

Employers Beware:

Understanding the Costs and Liability Risks of Health Insurance Copay Accumulator Programs

WHAT IS A COPAY ACCUMULATOR PROGRAM?

- When a patient cannot afford the copay or coinsurance for a medication, a drug manufacturer may offer the patient assistance in the form of a coupon card.
- The coupon card also typically counts toward the patient's health plan deductible or maximum out-of-pocket limit.
- A copay accumulator program is a health insurance policy that prevents copay assistance from counting toward a patient's deductible or maximum out-of-pocket limit, thereby extending the time it takes the patient to meet these requirements.

WHY SHOULD EMPLOYERS TAKE NOTICE?

Copay Accumulator Programs Put Employers at Legal Risk

Copay Accumulator Programs Could Violate Federal Laws — Employers considering offering health plans with copay accumulator programs should be aware that, in doing so, they increase their risk for liability by potentially violating federal laws.

- **Affordable Care Act (ACA) Annual Cost-Sharing Limitation Requirements**

- The ACA caps the amount that plan enrollees owe out of pocket each year if they are enrolled in employer plans that provide coverage of prescription medications as an essential health benefit or in individual and small group plans.
- The cost-sharing limit is \$7,350 per person or \$14,300 per family.
- Copay accumulator programs could violate this annual limitation on cost-sharing requirements.
- If the sum of the amount that the manufacturer provides to the plan enrollee in copay assistance and the amount that the plan enrollee pays out of pocket for copays or coinsurance exceeds the annual cost-sharing limit, the plan could violate federal law.

- **Discrimination Based on Health Status**

- Under the ACA, employer-sponsor plans are prohibited from discriminating against plan enrollees based on their health condition.
- Some employers have adopted copay accumulator programs that only apply to specific health conditions, such as HIV, hepatitis C, multiple sclerosis, cancer, and others.
- These copay accumulator programs could violate the ACA protection against discrimination on the basis of health condition because they impose different cost-sharing rules based on medical condition.

- **Federal Trade Commission Act (FTCA)**

- The FTCA prohibits businesses from engaging in unfair and deceptive business practices.
- Some health plans fail to disclose the existence of copay accumulator programs. Others use deceptive or convoluted language to describe accumulator programs, including language that imply such programs confer a benefit onto the plan enrollee.
- These copay accumulator programs may violate the FTCA because plan enrollees are likely to be misled, which could be considered unfair or deceptive.

- **Employee Retirement Income Security Act (“ERISA”)**

- ERISA requires health plans to disclose material terms and prohibits health plans from misleading plan enrollees.
- Health plans that fail to disclose the existence of copay accumulator programs or that use deceptive or convoluted language that misleads plan enrollees could violate these requirements.

To learn more about these and other potential violations, read Aired Alliance’s full report, “*Employers Beware: Understanding the Costs and Liability Risks of Health Insurance Copay Accumulator Programs*,” at www.AimedAlliance.org/copayaccumulators.

Copay Accumulators Negatively Impact Employees

Employers have a vested interest in the health and wellbeing of their employees; healthy employees tend to be more productive and have lower rates of absenteeism. Yet, copay accumulator programs negatively impact employees by increasing employees’ out-of-pocket costs, thereby making their medications more expensive and out of reach. Those who are unable to afford their medications are less likely to adhere to treatment plans and can experience negative health consequences.

Copay Accumulators May Not Save Employers Money

Copay accumulator programs may not save employers any money. Those who advocate for such programs argue that they are intended to drive plan enrollees to less expensive alternative medications. However, most medications for which copay assistance is available do not have low-cost alternatives. Moreover, any cost-savings received could be pocketed by middlemen, such as pharmacy benefit managers and health insurers, rather than being passed on to employers. Therefore, there is no guarantee that employers who implement copay accumulator programs will save any money.

AIMED ALLIANCE RECOMMENDATIONS

- Do not adopt copay accumulator programs.
- However, if a copay accumulator program is adopted, offer more than one plan option to employees, at least one of which should not include a copay accumulator program.
- Do not offer copay accumulator programs in high deductible health plans (HDHPs) because they are cost-prohibitive for individuals who require more expensive treatments for which lower cost alternatives do not exist.
- If an employer opts to include copay accumulator program in a standard, non-HDHP, then:
 - Ensure that any copay assistance received is applied to the plan’s cost-sharing limits.
 - Do not single out specific disease states and conditions because doing so is discriminatory.
 - Allow individuals who require treatment for which no lower cost generic alternative exists to obtain an exception from the copay accumulator requirements through a simple, speedy exemption process.
 - Include consistent definitions, terminology, and descriptions in plain language, and instructions on the exception process, so employees are not misled.

To read about our recommendations in greater detail, view Aired Alliance’s full report, “*Employers Beware: Understanding the Costs and Liability Risks of Health Insurance Copay Accumulator Programs*,” at www.AimedAlliance.org/copayaccumulators.

About Aired Alliance. Alliance is a 501(c)(3) not-for-profit organization that seeks to protect and enhance the rights of health care consumers and providers. We advance our mission by conducting legal research and analysis, developing economically sound policy recommendations, educating the public, and advocating for the enforcement of laws and professional ethics. Aired Alliance’s supporters are disclosed at www.aimedalliance.org/collaborators/.

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