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Biden Administration Begins to Address Patient Affordability of Medications

But Fails to Ensure Copay Assistance Counts as Patient Cost-sharing

Washington DC…Today, the Biden administration released a proposed rule that will govern how private health plans must operate in 2023 and in doing so, took some steps to limit patient cost-sharing for prescription drugs. However, despite the urging from patient groups, they are not requiring insurers and pharmacy benefit managers (PBMs) to count copay assistance towards patient out-of-pocket cost-sharing and deductibles.

"While we are pleased that CMS is moving forward with standardized plans that will limit patient cost-sharing to copays rather than co-insurance, they failed to address the issue of copay assistance for prescription drugs by requiring insurers and pharmacy benefit managers (PBMs) to count assistance towards patient out-of-pocket cost-sharing and deductibles," commented **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute.** "Allowing insurers to continue this cruel policy of collecting copay assistance but not counting it will dramatically increase how much patients pay for their prescription drugs. We know that the Biden-Harris administration wants to improve patient affordability of healthcare, particularly for vulnerable communities; however, they missed a perfect opportunity to demonstrate this commitment."

In 2023, the maximum out-of-pocket costs for an individual will be $9,100 and $18,200 for all others. Deductibles are also increasing. In fact, the median deductible for Silver Level plans will be $5,115 in 2022, an increase of 23 percent since 2018. High cost-sharing, often in the form of co-insurance, impacts adherence and leads to patients abandoning their medications.

In the proposed rule, CMS will require insurers on the exchange to offer a standardized plan in each metal level that uses copays rather than co-insurance. For example, for the Gold Level, generic drugs would be $15 for a 30-day supply; preferred brand drugs: $30; non-preferred brand drugs: $60; and specialty drugs: $250. In another positive development, all

of these costs would not be subject to the deductible. However, for some other metal levels and some non-preferred and specialty drugs, the copay limits would first be subject to a deductible.

The proposed rule also warns insurers and PBMs about discriminating against beneficiaries with chronic health conditions who rely on prescription drugs. CMS advised "instances of adverse tiering are presumptively discriminatory and that issuers and PBMs assigning tiers to drugs should weigh cost of drugs on their formulary with clinical guidelines for any such drugs used to treat high-cost chronic health conditions to avoid tiering such drugs in a manner that would discriminate based on an individual's present or predicted disability or other health conditions in a manner prohibited by § 156.125(a)."

"Despite these proposed positive developments," added Schmid, "CMS sided with the powerful insurers and PBMs again by allowing them to collect copay assistance and not count it towards patient cost-sharing, thus increasing the amount patients pay for their prescription drugs."

According to a recent *Kaiser Family Foundation* survey of employer health plans, 24 percent of medium and large size employers have instituted this growing practice. These policies, known as copay accumulator adjustment programs, are almost always buried in plan documents and come as a surprise to patients. In the past, CMS indicated that if plans were not transparent in their policies, they would consider future rulemaking. Unfortunately, CMS failed again to address the need for transparency for these hidden and ambiguous copay assistance policies.

In 2019, drug manufacturer copay assistance for patients totaled $14 billion, according to data from IQVIA.

"People are rightfully complaining about how much they pay for prescription medications. The Biden-Harris administration is beginning to address it by instituting standardized insurance benefit design with reasonable patient cost-sharing. However, this would not occur immediately and apply to all plans, such as employer group plans, and there still would be high deductibles for many drugs. Copay assistance for prescription drugs must still be required to count," concluded Schmid.

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The **HIV+Hepatitis Policy Institute** is a national, non-profit organization whose mission is to promote quality and affordable healthcare for people living with or at risk of HIV, hepatitis, and other serious and chronic health conditions.