



January XX, 2023

The Honorable Chiquita Brooks- LaSure
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: *HHS Notice of Benefit and Payment Parameters for 2024* Proposed Rule, CMS-9899-P RIN 0938-AU97

Dear Administrator Brooks-LaSure:

The All Copays Count Coalition submits these comments on the Health and Human Services' (HHS) Notice of Benefit and Payment Parameters (NBPP) for 2024 proposed rule. The XX organizations signing this letter represent millions of people living with serious, complex chronic illness across the United States. We are extremely disappointed to see that CMS has again failed to address copay accumulator adjustment policies in this proposed rule. The Biden Administration has committed to advance health equity, reduce disparities, and make healthcare more affordable; however, CMS' lack of action on this issue directly inhibits that mission. We strongly urge you to include a provision in the final rule requiring that insurers and pharmacy benefit managers (PBMs) count all copayments made by or on behalf of an enrollee toward the enrollee's annual deductible and out-of-pocket limit.

Copay accumulator adjustment policies unfairly target people with serious, chronic illness, undermining the Affordable Care Act (ACA) protections that prohibit insurers from charging people with pre-existing conditions more for health insurance than healthier enrollees. Copay assistance is available generally for high-cost brand and specialty medications without a medically equivalent generic alternative and is used by people with serious and complex chronic illnesses.¹ These policies subvert the benefit of copay assistance, thereby discriminating against people living with chronic conditions. People with low incomes and people of color are more likely to be living with a chronic illness;² therefore, these policies target the most vulnerable patients, enabling insurance issuers to essentially underwrite insurance policies for people who require specialty or brand medications.

Copay accumulator adjustment policies will push more patients into medical debt. As deductibles and maximum out-of-pocket limits have risen (as high as \$9,100 in 2023), the ability for many Americans to cover those costs is not feasible.³ Often the only way to afford their medicines on top of paying for basic needs such as rent, food, transportation, and childcare, is to seek copay assistance. When insurers and

¹ K. Van Nuys, G. Joyce, R. Ribero, D.P. Goldman, *A Perspective on Prescription Drug Copayment Coupons*. Leonard D Schaeffer Center for Health Policy & Economics. (February 2018), <https://healthpolicy.usc.edu/research/prescription-drug-copayment-coupon-landscape/>

² The Center for American Progress, Fact Sheet: *Health Disparities by Race and Ethnicity*. (May 7, 2020), <https://www.americanprogress.org/article/health-disparities-race-ethnicity/>

³ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of US Households in 2019-May 2020*. <https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-overall-economic-well-being-in-2019.htm>

PBMs collect the copay assistance but fail to count those amounts toward the enrollee's cost-sharing requirements, it will undoubtedly cause the enrollee to abandon their prescriptions, ration doses, or forego other necessities to cover those costs. In 2019, 16 million people had more than \$1,000 in medical debt, and 3 million people owed more than \$10,000 related to medical bills.⁴ Allowing copay accumulator adjustment policies will push more chronically ill people into financial and physical harm.

Copay accumulator policies harm patients at the benefit of insurers and PBMs. These policies take away the benefit of copay assistance intended for the enrollee, directing the money to the insurer or PBM's bottom line. The ACA established annual out-of-pocket limits for covered health care services. When enrollees hit the out-of-pocket limit, insurance issuers must fully cover any further health care costs incurred. When insurers do not count copay assistance cost-sharing amounts to pay for covered services toward annual deductibles and out-of-pocket limits, enrollees are forced to cover those costs again, thereby exceeding the out-of-pocket limit for the plan year.

Since 2021, when CMS officially sanctioned copay accumulator adjustment policies, copay accumulator programs have proliferated and have evolved.⁵ In 2023, across all states that have not passed legislation, almost two thirds of all plans implement copay accumulator adjustment policies. People do not choose to have a chronic condition; and when the health insurance plans available to them include a copay accumulator as part of the benefit design, their choice to buy health coverage that fits their needs is taken away.

We urge HHS to reconsider its policy allowing insurers and PBMs to adopt copay accumulator adjustment programs.⁶ These policies disproportionately impact enrollees with chronic illness, jeopardizing their access to needed care and prescription drugs. We urge HHS to require issuers and pharmacy benefit managers to count patient copay assistance toward a beneficiary's out-of-pocket costs, putting patients' health above insurer and PBM profits.

We appreciate HHS officials and CMS leaders considering the critical needs of our patient community. Please feel free to reach out to our steering committee, Rachel Klein, Deputy Executive Director, The AIDS Institute at rklein@taimail.org should you have any questions. Thank you very much for your consideration of our comments.

Sincerely:

Arthritis Foundation

Cancer Support Community

Immune Deficiency Foundation

National Hemophilia Foundation

National Multiple Sclerosis Society

The AIDS Institute

⁴ M. Rae, G. Claxton, K. Amin, E. Wager, J. Ortaliza, C. Cox, Peterson-KFF Health System Tracker, *The Burden of Medical Debt in the United States*, (March 10, 2022), <https://www.healthsystemtracker.org/brief/the-burden-of-medical-debt-in-the-united-states/>

⁵ J Brown, R. Ehrenberg, R. Glass, B., Plotnik, IQVIA, White Paper; *Five Years and Counting: Deductible Accumulators and Copay Maximizers in 2022*, (December 2022), <https://www.iqvia.com/-/media/iqvia/pdfs/us/white-paper/2022/five-years-and-counting-deductible-accumulators-and-copay-maximizers-in-2022.pdf>

⁶ The AIDS Institute. *Discriminatory Copay Policies Undermine Coverage for People with Chronic Illness*. (March 2022), file:///E:/Copay%20Accumulator%20Work/2022%20Research%20and%20Report/final_TAI_2022%20Report%20Update_02012_2.pdf