her medicine, Rivera had three seizures. The third was fatal." *Id.*

⁷⁷ See Brushwood, *supra* note 67. "[The patient] had [been] improperly denied coverage for linezolid prescribed for the patient" *Id.*; see also *Linezolid – Uses, Side Effects, and More*, WEDMD, <https://www.webmd.com/drugs/2/drug-18168-5154/linezolid-oral/linezolid-suspension-oral/details#:~:text=Linezolid%20is%20an%20antibiotic%20used,as%20common%20cold%2C%20flu> [https://perma.cc/89S6-KKA4] (last visited Nov. 27, 2022). "Linezolid is an antibiotic used to treat certain serious bacterial infections." *Id.*; see generally *Impact of Preemptive Laws on Public Health*, APHA (Nov. 3, 2015), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/11/11/08/impact-of-preemptive-laws-on-public-health> [https://perma.cc/94LH-2DXV].

⁷⁸ See Brushwood, *supra* note 67. "[D]ecision . . . exacerbate[ed] his infections . . . leading to the partial amputation of his feet." *Id.*

authorization requirements.⁷⁹ Consequently, these cases highlight the significant power that insurance providers wield over patient health outcomes.⁸⁰

D. International Comparisons of Insurance Coverage

Although the United States boasts some of the finest hospitals and physicians in the world, the nation's healthcare system is unfair, and many inequities exist due to economic and political influences.⁸¹ Compared to other developed nations, the United States struggles significantly with high spending, cost-containment, and citizen coverage.⁸² Some of the most obvious reasons for these problems is the lack of a universal healthcare

⁷⁹ See Christensen, *supra* note 67 (explaining how an individual needed medication to treat seizures); see also Brushwood, *supra* note 67 (describing how an individual required an antibiotic to treat his infection).

⁸⁰ See Christensen, *supra* note 67; see also Brushwood, *supra* note 67. "Apparently, the drug was subject to a prior authorization requirement under the patient's plan" *Id.*

⁸¹ See Chris Slaybaugh, *International Healthcare Systems: The US Versus the World*, AHP, https://axenehp.com/wp-content/uploads/2017/08/ahp_inspire_01_international_systems_FINAL_web.pdf [<https://perma.cc/MP59-PJ26>] (last visited Nov. 27, 2022). "The US has some of the best doctors and hospitals in the world, for those who can afford them." *Id.* at 9; see also Randall Ellis et al., *Comparisons of Health Insurance Systems in Developed Countries*, ENCYCLOPEDIA OF HEALTH ECON. 1, 16 (2014), <https://www.bu.edu/law/files/2016/01/EllisPaper.pdf> [<https://perma.cc/N8RU-HSGC>]. "[T]he US health care system is arguably the most unfair health care system, with consumers who are poor or ill with chronic illnesses paying a high share of their income for medical care." *Id.*; Peter Ubel, *Why Is Healthcare So Expensive? Blame the Lobbyists*, FORBES (Apr. 9, 2021, 11:17 AM), <https://www.forbes.com/sites/peterubel/2021/04/09/why-is-healthcare-so-expensive-blame-the-lobbyists/?sh=7800e58832e7> [<https://perma.cc/RTL6-59HV>]; *Political Divide: Why Health Care is the Issue on Which Americans May Never Agree*, VANDERBILT UNIVERSITY (April 10, 2012, 12:17 PM), <https://news.vanderbilt.edu/2012/04/10/health-care-politics/> [<https://perma.cc/8LBS-HRKF>]; *8 Policy and Political Issues That Will Impact Healthcare in 2021 and Beyond*, HEALTHPAY 24, <https://www.healthpay24.com/blog/policy-political-issues-impacting-healthcare-2021> [<https://perma.cc/85GC-Q35Y>] (last visited Nov. 27, 2022); *What's So Hard About Health Care Reform?*, HSPH, <https://www.hsph.harvard.edu/news/magazine/centennial-health-care-reform-hard/> [<https://perma.cc/PA3S-5N6W>] (last visited Nov. 27, 2022); Ryan Nunn et al., *A Dozen Facts About the Economics of the US Health-Care System*, BROOKINGS (Mar. 10, 2020), <https://www.brookings.edu/research/a-dozen-facts-about-the-economics-of-the-u-s-health-care-system/> [<https://perma.cc/M3FG-PS6J>]; *Taking the Pulse of Health Care and Politics*, ASH PUB'N (Sept. 2019), <https://ashpublications.org/ashclinicalnews/news/4660/Taking-the-Pulse-of-Health-Care-and-Politics> [<https://perma.cc/92DA-RCZK>]; *Cost of Insulin by Country 2022*, WORLD POPULATION REV, <https://worldpopulationreview.com/country-rankings/cost-of-insulin-by-country> [<https://perma.cc/434W-VH8M>] (last visited Nov. 27, 2022) (presenting data on international insulin prices).

