

ALL COPAYS COUNT COALITION

June 26, 2019

Jim L. Ridling
Commissioner
Alabama Department of Insurance
201 Monroe Street, Suite 502
Montgomery, Alabama 36104

Re: Update on Patient Co-pay Assistance & Accumulators

Dear Commissioner Ridling:

The 60 undersigned organizations of the **All Copays Count Coalition** and our supporters are writing to make sure you are aware of a significant development affecting copay assistance and accumulators. On April 25, 2019 the US Department of Health and Human Services issued the final [2020 Notice of Benefit and Payment Parameters](#) (NBPP), which includes a new provision limiting the application of copay accumulators in all non-grandfathered individual, small group, and large group health insurance plans.

Last year, a group of patient, provider, and consumer advocates brought to your [attention](#) the emerging issue of copay accumulators: the practice that many insurance plans, employers, and pharmacy benefit managers have adopted that prevents prescription drug financial assistance from counting towards a beneficiary's deductible and out-of-pocket spending limits. Since last year, the All Copays Count Coalition, comprised of over 60 groups serving the interests of people with chronic and serious health conditions that rely on copay assistance, continued to raise awareness of the link between copay assistance and access to prescription drugs.

Copay assistance has been a lifeline for patients as rising healthcare costs and shifting plan benefit design have placed greater financial burden on the people we serve, making it more difficult to pay for and maintain access to prescription drugs. **The rule from the Centers for Medicare and Medicaid Services (CMS) is a step in the right direction; however, we are asking for your help to ensure it is properly implemented and enforced.**

NBPP Updates on Copay Accumulators

The Department of Health and Human Services issued the final 2020 NBPP including new limits on the application of copay accumulators at §156.130(h)(2). The preamble to the rule states that 1) when there is no generic equivalent for a brand name drug or 2) when there is a generic equivalent, but a person utilizes a brand drug after they have gone through an appeals or exceptions process, “under those circumstances, **amounts paid toward cost sharing using any form of direct support offered by drug manufacturers must be counted toward the annual limitation on cost sharing.**” Under the regulation, issuers *may, but are not required to*, exclude manufacturer assistance from counting towards the annual limit on cost-sharing for brand-name prescription drugs that have a generic equivalent. Note that since biosimilars are not generic equivalents to their originator drugs, manufacturer assistance for biosimilars and their originator must be counted toward patients' annual limitation on cost sharing.

This new rule, which plans must comply with beginning January 1, 2020, will greatly help patients with serious, chronic illnesses, who often rely on copay assistance to afford the medicine they need. We are now hopeful that the rule will be **fully implemented and enforced. Therefore, we urge you, as you review plan filings for 2020, to ensure that all issuers are aware of, and in compliance with, the new regulation.**

Copay Accumulators and Plan Transparency

In reviewing a [sample of states' current Marketplace plans](#), it is clear that almost all are implementing copay accumulator policies with little or no consumer notice, burying the language deep in plan documents and failing to place this information in the *Summary of Benefits and Coverage* template. While our review only included health plans on the individual market, it is very likely that issuers in the small and large group insurance markets also include similar policies in their plans.

If issuers do include copay accumulator practices for the limited circumstances allowed by the NBPP, we ask that you ensure the language is clearly described for beneficiaries, as required by CMS regulation. CMS' [Summary of Benefits and Coverage Instruction Guide](#) requires health issuers to clearly state what is and is not included in the out-of-pocket limit in the *Summary of Benefits and Coverage* document.

State Legislation

In the NBPP, CMS also made clear that state laws requiring copay assistance to count towards a patient's annual cost-sharing limits preempt its rule, safeguarding the actions states have taken to protect their beneficiaries from any form of copay accumulators.

In the 2019 legislative season, several states considered legislation to protect patients by ensuring any payments made by or on behalf of an insured individual for all drugs (brand and generic), and notwithstanding whether there is a generic alternative, would count towards the insured's deductible and cost-sharing requirements. While bills are still pending in some states, to date, [Virginia](#) and [West Virginia](#) have enacted such laws. **The rule issued by CMS is a good first step, but these state laws provide additional protection for patients.** Your state may wish to adopt similar legislation.

Thank you for your attention to this important issue as enrollees seek to gain access to life-saving medications at a price they can afford. Should you have any questions or need additional information about this issue, please feel free to contact Carl Schmid at CSchmid@theaidsinstitute.org or Benjamin Chandhok at BChandhok@arthritis.org

Sincerely,

The AIDS Institute
AIDS Resource Center of Wisconsin
Aimed Alliance
Alliance for Patient Access
American Academy of HIV Medicine
American College of Rheumatology
American Liver Foundation
APLA Health
Arthritis Foundation
Association of Black Cardiologists
The Bonnell Foundation: Living with Cystic Fibrosis
Cancer Support Community
CancerCare
Caring Ambassadors Program
Coalition of State Rheumatology Organizations
Crohn's & Colitis Foundation
Cystic Fibrosis Engagement Network
Cystic Fibrosis Foundation
Cystic Fibrosis Lifestyle Foundation

Cystic Fibrosis Research, Inc. (CFRI)
Diabetes Patient Advocacy Coalition
Dystonia Medical Research Foundation
Emily's Entourage
Epilepsy Foundation
Global Healthy Living Foundation
GBS|CIDP Foundation International
Haystack Project
Hawaii Health & Harm Reduction Center
Hemophilia Federation of America
Hep Free Hawaii
HIV Medicine Association
International Myeloma Foundation
Little Hercules Foundation
LUNGeVity Foundation
Lupus Foundation of America
The Marfan Foundation
METAvivor Research and Support, Inc.
MLD Foundation

Multiple Sclerosis Association of America
NASTAD
National Alopecia Areata Foundation
National Diabetes Volunteer Leadership Council
National Hemophilia Foundation
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Pancreas Foundation
National Psoriasis Foundation
Ovarian Cancer Research Alliance (OCRA)
Patient Access Network (PAN) Foundation
Prevent Cancer Foundation
Preventive Cardiovascular Nurses Association
Rare Access Action Project (RAAP)
RetireSafe
Rock CF Foundation
Rocky Mountain CARES
San Francisco AIDS Foundation
Scleroderma Foundation
Spondylitis Association of America
St. Louis Effort for AIDS
US Hereditary Angioedema Association