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Submitted via email: ra-in-policyoffice@ pa.gov

Re: Commonwealth Essential Health Benefits Benchmark Plan—Public Comment Period; Notice 2023-14

The Pharmaceutical Research and Manufacturers of America (PhRMA) appreciates the opportunity to submit comments on Notice 2023-14 regarding essential health benefits (EHB) benchmark plans published by the Pennsylvania Insurance Department, also referred to as "Department" below. PhRMA represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. As the Department works to review and possibly expand the Commonwealth's EHB benchmark plan, as referenced in Notice 2023-14, PhRMA appreciates the opportunity to shed light on certain discriminatory insurance practices that impact Pennsylvanians.

As recognized by the U.S. Department of Health and Human Services, imposing higher cost sharing can be an indicator of discriminatory plan design.[1] Benefit designs with higher cost sharing can discourage individuals living with disabilities and chronic conditions from enrolling into health plans with higher cost sharing obligations as well as hinder patients from accessing their medication under their health insurance coverage because of the associated higher out-of-pocket costs. Prohibiting this practice is a key protection particularly for those living with chronic conditions who bear the brunt of paying higher out-of-pocket costs to access their life-saving medication. In addition, the Affordable Care Act's (ACA) annual limit on cost sharing or maximum out-of-pocket limit on EHB ensures that once patients meet this limit, their health plan fully pays for the costs of accessing EHB.[2] This is an important consumer protection that the ACA applies across group health plans and group and individual coverage.[3]

Health plans, pharmacy benefit managers (PBMs), and related entities, however, have adopted various programs whereby, contrary to established practice, they exclude from the deductible or annual limit on cost sharing the value of cost sharing paid by enrollees, but only when the enrollee uses manufacturer cost sharing assistance to pay.

Accumulator adjustment programs

Accumulator adjustment programs penalize patients for using manufacturer cost sharing support, and patients end up paying more out-of-pocket than is ordinarily permitted under their health plans. When accumulator adjustment programs are implemented by health plans, they can substantially increase patients' out-of-pocket costs, increasing financial burden and health risk, especially for those with serious and chronic

[1] 87 Fed. Reg. 47824 at 47869.
[2] *See* Patient Protection and Affordable Care Act § 1302 (c)(1), 42 USC 18022 (c)(3); § 2707(b), 42 USC 300gg-6(b).
[3] *Id.* Note that while the requirement to provide essential health benefits does not apply to the large group market, to the extent that large group health plans provide coverage of essential health benefits, the ACA's annual limitation on cost sharing applies.

illnesses. Thus, accumulator adjustment programs can undermine medication adherence, which can lead to negative health outcomes for patients and increase overall health care costs.[4] This discriminates against enrollees who use cost sharing assistance provided by drug manufacturers by offering more limited benefits – and higher cost sharing – to them as compared to other enrollees who have other forms of cost sharing assistance, including family support. There is no clinical basis for this disparate treatment. Indeed, it treats enrollees worse simply because they have significant health needs that require certain drugs. Further, a 2019 study of impacts of copay accumulators on specialty drug adherence for patients with health savings accounts (HSA) versus patients with preferred provider organizations (PPO) found that HSA patients who fill autoimmune prescriptions had lower monthly fill rates and a higher risk of stopping their medications than PPO patients when accumulators were applied. This study suggests that the application of accumulator adjustment programs may affect patients' specialty drug adherence.[5]

Once third-party patient assistance has been drawn down in accumulator adjustment programs, patients often face unexpected out-of-pocket costs. In a 2019 Kaiser Family Foundation (KFF) survey of prescription drug costs, among those currently taking prescription drugs, nearly one quarter of adults stated that it was difficult to afford their medications. Of patients who were unable to remain adherent to prescriptions due to cost, 20% skipped or delayed a dose. Skipping or delaying dosages may lead to negative health outcomes, especially for patients with chronic conditions.[6]

Copay maximizer programs

Copay maximizer programs can discriminate against individuals living with chronic conditions by imposing higher cost sharing on their medications unless a patient enrolls into a copay maximizer program. Copay maximizer programs skirt the protection of the ACA's annual limit on cost sharing and impose higher cost sharing on certain medications by designating them as non-Essential Health Benefits (non-EHB).[7] While there is no purported clinical reason to designate certain drugs as non-EHB and impose higher cost sharing, these copay maximizer programs shift higher costs of accessing these medications onto patients who decide not to enroll in the copay maximizer program or onto manufacturer cost sharing assistance programs that are intended for and available to patients independently of the copay maximizer program. Copay maximizer programs also require patients to access their medication only at preferred specialty pharmacies, which can have a discriminatory impact on individuals living with chronic conditions, and in particular, patients with chronic conditions living in areas in which they may only have access to one or two independent pharmacies serving their area.[8]