⁸² See Slaybaugh, *supra* note 81, at 9. "The United States spends far more on health care than any other country." *Id.* "In the rest of the developed world . . . medical costs are rarely or never cited as a driver behind personal bankruptcy." *Id.* "The United States is also the only developed country where a significant number of citizens are permitted to be uninsured and where a person's employment can determine whether they have insurance and what insurance they have." *Id.*; see Ellis et al., *supra* note 81, at 16. "Cost containment is a huge issue in the US with such high spending in relation to its income." *Id.*; *Cost of Insulin by Country 2022*, *supra* note 81.

system and the lack of government regulation of prescription drug prices and treatment.⁸³ While scholars have studied other countries' healthcare systems and have suggested reforms to address the shortcomings within the American healthcare system, political and financial debates over healthcare spending have inhibited systematic reform.⁸⁴ Without fundamental change, Americans will continue to face barriers regarding accessibility to necessary drugs and treatments that save lives and improve quality of life.⁸⁵

IV. Analysis

Health insurance in America first originated as an honorable attempt to provide affordable access to health services and medical prescriptions, but over time, insurers deviated from this purpose.⁸⁶ For example, individuals used to have little choice in health

⁸³ See Jason Shvili, *10 Countries Without Universal Healthcare*, WORLDATLAS (May 30, 2020), <https://www.worldatlas.com/articles/10-notable-countries-that-are-still-without-universal-healthcare.html> [https://perma.cc/2MZM-2KGK]. "The United States remains the only country in the developed world without a system of universal healthcare." *Id.*; see also *US Healthcare System Overview – Background*, ISPOR, <https://www.ispor.org/heor-resources/more-heor-resources/us-healthcare-system-overview/us-healthcare-system-overview-background-page-1> [https://perma.cc/56DF-N5T3] (last visited Nov. 27, 2022); Chung et al., *supra* note 50. The author addresses how prescription drug prices are higher in the US than in other countries and that the U.S. government does not directly regulate or negotiate the price of drugs. *Id.*; *Understanding the Healthcare System in the UK*, INTERNATIONALINSURANCE.COM, <https://www.internationalinsurance.com/health/systems/uk.php> [https://perma.cc/K7Y5-GW64] (2022) (describing the UK's health system); Michael Monstra, *U.S. House Votes to Cap Insulin Cost at \$35 Per Month*, HEALIO NEWS (Nov. 19, 2021),

<https://www.healio.com/news/endocrinology/20211119/us-house-votes-to-cap-insulin-cost-at-35-per-month> [https://perma.cc/R47K-B3BL] (discussing a bill to cap insulin prices in the US).

⁸⁴ See *What's So Hard About Health Care Reform*, *supra* note 81; see also Matthew Fiedler & Christen Linke Young, *Current Debates in Health Care Policy: A Brief Overview*, BROOKINGS (Oct. 15, 2019), <https://www.brookings.edu/policy2020/votervital/current-debates-in-health-care-policy-a-brief-overview/> [https://perma.cc/A24W-QH2A] (explaining current debates in health care policy); *Universal Health Coverage*, WHO, https://www.who.int/health-topics/universal-health-coverage#tab=tab_1 [https://perma.cc/2JGM-XD2L] (last visited Nov. 27, 2022) (defining universal healthcare); see generally Stuart M. Butler, *Achieving an Equitable National Health System for America*, BROOKINGS (Dec. 9, 2020), <https://www.brookings.edu/research/achieving-an-equitable-national-health-system-for-america/> [https://perma.cc/X3FC-SVLW].

⁸⁵ See Shvili, *supra* note 83. "[M]illions of Americans . . . struggle to pay medical bills and face the choice of either financial ruin or going without the healthcare they need." *Id.*; see also Neighmond, *supra* note 3; *Prescription Drugs and the Affordable Care Act – 10 Years Later*, B.U. (Feb. 27, 2020), <https://www.bu.edu/questrom/2020/02/27/the-acas-effect-on-the-prescription-drug-market-and-what-might-come-next/> [https://perma.cc/HF3B-BQ5B]; Nicole Rapfogel & Thomas Waldrop, *Congress Can Act Now to Lower Drug Costs by Allowing Medicare to Negotiate Prices*, CAP (Feb. 1, 2022), <https://www.americanprogress.org/article/congress-can-act-now-to-lower-drug-costs-by-allowing-medicare-to-negotiate-prices/> [https://perma.cc/DP9T-UV2F].

⁸⁶ See MORRISEY, *supra* note 8. "Private health insurance in the United States began as efforts by hospital and physician providers to deal with the revenue consequences of the Great Depression." *Id.* at 19; see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 8; Rosenthal, *supra* note 39. "The original purpose of health insurance was to mitigate financial disasters brought about by a serious illness, such as losing your home or your job . . ." *Id.*; Turner, *supra* note 46. "We have patients who have had their disease under control for years because they have been on the right drug, but we are forced to switch them to another drug because of a payer decision and it is very often harmful to the patient." *Id.*

insurance coverage, and insurers imposed limits on the specific services or prescriptions that insurers would cover.⁸⁷ In contrast, individuals today have many different options for health insurance coverage, and a majority of carriers cover extensive lists of medications and procedures.⁸⁸ Regardless of the present options for insurance coverage, however, a large proportion of Americans remain uninsured.⁸⁹ Similarly, even with the ability to choose between insurance plans and payment options, insurers deny beneficiaries coverage for medications and procedures at alarmingly high rates.⁹⁰ While the creation of health insurance, and its expansion over time, has undeniably resulted in a number of positive benefits, both insured and uninsured Americans still face significant barriers to healthcare.⁹¹ This dynamic begs the question: why purchase health insurance at all?⁹²

A. Why Insurance Coverage is Important

While the health insurance market in the United States presents several concerns, insurance coverage undeniably provides many benefits.⁹³ Coverage often makes medical treatment less expensive, incentivizes people to stay healthy, and protects individuals against the financial risks associated with medical emergencies and serious illness.⁹⁴ Additionally, health insurance covers most essential health benefits and, in most cases, provides free preventative care to beneficiaries.⁹⁵ Other potential benefits of health insurance coverage include a reduction in racial and ethnic disparities in receiving medical care, an increase in positive health outcomes, better disease management, and longer life expectancy.⁹⁶ These protections and positive outcomes provide clear evidence in support of individuals obtaining health coverage.⁹⁷ Despite the fact that health insurance provides

⁸⁷ See MORRISEY, *supra* note 15; see also *History of Health Insurance and 2019 & Beyond Projections*, *supra* note 15.

