



HOUSE BILL 4719: “COPAY ACCUMULATOR PROHIBITION” LEGISLATION

MAHP POSITION: OPPOSED

GENERAL COMMENTS: PRESCRIPTION COSTS

Prescription drug costs now account for over 22.2% of total health care costs, compared to just 6% in 2006. The rate of drug price increases has outpaced the Consumer Price Index by 150% over the last decade. The prohibition against “copay accumulator programs,” does not get at the “heart” of the issue, the high cost of manufacturers’ prescription drug products.



ARGUMENTS

PHARMACEUTICAL COPAY COUPONS INCREASE HEALTH CARE COSTS:

- ▶ Pharmaceutical manufacturers offer billions of dollars in "copay coupons" as one way to increase sales and profits of more expensive brand drugs over less costly generics or alternative therapies.
- ▶ At first glance, these coupons appear to benefit patients, but in reality, the ugly truth is that they result in higher spending by payers and insurers and result in higher premiums for businesses and individuals struggling to make each health care dollar efficient.
- ▶ A National Bureau of Economic Research study found that coupons increased brand drug sales by over 60% by reducing the sales of generic drugs, and drug manufacturers received a return of up to six-to-one on every dollar spent on copay coupons. During the five years following generic drug entry, coupons increased total drug spending by \$30-\$120 million per drug, or \$700 million to \$2.7 billion; a significant negative economic impact to health care. [1]
- ▶ An additional study noted that coupons allow manufacturer drug prices to grow more quickly than they would otherwise. Branded prescription drugs with coupons experienced a cost increase of 12-13% per year, compared to 7-8% per year for drugs without coupons. [2]
- ▶ Manufacturer prescription drug coupons act as a form of unauthorized, unregulated insurance, operating as a “secondary insurance” and circumventing the terms and conditions of health benefits plans that include cost-sharing for covered prescription drugs. Prescription drug copay coupons act as “secondary insurance” because the manufacturer agrees to cover a portion of the insured’s prescription drug expenses.

1 <https://www.nber.org/papers/w22745>

2 <https://insight.kellogg.northwestern.edu/article/prescription-drug>

STATE COPAY ACCUMULATOR PROHIBITION LEGISLATION WOULD VIOLATE SEVERAL FEDERAL STATUTES:

- ▶ The Center for Medicare and Medicaid Services (CMS) has barred coupons for patients in Federal Programs, Medicare, Medicaid, and Veterans Affairs, because they serve as an economic inducement. Use is a violation under the Anti-Kickback Statute and inducement provisions of the Civil Monetary Penalties statute (OIG 2014a, OIG 2014b).
- ▶ HHS Notice of Benefit and Payment Parameters for 2021 Final Rule, May 17, 2020, allows health plans to implement copay accumulator programs, regardless if generic is available. Plans and employers can limit out-of-pocket expenses on prescriptions to those actually incurred by the patients and not consider any copay assistance the patient may receive from drug manufacturers.[3]
- ▶ Coupon program utilization also violates IRS rules for Health Savings Accounts and the eligibility criteria for high-deductible health plans.
- ▶ Significant DOJ Health Care Fraud Recoveries have resulted due to drug manufacturers illegal payments of patient copays and resultant False Claims Act (FCA) violations. DOJ identified that copay coupons are a direct inducement to buy a specific product and influence a patient's drug choice. Further, manufacturers' donations to charities paying copay assistance to determine product choice were an indirect remuneration, also a violation of anti-kickback statute.
- ▶ **Drug manufacturer enforcements account for the highest healthcare recoveries:**
 - 2018: 2 drug manufacturers paid \$234 million to resolve illegal copay remuneration (Pfizer & United Therapeutics)
 - 2019: 8 drug manufacturers paid \$646 million to resolve claims of illegal copay remuneration (Actelion, Amgen, Astellas, Alexion, Biogen, Jazz, Lundbeck & US Worldmeds)
 - 2020: 3 drug manufacturers paid \$170 million to resolve claims they illegally used copay remunerations (Biogen, Gilead & Novartis)
- ▶ **Charitable foundations and other healthcare providers were also implicit FCA violations by paying for patient copays for manufacturer specific drugs using the independent foundations as conduits for the illegal coupon remuneration:**
 - 2019: 4 charitable foundations paid \$13 million to resolve claims enabling pharmaceutical companies to provide a kickback by paying patient copays (Patient Services Inc., Chronic Disease Fund, Patient Access Network Foundation and The Assistance Fund).
 - 2019: Advanced Care Scripts, a specialty pharmacy, paid \$1.4 million to resolve claims they acted as a vendor on behalf of pharmaceutical manufacturers to transfer patients to foundations that illegally paid patient copays.

MICHIGAN SHORTCOMINGS - STATE FALSE CLAIMS ACT RECOVERIES:

States can receive a 10-percentage point increase in their share of any amount recovered under false claims law. State statute must contain provisions that are "at least as effective in rewarding and facilitating qui tam actions" as those in the federal False Claims Act (FCA) and must contain civil penalties at least equivalent to those imposed by the federal FCA.[4] A similar requirement is that a state's statute must provide for civil penalty increases "at the same rate and times as those under the federal FCA" pursuant to the Federal Civil Penalties Inflation Adjustment Improvements Act of 2015.[5] **Michigan is one of 8 states that have not yet been deemed to meet federal standards, and is leaving money on the table.**

3 <https://www.federalregister.gov/documents/2020/05/14/2020-10045/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2021>

4 <https://oig.hhs.gov/fraud/state-false-claims-act-reviews/index.asp>

5 <https://www.federalregister.gov/documents/2016/06/27/2016-14973/federal-civil-penalties-inflation-adjustment-of-2015>