Patient Groups Sue U.S. Health Department Over Co-Pay Rules

Insurers should allow co-pay assistance to count as out-of-pocket spending, claims HHS lawsuit by HIV, hepatitis and diabetes advocates.

September 9, 2022 By Trent Straube

Three patient advocacy groups representing people with HIV, hepatitis and diabetes filed a lawsuit challenging a federal rule that allows health insurers not to count co-pay assistance when tabulating a patient's out-of-pocket payments.

Under the current Department of Health and Human Services (HHS) rule, which went into effect under the Trump administration, when health insurers add up the costs that patients have paid, they don't have to include co-pay assistance as part of patients' deductible and out-of-pocket expenses.

In other words, "these programs allow the insurer to divert the benefit of the assistance away from the patient to the plan then make the patient pay that amount again before meeting their deductible and other out-of-pocket cost obligations," explains a press release from the three groups that filed the lawsuit: the HIV+Hepatitis Policy Institute, the Diabetes Leadership Council (DLC), and the Diabetes Patient Advocacy Coalition (DPAC). Combined, the patient advocacy groups represent over 42 million people.

Below is a tweet that links to a press briefing by the patient groups. You can also watch the video at the top of this article.

@HIVHep @DiabetesLeaders @DiabetesPAC held a press briefing to announce they filed suit that challenges a federal rule allowing #insurer & #PBM policies to not apply #Rx copay assistance toward out-of-pocket #patient costs: https://t.co/av41mD9Kpw

pic.twitter.com/utdTkgzPvb

— HIV+Hepatitis Policy Institute (@HIVHep) September 8, 2022

The lawsuit claims that the HHS rule violates the Affordable Care Act (ACA, or Obamacare), which not only sets limits to cost sharing but also defines cost sharing as "deductibles, coinsurance, co-payments, or similar charges; and any other expenditure required of an insured individual which is a qualified medical expense."

"This practice is not only illegal but increases the cost of prescription drugs for millions of patients nationwide," said Carl Schmid, executive director of the HIV+Hepatitis Policy Institute, in the press statement. "Nearly one in four Americans taking prescription drugs struggles to afford them. The growing practice of insurers and PBMs [pharmacy benefit managers] not counting co-pay assistance is one reason why. We trust the court will side with us—and invalidate the ability to implement these punitive practices that impact people with HIV, hepatitis and so many other health conditions that are treated with prescription drugs."

"People today are struggling with an ever-increasing cost of living, including prescription drugs. On behalf of patients with diabetes who depend on co-pay assistance, we must end this cruel practice orchestrated by health insurers and PBMs," added George Huntley, CEO of DLC and DPAC. "As we urge HHS to reverse the rule, we continue to work at the federal and state levels to pass laws outlawing this practice. While we have been successful in 14 states and Puerto Rico, helping millions of patients in those jurisdictions, we need to end co-pay accumulator programs nationally. Success with this claim will do that."

The lawsuit was filed in the U.S District Court for the District of Columbia.

In related news, the HIV+Hepatitis Policy Institute has been instrumental in promoting programs to ensure access to PrEP, or pre-exposure prophylaxis, to prevent HIV. Read Schmid's opinion piece on establishing federal PrEP programs and addressing racial and ethnic disparities in the HIV epidemic.

The HIV+Hepatitis Policy Institute also joined with the American Autoimmune Related Diseases Association to craft a letter outlining five ways the White House can lower prescription drug costs. The letter was signed by 124 patient advocacy groups and sent to the Biden administration.

To learn more about financial assistance for HIV medications, see the POZ Basics on HIV Drug Assistance Programs, which covers Medicaid, the AIDS Drug Assistance Program, cost-sharing assistance programs, patient assistance programs and more. The Basics section also includes details on programs offered by various HIV drug manufacturers, such as Gilead Sciences and ViiV

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