

**HIV+HEP**  
POLICY INSTITUTE  
PRESS RELEASE

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**Biden-Harris Administration Urged to Comply with Court  
Decision & Require Insurers to Count Copay Assistance  
*Time Is Running Out & American People Need Help in Affording  
Prescription Drugs***

Washington DC... Yesterday, the **HIV+Hepatitis Policy Institute** once again urged the Biden-Harris administration to comply with the US District Court ruling that struck down the rule that allows insurers not to count copay assistance towards a patient's out-of-pocket costs. In [extensive comments submitted](#) on the [2026 Notice of Benefit and Payment Parameters Proposed Rule](#) (Proposed NBPP Rule) the patient organization, which was the lead plaintiff in the successful litigation against the US Department of Health and Human Services, argued that not only must the federal agencies comply from a legal standpoint, but that it is the right thing to do for the American people as they struggle to afford their prescription drugs.

“In the closing days of this administration they must do the right and very simple thing to help patients afford their prescription drugs—tell insurers that they must comply with the Court decision,” commented **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**. “They have been disregarding the law for over a year, haven't issued a promised new rule, and time is running out. They need to stop siding with the powerful insurers and their PBMs, and instead side with patients.”

In the [comments](#), **HIV+Hep** voiced its disappointment that a promised new cost-sharing provision was not included in the Proposed NBPP Rule, and reiterated that the Court issued a clarification, at the government's request, that found a previous rule is now in effect and therefore, a new rule does not need to be issued. That rule requires copay assistance to count except for brand name drugs with a generic equivalent.

In addition to laying out the legal arguments as to why copay assistance must count, **HIV+Hep** relayed stories they have received over the past year from patients who are facing thousands of dollars in unexpected prescription drug costs due to the government's inaction.

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Without federal government action, insurers will continue to implement copay accumulators, which, according to one study, 49 percent of commercial plans implemented in 2023.

**HIV+Hep** also detailed how out-of-pocket costs are rising for patients, particularly for prescription drugs, leading to increased medical debt. They noted that CMS has announced that maximum out-of-pocket costs will rise by 10.3 percent in 2026 to staggering levels: \$10,150 for an individual and \$20,300 for a family. These costs are on top of monthly premiums, which are also rising.

Due to these high out-of-pocket costs, which are set by the insurers and PBMs, 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. With copay accumulator and maximizers, the copay assistance is not applied to the beneficiary's deductible and out-of-pocket maximum. Implementing a copay accumulator allows the insurer to double dip, collecting once from the drug manufacturer and then again from the beneficiary.

In the [comments](#), **HIV+Hep** also urged the administration to follow through on its promise to apply a simple regulation issued last year for the small group and individual markets to the large group and self-funded markets. That rule simply states that a drug covered by a plan must be considered as an essential health benefit. This would end a loophole that a [growing number of employer plans](#) are using that designate certain drugs as “non-essential health benefits.” The drugs chosen are those whose manufacturer offers copay assistance, and that copay assistance is siphoned back to the plan and employer.

**HIV+Hep** also voiced its strong support for adding PrEP, which are drugs that prevent HIV, to the risk adjustment model.

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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.