⁸⁸ See Fernandez, *supra* note 19, at 8; see also Fernandez, *supra* note 23, at 11; *Health Coverage Options if You're Unemployed*, *supra* note 23; Fontinelle, *supra* note 23; Familydoctor.org Editorial Staff, *supra* note 32.

⁸⁹ See *Number of People with Health Insurance in the United States from 1990 to 2021*, *supra* note 2; see also Keisler-Starkey, *supra* note 2.

⁹⁰ See Schoen, *supra* note 3. “The data showed an alarmingly high rate of denial – 24 percent, nearly one in four – among consumers . . .” *Id.*; see also Leefeldt, *supra* note 43; Penn Today Staff, *supra* note 54; *Access to Life-Saving Medications is Being Denied*, *supra* note 54; *Half of Hepatitis C Patients with Private Insurance Denied Life-Saving Drugs*, *supra* note 54; BAKKO & KATTARI, *supra* note 54; Andrews, *The High Cost of Sex*, *supra* note 54; *Health and Prescription Medicine Insurance Denials*, *supra* note 54; Ussin, *supra* note 67; Gianelli & Morris, *supra* note 67.

⁹¹ See Schoen, *supra* note 3. “[I]nsurance coverage alone is no guarantee that patients will have access to quality healthcare when they most need it.” *Id.*; see also Neighmond, *supra* note 3; KIRBY & KANEDA, *supra* note 61.

⁹² See Schoen, *supra* note 3; see also Neighmond, *supra* note 3; KIRBY & KANEDA, *supra* note 61.

⁹³ See *Why Health Insurance Might Be More Important Than You Think*, *supra* note 18 (discussing the benefits of health insurance coverage).

⁹⁴ *Id.*

⁹⁵ *Health Insurance: How It Protects You from Health and Financial Risks*, *supra* note 18 (discussing how health insurance offers protection for health and financial risks).

⁹⁶ See COMMITTEE ON THE CONSEQUENCES OF UNINSURANCE, *supra* note 18, at 1-2 (explaining committee findings regarding the effects of insurance on Americans’ health).

⁹⁷ See *Why Health Insurance Might Be More Important than You Think*, *supra* note 18; see also *Health Insurance: How It Protects You from Health and Financial Risks*, *supra* note 18; COMMITTEE ON THE CONSEQUENCES OF UNINSURANCE, *supra* note 18, at 1-2.

a net benefit, systematic flaws within the American healthcare system, such as coverage disparities and inaccessibility, significantly undermine the benefits associated with coverage.⁹⁸

B. Flaws in the American Healthcare System

Many of the shortcomings found within the modern American healthcare system, including inaccessibility of coverage, are directly linked to political and economic factors.⁹⁹ For example, politics plays an influential role in health-related decision-making since political considerations impact healthcare related policies, legislation, and spending.¹⁰⁰ Furthermore, different political administrations tend to have conflicting views on issues related to insurance coverage and accessibility.¹⁰¹ These diverging opinions directly affect healthcare equity and accessibility, especially given the polarizing nature of healthcare within American political discourse.¹⁰² The influence of politics on healthcare policy is an exceptionally pressing issue because political beliefs can directly affect treatment and coverage decisions.¹⁰³ For example, self-interested healthcare companies can use lobbyists to substantially influence healthcare policies and reforms by employing the lobbyists to make large donations to the campaigns of legislators and other politicians.¹⁰⁴ These lawmakers in turn promote the lobbyists' specific interests as opposed to the broader healthcare interests of the American people.¹⁰⁵

Another reason for these inadequacies is the influence that insurance and drug companies exercise over costs and coverage.¹⁰⁶ Due to a lack of governmental regulation, drug companies may set prescription prices while insurance companies may determine what prescriptions to cover and what beneficiaries must pay to receive that coverage.¹⁰⁷ These economic decisions are comparable to healthcare-related political decisions in that, like healthcare lobbyists, drug and insurance companies act in their own self-interest.¹⁰⁸ Not only do insurance companies act in their own self-interest when determining

⁹⁸ See generally Leefeldt, *supra* note 43.

⁹⁹ See Ubel, *supra* note 81; Nunn et al., *supra* note 81; *Taking the Pulse of Health Care and Politics*, *supra* note 81.

¹⁰⁰ See 8 *Policy and Political Issues That Will Impact Healthcare in 2021 and Beyond*, *supra* note 81 (addressing the ways that policies and political issues impact healthcare).

¹⁰¹ VANDERBILT UNIVERSITY, *supra* note 81 (discussing differences in partisan opinions related to health care).

¹⁰² See *Taking the Pulse of Health Care and Politics*, *supra* note 81 (explaining the polarizing nature of certain health-related issues).

¹⁰³ See *Taking the Pulse of Health Care and Politics*, *supra* note 81. “[R]ecent research has demonstrated that an individual doctor’s political beliefs influence his or her choice of specialty and could even affect interactions with patients and treatment decisions.” *Id.*; see also VANDERBILT UNIVERSITY, note 81.

¹⁰⁴ See Ubel, *supra* note 81. “[T]he healthcare industry *really suffers* if politicians combat those prices, so they urgently lobby the government, pouring enormous sums of money into the re-election campaigns of legislators who protect their interests.” *Id.*

¹⁰⁵ See *id.*

¹⁰⁶ See Chapin, *supra* note 51; see also Turner, *supra* note 46; Garfield et al., *supra* note 46.

