

WHAT EMPLOYERS NEED TO KNOW ABOUT DC DECISION



Copay Accumulators Are No Longer Allowed – But Not All Health Plans Are In Compliance

The United States District Court for the District Court of Columbia, recently ruled that private health plans cannot use copay accumulators for brand name medications that do not have medically appropriate generic alternatives available. You can learn more about this court case [here](#).

Unfortunately, accumulators are still being widely used by insurance companies and their pharmacy benefit managers (PBMs).

The Impact for Employers

As employers, it is imperative that you review your health insurance plans to make sure your plan is acting consistently with Federal law.

As of September 29, 2023, all health plans, including employer sponsored health plans, are required to count all copay assistance for brand name medications without a medically appropriate generic alternative towards an employee deductible and annual limits on cost-sharing.

Steps Employers Can Take:

Step 1: [Educate yourself about copay accumulators](#)

Step 2: Learn if your plan includes an accumulator: Accumulators are widely used, but often not recognized. It is estimated that of all commercial markets in 2021, 43% of covered lives were in commercial health plans that had implemented accumulators. Review your plan documents. Accumulators can be included in all types of plans, but are most common in high-deductible health plans. To determine if your health plan is using a copay accumulator looking for the word “accumulator” or other terms such as:

- Out-of-Pocket Protection Program;
- True Accumulation; or
- Coupon Adjustment: Benefit Plan Protection Program;
- If you're still not sure, call your health plan and ask.

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Step 3: Know Your Rights: If you discover that your plan includes an accumulator, notify your insurance plan that they must immediately remove the accumulator in light of the [2023 District Court decision](#).

Below is a guide to help facilitate this conversation with your plan or PBM. This is not legal advice.

Dear (Health Plan):

I have recently learned that the health plan is accepting payments paid by or on behalf of our employees for their prescription drugs and not counting this assistance towards their deductible and annual limit on cost-sharing. This practice is inconsistent with Federal law under the [2020 Notice of Benefit and Payment Parameters Final Rule](#).

Under the [2020 Notice of Benefit and Payment Parameters Final Rule](#), all contributions to our employee's cost-sharing requirements must include all payments made to you, regardless of their source. The only possible exception to this policy is for small molecule drugs that have a medically appropriate generic equivalent available.

I insist that the health plan counts all payments paid by or on behalf of our employees for their prescription drugs and count this assistance towards their deductible and annual limit on cost-sharing. These payments must count for the entirety of the plan year.

This requirement has been upheld by *HIV + Hepatitis Policy Institute, et al. v HHS* [decision](#) on September 29, 2023.

Please contact me at (best information) if you need any additional information.

Thank you

It may be the case that the insurer chooses not to be in compliance with the law and that you get "no" as your answer. If this happens, here is what you can do next

- Contact your state insurance commissioner to file a complaint;
- Also contact the Department of Labor and the Department of Health and Human Services to file a complaint.

