

# **HIV+HEP**

## POLICY INSTITUTE

### PRESS RELEASE

April 2, 2024

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## **Federal Government Refuses to Enforce Copay Assistance Court Victory, But Moves to Stop Scheme of Classifying Drugs as “Non-Essential Health Benefits”**

### ***Will Also Issue Rule to Close Loophole for Large Group & Self-funded Plans***

Washington DC...As part of the [final 2025 Notice of Benefits and Payment Parameters rule](#) issued today, the federal government completely ignored the D.C. District Court [decision](#) that struck down the rule allowing insurers not to count copay assistance for prescription drugs as part of patient cost-sharing. However, they do move to stop a new scheme that insurers and employers are engaged in: classifying certain drugs as “non-essential health benefits.” In the final rule, CMS states that all covered drugs in excess of a state benchmark are essential health benefits.

“This is nonsense: everyone agrees that patients are having trouble affording their prescription drugs, that copay assistance is helping them, and that the plans are pocketing copay assistance without crediting patients, and even though the rule that allowed insurers not to count that assistance has been struck down, our federal government openly refuses to enforce the court ruling,” commented **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**.

The federal government has stated that it will issue a new rule pertaining to copay assistance and will not enforce the court ruling until then. **HIV+Hep** is currently exploring future legal options for patients who are currently victims of these cruel copay accumulator policies.

Meanwhile, in a positive note, the final rule ends the practice of “non-EHB” drugs in the individual and small group markets, and states that the Departments of Labor, Treasury, and HHS will issue a new rule to end this practice for large group and self-funded plans.

In the proposed rule, CMS stated that the practice of designating “non-EHB” drugs in these markets was not that widespread, but asked for input on how often this practice is being used. In response, **HIV+Hep** conducted research and submitted it as part of our [comments](#) on the proposed rule.

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We [found](#) over 100 employers and 22 issuers who are using vendors that classify a set of covered drugs as “non-EHB” and force employees enrolled in their insurance plan to obtain drugs outside of ACA cost-sharing protections. These vendors then collect copay assistance that is meant for patients in excess of the annual out-of-pocket maximum.

The list of **over 100** employers includes such **large private companies** as Bank of America, Chevron, Citi, Delta, Hertz, Hilton, Home Depot, NewsCorp, Ruby Tuesday, Target, and United Airlines; the **states** of Connecticut, Delaware, Kansas, Kentucky, and New Mexico; **universities** including Baylor, Carnegie Mellon, Duke, George Washington, Harvard, Kent State, New York University, Ohio State, Purdue, University of California, Yale, and Yeshiva; **unions** including New York Teamsters, Screen Actors Guild, and Writers Guild; and **non-profits** including the Catholic Diocese of Columbus and the Cleveland Clinic.

The **22 insurers** that use this tactic include Blue Cross Blue Shield plans in Massachusetts and Western New York, Johns Hopkins, Medical Mutual of Ohio, and Premera and WellMark Blue Cross.

“We hope the government will move quickly to end these schemes to stop this abuse. This is not how insurance is supposed to work,” added **Schmid**. “Forcing beneficiaries to access their medications without cost-sharing protections allows vendors to exploit copay assistance from drug manufacturers in excessive amounts.”

In **HIV+Hep’s** comments on the proposed rule, it included descriptions of how vendors such as [SaveOnSP](#) and [PrudentRx](#) operate. The pharmacy benefit manager Express Scripts [discusses](#) how they are working with SaveOnSP “on the **first non-essential health benefits copay assistance solution**.” SaveOnSP’s [list of drugs](#) numbers 392, while PrudentRx says it designates over 500 drugs impacting over 50 groups of health conditions as non-EHB.

The final rule issued today also will require plans beginning in 2026 to include knowledgeable patient representatives on Pharmacy and Therapeutic Committees to help develop drug formularies and allow insurers beginning in 2025 to develop non-standardized plans for certain high-cost patients with chronic conditions if they are able to lower cost-sharing by at least twenty-five percent. **HIV+Hep** voiced strong support for both of these proposals.

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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.