

March 17, 2021

Honorable Representative Bob Morgan  
Illinois State Capitol  
Springfield, IL

**RE: House Bill 2948 – Opposition**

Dear Representative Bob Morgan:

The 24 undersigned patient and provider organizations stand in opposition to House Bill 2948 and ask that you reconsider moving forward with the bill this session. This bill will open the door for health insurers and pharmacy benefit managers (PBMs) to once again utilize copay accumulator adjustment programs in Illinois. These programs prevent any copayment assistance available to help patients pay for high-cost specialty drugs from counting towards a member's deductible or maximum out of pocket requirements. Insurers and pharmacy benefit managers' (PBMs) use of copay accumulator adjustment programs to attempt to control high drug costs shifts the burden of high out-of-pocket expenses to patients. Copay accumulator adjustment programs block many patients with serious chronic and rare diseases from using copayment assistance to be able to afford their specialty medications – having heightened implications for patients with a high deductible. Copay accumulator adjustment programs, coupled with the rise of high deductible health plans and coinsurance as high as 50%, make it difficult, if not impossible, for patients to adhere to their treatment regimen.

These programs are so alarming that in 2019, Majority Leader Gregory Harris championed House Bill 465 to ensure that all copays count. This important bill had 14 co-sponsors in the Senate and almost 40 co-sponsors in the House. Ultimately, the bill was signed into law by Governor Pritzker. This important law ensures that a health care plan shall apply any third-party payments, financial assistance, discount, product vouchers, or any other reduction in out-of-pocket expenses made by or on behalf of such insured for prescription drugs count toward a covered individual's deductible, copay, or cost-sharing responsibility, or out-of-pocket maximum associated with the individual's health insurance.

It is important to note that Illinois' leadership on this issue has been followed by the rest of the nation. Since the enactment of this Illinois law, Arizona and Georgia have enacted similar language (alongside West Virginia, Virginia, and Puerto Rico which also passed similar bills in 2019). In 2021 alone, more than 20 states have introduced legislation like the Illinois law. This language has even been adopted as a model by the All Copays Count Coalition, a nationwide group of over # leading patient and provider organizations.

The undersigned organizations understand that the introduction of House Bill 2948 was due to strategic efforts by the insurers to cause confusion about how this state law interacts with federal rules. It is important to note that the most recent final Notice of Benefit Payment Parameters (NBPP) by the Department of Health and Human Services (HHS) stated that insurers/PBMs have discretion to exclude manufacturer cost-sharing from counting towards an enrollee's annual limit on cost-sharing but that does not preempt state laws, including the law in Illinois. As further described in the NBPP 2021 Final Rule,

“issuers and group health plans will continue to have flexibility, subject to state law... to determine if and how to factor in direct drug manufacturer support amounts towards the annual limitation on cost sharing.”<sup>1</sup> Based on its clear language, HHS’ regulation does not require states to change their policies. To the contrary, it explicitly gives states the responsibility to decide whether or not to permit accumulator adjustment programs.

In recent days, insurance companies have attempted to undermine the new Illinois law referenced above which is designed to ensure patients can access assistance programs. The effort is based on an unsubstantiated argument that a federal rule interferes with patients' ability to use copay assistance programs when they have a Health Saving Account (associated with a high deductible health plan). The claim is false. In fact, the federal rule referenced by insurance companies contains no mention of health savings accounts or high-deductible health plans. Insurance companies are further attempting to sow confusion by citing an obscure 2004 IRS guidance as further "proof" of their position. However, the guidance in fact does not relate to copay assistance programs. Moreover, patients have been using assistance programs with Health Savings Accounts since the 2004 IRS guidance was released, without any intervention from the IRS.<sup>2</sup>

Ultimately, the concerns that are being raised about the current Illinois law are incorrect. In addition, it is clear that any attempt to remove these protections will only harm patients by returning to situations where insurers are able to shift the cost sharing burden from the insurers to the patients.

Accordingly, the undersigned organizations ask for you to hold House Bill 2948 for the 2021 session. Please do not hesitate to contact Shana Crews at [shana.crews@cancer.org](mailto:shana.crews@cancer.org) or (309) 645-6909 with any questions or for an opportunity to sit down with stakeholders for a larger discussion. We look forward to hearing from you soon.

Sincerely,

AIDS Foundation of Chicago  
Allergy & Asthma Network  
American Cancer Society Cancer Action Network  
American Kidney Fund  
Arthritis Foundation  
Association of Women In Rheumatology  
Cancer Support Community  
Chronic Care Policy Alliance  
Coalition of State Rheumatology Organizations (CSRO)  
Gaucher Community Alliance

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<sup>1</sup> Department of Health and Human Services. Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans. Vol. 85, No. 94. (5/14/2020). p. 29232. <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>

<sup>2</sup> Internal Revenue Service. Part III – Administrative, Procedural, and Miscellaneous Health Saving Accounts – Qs & As. Notice 2004-50 (Revised and corrected – 8/9/04). <https://www.irs.gov/pub/irs-drop/n-04-50.pdf>

Hemophilia Federation of America  
HIV+Hepatitis Policy Institute  
Infusion Access Foundation (IAF)  
International Foundation for Autoimmune & Autoinflammatory Arthritis (AiArthritis)  
Little Hercules Foundation  
Lupus and Allied Diseases Association, Inc.  
Multiple Sclerosis Association of America  
National Eczema Association  
National Hemophilia Foundation  
National Infusion Center Association (NICA)  
National Multiple Sclerosis Society  
Pulmonary Hypertension Association  
Spondylitis Association of America  
The AIDS Institute

CC: Illinois Department of Insurance  
Majority Leader Gregory Harris  
Representative Thaddeus M. Jones, Chair of the House Committee on Insurance  
Members, House Committee on Insurance