April 30, 2026

Office of the Attorney General
Opinion Committee
opinion.committee@oag.texas.gov

Re: Legality of Copay Maximizer and Alternative Funding Programs

Dear General Paxton:

The undersigned organizations represent patients, providers, and caregiver groups across ten disease states that have been advocating for regulators and legislators to use existing state and federal laws to hold alternative funding programs and copay maximizers accountable for the harm these programs cause to patients living with complex and chronic conditions.

As explained in greater detail below, these programs delay patients' access to their necessary treatments, deprive consumers of the benefit of their premiums, and are inconsistent with state and federal health insurance and consumer protection laws. For these reasons, the undersigned organizations request that your Office swiftly issue an opinion recognizing the illegality of these programs.

I. Copay Maximizers and Alternative Funding Programs

When patients cannot afford their medications, they may rely on financial assistance from pharmaceutical manufacturers and other third parties to meet their health plan's cost-sharing responsibilities and fill their prescriptions. The value of this financial assistance typically counts toward the health plan's deductible or maximum out-of-pocket limit, unless the health plan has implemented a copay accumulator program. Copay accumulator programs exclude the value of financial assistance distributed by third parties from counting toward the health plan's deductible or maximum out-of-pocket limit. These programs may force patients to switch or stop taking their treatment because they cannot afford their out-of-pocket costs once their financial assistance has been exhausted. Copay accumulator programs may disproportionately affect patients whose conditions are managed or treated by drugs in specialty formulary tiers that require greater cost-sharing from the patient.[1]

In 2023, the Texas Legislature recognized that copay accumulators harm patients and banned the use of copay accumulators in state-regulated plans.[2] However, health plans have adopted copay maximizers and alternative funding programs in an attempt to avoid these requirements.

[1] Aimed Alliance, *Copay Accumulator 101,* https://aimedalliance.org/copay-accumulator-101/.
[2] The AIDS Institute, *Texas,* https://theaidsinstitute.org/media/documents/02-24-2026-16-36-08-2026%20State%20Grade%20Sheet_Texas.pdf

A. The Alleged Ambiguity

As recognized in Texas Senator Bryan Hughes's letter to your Office, the Patient Protection and Affordable Care Act (ACA) requires ACA-compliant plans to cover ten essential health benefits (EHB), one of which is prescription drugs.[3] The ACA further requires that (1) all cost-sharing for (2) an EHB count towards a consumer's annual out-of-pocket maximum (MOOP).[4] The 2023 Texas ban on copay accumulators addresses the first part of this requirement by clarifying that "all cost-sharing" includes payments made by or on behalf of consumers. However, to avoid this unambiguous requirement, some health plans allege that even if "all cost-sharing" includes copay assistance, health plans can deem certain covered prescription drugs as non-EHBs under the ACA.

Specifically, health plans allege that they can deem certain prescription drugs under the ACA covered non-EHBs because plans are only required to cover the minimum number of drugs in a class or category. However, the Centers for Medicare and Medicaid Services clarified in the 2025 NBPP that all drugs covered in addition to the benchmark plan are considered EHBs under the ACA, and are therefore, subject to the ACA's cost-sharing requirements.[5] Despite these requirements, health plans have continued to allege that they can designate certain drugs as covered non-EHBs. These plans further allege that designating a drug, as covered non-EHBs means that plans can collect copay assistance for that drug yet exclude the assistance from counting towards their annual out-of-pocket limits. As a result, the exact harms the Texas legislature intended to prevent by passing its 2023 copay accumulator ban occur, including increased out-of-pocket costs, challenges accessing and affording necessary treatments, and other negative health outcomes.

Finally, building upon the non-EHB designation, some health plans partner with alternative funding programs (AFPs) to steer patients to charitable patient assistance programs and international pharmacies.[6] AFPs are misleading and, in some cases, inaccurately identify themselves as "patient advocacy" companies, despite their for-profit purpose.[7] Importantly, AFPs directly and substantially delay patients' ability to access their medications, with one study finding

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[3] *Senator Bryan Hughes letter,* https://www.texasattorneygeneral.gov/sites/default/files/request-files/request/2026/RQ0638KP.pdf.

[4] Aimed Alliance, *How a loophole in the Patient Protection and Affordable Care Act Can Impact Access to Necessary Treatments,* https://aimedalliance.org/wp-content/uploads/2022/07/Aimed-Alliance-Non-EHB-Fact-Sheet-FINAL-1.pdf.

[5] CMS, *2025 NBPP Fact Sheet*, https://www.cms.gov/newsroom/fact-sheets/hhs-notice-benefit-and-payment-parameters-2025-final-rule.

[6] In a recent response to Aimed Alliance's citizen petition, the FDA confirmed that AFP use of international importation is not permissible under Section 804 of the FD&C Act. Aimed Alliance, FDA Response to Aimed Alliance, https://aimedalliance.org/wp-content/uploads/2026/03/FDA-2024-P-1058-Aimed-Alliance-CP-response.pdf.

