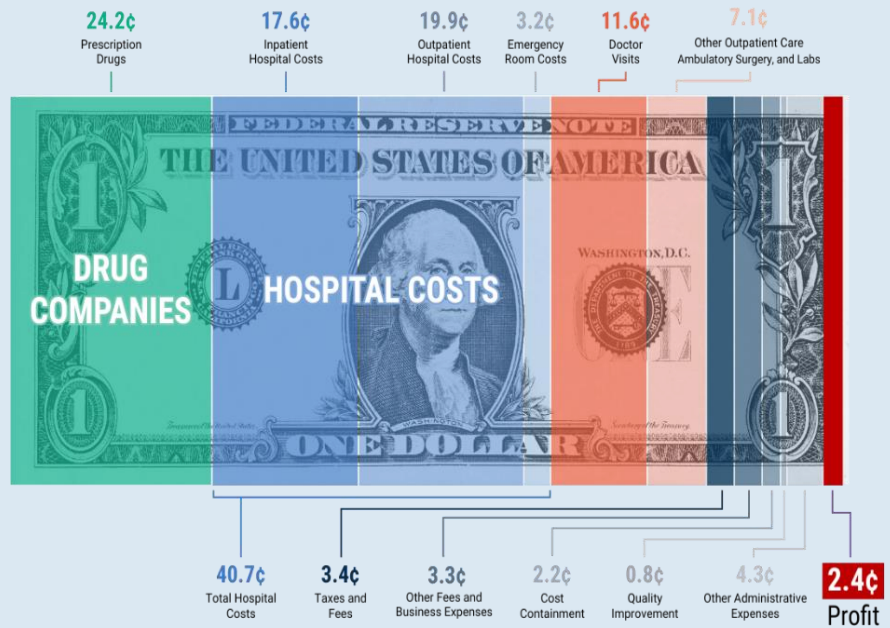




SENATE BILL 914: “COPAY ACCUMULATOR PROHIBITION” LEGISLATION
MAHP POSITION: OPPOSED

PRESCRIPTION DRUG COSTS

Prescription drug costs account for **24.2%** of total health care costs. The rate of drug price increases continues to far outpace inflationary increases in the Consumer Price Index over the last decade. Senate Bill 914, which prohibits health plans from imposing copay accumulator programs that stop copay coupon kickbacks, will only exacerbate the unregulated high cost of manufacturers’ prescription drug products.



DRUG COMPANY CO-PAY COUPONS INCREASE HEALTH CARE COSTS:

- The Center for Medicare and Medicaid Services (CMS) has barred drug company coupons for patients in Federal Programs, Medicare, Medicaid, and Veterans Affairs, because they serve as an economic inducement and drive-up the costs of health care.
- Use of a drug company coupon in these federal programs is a violation under the Anti-Kickback Statute and inducement provisions of the Civil Monetary Penalties statute (OIG 2014a, OIG 2014b).
- Coupon program utilization also violates IRS rules for Health Savings Accounts and the eligibility criteria for high-deductible health plans.
- The U.S. HHS Notice of Benefit and Payment Parameters for the 2021 Final Rule, May 17, 2020, allows health plans to implement copay accumulator programs, regardless of whether a generic is available.
- 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 lead to higher spending by payers and insurers and higher premiums for businesses and individuals struggling to make each health care dollar count.

Legal Actions against Patient Advocacy Organizations & Drug Companies for Coupon Kickbacks

Significant US Department of Justice (DOJ) Health Care Fraud Recoveries have resulted from drug manufacturers' illegal payments of patient copays and the resulting False Claims Act (FCA) violations. The 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 that provided copay assistance to determine product choice constituted indirect remuneration, also a violation of the 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.

Who funds Patient Advocacy Organizations...Drug Companies!

- ❑ A *Kaiser Health News* [analysis](#) found that drug companies gave 12,000 donations to patient advocacy organizations (PAOs) in 2015, worth \$116 million in total – nearly double what drug companies spent on lobbying that year.
- ❑ Unlike payments made to doctors, which are publicly disclosed through the Open Payments database, there are fewer requirements for companies to disclose funding to non-profit PAOs, making the full extent of financial relationships difficult to track.
- ❑ According to the [National Library of Medicine](#), the United States should consider adopting regulatory measures to enhance transparency in relationships between the pharmaceutical industry and PAOs and ensure the integrity of public health decision-making.