



COUNCIL OF THE DISTRICT OF COLUMBIA
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December 6, 2021

Nyasha Smith, Secretary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Secretary Smith,

Today, I, along with Councilmembers Gray, Lewis George, Nadeau, and Silverman, am introducing the "Copay Accumulator Amendment Act of 2021." Please find enclosed a signed copy of the legislation.

A common feature of health insurance plans in the District and throughout the United States is a cost-sharing agreement between the insurer and the insured, primarily through deductibles, copays, and out-of-pocket maximums. Cost-sharing requires the insured to pay some portion of the costs of medical care or prescription drugs out-of-pocket, usually up to a certain maximum amount. Recognizing that many insured individuals have difficulty paying these costs, some third parties in the health care industry, primarily pharmaceutical companies, have created assistance programs that use coupons or other discounts that an insured may use to assist in paying required the out-of-pocket costs. These coupons can significantly benefit consumers by making essential and life-saving medications more affordable.

In recent years, however, health insurance companies have created so-called copay accumulator adjustment programs, which excludes the value of any discount provided by a third party from counting towards the insured's deductible or out-of-pocket maximum. This means the insured will often exhaust the manufacturer discount and then must pay all the out-of-pocket costs under the cost-sharing agreement. The insurance company, in turn, receives a double benefit: first, they receive the benefit of the value of the manufacturers discount, and second, they receive the benefit of the insured's out-of-pocket payment. Therefore, what was designed as a way to cut costs for the insured actually results in higher costs for consumers and lower costs for insurers.

This legislation prohibits this practice by simply requiring that any discount, coupon, or other third-party assistance be applied to the insured's copay, deductible, or out-of-pocket maximum as if the insured had made the payment. The legislation

builds on previous legislation I've introduced and the Council has passed to make health care more affordable for consumers, including the Insulin and Diabetes Device Affordability Amendment Act of 2020 and the Specialty Drug Copayment Limitation Act of 2016. When consumers are unable to afford health care, primarily costly prescription drugs, they are often forced to ration the medication or forgo use altogether, leading to worse healthcare outcomes, and even risk of advance disease or death.

This legislation is being introduced with the input and support of the Medical Society of the District of Columbia and is modeled on legislation that has been passed in more than ten states, including Connecticut, Illinois, and Virginia. With this legislation, the District will continue to promote policies that protect consumers and reduce their healthcare costs.

Should you have any questions about this legislation, please contact my Legislative Director, Michael Porcello, at mporcello@dccouncil.us or (202) 724-8062.

Thank you.

Best,

A handwritten signature in black ink, appearing to read 'Mary M. Cheh', with a stylized flourish at the end.

Mary M. Cheh

1 Vincent C. Gray
2 Councilmember Vincent C. Gray

Mary M. Cheh
Councilmember Mary M. Cheh

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4 Janeese Lewis George
5 Councilmember Janeese Lewis George

Brianne K. Nadeau
Councilmember Brianne K. Nadeau

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8 Elissa Silverman
9 Councilmember Elissa Silverman

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15 A BILL
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20 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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25 To amend the Specialty Drug Copayment Limitation Act to require health insurers to apply
26 discounts, financial assistance, payments, product vouchers, or other reductions in
27 out-of-pocket expenses made by or on behalf of a member when calculating the
28 member's coinsurance, copayment, cost-sharing responsibility, deductible, or out-of-
29 pocket maximum for a covered benefit.

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31 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
32 act may be cited as the "Copay Accumulator Amendment Act of 2021."

33 Sec. 2. The Specialty Drug Copayment Limitation Act of 2016, effective April 7, 2017
34 (D.C. Law 21-248; D.C. Official Code § 48-855.01 *et seq.*), is amended by adding a new section
35 3b to read as follows:

36 "3b. Calculation of enrollee's contributions for a covered benefit.

37 "(a) To the extent permitted by federal law and regulation, a health insurer shall, when
38 calculating a member's contribution to a coinsurance, copayment, cost-sharing responsibility,

deductible, or out-of-pocket maximum for any covered benefit, apply any discount, financial assistance, payment, product voucher, or any other reduction in out-of-pocket expenses made by or on behalf of the member.

“(b) This section shall apply with respect to health plans that are entered into, amended, extended, or renewed on or after January 1, 2023.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.