HIV+HEP

POLICY INSTITUTE

November 4, 2026

Mr. Mike Causey
Commissioner
North Carolina Department of Insurance (DOI)
The State of North Carolina
3200 Beechleaf Court
Raleigh, NC 27604

Re: The Petition of Frank Marino & Enforcing North Carolina's Copay Accumulator Ban

Dear Commissioner:

We understand that Mr. Frank Marino has filed a petition with your office asking your agency to reconsider a statutory position which we understand that an employee provided to Mr. Marino of N.C. Gen. Stat. § 58-56A-3(c1). As we understand it, the employee stated that N.C. Gen. Stat. § 58-56A-3(c1) only applies to Pharmacy Benefit Managers and not to insurance companies. This position was apparently taken even though the statute unambiguously imposes the same obligation on an "insurer or pharmacy benefit manager". *Id*. We urge you to reject this misreading of the statute as it is contrary to the plain language of the statutory text.

A. About HIV+Hepatitis Policy Institute

The HIV+Hepatitis Policy Institute (the Institute) is a not-for-profit organized under Section 501(c)(3) of the Internal Revenue Code that promotes quality and affordable health care for people living with or at risk of HIV, hepatitis, and other serious and chronic health conditions. Prescription drug access is a central area of focus for the Institute. We promote programs and policies that support access to care and treatment. As part of that core focus, the Institute seeks to assist people with and at risk of HIV, hepatitis, and other serious and chronic health conditions gain and maintain access to comprehensive, quality, and affordable health care.

B. Accumulators and Maximizers and the Harm They Do

Cost-sharing and what counts towards annual maximums is of critical importance to the patients that we serve. Insurers and pharmacy benefit managers use accumulator and maximizer programs to deceptively increase annual maximums above the stated maximums on which consumers rely. By refusing to count the amounts paid by patients or paid for patients on their behalf towards cost-sharing, insurers and pharmacy benefit managers put access and the health of patients at risk.

Patients are victimized by these accumulator and maximizer programs. The vendors, pharmacy benefit managers, and insurance companies that implement them—and profit from them—routinely fail to disclose these programs to patients, deceptively describe them as a "benefit," or

bury their description in plan documents. When patients try to access healthcare they desperately need, thinking they have already satisfied a deductible or an out-of-pocket maximum, they are surprised to find they have not. The payments they have made with assistance from third parties have been disregarded, leaving patients in need of having to pay hundreds or thousands of dollars more in cost-sharing they are entirely unprepared to pay. Many patients with limited financial resources are left wholly unable to access the care they need, jeopardizing their—and their families'—health and well-being.

C. Mr. Marino's Petition

Although Mr. Marino is not affiliated with our organization, we became aware of this case and are deeply concerned by what it shows. Mr. Marino's son is insured by Ambetter of North Carolina Inc. His drug, Dupixent (dupilumab), has no AB-rated generic equivalent, and the manufacturer copay assistance of $250 per fill should count toward all of his cost-sharing under North Carolina law. Ambetter instead credits those sums only toward his out-of-pocket maximum and has refused repeatedly to recognize them toward his deductible. In 2025, five fills totaling $1,250 were credited, however $0.00 was applied toward his deductible, according to Ambetter's own accumulator report. As of October 28, 2026, his accumulator showed $3,354.41 of his $8,200 out-of-pocket maximum credited while he was only credited $159.41 of $2,000 towards his deductible. His most recent fill, on October 18, 2026, illustrates the practice precisely: the $250 was credited in full to the out-of-pocket maximum, which rose by exactly that amount over its October 4 level, and $0.00 was credited to the deductible, which did not move. Ambetter is acting contrary to North Carolina law.

Nor is Ambetter the only insurer in North Carolina to deploy accumulators in violation of state law. United Healthcare is also using an accumulator. On page 4 of their Individual Exchange Medical Policy it states: "Coupons: We may not permit certain coupons or offers from pharmaceutical manufacturers or an affiliate to apply to your Annual Deductible" and on page 5 it states: "Coupons: We may not permit certain coupons or offers from pharmaceutical manufacturers or an affiliate to apply to your Out-of-Pocket Limit." *See* https://www.uhc.com/content/dam/uhcdotcom/en/iex-marketplace/sample-medical-policy/Sample-Medical-Policy-NC-IEX-2026.pdf.

The Institute has long advocated for patients who are harmed by insurer and PBM refusals to recognize payments made by or on behalf of patients before agencies, in Congress and state legislatures, and in litigation. These unlawful actions by insurers and PBMs are a substantial threat to patient access and a significant source of the affordability problems that your constituents are communicating to their elected representatives.

