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Three Years Since Court Victory & Prescription Drug Copay Assistance Still Not Counting for Patients

Administration Must Enforce Court Victory to Lower Drug Costs for Patients & End Insurers' Double-Charging

Washington, DC… September 29th will mark the three-year anniversary of the federal court decision that struck down a rule that allowed health insurers not to count drug manufacturer copay assistance towards a beneficiary's out-of-pocket costs. After all this time, the federal government is still blatantly ignoring the court ruling and not enforcing the law that requires insurers to count copay assistance towards patient cost-sharing. As a result, insurers and their PBMs are pocketing billions of dollars of copay assistance meant for patients, and then, because that assistance isn't counted, charging patients for the same costs, forcing them to come up with thousands of dollars more to meet their deductible and copays.

"At a time when the American people are focused on the affordability crisis and concerned about how much they pay for their prescription medications, the federal government can easily reduce their costs by complying with the court order and telling insurers they must count copay assistance towards patient cost-sharing," said **Carl Schmid, executive director** of the **HIV+Hepatitis Policy Institute**. "Instead, they are siding with the big insurers and drug middlemen, increasing their profits at the expense of patients who are struggling to afford their medications."

According to IQVIA data, copay assistance totaled $23 billion in 2025. That represents billions and billions of dollars that patients did not have to pay out of their own pockets. However, insurers and middlemen are pocketing $7 billion of that money for schemes that don't count copay assistance towards patient cost-sharing. Due to the government's inaction, the use of "copay accumulator" programs is growing. In 2024 an estimated 43 percent of commercial insurers employed them.

As patient out-of-pocket costs continue to rise, the use of copay assistance is even more important for patients. Since 2000, out-of-pocket costs have risen 37 percent. Next year, the maximum out-of-pocket for a single person will be $12,000 and $24,000 for a family, an increase of 13 percent over the current year. IQVIA data demonstrate the importance of copay assistance. Patients with copay assistance abandon prescriptions at the pharmacy 8 percent of the

time, compared to 14 percent for those without it, and are adherent for an average of 202 days a year, while those without assistance were only adherent for an average of 102 days.

“But this should not be a debate about the value of copay assistance. It is about insurers and PBMs pocketing that copay assistance, refusing to apply it to patients’ deductible and out-of-pocket limits, and then forcing patients to pay them even more money if they want to pick up the prescription that keeps them healthy,” continued Schmid. “These schemes must end. Justice is being denied to millions of patients, and the federal government must act now.”

The Court gave the government the option of issuing a new rule to clarify how copay assistance applies to patient cost-sharing. Almost three years ago, the government pledged to the Court and the public that it would do so, yet no rule has been issued. Any new rule would have to be issued jointly by HHS and the Departments of Labor and Treasury.

While there has been no federal action, twenty-six states, the District of Columbia, and Puerto Rico have passed laws requiring insurers to count copay assistance towards patient cost-sharing. Two additional states, Nevada and Minnesota, have directed their insurers to comply with the Court order. However, since these laws only apply to state-regulated plans, a federal solution is needed. Bipartisan legislation to resolve this issue has been introduced in the U.S. Senate by Senators Roger Marshall (R-KS) and Tim Kaine (D-VA) and in the House of Representatives by Reps Tom Kean, Jr. (R-NJ), Nanette Barragán (D-CA), Mariannette Miller-Meeks (R-IA), Jake Auchincloss (D-MA), Brian Fitzpatrick (R-PA), and Bonnie Watson Coleman (D-NJ).

The court case was brought against the U.S. Department of Health and Human Services by the HIV+Hepatitis Policy Institute, three patients, and two diabetes groups. All briefs and press releases related to the case, which was originally filed in August 2022, can be found here.

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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.