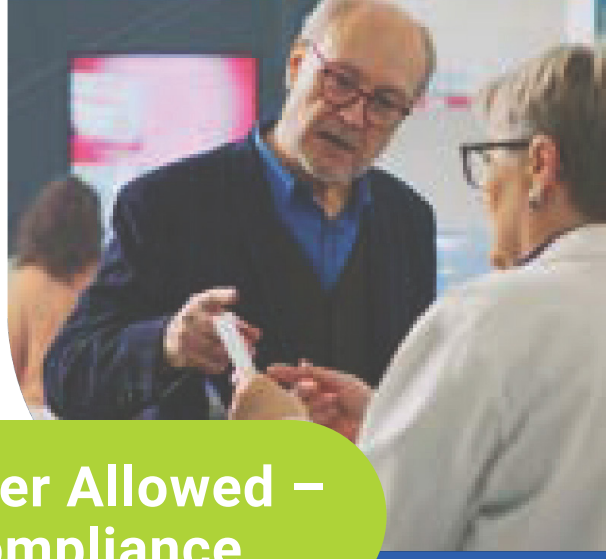
WHAT PATIENTS NEED TO KNOW



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). It is now up to patients and their employers to stop the use of accumulators and the harm they can cause.

Steps Patients Can Take

Step 1: Educate yourself about copay accumulators

Step 2: Learn if your plan includes an accumulator:

- Ask your human resources department if your plan includes a copay accumulator. Don't be surprised if they do not know the answer, as these programs are complex, confusing by nature, and often included in the fine print of health insurance contract.
- If your human resources department doesn't have an answer, review your plan documents. While an accumulators can be found in all types of health plans, they are most common

Biosimilar v. Generic Alternative

Like generics, biosimilars are lower-cost versions of brand-name biologics. However, unlike generics (which are exact chemical replicas of brand-name small molecule drugs) biologics and biosimilars are made with living ingredients. This means that they may be different in minor ways that do not impact their safety or how they work in your body.

The FDA has explicitly recognized that generics and biosimilars are not precisely the same. Which, in legal terms, means that copay assistance for a biosimilar is required to count towards your annual limit on cost-sharing.

To learn more about biosimilars please visit: https://www.crohnscolitisfoundation.org/what-is-ibd/medication/biosimilars

in high-deductible health plans. When looking at your plan documents, look 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.
  - Another place to look is your explanation of benefit (EOB) statement, which may specify how copay assistance, manufacturer coupons, or third-party assistance will be applied.

Step 3: Know Your Rights: If you discover that your plan includes an accumulator, speak with your human resources department and insurance plan. If they are not aware of the District Court decision speak with them about the implications of the decision, and state that you must be removed from the accumulator program in light of the decision.

To help consumers facilitate these conversations with plans, you may use the below draft letter to help initiate these conversations. This is not legal advice.

Dear [health plan and/or human resource department]:

I have recently learned that the health plan is accepting payments paid on behalf for my prescription drugs and not counting this assistance towards my 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 paid by me, or on my behalf, must count towards my annual cost-sharing requirements, regardless of their source. The only possible exception to this policy is for small molecule drugs that have a medically appropriate generic equivalent available.

[if you are comfortable doing so, explain how the exception is applicable to your medication.]

I insist that the health plan count all payments paid by or on my behalf for my prescription drugs count towards my deductible and annual limit on cost-sharing. Moreover, 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,

What If My State Already Passed a Copay Accumulator Ban?

If your state is one of the 19 that has passed a copay accumulator ban, your health plan may already be required to count copay assistance towards your deductible and annual limits on cost-sharing. However, these state laws do not apply to employer-sponsored health plans that are self-funded (see chart below).

If you receive health insurance coverage from your employer, you likely have a large group health plan. Large group health plans that are fully-insured are regulated by state law and federal law. However, large group health plans that are self-funded are only regulated by federal law, and are therefore, not covered by state laws on accumulators. To determine if your health plan is fully-funded or self-funded, contact your HR department.

Plan Type	Regulated by State Law	Regulated by Federal Law
INDIVIDUAL (ACA Marketplace)	✓	✓
SMALL GROUP (ACA Marketplace)	✓	✓
LARGE GROUP EMPLOYER PLAN (Fully-Insured)	✓	✓
LARGE GROUP EMPLOYER PLAN (Self-Insured)		✓

This Decision Covers Everyone

The DC court decision is a game-changer, because the 2020 NBPP applies to all health plans including individual, small group, large group and employer-sponsored health plans. Therefore all health plans for the 2024 plan year are required to count all copay assistances towards your deductible and annual limits on cost sharing.

The only possible exception is copay assistance used for a brand-name medication that has a medically appropriate generic available. If the generic medication is not medically appropriate for you then the copay assistance for the brand-name medication must count towards your deductible and annual limits on cost-sharing. Copay assistance for all biologics and biosimilars must also be counted toward your cost-sharing.

What if my health plan refuses to count my copay assistance?

If your health plan refuses to count your copay assistance towards your cost-sharing requirements, you can file a complaint with the insurance commissioner or attorney general in your state. To determine whom to contact and how to submit the complaint, please go to www.CoverageRights.org.

Your complaint should include the following information:

- The name, address, email address, and telephone number of the person filing the complaint ("Complainant");
- The name of the insured individual, if different from the Complainant;
- The names of any other parties involved in the claim (for example, the plan administrator or pharmacy benefit manager);
- The name of the insurance company and the type of insurance;
- The state where the insurance plan was purchased;
- Claim information, including the policy number, certificate number, claim number, dates of denial, and amount in dispute;
- The reason for and details of the complaint; and
- What you consider to be a fair resolution.

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

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