¹⁰⁷ See Chung et al., *supra* note 50; RAJKUMAR, *supra* note 57; *The High Price of Life-Saving Drugs Makes it Impossible for Millions of People Around the World to Afford Their Medicines – While Drug Companies Make Record Profits*, *supra* note 57.

¹⁰⁸ See Chung et al., *supra* note 50; Garfield et al., *supra* note 46; see also Ubel, *supra* note 81.

deductibles and premium rates, but these companies may also implement their own pre-authorization requirements and deny coverage for medications or procedures, even when a beneficiary's doctor prescribes or recommends the treatment.¹⁰⁹ Given that patients and physicians are not usually included in insurance companies' decision-making processes, beneficiaries' access to healthcare lies in the hands of their insurance providers.¹¹⁰ These economically-motivated decisions ultimately create barriers to accessing both medications and medical services, which negatively impact patient health and wellbeing.¹¹¹

C. How Flaws in the System Affect Americans

An unfortunate reality is that flaws within the American healthcare system disproportionately affect low-income individuals, people of color, and older adults.¹¹² For example, these groups are more likely to suffer from chronic or serious illnesses that require more frequent and extensive medical care.¹¹³ Although many poor individuals receive health insurance coverage through Medicaid,¹¹⁴ many low-income individuals, particularly the working poor, do not qualify for government-funded health insurance programs.¹¹⁵ Without Medicaid coverage or assistance from other programs, individuals fall within a "coverage gap" and are subsequently left uninsured and unable to afford healthcare.¹¹⁶ This coverage inequality ultimately perpetuates a cycle of the poor getting sick and the sick becoming poorer, which results in ongoing illness and financial hardship, with no means to remedy these detrimental results.¹¹⁷

People of color are similarly affected by healthcare inequality.¹¹⁸ People of color are statistically more likely to receive care in nonoptimal settings, to lack continuity of care, and to experience worse health outcomes than their peers.¹¹⁹ Given these facts, obtaining health insurance coverage is particularly important for people of color.¹²⁰

¹⁰⁹ See Garfield et al., *supra* note 46; *What Is Prior Authorization & Why Do Insurance Companies Require It?*, *supra* note 48; Turner, *supra* note 46.

¹¹⁰ See AM. MED. ASS'N, *supra* note 53 (explaining how drug price negotiations often occur without patients or physicians); see also Finnegan, *supra* note 51; Entis, *supra* note 48; *Taking the Pulse of Health Care and Politics*, *supra* note 81; Garfield et al., *supra* note 46.

¹¹¹ See Finnegan, *supra* note 51. "Insurance practices are affecting doctors and compromising the health of patients" *Id.* "[T]he long-term health of . . . patients is being compromised so health plans can achieve short-term cost savings" *Id.*

¹¹² See LEE ET AL., *supra* note 59; see also Young, *supra* note 61; *Seniors Suffering*, *supra* note 65.

¹¹³ See Amadeo, *supra* note 59 (addressing health issues low-income adults struggle with).

¹¹⁴ See Rapfogel et al., *supra* note 60 (explaining the benefits of Medicaid coverage for low-income adults); see also Fernandez, *supra* note 27.

¹¹⁵ See Amadeo, *supra* note 59. "Many of the working poor don't qualify for Medicaid." *Id.*

¹¹⁶ See *id.* (explaining the lack of access to health insurance for low-income individuals); see also Reinberg, *supra* note 6 (describing how many Americans cannot afford their medications).

¹¹⁷ See Amadeo, *supra* note 59. "Those with poor health are likely to wind up in poverty. It is difficult to find and maintain a high-paying job if you are chronically ill." *Id.*

¹¹⁸ See LEE ET AL., *supra* note 59; see also Artiga et al., *supra* note 60; Young, *supra* note 61; KIRBY & KANEDA, *supra* note 61.

¹¹⁹ See COMMITTEE ON POPULATION DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, *supra* note 61 (elaborating on the existence of differences in health between racial groups in the US).

¹²⁰ See COMMITTEE ON THE CONSEQUENCES OF UNINSURANCE, *supra* note 96.

Regrettably, people of color tend to have lower levels of insurance coverage, and, of individuals who do have insurance coverage, a significant proportion receive that coverage through programs like Medicaid.¹²¹ This disproportionate reliance on Medicaid raises concerns because Medicaid does not cover certain medical necessities, such as some prescription drugs, dental care, and long-term care, and because the scope of Medicaid benefits differ from state-to-state.¹²² As a result of this coverage and insurance structure, many people of color encounter barriers to medical treatment, even when individuals have some form of insurance coverage.¹²³

Like low-income individuals and people of color, older adults are more likely to be adversely affected by the American healthcare system.¹²⁴ Not only do older adults experience chronic illnesses and severe health conditions at higher rates, but older adults also require medical services more frequently than younger people.¹²⁵ While this is not an issue for elderly people with private insurance coverage or Medicare coverage, inaccessibility to coverage can have devastating effects on older Americans without any form of health insurance.¹²⁶ Without coverage, these elderly individuals must pay out-of-pocket to obtain medications or treatment.¹²⁷ Due to the fact that elderly Americans are more likely to be low-income, these individuals typically cannot afford to pay for these health-related necessities, and subsequently do not receive the care they desperately need.¹²⁸

Overall, individuals with low socioeconomic status, people of color, and older adults are more likely to suffer negative health consequences as a result of the structure

¹²¹ See LEE ET AL., *supra* note 59; see also Artiga et al., *supra* note 60; MACPAC, *supra* note 27 (discussing how more than half of Medicaid's beneficiaries identify as non-white).

