



April 28, 2023

The Honorable Bernie Sanders
Chair
Committee on Health, Education,
Labor, and Pensions
United States Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Cassidy, MD
Ranking Member
Committee on Health, Education,
Labor, and Pensions
United States Senate
428 Dirksen Senate Office Building
Washington, DC 20510

Re: Ensuring Copay Assistance Counts & Reining in Unscrupulous Prescription Drug Practices

Dear Chairman Sanders and Ranking Member Cassidy:

The **HIV+Hepatitis Policy Institute** is a leading HIV and hepatitis policy organization promoting quality and affordable healthcare for people living with or at risk of HIV, hepatitis, and other serious and chronic health conditions. **We strongly support your bipartisan leadership in taking action to address some of the abusive practices Pharmacy Benefit Managers (PBMs) engage in that hinder patient access and the affordability of prescription drugs.** While most people think insurers make the majority of decisions regarding health coverage and affordability, when it comes to prescription drugs, it is PBMs that drive many of the decisions as to what medications a beneficiary can access and how much they pay for them. PBMs control which drugs are on plan formularies, decide when to impose utilization management such as step-therapy and prior authorizations, and determine patient cost-sharing and tiering, along with pharmacy access.

We commend you for introducing and scheduling for mark-up the [Pharmacy Benefit Manager Reform Act](#); however, we urge you to take immediate additional steps to protect patients and reduce their prescription drugs costs. **Specifically, we urge you 1) to pass the HELP Copays Act (S. 1375) and 2) stop a new unscrupulous practice that some insurers and PBMs are engaging in by forcing patients to enroll in programs that seek alternative funding to pay for medications.**

The Help Ensure Lower Patient Copays Act (HELP Copays Act)

The bipartisan **HELP Copays Act (S. 1375, [H.R. 830](#))**, introduced by Senators Marshall, Kaine, Ernst, Markey and Murkowski, would outlaw copay accumulators at a national level. Due to high deductibles and high co-insurance, people with HIV, hepatitis, and so many other illnesses rely on drug company copay assistance. It is the way people afford their drugs. With copay accumulators, insurers and PBMs still collect copay assistance but do not count it towards the patient's out-of-pocket maximum or deductible. The patient ends up paying unanticipated cost-sharing, while insurers are double-dipping by collecting both the copay assistance from the drug manufacturer, and then a second time from the beneficiary.

HIV + HEPATITIS POLICY INSTITUTE

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We urge you to end these very harmful policies by passing S. 1375 as part of the mark-up.

In order to reduce the costs people pay for their medications, the patient community has been trying to end this insurer and PBM practice. We have urged CMS to reverse the regulation that allows this policy. Since we have not been successful, the **HIV+Hepatitis Policy Institute** has [filed suit](#) against HHS for the *Notice of Benefits and Payment Parameters* rule that allows copay accumulators. We contend that the rule violates the ACA cost-sharing limit provisions, as well as other rules. State laws banning copay accumulators such as those passed in 17 states have been helpful, but they only impact plans that are state regulated. **We need a national solution and passage of S. 1375 would ensure that copay assistance counts for everyone.**

Alternative Funding Programs

Insurers and PBMs are increasingly engaging in a new practice that forces people to receive their medications from an entity that requires patients to enroll in drug manufacturer assistance programs, patient copay assistance programs, or rely on imported drugs. **These new schemes, which carve out certain specialty medications from essential health benefits in the self-funded insurance market, must be stopped.**

[Here](#) is an example of what Cigna is doing in California by teaming up with an entity called [SaveOnSP](#). They have selected a number of medications to treat cancer, multiple sclerosis, hemophilia, arthritis, and others along with several HIV and hepatitis C drugs (which are highlighted in this [document](#), and includes the most widely prescribed HIV drug in the country) and force the beneficiary to enroll in SaveOnSP.

If they enroll in the program, they are promised that their drug cost will be zero. If they don't, they will be forced to pay 30 percent co-insurance. (Some other entities require the patient to pay the full price of the drug if they do not enroll.) Ironically, while insurers and PBMs complain about copay assistance, under this scheme, SaveOnSP collects manufacturer copay assistance to pay for the drug.

Another entity called [SHARx](#) offers to “access many medications through manufacturer free programs, grants/charities, our International Mail Order Pharmacy partner, domestic wholesale pharmacy, and occasionally a copay card.” It should be noted that manufacturer free programs are for people who do not have insurance and importing drugs into the U.S. is illegal. In fact, recently, the FDA [issued a warning letter](#) to one of these companies, ElectRx and Health Solutions, for relying on imported drugs.

The alternative programs are not insurance and therefore the beneficiary does not benefit from any of the ACA protections. For a number of obvious reasons, including the risky and illegal ways patients are forced to access lifesaving medications, insurance plans should not be allowed to engage in Alternative Funding Programs. **Therefore, as you develop your legislative package, the HIV+Hepatitis Policy Institute urges you to include a provision that states a health plan cannot condition coverage of medications based on the availability of financial assistance or other similar financial and product support.**

We look forward to working with you as you seek to make prescription medications more affordable to patients through addressing harmful PBM practices.

If you have any questions or need any additional information, please do not hesitate to reach out via phone at (202) 462-3042 or email at cschmid@hivhep.org.

Thank you very much.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carl E. Schmid II". The signature is fluid and cursive, with a large initial "C" and "S".

Carl E. Schmid II
Executive Director

cc: Members, Senate HELP Committee