

HIV+HEP
POLICY INSTITUTE
PRESS RELEASE

October 4, 2024

Contact: Jen Burke
jburke@hivhep.org
(301) 801-9847

**Biden-Harris Administration Sides with Insurers & Fails to Take
Steps to Lower Patient Costs for Prescription Drugs**
*Promised Rules Not Included in Notice of Benefit & Payment Parameters
Proposal*

Washington DC... In a shock to patients who are struggling to afford their prescription medications, the Biden-Harris administration has failed—again—to take steps to lower how much Americans pay for their drugs and instead, by their inaction, are continuing to allow big insurers and PBMs to profit from billions of dollars of drug manufacturer copay assistance that is meant for patients, not for insurers or PBMs.

In the [2026 Notice of Benefit and Payment Parameters rule](#) proposed today, although they state they still intend to do it, the administration failed to include promised new regulations on whether copay assistance will count as part of patient cost-sharing and that all drugs covered by large group and self-funded plans are to be considered essential health benefits.

“Every day these rules are delayed is another day that insurers and PBMs are pocketing billions of dollars meant for patients who are struggling to afford their drugs,” commented **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**. “Coming from an administration that prides itself on supporting patients and lowering their prescription drug costs, this is a huge disappointment. While they have gone on record that they will issue these rules, the clock is ticking and there isn’t much time left.”

On September 29th, it was **one year** that a federal court sided with patients and [struck down](#) the government’s rule that allowed insurers to decide whether copay assistance would count or not. The court’s ruling added that the government was permitted to issue new regulations, which the government indicated that it would in a written court [brief](#). In a slap to patients and the court, the federal government went on to declare that until they issue the new rule, they will not enforce the court’s decision and the 2020 NBPP rule, which the court clarified is now in effect. That rule requires copay assistance to count except for brand name drugs with a generic equivalent.

HIV+HEPATITIS POLICY INSTITUTE

1602B Belmont Street NW | Washington DC 20009 | 202-462-3042 | 202-365-7725 (cell)
HIVHep.org | Twitter: @HIVHep | Facebook: HIVHep

It is not known what direction the new cost-sharing rule relative to copay assistance will take. For years the patient community has urged the federal government to issue a rule requiring copay assistance to count, but to date they have ignored our pleas. That is what led to the litigation headed by the **HIV+Hepatitis Policy Institute**. Despite the passage of a year after our court victory, they still have not acted.

Today's [proposed rule](#) also fails to include a provision that the government said it would issue in order to close an essential health benefits loophole. More and more employers are working with PBMs and third-party vendors that designate drugs for which manufacturer copay assistance is available as “non-essential health benefit” drugs, even though they are covered. Essential health benefits are protected by ACA cost-sharing limits. What is happening is that plan sponsors are currently collecting all of the copay assistance for themselves and not applying it to their beneficiary's cost-sharing.

In the [2025 Notice of Benefit and Payment Parameters rule](#) the federal government closed this loophole for the individual and small group markets, and said it would do the same for large group and self-funded plans in the future.

HIV+Hepatitis Policy Institute released updated [research](#) that found over 150 employers and insurers, including 30 companies such as Chevron, CitiBank, Home Depot, Target and United Airlines; 44 universities including Harvard, Yale and NYU; 11 unions including the New York Teamsters and the Screen Actors Fund; 9 states including Connecticut and Delaware; along with 25 insurers including several Blue Cross/Blue Shield plans that are all exploiting the EHB loophole.

Due to high and ever-increasing deductibles and cost-sharing, patients rely on manufacturer assistance to afford their prescription drugs. In 2023, [IQVIA](#) found that the total amount provided was \$23 billion, an increase of \$5 billion over the prior year. They also found that copay accumulators and maximizers accounted for \$4.8 billion of that copay assistance.

###

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.