¹²² See COMMITTEE ON POPULATION DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, *supra* note 61, at 98; see also *Policy Basics: Introduction to Medicaid*, *supra* note 27.

¹²³ See COMMITTEE ON POPULATION DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, *supra* note 61, at 92-103 (discussing racial and ethnic influence on barriers to health care); see also Reinberg, *supra* note 6 (emphasizing unaffordability of prescribed medications); Neighmond, *supra* note 3 (highlighting lack of health coverage for specific prescribed medications).

¹²⁴ See Townsend, *supra* note 64 (explaining why the elderly pay higher premiums); see also Norris, *supra* note 64 (discussing increased health premiums for elderly); *Seniors Suffering*, *supra* note 65 (explaining why older Americans are more likely to be denied coverage).

¹²⁵ See Townsend, *supra* note 64 (recognizing that older people typically need more medical care); see also *Seniors Suffering*, *supra* note 65 (highlighting advanced age and preexisting conditions result in unaffordable medical costs for older adults).

¹²⁶ See *Why Health Insurance Might Be More Important Than You Think*, *supra* note 18 (recommending health insurance to control costs and provide peace of mind); Fernandez, *supra* note 17, at 12 (reviewing eligibility criteria for Medicaid coverage); see also *Denials / Appeals: What to Do When Your Insurance Company Denies You Coverage*, *supra* note 55 (explaining reasons for denial of coverage for medical care); Roberts-Grey, *supra* note 18 (highlighting possible financial implications of lacking health insurance).

¹²⁷ See Roberts-Grey, *supra* note 18 (explaining how people who are uninsured must pay retail price of medications out of pocket).

¹²⁸ See Amadeo, *supra* note 59 (concluding health and health care inequality relates to income inequality). “[The elderly] are . . . more likely to be poor.” *Id.*; see also *Seniors Suffering*, *supra* note 65 (correlating commonly compromised health of the elderly, lack of insurance coverage, and denial of care).

of the American healthcare system.¹²⁹ One major reason for this is due to the extensive crossover among these population subgroups.¹³⁰ For example, minority individuals and the elderly are statistically more likely to have a low socioeconomic status, and all three subgroups are more likely to suffer from chronic illness or disease.¹³¹ These facts illuminate a harsh and devastating reality: the current structure of the American healthcare system is helping to destroy the economic security and wellbeing of the country's most vulnerable populations.¹³²

Another important reality to acknowledge is that middle-class and insured Americans face barriers related to insurance coverage and healthcare accessibility.¹³³ One substantial cause of this concern is medical bankruptcy due to high costs of care.¹³⁴ Even when individuals have insurance, they must pay costly fees in the form of premiums, deductibles, and coinsurance.¹³⁵ Regardless of these pre-payments, insurers may still refuse to cover certain medications and treatments.¹³⁶ As a result, beneficiaries must incur hefty out-of-pocket costs if they choose to proceed with prescribed treatment plans following a coverage denial.¹³⁷ An additional way that middle-income and insured Americans suffer is that when these individuals become ill, they often have to stop working and, despite employment or payment status, their medical bills continue to grow.¹³⁸ Consequently, regardless of income or insurance status, the impact of coverage denials and the structure of the healthcare system in the United States affects almost every American.¹³⁹

D. Medication and Treatment Denials

As previously mentioned, many of the issues plaguing the American healthcare system largely stem from insurance and pharmaceutical companies' influence on prices

¹²⁹ See LEE ET AL., *supra* note 59 (reporting effect of race and income on health insurance coverage); see also YOUNG, *supra* note 61 (discussing racial inequities in health coverage and outcomes); *Seniors Suffering*, *supra* note 65 (reporting older Americans are victims of "abusive insurance company practices").

¹³⁰ See Amadeo, *supra* note 59 (explaining how the elderly are more likely to be poor); see also LEE ET AL., *supra* note 59. "[R]acial/ethnic minorities are more likely to have lower income . . ." *Id.*

¹³¹ See Amadeo, *supra* note 59; see also *Seniors Suffering*, *supra* note 65; COMMITTEE ON POPULATION DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, *supra* note 61.

¹³² See Amadeo, *supra* note 59; see also *Seniors Suffering*, *supra* note 65; COMMITTEE ON POPULATION DIVISION OF BEHAVIORAL AND SOCIAL SCIENCES AND EDUCATION, *supra* note 61.

¹³³ See Seervai, *supra* note 33 (discussing how middle-income people have lost their savings due to serious illness); see also Amadeo, *supra* note 59 (expressing how those in the middle class who have insurance face devastation from healthcare inequality).

¹³⁴ See Seervai, *supra* note 33; see also Amadeo, *supra* note 59. "[H]alf of all bankruptcies were caused by high medical costs." *Id.*

¹³⁵ See Roberts-Grey, *supra* note 18; *How Are Prescription Drug Prices Determined*, *supra* note 53; see also Amadeo, *supra* note 59.

¹³⁶ See Roberts-Grey, *supra* note 18; *How Are Prescription Drug Prices Determined*, *supra* note 53; see also Amadeo, *supra* note 59.

¹³⁷ See Roberts-Grey, *supra* note 18; see also Neighmond, *supra* note 3; RAJKUMAR, *supra* note 57.

