Maine Association OF Health Plans

January 21, 2022

To: Senator Sanborn, Representative Tepler, Members of the Joint Standing Committee on Health Coverage, Insurance and Financial Services

From: Katherine Pelletreau, MPH

RE: LD 1783 An Act to Require Health Insurance Carriers and Pharmacy Benefit Managers to Appropriately Account for Cost-sharing Amounts Paid on Behalf of Insureds

I am writing to provide supplemental information to the committee and to request that the following amendments be considered.

Proposed Amendments:

- 1. First, consider banning coupons from manufacturers that are not income based and avoid conflicts with federal law.
 - a. Distinguish between income related assistance which is typically already applied to deductibles and OOP expense, and prescription drug manufacturers' coupons

<u>Co-pay coupons are banned by the federal government for public payors</u>
Guidance from the Federal Department of Health and Human Services, Office of the Inspector General¹ --

- The federal government considers copay coupons to be an illegal kickback if used by an enrollee in federal health programs like Medicare or Medicaid.
 - Their position is that copay coupons induce a patient to use a specific drug, with the rest of the cost picked up by taxpayers.
 - o That wastes taxpayer money, and that's why the federal government doesn't allow them to be used when you have a Medicare Part D or a Medicaid plan.

At least two states have some version of a ban on co-pay coupons California:

¹ https://oig.hhs.gov/documents/special-advisory-bulletins/878/SAB Copayment Coupons.pdf

<u>CA AB 265</u> (2017) – Prohibits manufacturers from offering discounts, repayments, vouchers, or other reductions on an individual's out-of-pocket expenses if there is a covered, lower cost, therapeutically equivalent generic drug available on a lower cost-sharing tier or if the drug's active ingredients are available without prescription at a lower cost and are not otherwise contraindicated for treatment.

Massachusetts:

MA M.G.L. 175H § 3 – Prohibits manufacturers from offering any discount, rebate, product voucher or other reduction in an individual's out-of-pocket expenses for any prescription drug that has an AB rated generic equivalent or for any prescription drug that is an opioid (sunset extended to 2023).

The IRS does not permit coupons to accumulate to deductibles in HDHPs and HSAs IRS guidance requires that for High Deductible Health Plans (HDHPs) and Health Savings accounts (HSAs), the minimum annual deductible may only be satisfied by actual medical expenses the covered individual incurred, not by any discount, rebate, or coupon.²

- The IRS opined that requirements to count coupons/discounts towards the
 deductible are incompatible with HSA rules in an <u>April 2021 letter</u> to the Illinois
 Department of Insurance where they noted that "the minimum annual deductible
 may only be satisfied by actual medical expenses the covered individual incurred."
- They also provided this helpful example: If a covered individual is prescribed a drug that costs \$1,000, but a discount from the drug manufacturer reduces the cost to the individual to \$600, the amount that may be credited towards satisfying the deductible is \$600, not \$1,000. This same principle also applies to a third-party payment, such as a rebate or coupon, that has the same effect as a discount.
- The Oklahoma Insurance Department has also issued guidance on this issue³ outlining the conflict between state and federal law and noting that they are actively engaged with the Legislature seeking resolution.
- Be aware that a significant portion of the small group market offers HDHPs so this issue has wide-reaching impact.

2. Add exceptions to application of accumulator bans if:

- a. there is a covered interchangeable bio-similar; or
- b. there is a covered drug in the same therapeutic class that may be preferred under the plan's formulary

The bill language must be clarified so that drug manufacturers cannot use coupons to bypass a formulary. Copay coupons under the circumstances identified by this amendment undermine health insurers' programs to incentivize use of generics and lower cost

² https://www.irs.gov/pub/irs-wd/21-0014.pdf

³ https://www.oid.ok.gov/bulletin-no-lh-2021-05/

preferred drugs by masking the true cost of medications from the patient while shifting the financial burden to everyone in the system.

Accumulator bans should be limited and not applicable where other, non-generic drugs in the same therapeutic class may be available as they may be preferred by a plan's formulary or otherwise less expensive than a drug for which cost sharing assistance is offered. In these situations, there are still choices and significant price differences. For example, there are several treatments for Hepatitis C that are in the same therapeutic class and that may potentially be interchangeable depending on the patient's condition, but none are generic equivalents (e.g., Sovaldi, Harvonia, Viekira Pak).

- 3. Require that a third party that pays any amount on behalf of an enrollee for a covered prescription drug:
 - a. must offer the assistance for the full plan year;
 - b. must notify the enrollee prior to an open enrollment period if the financial assistance will be discontinued in a subsequent plan year; and
 - c. may not condition the assistance on enrollment in a health plan or type of health plan, to the extent permitted under federal law.

Patients are vulnerable to financial exposure or disruptions in care if payments stop in the middle of treatment. Requiring assistance to be provided for the entire plan year and requiring notice when that assistance will be discontinued provides predictability, ensures patients can focus on their health, and allows patients to choose the right health plan for their needs.

The amendment requiring assistance to be provided for an entire plan year also eliminates a common gaming of the system, whereby a third-party provides assistance for a brandname drug before the patient has reached their deductible and then then intentionally discontinues the assistance, requiring the other patients to pay higher premiums. This allows pharmaceutical manufacturers to keep their prices high by hiding the true cost of their drugs from patients and allows them to reap higher profits over the course of the year – all while employers, consumers, and taxpayers are picking up the tab through higher premiums. This is especially vexing in situations where less costly and effective alternative medications may be available.

Instead of lowering costs for everyone by reducing the actual price of the drug, prescription drug manufacturers and patient assistance organizations target specific populations in specific types of health plans with advertising and discounts. If third-party cost sharing assistance is allowed and must be counted towards the deductible, then it should be provided to all patients equally. We have included the language "to the extent permitted under federal law" because copay coupons are banned by the federal government for use in Medicare and Medicaid because they are considered an illegal kickback.

4. Consider establishing reporting requirements to better understand the detrimental impact of coupons on the price of prescription drugs and health

insurance premiums through either the MHDO or the Prescription Drug Affordability Board.

Committee Questions

Q: Are insurers collecting the annual deductible twice – once from the copay assistance program, and again from the patient/enrollee?

A: No. When a copay coupon is used, the value of the coupon goes from the manufacturer (who issues the coupon) to the pharmacy (as a form of consumer payment) and then back to the manufacturer (as payment for the drug). That is why the federal government considers coupons an illegal kickback – drugmakers are paying themselves.

At no point do health insurers or PBMs receive the value of the coupon. Health insurers and PBMs may not even be aware that a coupon is being used because coupons include their own identifying information (i.e., bin number, member ID, etc.) that results in them being processed separately from a consumer's insurance.

• https://www.goodrx.com/healthcare-access/patient-advocacy/what-are-manufacturer-copay-cards

Q: Don't coupons save money for patients?

A: Research shows that co-pay coupons raise costs for all purchasers.

- https://www.propublica.org/article/are-copay-coupons-actually-making-drugs-more-expensive
- <u>https://www.marketwatch.com/story/the-real-reason-drug-makers-offer-discount-cards-youll-pay-eventually-2016-12-22</u>

Thank you for your consideration of this additional information.