

FAQ COURT DECISION ON COPAY ACCUMULATORS



QUICK SUMMARY:

The United States District Court for the District of Columbia recently sided with patient organizations in overturning a change implemented by the Trump Administration that allowed commercial group health plans to use [copay accumulators](#). The Biden Administration has decided not to appeal the decision to a higher court.

What was the Court Case About?

In 2021, the Department of Health and Human Services (HHS) issued a rule which allowed health plans to implement copay accumulators. In 2022, patient groups filed a [lawsuit](#) against HHS claiming that the 2021 rule was illegal and asked the court to strike down (vacate) the rule. On September 29, 2023, the District Court ruled in favor of patient groups and struck down the 2021 rule permitting copay accumulators.

Does this Cover All Insurance?

This court decision applies to all private commercial health insurance plans, including employer-sponsored health plans.

Medicare and Medicaid patients are not permitted to use copay assistance under the Anti-Kickback Statute. Therefore, this decision does not impact Medicare or Medicaid patients.

What are Copay Accumulators?

To help address the skyrocketing health costs, many pharmaceutical companies and foundations offer financial assistance to help patients pay for their cost-sharing requirements medications (i.e. copay, coinsurance, etc). When a health plan uses accumulator program, it does not count a manufacturer's support (for example, copay assistance that a patient presents at a pharmacy to cover the cost of the copay) towards a patient's annual deductible or out-of-pocket maximum. When the assistance runs out, the patient is once again responsible for their copay and meeting their deductible and annual cost-sharing limits.

Is This a Good Thing?

Yes! This ruling could be a game-changer for patients. Accumulators divert funds intended for patients to insurance companies, leaving patients to cover the costs all over again. We know that patients suffer when they cannot pay for their medications. Copays higher than \$250 a month have been shown to [significantly harm](#) patient access to needed medications. A recent [literature review](#) concluded that copay assistance is associated with improved treatment adherence and clinical outcomes.

What Does this Mean for Patients?

As of September 29, 2023, all [copay assistance](#) should count towards consumers deductibles, coinsurance, copays, and annual limits on cost-sharing.

Therefore, if you receive copay assistance for your medication you should contact your health plan to ensure that all copay assistance received for your medication(s) is counting to your deductible and annual limit on cost-sharing.

The only exception to this rule is for brand-name medications that have a ***medically appropriate*** generic equivalent available. Copay assistance does not apply to your deductible and annual limit if you chose to take a brand-name medication that has an appropriate generic competitor. If you have tried and failed on the generic, then copay assistance for the brand name medication should count towards your cost-sharing requirements. Copay accumulators are prohibited for both biologics and biosimilars.

If you receive push-back from your health plan refusing to count copay assistance, or would like additional information about how to have this conversation with your health plan contact Aired Alliance at policy@aimedalliance.org.

Are Copay Accumulators Banned Forever?

Unfortunately, no.

While the Court's decision is final, the Biden Administration could issue a new rule that reauthorizes copay accumulators at a later date. This is why we are still working to pass the HELP Copays Act which would permanently halt the use of accumulators.

Does this Stop Copay Maximizers?

No. The rule does not address copay maximizers, which are another tool used by insurers to pocket patient assistance without crediting it to the patient's cost-sharing requirements. This is why we are still working to pass the HELP Copays Act, which would outlaw their use.

Maximizers are complex programs that exploit a loophole in the definition of "essential health benefit". To learn more about maximizers and this loophole, read the Aired Alliance's fact sheet [here](#).

What Can Employers Do?

Employers should make sure that their health insurance plans are following Federal guidelines and refrain from using copay accumulators.

This content was originally developed by Aired Alliance and the Crohn's and Colitis Foundation, and has been republished, with the original authors permission, by the All Copays Count Coalition

