



January 30, 2023

The Honorable Chiquita Brooks- LaSure
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: *HHS Notice of Benefit and Payment Parameters for 2024* Proposed Rule, CMS-9899-P RIN 0938-AU97

Dear Administrator Brooks-LaSure:

The All Copays Count Coalition submits these comments on the Health and Human Services' (HHS) Notice of Benefit and Payment Parameters (NBPP) for 2024 proposed rule. The 80 organizations signing this letter represent millions of people living with serious, complex chronic illness across the United States. We are extremely disappointed to see that CMS has again failed to address copay accumulator adjustment policies in this proposed rule. The Biden Administration has committed to advance health equity, reduce disparities, and make healthcare more affordable; however, CMS' lack of action on this issue directly inhibits that mission. We strongly urge you to include a provision in the final rule requiring that insurers and pharmacy benefit managers (PBMs) count all copayments made by or on behalf of an enrollee toward the enrollee's annual deductible and out-of-pocket limit.

Copay accumulator adjustment policies unfairly target people with serious, chronic illness, undermining the Affordable Care Act (ACA) protections that prohibit insurers from charging people with pre-existing conditions more for health insurance than healthier enrollees. Copay assistance is available generally for high-cost brand and specialty medications without a medically equivalent generic alternative and is used by people with serious and complex chronic illnesses.¹ These policies subvert the benefit of copay assistance, thereby discriminating against people living with chronic conditions. People with low incomes and people of color are more likely to be living with a chronic illness;² therefore, these policies target the most vulnerable patients, enabling insurance issuers to essentially underwrite insurance policies for people who require specialty or brand medications.

Copay accumulator adjustment policies will push more patients into medical debt. As deductibles and maximum out-of-pocket limits have risen (as high as \$9,100 in 2023), the ability for many Americans to cover those costs is not feasible.³ Often the only way to afford their medicines on top of paying for basic needs such as rent, food, transportation, and childcare, is to seek copay assistance. When insurers and

¹ K. Van Nuys, G. Joyce, R. Ribero, D.P. Goldman, *A Perspective on Prescription Drug Copayment Coupons*. Leonard D Schaeffer Center for Health Policy & Economics. (February 2018), <https://healthpolicy.usc.edu/research/prescription-drug-copayment-coupon-landscape/>

² The Center for American Progress, Fact Sheet: *Health Disparities by Race and Ethnicity*. (May 7, 2020), <https://www.americanprogress.org/article/health-disparities-race-ethnicity/>

³ Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of US Households in 2019-May 2020*. <https://www.federalreserve.gov/publications/2020-economic-well-being-of-us-households-in-2019-overall-economic-well-being-in-2019.htm>

PBMs collect the copay assistance but fail to count those amounts toward the enrollee's cost-sharing requirements, it will undoubtedly cause the enrollee to abandon their prescriptions, ration doses, or forego other necessities to cover those costs. In 2019, 16 million people had more than \$1,000 in medical debt, and 3 million people owed more than \$10,000 related to medical bills.⁴ Allowing copay accumulator adjustment policies will push more chronically ill people into financial and physical harm.

Copay accumulator policies harm patients at the benefit of insurers and PBMs. These policies take away the benefit of copay assistance intended for the enrollee, directing the money to the insurer or PBM's bottom line. The ACA established annual out-of-pocket limits for covered health care services. When enrollees hit the out-of-pocket limit, insurance issuers must fully cover any further health care costs incurred. When insurers do not count copay assistance cost-sharing amounts to pay for covered services toward annual deductibles and out-of-pocket limits, enrollees are forced to cover those costs again, thereby exceeding the out-of-pocket limit for the plan year.

People do not choose to have a chronic condition; and when the health insurance plans available to them include a copay accumulator as part of the benefit design, their choice to buy health coverage that fits their needs is taken away. Since 2021, when CMS officially sanctioned copay accumulator adjustment policies, copay accumulator programs have proliferated and have evolved.⁵ In 2023, 16 states and Puerto Rico have passed legislation prohibiting copay accumulators; however, this only accounts for 13% of commercially insured enrollees.⁶ Based on research of several plans, representing differing payer types, covering almost 100 million commercially insured lives, 83% of those insured by the plans have copay accumulator policies.⁷ A solution bigger than state legislation is needed to fix this problem.

We urge HHS to reconsider its policy allowing insurers and PBMs to adopt copay accumulator adjustment programs.⁸ These policies disproportionately impact enrollees with chronic illness, jeopardizing their access to needed care and prescription drugs. We urge HHS to require issuers and pharmacy benefit managers to count patient copay assistance toward a beneficiary's out-of-pocket costs, putting patients' health above insurer and PBM profits.