¹³⁸ See Seervai, *supra* note 18. "[Middle-income people] . . . get sick, then they stop working, and then they're not getting a check but the bills keep coming." *Id.*

¹³⁹ See LEE ET AL., *supra* note 59; see also Young, *supra* note 61; *Seniors Suffering*, *supra* note 65; Seervai, *supra* note 33.

and coverage accessibility.¹⁴⁰ Strict pre-authorization requirements and exceptionally high costs mandated by these companies creates barriers to care, not only for individuals suffering from life-threatening illnesses, but also for individuals whose health issues affect the quality of their lives.¹⁴¹ As a result of this problem, to effectively rectify the shortcomings of the American healthcare system, legislators must address coverage limitations and the lack of protective measures for patients.¹⁴²

While some legislation and case law protects individuals with chronic conditions or beneficiaries who have experienced coverage denials, these safeguards are limited in their scope and application.¹⁴³ For example, while the Affordable Care Act prevents insurers from denying coverage for pre-existing conditions, the ACA does not require insurers to cover all related prescriptions or procedures.¹⁴⁴ The ACA only requires marketplace plans to cover at least one drug in each drug class, which means that insurers are not automatically required to cover the exact medication that a patient's physician may prescribe.¹⁴⁵ Additionally, while insurance providers may not refuse coverage for treatments due to pre-existing conditions, insurers may still deny coverage if a procedure does not meet their pre-authorization requirements.¹⁴⁶ Although the limited scope of the ACA affects all individuals who suffer from chronic illnesses, it is especially detrimental to individuals whose conditions are not expressly included in the Act's list of required services.¹⁴⁷

While some cases affirmed patients' rights to legal recovery for denied coverage, the situations in which suits may be effectively brought are limited in scope and

¹⁴⁰ See Chung et al., *supra* note 50; Rajkumar, *supra* note 57; *The High Price of Life-Saving Drugs Makes it Impossible for Millions of People Around the World to Afford Their Medicines – While Drug Companies Make Record Profits*, *supra* note 57; Familydoctor.org Editorial Staff, *supra* note 32.

¹⁴¹ See Davis, *supra* note 38; see also Christensen, *supra* note 80 (describing a barrier to medication for seizure medication); *What Is Prior Authorization & Why Do Insurance Companies Require It?*, *supra* note 48; Turner, *supra* note 46; see generally Brushwood, *supra* note 80 (describing a barrier to medication for an antibiotic).

¹⁴² See Ellis et al., *supra* note 81; see also Shvili, *supra* note 83; Butler, *supra* note 84.

¹⁴³ See *Health Insurance Update*, *supra* note 69 (discussing how the ACA prevents plans from discriminating against people with pre-existing conditions); Patient Protection and Affordable Care Act, *supra* note 32; *Affordable Care Act Preventative Items and Services*, *supra* note 71; see generally Christensen, *supra* note 67 (explaining a case holding where the court determined patient could sue pharmacy).

¹⁴⁴ See *Health Insurance Update*, *supra* note 70; see also *Preventative Services Covered by Private Health Plans under the Affordable Care Act*, *supra* note 32 (explaining list of preventative services required to be covered by private insurance plans); Familydoctor.org Editorial Staff, *supra* note 32 (describing required essential health benefits).

¹⁴⁵ See Rapfogel et al., *supra* note 60. "The ACA expanded drug coverage by requiring marketplace plans to 'cover at least one drug in each drug class' and to count out-of-pocket expenses toward a beneficiary's deductible." *Id.* See also Christensen, *supra* note 67; Garfield et al., *supra* note 46; Turner, *supra* note 46; Brushwood, *supra* note 67.

¹⁴⁶ See Patient Protection and Affordable Care Act, *supra* note 32; see also Christensen, *supra* note 67; *What Is Prior Authorization & Why Do Insurance Companies Require It?*, *supra* note 48..

¹⁴⁷ See *Health Insurance Update*, *supra* note 69; see also *Affordable Care Act Preventative Items and Services*, *supra* note 71; Zucchi, *supra* note 35; Familydoctor.org Editorial Staff, *supra* note 32; Turner, *supra* note 46..

applicability.¹⁴⁸ For example, in 2018, the Massachusetts Supreme Judicial Court (“SJC”) ruled that Yarushka Rivera’s family could sue a pharmacy for wrongful death for the role the pharmacy played in preventing Yarushka from obtaining her seizure medication.¹⁴⁹ Yarushka was originally unable to get her prescription because her insurer would not cover the drug’s cost without a doctor’s preauthorization, and her family could not afford the out-of-pocket cost of the drug.¹⁵⁰ The pharmacy assured her family that it would notify her doctor of the coverage denial, but the pharmacy failed to do so in a timely manner and Yarushka ultimately died after suffering a fatal seizure.¹⁵¹ Through its decision, the SJC acknowledged that healthcare-related companies, specifically pharmacies, can be held liable for failing to comply with certain duties.¹⁵² This holding set an important precedent for the families of individuals who experience fatal consequences as a result of health providers’ inaction or negligence.¹⁵³ The SJC did not address whether this holding applies to pharmaceutical companies and insurance providers; nevertheless, this case offers a remedy against supplier inaction.¹⁵⁴

Conversely, in a second case, a patient whose insurer denied coverage for Linezolid sued his insurance company, its plan administrator, and pharmacists employed by those entities for breach of duty after his coverage denial resulted in the partial amputation of his feet.¹⁵⁵ A United States District Court in Montana ultimately dismissed the plaintiff’s case and ruled that the lawsuit was preempted by federal law.¹⁵⁶ In supporting this conclusion, the court stated that “a ruling based on the state law standard would [...] undermine CMS’s ability to regulate Part D insurers and enforce Medicare Act regulations.”¹⁵⁷ While the court did not address the validity of the plaintiff’s claim, this holding illustrates that preemption arising from conflicts in federal and state regulations is a fundamental issue that Medicare and Medicaid insured individuals may face when bringing suit against providers.¹⁵⁸ This ruling limits patient protection and provider accountability for negligent coverage denials.¹⁵⁹ Without cohesive government regulations that are equally applied across all states, individuals like this plaintiff may slip through the cracks, which leaves these patients in worse health and without legal remedy.¹⁶⁰

Despite legislative protections such as coverage requirements under the ACA and judicial rulings in support of patients, Americans continue to face coverage denials for life-saving medications and treatments as well as quality of life improving prescriptions

¹⁴⁸ See Christensen, *supra* note 67 (describing case in which patient could sue pharmacy for not obtaining medication).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Christensen, *supra* note 67.

