

## **Government Drops Appeal in Copay Assistance Case** *Copay Assistance Must Be Counted by Insurers for Most Prescription Drugs*

WASHINGTON (January 16, 2024) – The U.S. Justice Department has [moved to withdraw](#) its appeal of the patient community’s victory last year, which struck down HHS’ rule that allowed insurers not to count drug manufacturer copay assistance towards a beneficiary’s deductible and out-of-pocket maximum.

This comes after the District Court for the District of Columbia issued a second [ruling](#) in December. That ruling clarified, as the patient community contended, the Court’s earlier [decision](#) means that the prior rule is now in effect. That rule, the 2020 *Notice of Benefits and Payment Parameters*, requires copay assistance to count as patient cost-sharing for prescription drugs, except for brand name drugs with a generic equivalent.

The now withdrawn appeal was filed after the government requested the motion for clarification.

“We are pleased that the government has withdrawn its appeal of our court victory for patients who struggle to afford their prescription drugs and rely on copay assistance,” said **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**, one of the plaintiffs in the lawsuit. “Now, insurers must heed the court ruling by ending their cruel policy of collecting copay assistance and not applying it to patients’ cost-sharing obligations.”

“Now that the government has dropped its appeal, we hope this is a signal they will accept and enforce the court ruling and issue guidance stating that copay assistance, in most instances, must count for patients,” said **George Huntley, CEO** of additional plaintiffs the **Diabetes Leadership Council** and the **Diabetes Patient Advocacy Coalition**. “They also have stated they will pursue a new rule regarding copay assistance. While the current rule is sufficient in our view and remains in effect, if they move forward with a new rule, it must ensure that copay assistance counts.”

Plaintiffs’ representatives in the case are Paul Hughes and Andrew Lyonsberg of McDermott Will & Emery LLP.

The U.S. Justice Department Motion to Dismiss can be found [here](#).

All briefs associated with the case can be found [here](#).

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### **About the HIV+Hepatitis Policy Institute**

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.

**About the Diabetes Leadership Council**

The Diabetes Leadership Council is a 501(c)(3) patient advocacy organization comprised of individuals with decades of diabetes experience and leadership to advance patients-first policies at the local, state and national levels. We are people with diabetes, parents of children with diabetes, allies and tireless volunteers dedicated to improving the lives of all people impacted by this condition. Our members—all former leaders of national diabetes organizations—engage policymakers, and public and private sector influencers to call attention to the diabetes epidemic and provide a voice for 37 million Americans living with diabetes.

**About the Diabetes Patient Advocacy Coalition**

The Diabetes Patient Advocacy Coalition (DPAC), a 501(c)4 organization, is a grassroots alliance of thousands of people with diabetes, caregivers, patient advocates, health professionals, disease organizations and companies working collaboratively to promote and support public policy initiatives to improve the health of people with diabetes.

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