



## **Patient and Provider Groups Disappointed in HHS Decision to Appeal Court Ruling**

*HHS will continue to allow insurers and PBMs to profit from copay assistance for vulnerable patients.*

**Media Contact:** [info@allcopayscount.org](mailto:info@allcopayscount.org)

**WASHINGTON, DC – November 29, 2023** — Patient and provider groups were disappointed to learn the US Department of Health and Human Services (HHS) filed an appeal yesterday challenging a US District Court ruling that would have made access to prescription drugs easier for people living with serious, chronic conditions. This move runs counter to the Biden Administration's efforts to improve health care access and affordability for Americans.

Last month, 86 patient-focused organizations from the [All Copays Count Coalition](#) (ACCC) sent a [letter](#) urging HHS and the Department of Labor (DOL) to enforce a rule requiring insurers and pharmacy benefit managers (PBMs) to count copay assistance toward their enrollees' annual deductible and total out-of-pocket costs. The letter followed a US District Court for the District of Columbia's [decision](#) vacating a [regulation](#) that allowed commercial market insurers and PBMs to profit from copay assistance provided to patients with rare and chronic diseases. In the letter, the groups asked HHS to honor the court's decision and uphold the patient protections guaranteed in the Affordable Care Act (ACA).

In a [motion to clarify](#) the original court decision, also filed this week, HHS declared its intention to allow these practices to continue pending rulemaking in the future, despite the court's ruling.

Three patient groups and three patients brought a [lawsuit](#) against HHS, challenging a provision of the 2021 Notice of Benefit and Payment Parameters (NBPP), arguing that it violated the ACA's definition of cost-sharing, and that the rule was arbitrary and capricious. The disputed provision permitted health insurers and PBMs to decide whether to count copay assistance payments that they collected on behalf of enrollees toward those enrollee's annual deductible and out-of-pocket costs, or not. The judge for the District Court ruled in favor of the patient groups on the grounds that HHS was not consistent in its definition of cost-sharing, leaving it to issuers to interpret. The 2021 NBPP provision had reversed a 2020 rule that required insurers and PBMs to count those payments for enrollees, with limited exceptions.

"We are surprised and disappointed that HHS has decided not to use this opportunity to protect patients against these harmful practices," said **Anna Hyde, Vice President of Advocacy and Access at the Arthritis Foundation**. "We urge the Administration to reconsider its position and support the intent of the Affordable Care Act to protect patients against detrimental insurer and PBM practices."

*The ACCC has tried to work with HHS officials, advocating on behalf of patients with serious, chronic conditions, to find policy solutions that will ensure patients can afford their life-saving medicines. In recent years, health insurance costs have risen so drastically that many people with chronic illness struggle to meet their high deductibles and cover their coinsurance payments, putting them in grave danger physically and financially. However, HHS is now using their resources to keep life-saving medicines out of reach for patients and their families.*

**Rachel Klein, Deputy Executive Director of The AIDS Institute**, said, *“Insurers and PBMs should not be diverting funds intended to help patients living with serious chronic illness toward their own bottom lines. These policies target the most vulnerable people in our communities. Insurers are profiting while patients are suffering; with this action, HHS is continuing to put insurance industry interests over patient protections.”*

*By following the original court order, HHS would align with federal regulations and laws enacted in 19 states plus DC and Puerto Rico, to ensure that insurers and PBMs count copay assistance payments made on behalf of enrollees toward their annual deductible and out-of-pocket limit. The original court order also follows federal legislation, the [HELP Copays Act of 2023](#), which is supported by the ACCC. The bipartisan HELP Copays Act was introduced in the House by Representatives Buddy Carter (R-GA) and Nanette Barragan (D-CA), and currently has over 100 cosponsors. The bill was also introduced in the Senate by Senators Roger Marshall (R-KS) and Tim Kaine (D-VA) and is cosponsored by 16 Senators.*

*The All Copays Count Coalition members urge HHS to follow the court’s decision, align with the Administration’s priorities, withdraw its appeal, and enforce the 2020 rule.*

#### **About the All Copays Count Coalition**

*The All Copays Count Coalition (ACCC) is comprised of members serving the interests of beneficiaries with chronic and serious health conditions that rely on copay assistance in various forms to make medically necessary drug treatments affordable. The coalition provides information about the harmful effects of pricing schemes, known as “copay accumulators and maximizers,” on access to prescription drugs for people with chronic and serious health conditions.*