¹⁵³ *Id.*

¹⁵⁴ See *id.*

¹⁵⁵ Brushwood, *supra* note 67 (describing case in which patient could not bring suit due to federal preemption).

¹⁵⁶ *Id.*; see also *Impact of Preemptive Laws on Public Health*, *supra* note 77.

¹⁵⁷ Brushwood, *supra* note 67.

¹⁵⁸ See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ See Brushwood, *supra* note 67; see also *Impact of Preemptive Laws on Public Health*, *supra* note 77 (explaining preemption and its effect on public health).

and procedures.¹⁶¹ For example, insurers often deny coverage for life-saving antiviral drugs that treat Hepatitis C.¹⁶² Although these drugs have a 95% cure rate, both public and private insurers deny these prescriptions up to 52% of the time.¹⁶³ Comparably, insurers often deny coverage for cholesterol-lowering drugs called PCSK9 inhibitors, even though these drugs are effective in reducing the risk of heart disease, stroke, and death.¹⁶⁴ In addition to denying coverage for life-saving medications, insurers also deny coverage for life-saving treatments, even when the procedure is FDA-approved.¹⁶⁵ These damaging choices to deny coverage—specifically related to life-saving medications and treatments—have potentially fatal consequences for patients and their families, regardless of insurance or income-status.¹⁶⁶

Coverage denials not only harm individuals who require life-saving medications or treatments, but they also have detrimental effects on Americans who have been denied prescriptions or procedures that improve their quality of life.¹⁶⁷ For example, many transgender people face barriers to gender-affirming care as a result of insurance denials or due to their plans not covering the type of care they require.¹⁶⁸ Additionally, some government insurance programs and private insurance companies refuse to cover drugs that treat sexually-related problems since drugs used to treat these issues are often viewed as being “lifestyle-related” rather than “medically necessary.”¹⁶⁹ Similarly, Americans who suffer from hypersomnia, a neurological sleep disorder which can affect many aspects of an individual’s life, are also extremely likely to be denied coverage for their medications.¹⁷⁰ Similar to life-improving medications, insurers frequently deny coverage for life-enhancing procedures such as reconstructive surgeries.¹⁷¹ Although these surgical procedures can help restore function and correct deformities, insurance companies often deny coverage for these procedures because they view them as “cosmetic.”¹⁷²

While coverage denials for quality-of-life improving medications and treatments may not have as devastating of an effect as denials for life-saving prescriptions or care, these denials can still significantly impact people’s health and wellbeing.¹⁷³ Without life-

¹⁶¹ See *Health Insurance Update*, *supra* note 70; see also Patient Protection and Affordable Care Act, *supra* note 32; *Affordable Care Act Preventative Items and Services*, *supra* note 71; Christensen, *supra* note 67.

¹⁶² See *Half of Hepatitis C Patients with Private Insurance Denied Life-Saving Drugs*, *supra* note 54; see also Penn Today Staff, *supra* note 54.

¹⁶³ See Penn Today Staff, *supra* note 54.

¹⁶⁴ See *Access to Life-Saving Medications is Being Denied*, *supra* note 54.

¹⁶⁵ See Ussin, *supra* note 67.

¹⁶⁶ See Christensen, *supra* note 67 (explaining how patient died following coverage denial); Ussin, *supra* note 67 (discussing coverage denial for patient’s brain tumor treatment).

¹⁶⁷ See Brushwood, *supra* note 67; see also Gianelli & Morris, *supra* note 67; Santoro, *supra* note 67.

¹⁶⁸ See BAKKO & KATTARI, *supra* note 54; see also Santoro, *supra* note 67.

¹⁶⁹ See Andrews, *The High Cost of Sex*, *supra* note 54.

¹⁷⁰ See *Health and Prescription Medicine Insurance Denials*, *supra* note 54. Between 2017 and 2019, only a little more than half of individuals who filed denial appeals for these medications were successful. *Id.*

¹⁷¹ See Gianelli & Morris, *supra* note 67; see also Ussin, *supra* note 67.

¹⁷² See Gianelli & Morris, *supra* note 67.

¹⁷³ See Christensen, *supra* note 67 (describing a death resulting from a coverage denial); *Half of Hepatitis C Patients with Private Insurance Denied Life-Saving Drugs*, *supra* note 54; Brushwood, *supra*

enhancing medications or treatments, for example, many people suffer negative consequences of easily managed or treatable conditions, and these individuals fall victim to more severe health conditions.¹⁷⁴ These specific coverage denials limit the ways in which individuals can effectively control their lives, particularly their health, and place extensive decision-making power in the hands of insurers.¹⁷⁵ Although there are many fundamental changes needed in the American healthcare system, specific changes that may particularly benefit individuals who suffer due to life-enhancing care denials include improving access and affordability to prescriptions, addressing misaligned incentives that reinforce high drug prices, and implementing drug pricing review boards.¹⁷⁶