[7] Aimed Alliance, *Advocacy Organizations Send Letter to Payer Matrix Regarding Its Identification as a "Patient Advocacy" Company,* https://aimedalliance.org/advocacy-organizations-send-letter-to-payer-matrix-regarding-its-identification-as-a-patient-advocacy-company/

that consumers enrolled in an AFP waited over two months to access their medication.[8] In other documented instances, patients ensnared in AFPs have, after long delays, accessed their medication – only to, months later, receive bills for tens of thousands of dollars and letters saying the medication was not covered by their health plan. One patient summed up her experience: "In one week, I went from being out of debt to over a quarter of a million in debt."[9]

II. Maximizers and AFPs violate state and federal laws and regulations

In addition to the multiple laws and regulations raised in Senator Hughes letters, the undersigned organizations also believe that maximizers and AFPs may also violate state consumer protection laws under The Deceptive Trade Practices Act.[10] Specifically, we believe Texas Business and Commerce Code, Title 2, Ch. 17, Section 17.46 may be relevant to this inquiry.[11] Section 17.46 states a practice is false, misleading or deceptive if it makes false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions.[12]

AFPs misleadingly inform consumers that their drug is considered medically necessary, but not available through the plan; therefore, the consumer must work with the AFP to access their necessary medication. This is misleading to consumers because if the drug is not available through the AFP, the drug will revert to the health plan and be covered as a typical pharmacy benefit.[13] AFPs have also made additional misleading statements as to whether the consumers drug is covered under their pharmacy benefit. For example, in one AFP FAQ[14] the following two questions are included:

> ***Is my medication still covered?***
> The plan will still pay for your medication with no increase in co-pay or cost share to you. However, the method of obtaining these medications have [sic] changed. Instead of funneling through your Pharmacy Benefits Manager, this will now funnel through [the AFP]. If [the AFP] is unable to obtain secure alternative funding, then coverage will revert to your traditional coverage.

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[8] *A descriptive survey of patient experiences and access to specialty medicines with alternative funding programs,* https://pubmed.ncbi.nlm.nih.gov/39471273/.
[9] John Tozzi, "Patient Hit With $250,000 Bill Over Plan to Access Cheap Drugs." Bloomberg Law News (April 22, 2025), https://www.bloomberg.com/news/features/2025-04-22/high-prescription-drug-costs-push-employers-to-alternative-funders.
[10] *Consumer Rights,* https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint/consumer-rights
[11] Texas Business and Commerce Code, Title 2, Ch. 17, Section 17.46, https://statutes.capitol.texas.gov/?tab=1&code=BC&chapter=BC.17&artSec=
[12] *Id.* at (b)(11).
[13] Example FAQ attached in email.
[14] Example FAQ attached in email.

What do I do if the manufacturer calls to confirm that there is no coverage for Specialty Drugs?

While the manufacturer may contact you, your Reimbursement Care Coordinators will help you prepare for these potential calls. The coverage effective December 1st, 2022, under the [plan's] prescription drug benefit, is that all specialty drugs are 100% patient responsibility, with no portion of the cost being covered by the group. Additionally, these costs do not accumulate towards satisfying either the in-network or out-of-network deductibles, coinsurance or out-of-pocket maximums.

To the average consumer, a clear statement in writing that "[t]he plan will still pay for your medication with no increase in co-pay or cost share to you" would be understood as the plan continuing to provide coverage for the specialty medication. This is misleading when read in conjunction with the subsequent language instructing the consumer on how to respond if a manufacturer calls. Either the individual still has coverage for their medication, and their cost-sharing does not change (paragraph 1) – OR they are 100% responsible for the cost of specialty drugs, with payment for those medications not counting toward their cost-sharing (paragraph 2). Both statements cannot be true. Although this is only one example, these are common statements made by AFPs that mislead a reasonable consumer as to whether they have health insurance coverage for their medications and their cost-sharing requirements. For these reasons, the undersigned organizations urge your office to consider how consumer protection laws related to deceptive and unfair trade practices may apply to the activities of AFPs.

III. Conclusion

In conclusion, the undersigned organizations urge your office to swiftly issue an opinion to address all questions and legal concerns raised in Senator Hughes's letter. Moreover, we urge your Office to provide additional analysis of the consumer protection laws that AFPs may be subject to as this will provide the Texas Legislature with the necessary legal foundation for legislation and potential rulemaking to address the alleged conduct.

Finally, we would also greatly appreciate an opportunity to meet with your office and share the experiences of our communities that have been required to work with maximizers and AFPs. We believe this lived-experience perspective may be helpful and instructive to your Office in understanding how these programs impact patients, providers, and caregivers.

Sincerely,

Aimed Alliance
Alliance for Patient Access
AiArthritis
American Kidney Fund
Autoimmune Association
Cancer*Care*
Cancer Support Community

Crohn's & Colitis Foundation
Hemophilia Alliance
Hemophilia Federation of America
Lupus and Allied Diseases Association, Inc.
HIV+Hepatitis Policy Institute
National Bleeding Disorders Foundation
National Psoriasis Foundation
Spondylitis Association of America
The AIDS Institute
The US Hereditary Angioedema Association