

With Court Victories, Patient Groups Drop Appeal in Copay Assistance Case

Copay Assistance Must Be Counted by Insurers for Most Prescription Drugs

WASHINGTON (February 2, 2024) – After two victories in the District Court for the District of Columbia and the U.S. Government’s withdrawal of its appeal, the patient groups that successfully led the efforts to require insurers to count drug manufacturer copay assistance have [moved to dismiss](#) their cross-appeal.

“Now that the Court has struck down the rule that allowed insurers and PBMs not to count copay assistance and clarified that the previous rule—requiring copay assistance to count in most instances—is now in effect, we now must turn to enforcement to ensure patients are no longer being financially harmed by copay accumulators,” said **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**, one of the plaintiffs in the lawsuit. “We are already hearing from patients that insurers are still subjecting them to these unscrupulous and now, illegal practices, and we will ensure that any unlawful practices stop.”

“A bipartisan coalition of members of the United States [House of Representatives](#) and [Senate](#) have properly urged the federal government to underscore that copay assistance must count for patients,” said **George Huntley, CEO** of the **Diabetes Leadership Council** and the **Diabetes Patient Advocacy Coalition**, who are additional plaintiffs in the case. “For the Biden administration to achieve its goal of lowering the cost of prescription drugs for patients, it is essential that the federal government vigorously enforce the Court’s decisions.”

Last September, the District Court for the District of Columbia [struck down](#) the provision in the *2021 Notice of Benefits and Payment Parameters* rule that allowed insurers to implement copay accumulators. In December, it issued a second [ruling](#) clarifying 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 U.S. Government has suggested that it will pursue a new rule regarding copay assistance. While it is uncertain if or when that will happen, the current rule in effect is sufficient. If the government moves forward with a new rule, it must ensure that copay assistance counts in accordance with the ACA.

Since the government filed an appeal of its loss, the plaintiffs filed a protective appeal. After the government [withdrew](#) its appeal on January 16, 2024, plaintiffs are similarly dismissing their protective appeal, focusing instead on ensuring that the now-governing law is properly enforced.

The plaintiffs, who also include three patients directly impacted by copay accumulators, have been represented by Paul Hughes and Andrew Lyonsberg of McDermott Will & Emery LLP.

The plaintiffs 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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