

October 22, 2021

Ellen Montz, PhD  
Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Re: 2023 Notice of Benefit and Payment Parameters

Dear Dr. Ellen Montz:

On behalf of The Patient Access Network (PAN) Foundation, one of the nation's largest charities, I am writing to strongly urge CMS to ensure that the forthcoming Notice of Benefit and Payment Parameters for 2023 reverses the Trump Administration's decision to allow insurers and pharmacy benefit managers to include copay accumulator adjustment policies in their plans.

PAN is a non-profit organization whose mission is to help underinsured people with life-threatening, chronic, and rare diseases get the medications and treatments their physicians prescribe for them by providing financial assistance for their out-of-pocket costs and by advocating for improved access and affordability. PAN provides patients with direct assistance through nearly 70 disease-specific programs and collaborates with national patient advocacy organizations to provide patients with education and additional support. Since 2004, more than one million underinsured patients have received financial assistance from the Foundation, those with federal insurance, as well as those who are commercially insured.

PAN is a strong advocate for copay assistance which help patients cover the cost of copays and coinsurance, as imposed by the health issuer's benefit design. Copay assistance is financial assistance provided by manufacturers, charitable assistance foundations, or from a family member that helps a patient cover the cost of their copays and co-insurance, ensuring older adults and people living with disabilities can afford and access their prescriptions. It does not change how much a patient must pay toward the cost of their care; it is simply a source of funding to pay those costs.

Copay accumulators, which have been permitted through the 2021 Notice of Benefit & Payment Parameters, create barriers to patients in accessing and affording their prescription medications. Copay assistance helps patients cover the cost of copays and coinsurance, as imposed by the health issuer's benefit design. When that assistance is not counted toward a patient's deductible and out-of-pocket costs, the patient alone is left responsible for paying what is often an exorbitant amount in out-of-pocket costs that can inhibit access to a needed prescription medication. This means that the insurer is often accepting payments above and beyond the maximum cost sharing requirement required by the Affordable Care Act, as the dollars from third-party payments are not counted towards the calculation of the patient's deductible or annual OOP maximum. Pharmacy benefit managers are potentially collecting the payments twice - once via copay assistance, and again when the patient requires other care, or when their copay assistance runs out and they need to get their prescriptions refilled assuming they can afford to do so.

Copay accumulator policies have proliferated since the 2021 Notice of Benefit & Payment Parameters (NBPP) was released. Every state that has not passed legislation prohibiting copay accumulators in 2021 marketplace plans has at least one plan with a copay accumulator policy. In 14 states (AL, CT, DE, HI, ID, IN, IA, KY, LA, ME, MI, MS, MT, NE) every plan available through the marketplace has a copay accumulator policy. Alternatively, many state policy makers have recognized the harm these insurance policies have on their patients. To date, 12 states (AR, AZ, CT, GA, IL, KY, LA, NC, OK, TN, VA, WV) plus Puerto Rico have passed legislation prohibiting copay accumulators in their individual marketplace plans.

In 2019, CMS implemented a policy to require insurance issuers and pharmacy benefit managers to count copay assistance toward a beneficiaries' out-of-pocket costs. However, in a reversal of rule, the final 2021 NBPP, issued in May 2020, permitted health insurance issuers and pharmacy benefit managers (PBMs) to adopt copay accumulator policies without restriction. **We urge CMS to reinstate the agency's original rule requiring issuers to count all payments made by or on behalf of the beneficiary (including patient copay assistance) toward patients' annual deductible and out-of-pocket limit.** Keeping medications out of the reach of patients who need them is not good or effective policy.

The PAN Foundation appreciates your leadership in seeking solutions to increase access to and affordability of health care for more Americans. PAN strongly supports policies that ensure patient access to prescribed medications. If you would like further information or have questions, please contact Amy Niles, Executive Vice President at [aniles@panfoundation.org](mailto:aniles@panfoundation.org).

Sincerely,



Kevin L. Hagan  
President and Chief Executive Officer

CCs: Deputy Director Jeff Grant  
Deputy Director for Policy Jeff Wu