

Nadler Pushes for Federal Answer to Ian's Law to Protect Consumers from Possible Health Insurance Loophole

Thursday, 28 October 2010

NEW YORK, N.Y. - Today, Congressman Jerrold Nadler (D-NY) took action to close a possible federal health insurance loophole allowing insurance companies to deny coverage to sick policyholders by canceling entire classes of insurance coverage. Nadler sent a letter to Department of Health and Human Services (HHS) Secretary Kathleen Sebelius asking the agency about the potential loophole in the Patient Protection and Affordable Care Act so as to ensure that consumers are not dropped from vital coverage. New York State recently enacted Ian's Law, sponsored by State Senator Eric Schneiderman, to address this issue. If HHS is unwilling or unable to make regulatory changes, Nadler will follow up with legislation, based on Ian's Law, to get the job done.

"What Guardian did to Ian Pearl is unconscionable," said Nadler. "Going forward, we must ensure that people with high-cost insurance needs will not live in fear that their insurance coverage will be taken away suddenly and unfairly. Whether through regulatory or legislative action, I intend to make Ian's Law a federal reality and close what may be an unjust and outrageous loophole."

These efforts are in response to the recent case of Ian Pearl, a 37-year old man who suffers from muscular dystrophy and requires 24-hour home nursing care. Because his care was expensive, his insurer, Guardian Insurance Company, discontinued the entire class of insurance policies in the state of New York that was providing his benefits. Guardian then offered policyholders who had been dropped - including Mr. Pearl - replacement coverage that excluded the very benefit on which Mr. Pearl relied to stay alive. New York State's Ian's Law improves notice of pending benefit discontinuations, prohibits discontinuing plans specifically from dropping high-cost policyholders, and requires offering alternative coverage for the benefit if a plan is discontinued.

"I did not set out to be a fighter for continued insurance reform," said Ian Pearl. "Yet what happened to me should not happen to any American. The promise of the federal health care reform bill is that no one who pays for insurance should lose their benefits when they get sick. The loophole that allows insurance companies to withdraw whole classes of policies from the marketplace in order to cancel specific benefits for sick people needs to be closed. I urge the Department of Health and Human Services to act on Congressman Nadler's letter to protect the tens of thousands of Americans, like me, who only ask that insurance companies provide the benefits that they promised when we paid our premiums."

"Insurance companies must not be allowed to cancel life-saving benefits through the back-door practice of suddenly withdrawing whole classes of policies from state marketplaces," said Mr. Pearl's mother, Susan Pearl. "Congressman Nadler's fight to enact a federal version of New York's Ian's Law is critical and being watched by families all over the country. Congressman Nadler's actions today are more than just about shutting down an egregious insurance practice; they are about justice and giving patients with serious medical conditions - and their families - a sound piece of mind."

October 28, 2010

The Honorable Kathleen Sebelius

Secretary

United States Department of Health and Human Services

200 Independence Avenue, SW

Washington, DC 20201

Dear Secretary Sebelius:

I am writing to request a formal determination from the Department of Health and Human Services (HHS) whether the Patient Protection and Affordable Care Act (PPACA) would prevent an insurance company from withdrawing care from a beneficiary when they get sick. In the absence of this protection in the law, I request that HHS take regulatory action to close this unintended loophole.

Recently, I learned of an issue affecting the Pearl family, small business owners in New York. Ian Pearl suffers from muscular dystrophy and requires 24-hour home nursing care costing upward of one million dollars per year. Mr. Pearl and his family own a health insurance policy in New York through the Guardian Insurance Company, which covers Mr. Pearl's health needs. Last fall, Guardian informed the Pearl family that it intended to cancel the class of insurance policies the family owned. In its place, Guardian offered displaced customers a similar plan that did not cover the benefit utilized by Mr. Pearl.

Guardian's goal was unambiguous and disgraceful: it sought end its contract with Mr. Pearl, whom they referred to as a "dog" and a "trainwreck," because he got sick and utilized his benefits. No matter that this meant merely a slight increase in their corporate bottom line; no matter that this undoubtedly would mean a death sentence for Mr. Pearl.

Under pre-PPACA federal law and then-existing New York State law, an insurance company could withdraw a class of policies from the market place for any reason and was obligated merely to provide policyholders with 90 days notice. In light of Mr. Pearl's treatment by Guardian, New York State enacted Ian's Law. Under Ian's Law, if an insurance company withdraws a class of policies from the statewide marketplace, it must offer any person who has utilized a benefit related to a "serious medical condition" the opportunity to purchase a replacement plan that contains the same or a substantially similar benefit.

While New York has addressed this terrible situation, it would be unconscionable for others around the country to face the same degrading and life-threatening treatment that Mr. Pearl did. That is why I am asking for a formal opinion from HHS assessing whether the PPACA - a law that, at its core, maintains the promise that people who have insurance should not lose their coverage just because they get sick - covers Mr. Pearl's situation. In the absence of that protection in the law, I request that HHS propose regulations to ensure that people with serious medical conditions do not face losing coverage in the wake of the cancellation of a class of policies.

For your review, I have attached a copy of New York's Ian's Law and a blog post by Mr. Pearl explaining his situation in his own words.

I look forward to hearing from you on this important health matter.

Sincerely,

Jerrold L. Nadler

Member of Congress

###