



601 Pennsylvania Avenue, NW T 202.778.3200
South Building, Suite 500 F 202.331.7487
Washington, D.C. 20004 ahip.org

April 11, 2024

The Honorable Joseph J. Solomon, Jr., Chairman
Of the House Corporations Committee
Rhode Island State House
Providence, RI 02903

**RE: AHIP Comments on H-8041, An Act Relating to Insurance – Prescription Drug Benefits -
 OPPOSE**

To Chairman Solomon and Members of the House Corporations Committee,

America's Health Insurance Plans (AHIP) appreciates the opportunity to comment on H-8041, legislation that would require any costs paid by an enrollee or on behalf of an enrollee by a third party when calculating an enrollee's overall contribution to any out-of-pocket maximum or cost sharing requirement. The bill does nothing to control the soaring prices of prescription drugs for patients, but instead rewards drug makers for steering patients towards expensive brand-name drugs. Patients' access to affordable health care will be negatively impacted by this bill.

Drug Manufacturers Intentionally Use Copay Coupons to Keep Drug Prices High.

We agree with policymakers, patients, families, employers, labor unions, and state health programs that drug prices are out of control. Pharmacy costs now represent over 21 cents out of every dollar of premium spent on health care.¹

Drug manufacturers acknowledge their drugs are unaffordable for patients, which is why they offer copay coupons, vouchers, discounts, or payments to offset cost-sharing expenses (collectively, "copay coupons") to hide the actual cost of those drugs. Data shows that, while coupons may lower the cost for some patients, they have much larger, negative consequences to a larger group of patients through the entire market:

- Coupons mask the actual cost of brand-name medications by shifting the high price from one individual to all individuals.
- Coupons encourage patients to use more expensive, brand-name drugs instead of equally effective, far less expensive generics.
- Coupons undermine tools, such as formularies, that employers, states, and health insurance providers rely on to maintain lower costs for all health care consumers.

The federal government considers copay coupons to be an illegal kickback if used by an enrollee in Medicare or Medicaid because they induce a patient to use a specific drug.² In the commercial market where they have not yet been outlawed, drug manufacturers strategically offer them for a narrow

¹ *Where Does Your Health Care Dollar Go?* America's Health Insurance Plans. November 12, 2020. Available at <https://www.ahip.org/health-care-dollar/>

² See 42 U.S.C § 1320a-7b; *Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons*. Department of Health and Human Services, Office of the Inspector General. September 2014. Available at https://oig.hhs.gov/fraud/docs/alertsandbulletins/2014/SAB_Copayment_Coupons.pdf.

selection of drugs and often only for a limited period, after which the full price of the drug is passed on to the patient's insurance, raising costs for everyone.

Data Proves that Drug Coupons Raise Costs

A case study conducted by economists at Harvard, Northwestern, and UCLA (University of California Los Angeles) of the effect of copay coupons in Massachusetts (who had banned coupons) and their neighboring state New Hampshire (which allowed coupons) found:

- prices for brand name drugs with copay coupons rose 12% per year compared to price increases of 7% to 8% per year on brand name drugs that did not offer coupons;
- a 60% (or more) increase in brand utilization than if patients had switched to a generic competitor; and
- after reviewing a sample of 23 medications, coupons increased total spending by \$700 million in the five years after generic entry.³

Rather than protecting consumers from high drug prices, copay coupons are yet another way for drug companies to insulate themselves from public scrutiny, skirt transparency, and protect their out-of-control pricing practices.

Insurers' Accumulator Programs Hold Drug Manufacturers Accountable for Pricing Schemes

Employers and health insurance providers have worked hard to develop programs that attempt to better reflect patients' actual out-of-pocket spending on drugs and to shed light on these pricing schemes.⁴ It is critical to have guardrails in place against this kickback system to ensure transparency and affordability in drug pricing for every American. Accumulator programs help to restore the balance in the system by allowing the patient to use manufacturer coupons, but not counting the coupon towards the deductible – since the drug manufacturer is paying the amount of the coupon.

The Centers for Medicare and Medicaid Services (CMS) has explicitly allowed accumulator programs to continue in the Exchange Marketplaces as part of their efforts to combat the high and rising out-of-pocket costs for prescription drugs, recognizing the “market distortion effects related to direct drug manufacturer support amounts when consumers select a higher-cost brand name drug over an equally effective, medically appropriate generic drug.”⁵

Legislation banning accumulator programs like H-8041 will eliminate incentives for drug companies to lower prices, as they can continue to replace real price reductions with coupons as a work-around to health plan cost-sharing. As a result, drug companies will make more money while consumers and businesses will continue to foot the bill through higher premiums, out-of-pocket expenses, and federal insurance subsidies.

The Legislature Should Focus on Solutions that Forbid Market Manipulation

Instead of taking away the few tools that health plans use to control drug prices, the legislature should focus on fixing the market distortion caused by pricing schemes, including copay coupons. We support a ban on copay coupons, especially in cases where less expensive generic alternatives are available, as

³ Dafny, et. al. *When Discounts Raise Costs: The Effect of Copay Coupons on Generic Utilization*. American Economic Journal: Economic Policy 9, no. 2 (May 2017): 91–123. Available at https://www.hbs.edu/ris/Publication%20Files/DafnyOdySchmitt_CopayCoupons_32601e45-849b-4280-9992-2c3e03bc8cc4.pdf

⁴ Humer, Caroline and Michael Erman. *Walmart, Home Depot adopt health insurer tactic in drug copay battle*. Reuters. November 13, 2018. Available at <https://www.reuters.com/article/us-usa-healthcare-employers/walmart-home-depot-adopt-health-insurer-tactic-in-drug-copay-battle-idUSKCN1N1F1>.

⁵ *Notice of Benefit and Payment Parameters for 2021*. Centers for Medicare & Medicaid Services. June 13, 2020. Available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10045.pdf>.

California did in 2017.⁶ This has been proposed as a major step by a group of prestigious health care scholars looking at ways to offer evidence-based steps for reforming health care spending in the US.⁷

If you wish to allow the use of coupons to continue, we urge you to consider reforms that require fair and equitable distribution of coupons with sufficient oversight and transparency. This includes requiring coupons to be given to all patients prescribed a drug, require the assistance to be provided for the entire plan year, and require manufacturers to inform health plans when they are providing a coupon or other type of financial assistance to an enrollee of that health plan.

AHIP opposes H-8041 because it eliminates valuable tools to hold drug manufacturers accountable for their exorbitant prices. AHIP stands ready to work together with state policymakers to ensure every patient has access to the high quality, affordable drugs that they need.

Sincerely,

America's Health Insurance Plans



By: _____
Terrance S. Martiesian

AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

⁶ CA AB 265 (2017).

⁷ Dafny, et. al. *Eliminating Prescription Drug Copay Coupons. 1% Steps for Health Care Reform*. Available at <https://onepercentsteps.com/policy-briefs/eliminating-prescription-drug-copay-coupons/>