



November 12, 2024

The Honorable Chiquita Brooks- LaSure
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Re: *Patient Out-of-Pocket Cost Protections in the HHS Proposed Notice of Benefit and Payment Parameters for 2026*

Dear Administrator Brooks-LaSure:

The All Copays Count Coalition (ACCC) writes to provide comments on the 2026 Actuarial Value Calculator Methodology, as it relates to patient out-of-pocket costs. This coalition represents more than 90 patient and provider organizations and is driven to ensure people living with serious, rare, and complex chronic conditions can afford the health care their insurance guarantees. We note that HHS indicated in the 2026 Notice of Benefit and Payment Parameters that it intends to address our coalition's main concern (whether copay assistance paid on behalf of enrollees is considered a cost-sharing payment) in future rule-making. We urge the tri-departments to issue that rule quickly, and to ensure that it meets the needs of people living with chronic illness.

Protecting patients from copay diversion schemes implemented by insurers and pharmacy benefit managers (PBMs) is more important than ever as out-of-pocket costs have climbed to new and staggering heights. For 2026, the annual limitation on cost-sharing for Affordable Care Act (ACA) plans is more than \$10,000, an amount that most Americans simply do not have.¹ This unfeasible amount will have financial and medical repercussions for people with high health care needs. Ensuring that copay assistance counts toward an enrollee's out-of-pocket costs is the only way many people living with chronic illness will be able to afford their life-saving prescription drugs.

The ACA's annual maximum out-of-pocket limit is intended to provide financial protection to plan enrollees, however at a price point this high, it becomes meaningless for most Americans. While healthcare costs are rising, paychecks are not; the maximum out-of-pocket limit is increasing faster than wages and salaries with the divide predicted to grow year-over-year.² People are having to spend more of their income on out-of-pocket health care costs. Data from a 2019 Survey of Consumer Finances

¹ Department of Health and Human Services, Centers for Medicare & Medicaid Services, Consumer Information and Insurance Oversight, Final 2026 Actuarial Value Calculator Methodology, October 16, 2024. <https://www.cms.gov/files/document/final-2026-av-calculator-methodology.pdf>.

² Mathew Rae, Krutika Amin, Cynthia Cox, ACA's Maximum Out-of-Pocket Limit is Growing Faster than Wages, Peterson-KFF, Health System Tracker, July 20, 2022, [https://www.healthsystemtracker.org/brief/aca-maximum-out-of-pocket-limit-is-growing-faster-than-wages/#Maximum%20out-of-pocket%20limits%20for%20HSA-qualified%20health%20plans%20and%20other%20private%20non-grandfathered%20health%20plans,%20actual%20\(2014-2023\)%20and%20projected%20\(2024-2033\)](https://www.healthsystemtracker.org/brief/aca-maximum-out-of-pocket-limit-is-growing-faster-than-wages/#Maximum%20out-of-pocket%20limits%20for%20HSA-qualified%20health%20plans%20and%20other%20private%20non-grandfathered%20health%20plans,%20actual%20(2014-2023)%20and%20projected%20(2024-2033)).

revealed that 45% of single-person households and 30% of multi-person households did not have more than \$2,000 in savings.³ As patients are paying more upfront with premiums on the rise, a \$10,000 out-of-pocket limit puts necessary health care truly out-of-reach for many of the patients and families we represent.

The current administration has worked to expand access to quality, affordable healthcare. However, 33% of people with marketplace plans have medical debt and are choosing to delay or forego care.⁴ Increasing the annual threshold to over \$10,000 will push more people over the edge into poorer health and debt. The ACCC suggests a two-prong approach to ensure patients are truly protected, and care is affordable as intended in the Patient Protection and Affordable Care Act; reduce the maximum out-of-pocket limit and require insurers to count copay assistance toward the enrollee's out-of-pocket costs.

When comparing the changes over time for the maximum out-of-pocket limit of ACA plans and employer-based Health Savings Account-qualified health plans, the former is increasing more rapidly than the latter due to differences in the methodology.⁵ HHS could choose various policy options to slow the growth and reduce the impact on patients: the methodology and index used to set the ACA limit could be updated to mirror that of HSA plans, the benchmark used to set cost-sharing reductions could be changed from silver to gold plans, or a more reasonable cap could be instituted like in Medicare plans.^{6, 7} This could alleviate the burden of out-of-pocket costs on many Americans, especially those with serious, chronic conditions.

In June 2024, the ACCC sent a letter to HHS, the Department of Labor, and Treasury, with an updated approach to consider revising provision 45 CFR §156.130(h) permitting insurers and PBMs to apply copay diversion policies in health insurance plans.⁸ We encourage CMS to reconsider its policy allowing insurers and PBMs to adopt copay accumulator adjustment programs with the following suggested revisions to 45 CFR §156.130(h):

Use of direct support offered by drug manufacturers. Notwithstanding any other provision of this section, and to the extent consistent with State law, **an enrollee enrolled in a HSA-eligible HDHP must first satisfy the minimum deductible for a high deductible health plan with a health savings account as defined by IRS**, after which any amounts paid toward reducing the cost

³ Gregory Young, Matthew Rae, Gary Claxton, Emma Wagner, Krutika Amin, How Many People Have Enough Money to Afford Private Insurance Cost Sharing? Peterson-KFF, Health System Tracker, March 10, 2022, <https://www.healthsystemtracker.org/brief/many-households-do-not-have-enough-money-to-pay-cost-sharing-in-typical-private-health-plans/>.