E. How to Change the American Healthcare System

The coverage denial crisis in the American healthcare system could be addressed in a multitude of ways.¹⁷⁷ A less drastic way to increase accessibility to life-enhancing medications would be to implement a national policy that regulates drug prices or reduces out-of-pocket costs.¹⁷⁸ This policy would ideally make drugs and treatment prices low enough that individuals could afford healthcare, regardless of an insurer's denial.¹⁷⁹ Further, a policy like this would benefit patients by allowing them to follow through with recommended treatment plans, resulting in better health outcomes generally and benefitting the national healthcare system overall.¹⁸⁰

A more drastic way to address coverage denials would be for the United States government to implement a system of universal healthcare coverage similar to systems adopted by other developed nations.¹⁸¹ This approach would benefit individuals with chronic illnesses because universal healthcare customarily provides extensive coverage for health services and prescription drugs.¹⁸² Universal coverage not only covers these types

note 67 (explaining how a patient had to have a partial amputation due to a coverage denial); BAKKO & KATTARI, *supra* note 54; *see also* Penn Today Staff, *supra* note 54; *Access to Life-Saving Medications is Being Denied*, *supra* note 54; Ussin, *supra* note 67; Gianelli & Morris, *supra* note 67; Santoro, *supra* note 67; Andrews, *supra* note 54; *Health and Prescription Medicine Insurance Denials*, *supra* note 54.

¹⁷⁴ *See* Brushwood, *supra* note 67; *see also* Gianelli & Morris, *supra* note 67; BAKKO & KATTARI, *supra* note 54; Santoro, *supra* note 67; Andrews, *supra* note 54; *Health and Prescription Medicine Insurance Denials*, *supra* note 54; LeWine, *supra* note 6.

¹⁷⁵ *See* Neighmond, *supra* note 3; *see also* Garfield, *supra* note 46; Turner, *supra* note 46; Chapin, *supra* note 51; Finnegan, *supra* note 51.

¹⁷⁶ *See* *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85 (addressing ways to make prescription drugs more affordable).

¹⁷⁷ *See* Rapfogel & Waldrop, *supra* note 85; *see also* *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85; Fiedler & Young, *supra* note 84; Butler, *supra* note 84.

¹⁷⁸ *See* Fiedler & Young, *supra* note 84; *see also* Chung et al., *supra* note 50; *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85.

¹⁷⁹ *See* *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85; Reinberg, *supra* note 6; LeWine, *supra* note 6.

¹⁸⁰ *See* Roberts-Grey, *supra* note 18; *see also* Neighmond, *supra* note 3; RAJKUMAR, *supra* note 57; Butler, *supra* note 84.

¹⁸¹ *See* *Universal Health Coverage*, *supra* note 84; *Understanding the Healthcare System in the UK*, *supra* note 83.

¹⁸² *See* *Universal Health Coverage*, *supra* note 84.

of health-related necessities, it also makes these services extremely affordable.¹⁸³ For example, in the United Kingdom, a country that has effectively implemented universal healthcare, the average insulin cost is \$7.52 per vial compared to the \$98.70 cost per vial in the United States.¹⁸⁴ Given the affordability of treatments and prescriptions, like insulin, under the United Kingdom's universal healthcare model, the United States might be able to incorporate some of the UK's policies to make prescriptions more affordable and make health insurance more accessible overall.¹⁸⁵

F. Realistic Outcomes

Although American politicians have made some efforts to control prescription drug prices, many of these efforts have focused on cost-capping for specific medications.¹⁸⁶ While these initiatives are undoubtedly admirable, these initiatives have minimal impact due to their limited scope and applicability.¹⁸⁷ To effectively address problems like coverage denials, the American healthcare system requires more than just the implementation of cost-capping policies.¹⁸⁸ Some realistic ways to effect change include addressing misaligned incentives that reinforce high drug prices and implementing drug pricing review boards to determine coverage and reimbursement policies.¹⁸⁹ A more extreme measure would be to completely restructure the American healthcare system by implementing universal healthcare coverage; however, this systemic transformation would require significant time and collaboration from various political entities and individuals.¹⁹⁰ Regardless of how the government ultimately addresses coverage denials and other health policy issues, one thing remains clear: the government must be directly involved in prescription drug cost control and oversight.¹⁹¹

V. Conclusion

Overall, the structure of the American healthcare system creates devastating consequences for both insured and uninsured individuals. From coverage inaccessibility to insurance denials, Americans are forced to make difficult decisions related to their health and wellbeing. Although there is progress related to insurance coverage for specific medications and procedures, individuals in need of quality-of-life enhancing medications are prevented from receiving prescriptions and care due to several barriers set in place by insurance providers. If insurance companies were to prioritize the health of beneficiaries over generating profits, the American healthcare system would change in a way that would

¹⁸³ See *id.*; see also *Cost of Insulin by Country 2022*, *supra* note 81.

¹⁸⁴ See *Cost of Insulin by Country 2022*, *supra* note 81.

¹⁸⁵ See *id.*

¹⁸⁶ See Monostra, *supra* note 83.

¹⁸⁷ See *id.*

¹⁸⁸ See Monostra, *supra* note 83; see also *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85.

¹⁸⁹ See *Prescription Drugs and the Affordable Care Act – 10 Years Later*, *supra* note 85 (explaining ways to address the unaffordability of prescription drugs).

¹⁹⁰ See *Universal Health Coverage*, *supra* note 84; see also *Understanding the Healthcare System in the UK*, *supra* note 83.

¹⁹¹ See Chung et al., *supra* note 83; see also Chung et al., *supra* note 50; RAJKUMAR, *supra* note 57; *The High Price of Life-Saving Drugs Makes it Impossible for Millions of People Around the World to Afford Their Medicines – While Drug Companies Make Record Profits*, *supra* note 57.

benefit everyone. Until that change materializes, the health of many Americans will continue to suffer.