

Copay Accumulator Plans Put Employers In Legal Jeopardy

By **Stacey Worthy**

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America spends more on health care than any country in the world, and with health care premiums increasing by 5 percent since 2017 — twice as fast as the rate of inflation and workers' wages — the trend shows no signs of slowing. Large employers have responded by trying to shift more of the burden of health care costs to their employees, often in the form of high-deductible health plans, or HDHPs, and more recently through the use of controversial and legally questionable copay accumulator programs.



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These programs, which prevent patients from applying any form of drug manufacturer copay assistance toward their deductible, not only increase the cost of health care both for employees and employers, but have the potential to put the businesses that adopt them in significant legal peril.

Copay accumulator programs are an insurance company tactic designed to force patients to switch to less expensive medications by making them pay the entire cost of newer, more cutting-edge drugs out of their own pocket. The problem is that the programs can potentially violate a number of federal laws and consumer protections, including several provisions of the Patient Protection and Affordable Care Act. This is because copay accumulators often use confusing, misleading language when describing the program, often discriminate against employees with certain health conditions, and can result in plan enrollees paying more than their annual maximum out-of-pocket limits.

These issues are detailed in a new report from health care advocacy coalition Aimed Alliance. The report details the many ways that copay accumulators can put employers in legal jeopardy by potentially violating not just the ACA, but also the Federal Trade Commission Act, and the Employee Retirement Income Security Act.

Beyond describing the potential illegality of copay accumulators, the report also shows how the programs provide little to no benefit to employers and employees alike. When combined with a HDHP, copay accumulators can be financially devastating to employees, especially those with chronic conditions who rely on expensive medications. These patients are often unable to afford their medications once they have to pay the full out-of-pocket price until their deductible is met, and patients either end up rationing treatments to make them last longer or discontinuing their medications entirely.

Rather than saving a company money, employees who ration or stop taking their medicine because they can no longer afford it can actually increase health care costs for their employers, as patient nonadherence can often result in adverse events requiring increased doctors' visits and hospitalization. As such, the employee's overall cost of care goes up on the medical side of the health plan, which can negate any savings that the employer may see on the prescription drug side of the plan. Moreover, even if a copay accumulator program were to result in cost-savings, there is no guarantee that middlemen, such as a

pharmacy benefit manager or health insurer administering the employer's health plan, would not pocket such cost-savings rather than pass them on to the employer.

Especially troubling is that 56 percent of large employers said they are considering adopting copay accumulator programs into their employer-sponsored health plans in the next two years, and both Walmart and Home Depot recently announced they have included the programs in their plans. When you consider that more than 43 percent of adults with employment-based coverage are enrolled in a HDHPs and are likely already struggling to pay their medical bills, there is a potential recipe for disaster.

So what is an employer to do? The best option to reduce legal liability and improve employee health is to simply not adopt a copay accumulator plan. For employers who are determined to do so anyway, Aired Alliance recommends allowing copay assistance to be applied to a plan's maximum out-of-pocket limit even if it can't be applied to the employees' deductible. Also, health plans should not single out specific diseases or conditions that are subject to copay accumulator programs, such as in Home Depot's plan, which states that its copay accumulator program only applies to plan enrollees who receive treatment for cancer, HIV and other expensive-to-treat diseases.

Additionally, employers should offer an exemption process to employees whose treatments don't have a lower-cost alternative, which is the case for more than 50 percent of medications that offer copay assistance. Employers must also use plain language to explain copay accumulator programs — not misnomers like “coupon adjustment: Benefit Plan Protection Program,” “Out of Pocket Protection Program,” “Specialty Copay Card Program,” and “Copay Card True Program Accumulation.” Finally, employers must provide enrollees with adequate notice that a program is being adopted, and not implement the program mid-year once employees are locked into a plan.

All employers are under increased pressure to reduce costs related to health plans. But implementing a copay accumulator programs is no solution. The risks to patient health — and the risk of litigation — is simply too great a cost.

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