⁴ Sara Collins, Shreya Roy, Relebohile Masitha, Paying for It: How Health Care Costs and Medical Debt are Making Americans Sicker and Poorer, The Commonwealth Fund, October 26, 2023, <https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey#:~:text=Thirty%20percent%20of%20adults%20with,and%2032%20percent%20in%20Medicare>.

⁵ Peterson-KFF Health Systems Tracker, ACA's Maximum Out-of-Pocket Limit is Growing Faster than Wages.

⁶ Center on Budget and Policy Priorities, Building on the Affordable Care Act: Strategies to Address Marketplace Enrollees' Cost Challenges, April 10, 2024, <https://www.cbpp.org/research/health/building-on-the-affordable-care-act-strategies-to-address-marketplace-enrollees>.

⁷ Jesse Baumgartner, Munira Gunja, Sara Collins, The New Gold Standard: How Changing the Marketplace Coverage Benchmark Could Impact Affordability, The Commonwealth Fund, September 22 2022, [https://www.commonwealthfund.org/publications/issue-briefs/2022/sep/new-gold-standard-changing-marketplace-coverage-benchmark-affordability#:~:text=What%20Are%20Cost%20Sharing%20Reductions,percent%20AV%20\(silver%2D73\)](https://www.commonwealthfund.org/publications/issue-briefs/2022/sep/new-gold-standard-changing-marketplace-coverage-benchmark-affordability#:~:text=What%20Are%20Cost%20Sharing%20Reductions,percent%20AV%20(silver%2D73)).

⁸ Health and Human Services Department, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021, May 14, 2020, <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>.

sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs **must be** counted toward the annual limitation on cost sharing, as defined in paragraph (a) of this section. For enrollees not enrolled in plans with high deductibles or are HDHPs but are not eligible for an HSA, any amounts paid toward reducing the cost sharing incurred by an enrollee using any form of direct support offered by drug manufacturers for specific prescription drugs **must be** counted toward the annual limitation on cost sharing, as defined in paragraph (a) of this section.

Lowering the maximum out-of-pocket limit and requiring insurers and PBMs to include copay assistance payments in their calculation of an enrollee's out-of-pocket limit will provide our most vulnerable with the protections they need. We appreciate the proactive approach CMS has taken to increase access to and affordability of marketplace plans, and your consideration of the patient community. Please reach out to Rachel Klein Deputy Executive Director, The AIDS Institute at rklein@tmail.org should you have any questions. Thank you very much for considering our comments.

Sincerely:

Arthritis Foundation

Cancer Support Community

Immune Deficiency Foundation

National Bleeding Disorders Foundation

National Psoriasis Foundation

The AIDS Institute

AIDS Foundation Chicago

Aimed Alliance

Alliance for Headache Disorders Advocacy

Alliance for Patient Access

Alliance for Women's Health and Prevention

ALS Association

American Academy of Ophthalmology

Arthritis & Osteoporosis Treatment Center PA

Association for Clinical Oncology

Association of Women in Rheumatology (AWIR)

Autoimmune Association

Biomarker Collaborative

Bleeding Disorders Alliance of North Dakota

California Chronic Care Coalition

CancerCare

Chronic Care Policy Alliance

CLL Society

Coalition of Skin Diseases

Coalition of State Rheumatology Organizations

Crohn's & Colitis Foundation

Cystic Fibrosis Research institute

Diabetes Leadership Council

Diabetes Patient Advocacy Coalition

Dravet Syndrome Foundation

Eastern Pennsylvania Bleeding Disorders Foundation

Epilepsy Foundation of America
Exon 20 Group
Florida Society of Rheumatology (FSR)
Foundation for Sarcoidosis Research (FSR)
Georgia AIDS Coalition
Global Healthy Living Foundation
GO2 for Lung Cancer
Good Days
Haystack Project
HealthyWomen
Hemophilia Alliance
Hemophilia Federation of America
Hereditary Angioedema Association
ICAN, International Cancer Advocacy Network
Immune Deficiency Foundation
Infusion Access Foundation
International Foundation for Autoimmune and Autoinflammatory Arthritis (AiArthritis)
Little Hercules Foundation
Looms For Lupus
LUNgevity Foundation
Lupus and Allied Diseases Association, Inc.
Lupus Foundation of America
MET Crusaders
National Eczema Association
National Infusion Center Association (NICA)
National Organization for Rare Disorders
Nevada Chronic Care Collaborative
Pacific Northwest Bleeding Disorders
PAN Foundation
PD-L1 Amplifieds
Pulmonary Hypertension Association
Society of Dermatology Physician Associates (SDPA)
Spondylitis Association of America
Susan G. Komen
The Headache & Migraine Policy Forum
Triage Cancer