We appreciate HHS officials and CMS leaders considering the critical needs of our patient community. Please feel free to reach out to our steering committee, Rachel Klein, Deputy Executive Director, The AIDS Institute at rklein@tmail.org should you have any questions. Thank you very much for your consideration of our comments.

⁴ M. Rae, G. Claxton, K. Amin, E. Wager, J. Ortaliza, C. Cox, Peterson-KFF Health System Tracker, *The Burden of Medical Debt in the United States*, (March 10, 2022), <https://www.healthsystemtracker.org/brief/the-burden-of-medical-debt-in-the-united-states/>

⁵ J. Brown, R. Ehrenberg, R. Glass, B., Plotnik, IQVIA, White Paper; *Five Years and Counting: Deductible Accumulators and Copay Maximizers in 2022*, (December 2022), <https://www.iqvia.com/-/media/iqvia/pdfs/us/white-paper/2022/five-years-and-counting-deductible-accumulators-and-copay-maximizers-in-2022.pdf>

⁶ M. Gooding, K. Sikora, M. Finkel, *State Copay Accumulator Bans Will Affect 13% of US Commercial Lives*, Avalere (January 5, 2023), <https://avalere.com/insights/state-copay-accumulator-bans-impact-11-of-us-commercial-lives#:~:text=Thirteen%20percent%20of%20people%20enrolled,patient%20cost%20sharing%20by%202024.>

⁷ J. Wang, K. Kirk, C. Scott, *Contributor: Providers and Patients Push Back, Payers Push Forward – Copay Mitigation Programs*, American Journal of Managed Care, (February 7, 2021), [https://www.ajmc.com/view/contributor-providers-and-patients-push-back-payers-push-forward-co-pay-mitigation-programs.](https://www.ajmc.com/view/contributor-providers-and-patients-push-back-payers-push-forward-co-pay-mitigation-programs)

⁸ The AIDS Institute. *Discriminatory Copay Policies Undermine Coverage for People with Chronic Illness*. (March 2022), file:///E:/Copay%20Accumulator%20Work/2022%20Research%20and%20Report/final_TAI_2022%20Report%20Update_02102.pdf

Sincerely:

AIDS Foundation Chicago
Alaska Hemophilia Association
Alliance for Patient Access
ALS Association
American Academy of HIV Medicine
American Cancer Society Cancer Action Network
Arizona Bleeding Disorders
Arthritis Foundation
Association for Clinical Oncology
Association of Women in Rheumatology (AWIR)
Autoimmune Association
Bleeding Disorders Association of South Carolina
Bleeding Disorders Foundation of North Carolina
Bleeding Disorders Foundation of Northeastern New York
California Chronic Care Coalition
Cancer Support Community
CancerCare
Chronic Care Policy Alliance
Coalition of Skin Diseases
Coalition of State Rheumatology Organizations
Community Liver Alliance
Community Oncology Alliance (COA)
Crohn's & Colitis Foundation
Derma Care Access Network
Diabetes Leadership Council
Diabetes Patient Advocacy Coalition
Epilepsy Foundation
EveryLife Foundation for Rare Diseases
Florida Hemophilia Association
Florida Society of Rheumatology
Foundation for Sarcoidosis Research
Gateway Hemophilia Association
Global Healthy Living Foundation
Global Healthy Living Foundation
Great Lakes Hemophilia Foundation
Haystack Project
Headache and Migraine Policy Forum
HealthyWomen
Hemophilia Association of New York, Inc.
Hemophilia Association of the Capital Area
Hemophilia Council of California

Hemophilia Federation of America
Hemophilia of Iowa
HIV + Hepatitis Policy Institute
HIV Dental Alliance
HIV Medicine Association
ICAN, International Cancer Advocacy Network
Immune Deficiency Foundation
Infusion Access Foundation (IAF)
International Foundation for Autoimmune &
Autoinflammatory Arthritis
Looms For Lupus
Lupus and Allied Diseases Association, Inc.
Lupus Foundation of America
Mary M. Gooley Hemophilia Center
Multiple Sclerosis Association of America
NASTAD
National Eczema Association
National Hemophilia Foundation
National Infusion Center Association (NICA)
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Psoriasis Foundation
Nevada Chronic Care Collaborative
New York Blood Center
New York State Bleeding Disorders Coalition
North Carolina AIDS Action Network
Ovarian Cancer Research Alliance
Partnership to Advance Cardiovascular Health
Patient Access Network (PAN) Foundation
Pulmonary Hypertension Association
Susan G. Komen
Texas Central Bleeding Disorders
The AIDS Institute
The Assistance Fund
The Headache and Migraine Policy Forum
The South Carolina Hemophilia and Bleeding Disorders
Advocacy Coalition
Triage Cancer
Virginia Hemophilia Foundation
Vivent Health
Western Pennsylvania Bleeding Disorders Foundation