

FROM THE NAIC CONSUMER REPRESENTATIVES

November 8, 2021

To: Regulatory Framework (B) Task Force Members

RE: Consumer Representatives' Comments on Suggested Additional Charge Addressing Copay Assistance

On behalf of the undersigned Consumer Representatives to the National Association of Insurance Commissioners (NAIC), we offer comments on the suggestion offered by the American Bankers Association Health Savings Account Council (ABA HSA Council) to add a new charge for the Task Force in 2022 relative to copay assistance for prescription drugs.

For the past several years, many of us have raised the issue of insurers and pharmacy benefit managers (PBMs) not counting copay assistance as part of an enrollee's deductible and cost-sharing requirements even though the insurers continue to collect the copay assistance. To date, the NAIC has not taken any action on this growing practice, often called copay accumulator adjustment programs. These policies significantly increase beneficiary costs and reduce access to prescription drugs and other covered services.

If the NAIC were to add a charge addressing copay assistance for prescription drugs, we do not believe it should be narrowly construed as suggested by the ABA HSA Council, but rather broadened to explore the impact of high prescription drug cost-sharing on consumers and their medication adherence, along with the value of copay assistance, and include the following elements:

1. The underlying need for copay assistance, driven by insurance benefit design;
2. How benefit design with high costs for specialty medications discriminate against people with chronic conditions;
3. The financial impact of copay accumulator policies on enrollees and their families, particularly when they are unaware of them and encounter unexpected costs to pay for their prescriptions;
4. The impact that copay accumulator policies have on access and adherence to medications prescribed by providers;
5. The impact of copay accumulator policies on enrollee's health;
6. The lack of transparency by insurers and PBMs when implementing these policies;
7. The impact of these policies on racial disparities and health inequities;
8. The legal implications of insurers double charging for deductibles and out-of-pocket costs;
9. What states are doing to protect enrollees from these practices; and
10. An examination of federal actions to date that may impact copay assistance.

The ABA HSA Council has raised this issue in the context of the impact of state legislation banning the practice may have on the ability of a relatively small number of consumers to contribute to Health Savings Accounts (HSAs). We disagree with the interpretation of the IRS guidance referenced by the ABA HSA Council and that it is appropriate to privilege HSA eligibility over access to necessary health care for people who have high-deductible health plans.

Any discussion of this issue by the NAIC should be considered as part of a more comprehensive review of these policies.

For any questions, please contact Carl Schmid, HIV+Hepatitis Policy Institute at cschmid@hivhep.org. Thank you very much.

Sincerely,

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