

Congress of the United States
Washington, DC 20515

March 18, 2021

The Honorable Joseph R. Biden, Jr
President
1600 Pennsylvania Ave, N.W.
Washington, D.C. 20500

Dear President Biden,

We write to thank you for your ongoing commitment to work with us to lower drug prices for Americans and to highlight a needed policy change that would bring us closer to that goal.

Millions of vulnerable Americans across the country rely on cost-sharing assistance to afford the medicines they need. Patients in the private health insurance market have increasingly relied on this assistance due to rising out-of-pocket costs for drugs. Historically, when a patient uses cost-sharing assistance, the amount has counted towards a patient's deductible and maximum out-of-pocket (OOP) limit. Recently, many health plans started designing benefits to exclude cost-sharing assistance from counting towards a patient's maximum OOP limit and deductible.

This problem can be rectified by reversing a policy adopted in the 2021 Notice of Benefit and Payment Parameters (NBPP).¹ The 2021 NBPP permits health insurance issuers and pharmacy benefit managers (PBMs) to adopt a practice referred to as a “copay accumulator adjustment program.” These programs permit issuers to exclude cost-sharing assistance towards a patient's OOP maximum, making it difficult for patients to afford their medicines. Moreover, allowing PBMs to adopt these programs impedes patient access to treatment and increases OOP costs for patients in the midst of an unprecedented pandemic and economic crisis. We believe that the 2021 NBPP does not align with the U.S. Department of Health and Human Services' (HHS) own regulation defining cost-sharing – which includes payments made by or *on behalf of* an insured² – nor does it align with Congressional intent in defining cost-sharing and establishing the annual limit on cost-sharing.

Many of us wrote to then-Secretary Alex Azar to urge HHS to reverse this decision in the 2022 NBPP,³ but the final rule released in January 2021 did not include this change⁴. We urge you to

¹ 45 CFR § 156.130 - Cost-sharing requirements.

² 45 CFR § 155.20, Definition of Cost-Sharing.

³ <https://edit-mceachin.house.gov/sites/mceachin.house.gov/files/Final%20NBPP%20Co-pay%20Accumulator%20Letter%20%5BSigned%5D%203.9.20.pdf>

⁴ <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10045.pdf>

roll back the practice of copay accumulator adjustment programs and require health insurance issuers and PBMs to count all cost-sharing payments made by or on behalf of a patient toward that patient's annual deductible and OOP maximum.

With patient out-of-pocket costs increasing, we support regulatory changes that improve affordability. It is our fear that many patients will have to ration their medicines, or abandon their prescriptions altogether, which could lead to more serious health outcomes and higher costs. In addition, this is likely to have a disproportionate impact on individuals from vulnerable populations, people of color, and those with lower incomes and poorer health.

During a global pandemic, we should be doing everything we can to increase affordability of prescription drugs, not decrease it, and reversing the 2021 NBPP copay accumulator policy will help people save more money at the pharmacy counter. We urge you to consider reversing this policy to enable Americans to afford the lifesaving medication they rely on.

Thank you and we look forward to your response.

Sincerely,

Handwritten signature of A. Donald McEachin in blue ink. The signature is written in a cursive style, with the first name 'A.' and last name 'McEachin' clearly visible. A small 'M.C.' is written below the signature.

A. Donald McEachin
Member of Congress

Handwritten signature of Rodney Davis in blue ink. The signature is written in a cursive style, with the first name 'Rodney' and last name 'Davis' clearly visible.

Rodney Davis
Member of Congress

Other signers:

Ted Deutch
Sara Jacobs
Bill Posey
Barbara Lee
Brian Fitzpatrick
Sheila Jackson Lee
Bobby L. Rush
Maxine Waters
Lucy McBath
Jeff Van Drew
Nanette Diaz Barragán
Marc Veasey
Mary Gay Scanlon
Gregory Meeks
Gwen Moore
Stephen F. Lynch
Abigail Spanberger
Doris Matsui

David Cicilline
David Trone
Deborah K. Ross
Grace Meng
Brendan F. Boyle
Tom O'Halleran
Mike Bost
Diana DeGette
Stephanie Murphy
Yvette D. Clarke
Lisa Blunt Rochester
Lizzie Fletcher
G. K. Butterfield
Robin L. Kelly
Madeleine Dean
Steven Horsford
William R. Keating
Carolyn Bourdeaux
Bonnie Watson Coleman
Jim Cooper
John Yarmuth
Ann McLane Kuster
Earl L. "Buddy" Carter
Thomas R. Suozzi
Bill Foster
Kurt Schrader
Bill Pascrell, Jr
Angie Craig
Chris Pappas
Brad Schneider
Michael T. McCaul
Ron Kind
Randy Feenstra
Tim Ryan
Colin Allred
Andrew R. Garbarino
Mikie Sherrill