



The Honorable Roger Marshall

U.S. Senate
Washington, D.C. 20515

The Honorable Tim Kaine

U.S. Senate
Washington, D.C. 20515

The Honorable Earl L. “Buddy” Carter

U.S. House of Representatives
Washington, DC 20515

The Honorable Nanette Barragán

U.S. House of Representatives
Washington, DC 20515

The Honorable Mariannette Miller-Meeks

U.S. House of Representatives
Washington, DC 20515

The Honorable Diana DeGette

U.S. House of Representatives
Washington, DC 20515

The Honorable Brian Fitzpatrick

U.S. House of Representatives
Washington, DC 20515

The Honorable Yvette Clarke

U.S. House of Representatives
Washington, DC 20515

The Honorable Bonnie Watson-Coleman

U.S. House of Representatives
Washington, DC 20515

October 17, 2023

Re: Support for the HELP Copays Act Amid U.S. District Court Decision on 2021 Notice of Benefit and Payment Parameters Final Rule

Dear Senators Marshall and Kaine and Representatives Carter, Barragán, Miller-Meeks, DeGette, Fitzpatrick, Clarke, and Watson-Coleman:

In light of your leadership on the introduction of the Help Ensure Lower Patient (HELP) Copays Act, and the recent U.S. District Court for the District of Columbia’s ruling to vacate the provision of the 2021 Notice of Benefit Payment Parameters (NBPP)¹ - which had allowed PBM’s and commercial market health plans to implement “copay accumulator adjustment policies” at their discretion - we are writing to reiterate our commitment to continue working with you and advocating for the passage of the HELP Copays Act.

The Court’s decision is a big win for patients, but until the matter is codified in statute, patients remain vulnerable to future threats from the Department of Health and Human Services (HHS). Under the Court’s ruling, HHS still has discretion to draft new regulations that justify the use of copay accumulators. That’s why, within days of the Court’s decision, 86 patient and provider organizations of the All Copays

¹ US District Court for the District of Columbia, Memorandum Opinion: HIV and Hepatitis Policy Institute, et. al v US Department of Health and Human Services, September 29, 2023, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2022cv2604-42.

Count Coalition signed [a letter \(attached\)](#) to HHS urging them to quickly issue guidance clarifying to health insurance issuers and PBMs that they must follow the copay assistance provision included in the 2020 NBPP; and, further, that they must inform enrollees subject to a copay accumulator adjustment policy of this change. We also urged HHS not to appeal this important legal decision.

Additionally, the District Court’s ruling addresses copay accumulators only; not the Essential Health Benefit (EHB) ‘Loophole.’ The loophole allows some commercial market plans to deem certain benefits as covered but “non-essential” – labeling a product or service as non-essential allows the issuer or PBM to collect copay assistance on behalf of a patient but not count the value towards the annual limitation on cost-sharing. When plans use this loophole to impose “copay maximizers” on the prescription drugs, it leaves patients exposed to high deductibles creating a barrier to other necessary healthcare services. Maximizer policies have grown in popularity in recent years; an analysis of commercial insurers found 73% of surveyed plans have implemented copay maximizers.² This tactic grants health plans and PBMs permission to divert and profit from assistance intended for the most financially vulnerable patients with chronic health conditions.

To truly ensure that patients are protected from harmful PBM schemes, Congress must enact federal legislation – the HELP Copays Act. The HELP Copays Act will hold PBMs accountable and guarantee vulnerable patients across the nation will be able to access and adhere to necessary treatments.

The steering committee members of the ACCC share the same mission; to advocate for the patients we represent by ensuring adequate access to affordable lifesaving and lifechanging care. We stand ready to continue our work together on this important legislation.

Sincerely,

Arthritis Foundation
Cancer Support Community
Immune Deficiency Foundation
National Bleeding Disorders Foundation
National MS Society
The AIDS Institute

CC: Sen. Charles Schumer
Sen. Mitch McConnell
Speaker Pro Temp Patrick McHenry
Rep. Hakeem Jeffries
Warran Scott Gunnels
Amanda Lincoln
Nate Hodson
Tiffany Guarascio

² <https://avalere.com/insights/copay-accumulator-and-maximizers-evolving-policy-landscape>