Alternative funding programs

Another potentially discriminatory practice is alternative funding programs, in which claims for branded specialty drugs are automatically denied by the PBM and patients are referred to an alternative funding vendor

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[4] PhRMA. Accumulator adjustment programs lead to surprise out-of-pocket costs and nonadherence, analysis finds. November 2020. https://catalyst.phrma.org/accumulator-adjustment-programs-lead-to-surprise-out-of-pocket-costs-and-nonadherence-analysis-finds.

[5] Sherman BW, Epstein AJ, Meissner B, Mittal M. Impact of a co-pay accumulator adjustment program on specialty drug adherence. Am J Manag Care. 2019 Jul;25(7):335-340. PMID: 31318506.

[6] Ashley Kirzinger, Lunna Lopes, Brian Wu, and Mollyann Brodie, KFF Health Tracking Poll -February 2019 Prescription Drugs (Kaiser Family
Foundation, March 1, 2019), https://www.kff.org/health-costs/poll-finding/kff-health-tracking-poll-february-2019-prescription-drugs/

[7] *See* David Cook, IPBC and SaveOnSP Training-20210216 1901-1, VIMEO (Feb 17, 2021), https://vimeo.com/513414094 (describing SaveOnSP's program to get the "most lucrative savings" by reclassifying specialty drugs as "non-essential," allowing SaveonSP to "operate outside of those [Affordable Care Act] rules"); PrudentRx Copay Program for Specialty Medications, https://personnel.ky.gov/KEHP/PrudentRx%20Overview.pdf (indicating that "certain specialty drugs do not qualify as 'essential health benefits'").

[8] *See* Express Scripts, SaveOnSP, https://www.express-scripts.com/corporate/solutions/lowering-costs#saveonsp (last accessed on Aug. 21, 2022);

that facilitates enrollment into manufacturer free drug programs or other condition-specific charities or foundations designed to assist uninsured or underinsured patients.[9] Alternative funding programs allow commercially insured patients, who otherwise may not be eligible for the manufacturer charities or foundations, to access funds intended for uninsured or underinsured patients. This in turn may cause patients with financial needs to compete for limited resources or funds and enhance the potential for discrimination for patients with disabilities and prescribed specialty products. These programs only exist for specialty drugs and thus disproportionately affect individuals living with chronic conditions who need these life-saving specialty medications. Individuals living with chronic conditions must undergo additional processes after their claim is denied – without any discernable clinical justification – which delays their therapy and potentially puts them at risk of poorer health outcomes.

Protect patients from discriminatory insurance practices

We urge the Department when updating the Commonwealth's EHB benchmark plan to expressly prohibit the use of accumulator adjustment programs, copay maximizers programs, alternative funding programs, and any other scheme where health plans or third parties divert or profit from patient assistance because these schemes discriminate against individuals and families living with chronic conditions, including those with disabilities. These programs also run counter to the intent of the ACA, which aims to increase affordability for health insurance coverage by requiring an annual limitation on out-of-pocket costs for EHB to apply throughout the private health insurance market.[10]

We note that these discriminatory insurance practices hindering patient access and affordability in the private market also impact patients in non-federal governmental health plans. We encourage the Department to protect patients from such practices not just in its updates to the benchmark plan, but also in state and local employee health plans. Protecting patient access and affordability is a core initiative for the industry, and we welcome further discussions with the Department on how we can assist the Commonwealth in this mission.

We thank you for your consideration, for any questions please contact Charise Johnson at cjohnson@phrma.org.

Sincerely,

Charise Johnson
Director, State Policy
PhRMA

[9] *See* RxBenefits, Understanding Funding for Specialty Medications, https://www.rxbenefits.com/ebooks/understanding-alternative-funding-for-specialty/ (last accessed Aug. 21, 2022); Industry Experts Question Alternative Funding Companies That Carve Out Some Specialty Drugs, 'Abuse Charities,' AISHealth, Sept. 1, 2022, https://www.mmitnetwork.com/aishealth/spotlight-on-market-access/industry-experts-question-alternative-funding-companies-that-carve-out-some-specialty-drugs-abuse-charities/ (last accessed Sept. 26, 2022).

[10] *See* Patient Protection and Affordable Care Act § 1302 (c)(1), 42 USC 18022 (c)(3); § 2707(b), 42 USC 300gg-6(b).