

“Copay Maximizers” Are Just Another PBM Scheme that Exploits Patient Cost-Sharing Assistance to Benefit the Bottom Lines of Middlemen

Copay maximizer programs are used by health plans and pharmacy benefit managers (PBMs) to create and apply separate prescription drug coverage requirements for patients who need certain medicines. Middlemen use these programs to boost profits at the expense of patients.

Maximizer programs often are sold to health plans by third-party entities affiliated with PBMs. They do two things: (1) target and designate specific medicines with available manufacturer cost-sharing assistance as “non-essential health benefits” so that the Affordable Care Act’s cost-sharing limitations do not apply, and (2) increase individual patient cost sharing obligations to match, and therefore, exhaust the full value of the manufacturer-provided cost-sharing assistance available for those medicines. The patients who need the medicines targeted by these programs are threatened with higher out-of-pocket costs unless they enroll in the applicable manufacturer cost-sharing assistance program to access the drug. That’s not fair to patients, and it skirts the intent of health insurance reforms that require health plans to cover 100% of the costs for a covered drug after the cost-sharing limitation is reached. Rather than applying this framework, these copay maximizer programs shift the costs of coverage from the plan to the patient’s available manufacturer assistance program. Policymakers should address how insurers and PBMs increasingly use copay maximizers and similar programs so that we can ensure the value of patient assistance goes to patients as intended, not middlemen.

Copay maximizer programs are motivated by profits, not medical need.

- By focusing on medicines with available cost-sharing assistance programs, these copay maximizer programs affect certain patients based solely on their medical condition or need for a specific medicine. This targeting of certain medicines—and thus certain patients—is concerning and could run afoul of federal nondiscrimination requirements.ⁱ

Bottom line: Copay maximizer programs hurt patients.

- Middlemen want to extract all available manufacturer cost-sharing assistance funds to pad their own profit margins. With copay maximizer programs, they inflate patient cost sharing for the targeted medicines sometimes as much as thousands of dollars per prescription.ⁱⁱ
- The middlemen operating copay maximizer programs use the high cost-sharing patients face as leverage to compel them into opting into their copay maximizer program. Representatives from the copay maximizer program then assist patients with enrolling in manufacturers’ cost-sharing assistance program even though patients can enroll in the cost-sharing assistance programs without opting into the middlemen’s copay maximizer program. In some cases, the patient may be denied coverage at the pharmacy and directed to participate in the copay maximizer program.ⁱⁱⁱ These circumstances create a false choice for patients and can cause undue stress and confusion for them at a time when they might be going through difficult medical situations.
- These middlemen also categorize the targeted medicines as outside of the ‘essential health benefits’ covered by the plan so that nothing patients pay out of pocket for the medicines or with the help of the manufacturer cost-sharing assistance counts toward their deductible or out-of-pocket maximum.^{iv,v} This can increase the out-of-pocket costs patients face for other needed

drugs or health care services by slowing their progress through their health insurance benefit before they reach their annual cost-sharing limit.

- Copay maximizers can also require patients to obtain medicines exclusively from PBM-owned or affiliated pharmacies, allowing these middlemen to earn even more through dispensing fees and spread pricing.^{vi} Sometimes these pharmacies are not easily accessible, meaning patients can face obstacles or delays in getting the medicines their doctors prescribed.
- Under some copay maximizer programs, available manufacturer cost-sharing assistance may be exhausted in a period of months rather than over the course of the plan year. That means patients who switch plans mid-year may find that there is no cost-sharing assistance available to them in their new plan. This can cause disruptions in treatment and may lead patients to ultimately abandon their medicine to the detriment of their health.^{vii}
- Expanded use of copay maximizer programs could have a chilling effect on the availability of cost-sharing assistance programs.

Middlemen operating copay maximizer programs rely on a lack of transparency to conduct these schemes.

- Each large PBM implements copay maximizers directly or via partnerships with nontransparent, independent private companies.^{viii} Additionally, health plans and PBMs may use promotional materials that can mislead and obscure how these programs operate.
- Public data from copay maximizer vendors, including SaveOnSP and PrudentRx, indicate that health plans pay administrative fees of 25% or more of the total amount of cost-sharing assistance that they divert through copay maximizer programs to these companies.^{ix} Cost-sharing assistance is intended for patients, but the payment structure these middlemen use comes with little transparency for patients enrolling through the medicine's manufacturer for assistance, including as to how the PBM might benefit from the maximizer program.

Policymakers should ensure that patient assistance benefits patients by closing policy loopholes regarding coverage that allow these programs to flourish.

- Middlemen instituting maximizer programs use a purported loophole in regulatory cost-sharing requirements for the large employer market. They categorize certain medicines as not "essential health benefits" so that these covered drugs are not subject to the Affordable Care Act's annual limit on cost sharing.
- HHS should clarify this cost-sharing requirement so that patients with coverage through large employers have the same protections as those with coverage in the individual and small group market.
- Congress should enact the HELP Copays Act, which would close this loophole and ensure that all medicines covered by a plan are subject to annual cost-sharing limits.^x

ⁱ For more detail, see PhRMA's comment letter on the 2023 Notice of Benefit and Payment Parameters:

<https://www.phrma.org/policy-issues/Access/Insurance-Coverage/PhRMA-Comments-on-the-2023-Notice-of-Benefit-and-Payment-Parameters-Proposed-Rule>

ⁱⁱ Mulcahy AW, Kareddy K. "Prescription Drug Supply Chains: An Overview of Stakeholders and Relationships." ASPE, October 2021. <https://aspe.hhs.gov/sites/default/files/documents/0a464f25f0f2e987170f0a1d7ec21448/RRA328-1-Rxsupplychain.pdf>

ⁱⁱⁱ JOHNSON & JOHNSON HEALTH CARE SYSTEMS INC. vs. SAVE ON SP, LLC (Case 2:22-cv-02632).

<https://www.drugchannelsinstitute.com/files/22-cv-02632.pdf>

^{iv} Frier Levitt, LLC and Community Oncology Alliance. “Pharmacy Benefit Manager Exposé: How PBMs Adversely Impact Cancer Care While Profiting at the Expense of Patients, Providers, Employers, and Taxpayers.” February 2022. https://communityoncology.org/wp-content/uploads/2022/02/COA_FL_PBM_Expose_2-2022.pdf

^v Fein AJ. “Why Do CVS And Express Scripts Rely on Secretive Private Companies to Run Their Copay Maximizer Programs?” Drug Channels. May 2020. <https://www.drugchannels.net/2020/05/why-do-cvs-and-express-scripts-rely-on.html>

^{vi} *Ibid.*

^{vii} See Anonymous Comment submitted to Federal Trade Commission RFI on PBMs. Posted May 31, 2022. Available: <https://www.regulations.gov/comment/FTC-2022-0015-0693>

^{viii} OptumRx provides maximizers with its Variable Copay solution. The other large PBMs provide maximizers only via partnerships with secretive, independent private companies: SaveonSP (Express Scripts/Cigna) and PrudentRx (CVS Caremark/CVS Health).

^{ix} Fein AJ. “The 2022 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers.” Drug Channels Institute. March 2022.

^x HELP Copays Act. <https://www.congress.gov/bill/117th-congress/house-bill/5801/text>