D. The Statute

N.C. Gen. Stat. § 58-56A-3(c1) provides that:

> When calculating an insured's contribution to any out-of-pocket maximum, deductible, copayment, coinsurance, or other applicable cost-sharing requirement, the insurer or pharmacy benefits manager shall include any amounts paid by the insured, or on the insured's behalf, for a prescription that is either: (1) Without an AB-rated generic

> equivalent. (2) With an AB-rated generic equivalent if the insured has obtained authorization for the drug through any of the following: a. Prior authorization from the insurer or pharmacy benefits manager. b. A step therapy protocol. c. The exception or appeal process of the insurer or pharmacy benefits manager.

The statute is written in clear, strong, decisive, and mandatory terms. It applies to any "insurer or the pharmacy benefit manager." They are both clearly subject to the mandate. Indeed, the fact that the statute first references the "insurer" means that insurance companies are, if anything, the primary target of the obligation. The obligation imposed is reinforced the use of the mandatory "shall," the reference to "any" amount paid, the sweeping catalogue of specific payment types ("maximum, deductible, copayment, [or] coinsurance"), and then the broad final catch-all of any "other" cost-sharing requirement.

Despite that, we understood the office's employee took the position that, because this language is codified in a section of the statutory code that generally relates to PBMs, the statute applies only to PBMs and has no effect on insurers. That misreading of the statute literally writes the word "insurer" out of the text as enacted by the legislature. We urge you to reconsider that misinterpretation as it is incorrect as a matter of law.

E. The Correct Interpretation of the Statute

In North Carolina, when a statute "is clear," the "text" controls. *In re Appeal of Forsyth County*, 285 N.C. 64, 71, 203 S.E.2d 51, 55 (1974). Thus, when a statute is "unambiguous," a court's analysis "will end with the plain meaning of the text." *Schroeder v. City of Wilmington*, 282 N.C. App. 558, 566, 872 S.E.2d 58, 64 (2022). In such a case, a statute's "placement" in the code is irrelevant to "discern[ing] the legislature's intent." *Id*.

Because insurers are unambiguously named in the operative text of the statute, the misinterpretation of the statute at issue is a "construction which operates to defeat or impair the object of the statute." *Burgess v. Your House of Raleigh, Inc.*, 326 N.C. 205, 215, 388 S.E.2d 134, 140 (1990), *quoting State v. Hart*, 287 N.C. 76, 80, 213 S.E.2d 291, 295 (1975). As such, it is a construction that does "violence to the legislative language." *Id*.

North Carolina is hardly alone in recognizing these basic precepts of statutory construction. Codification elements, even textual ones like subchapter headings, "cannot substitute for the operative language of the statute." *Wikimedia Foundation v. National Security Agency/Central Security Service*, 14 F.4th 276 (4th Cir. 2021), *quoting Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47 (2008).

Even if there were any doubt as to the fact that the statute applies to "insurers" under any plain language reading of the law—and there is none—the legislative history of the provision shows unmistakably that the North Carolina legislature meant exactly what it said. An early version of S.B. 257 already applied to "PBMs and health benefit plans." Shortly thereafter, an edition of the bill referenced an "insurer" and reinforced the application of the bill to insurance companies by stating that the protection was to apply to payments made by an "insured" or on behalf of an "insured." PBMs were only added thereafter to that bill language, emphasizing the primacy of the "insurer" reference.

Indeed, the suggestion that the plain language of the text should be disregarded because it is found in a section of the code that generally applies to PBMs is a false premise. Section 56A is itself just a part of what, by statute, the state legislature has conclusively determined is merely a part of the state's "Insurance Law." N.C. Gen. Stat. § 58-1-1 ("Articles 1 through 64 of this Chapter … shall be known as the Insurance Law").

F. Our Ask

We ask that the DOI:

- grant Mr. Marino's petition;
- instruct Ambetter of North Carolina Inc. to immediately count all amounts paid by or on behalf of Mr. Marino's son toward his son's deductible, out-of-pocket maximum, and other cost-sharing obligations for each relevant year;
- require Ambetter and United Healthcare to count all other amounts paid on behalf of other insureds toward their cost-sharing obligations without regard to the nature of that cost-sharing amount; and
- issue an advisory to all North Carolina insurers and pharmacy benefits managers that they must comply with N.C. Gen. Stat. § 58-56A-3(c1).

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We would appreciate the opportunity to meet with you in follow-up to this letter. We expect that a number of other patient advocacy groups will wish to participate. In order to set up this meeting, I can be reached at cschmid@hivhep.org or (202) 462-3042.

Thank you for your attention to this extremely important issue.

Best regards,



Carl Schmid
Executive Director

cc: Sen. Danny Britt, Co-Chair, Senate Commerce and Insurance Cmte.
Sen. Todd Johnson, Co-Chair, Senate Commerce and Insurance Cmte.
Sen. Eddie Settle, Co-Chair, Senate Commerce and Insurance Cmte.
Rep. Jennifer Balkcom, Co-Chair, House Insurance Committee
Rep. Chris Humphrey, Co-Chair, House Insurance Committee
Sen. Lisa Grafstein
Rep. Erin Paré
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