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

May 1, 2025

The Honorable Susan R. Donovan
Of the House Health and Human Services Committee, Chairwoman
Rhode Island State House
82 Smith St.
Providence, RI 02903

RE: AHIP Comments on H.6209, An Act Relating to Insurance – Prescription Drug Benefits – OPPOSE

To Chairwoman Donovan and Members of the House Health and Human Services Committee,

On behalf of AHIP, we offer the following comments in opposition to H.6209, which restricts health plans' ability to hold down drug costs. This bill does nothing to control the soaring prices of prescription drugs set by pharmaceutical manufacturers, but instead rewards drug makers for steering patients towards more expensive brand-name drugs. As we will discuss below, a Wakely analysis of requirements like those in H.6209 demonstrates that the bill's provisions would encourage the use of more expensive drugs, increase premiums, and reduce wages for Rhode Islanders.

Drug manufacturers intentionally use copay coupons to keep drug prices high. Everyone should be able to get the medications they need at a cost they can afford. But drug prices are out of control, and Rhode Island families feel the consequences every day. Pharmacy costs now represent over 24 cents out of every dollar of premium spent on health care.[i]

Drug manufacturers acknowledge their drugs are unaffordable for patients, but rather than addressing this by lowering their prices, they instead offer copay coupons[ii] to hide the actual cost of those drugs. Coupons intentionally offset short term cost sharing for a few patients, while increasing the cost of pharmacy care for everyone and benefiting drug manufacturers.

Copay coupons encourage the use of high-priced branded prescription drugs when more affordable generic alternatives are available. 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.[iii] In the commercial market, coupons are often offered by the drugmaker only for a limited time – once the patient hits their deductible, the drugmaker discontinues the patient's assistance.

The Centers for Medicare and Medicaid Services (CMS) has concluded that coupons can distort the market and hide the true cost of drugs. "Such coupons can add significant long-term costs to the health care system that may outweigh the short-term benefits of allowing the coupons, and counter-balance issuers' efforts to point enrollees to more cost-effective drugs.[iv]"

Studies prove drug promotions are used to increase sales, fueling increased spending overall. Repeated studies have shown coupons benefit only drug manufacturers and have much larger, negative consequences for patients throughout the entire market:

- The U.S. House Oversight Committee's report on drug pricing found that drug companies use patient assistance programs as a sales tool – focusing on their rates of return, encouraging

patients to stay on high-priced branded drugs after a generic is introduced, and subsidizing third-party foundations to drive sales and attract patients who otherwise might not have used the drug.[v]

The Committee stressed that these programs **"do not provide sustainable support for patients and do not address the burden that the company's pricing practices have placed on the U.S. health care system."**

- The Oversight Committee found one manufacturer projected a potential rate of return of $8.90 for every $1 spent on their copay assistance program for a cancer treatment "because oncologic drugs are a necessity for patients, there is less sensitivity to price increases."[vi]
- A study by Harvard, Kellogg, and UCLA economists found couponed drugs had a higher annual price growth (12-13%) than non-couponed drugs (7-8%). After a generic alternative was introduced, coupons increased spending on brand drugs by $30-$120 million per drug over 5 years.[vii]
- A National Bureau of Economic Research (NBER) working paper estimated "copayment coupons increase spending on couponed drugs without bioequivalent generics by up to 30 percent."[viii]
- A Congressional Research Service report found "manufacturers may use coupons as part of a marketing strategy to keep prices for brand-name drugs higher than they otherwise would be after a lower-cost generic substitute comes to market." [ix]

Studies estimate that eliminating coupons would save at least $1 billion per year.[x] Reporting on one such study, Axios noted, "The study adds further evidence to the idea that drug copay cards are a great short-term deal for patients – and especially the pharmaceutical companies that promote them – but a bad long-term deal for society."[xi]

Health plans use guardrails to hold drug manufacturers accountable for pricing schemes such as copay coupons. It is critical to have guardrails in place against this kickback system to ensure transparency and affordability in drug pricing. Employers and health plans have worked hard to develop guardrails that reflect patients' actual out-of-pocket spending on drugs and shed light on drug manufacturer pricing schemes.[xii] These employer and health plan guardrails do not result in higher costs for patients. Instead, they maximize the value of coupons to benefit the patient, taxpayers, and plan sponsors, and reduce the ability of drug manufacturers to avoid fair negotiation on prices.

CMS has explicitly allowed health plans to adopt programs that allow patients to use manufacturer coupons at the pharmacy counter but exclude some such coupons from counting towards annual cost sharing limitations to "lower the cost of coverage and generate cost savings while also ensuring efficient use of federal funds and sufficient coverage for people with diverse health needs."[xiii] This balanced approach allows patients to use coupons to reduce their cost sharing without subjecting consumers to higher premiums resulting from increased total spending – a more generous treatment than in the Medicare or Medicaid programs, which prohibit patients from using these coupons at all.

This bill will have negative consequences for all patients. This bill would significantly hamper health insurance providers' ability to develop programs to hold manufacturers accountable for problematic pricing schemes. To assist policymakers considering whether to require health plans to accrue third-party payments towards patient cost-sharing, AHIP commissioned the actuarial firm Wakely to analyze the impact of such policy. Wakley found that legislation like H.6209 would:

- **Increase premiums**, with the largest increases in the individual marketplace
- **Result in adverse selection** into lower premium plans, such as Bronze plans, resulting in **higher premiums and consumers dropping their coverage.**
- **Reduce wages** for workers who receive coverage at work, due to **higher employer costs.**
- **Encourage use of more expensive drugs** over cheaper alternatives.[xiv]

Restricting the use of health plans' guardrails will reduce incentives for drug companies to offer lower prices because those drug companies can continue to replace real price reductions with coupons. As a result, drug companies will make more money, while consumers and businesses continue to foot the bill through lower wages and higher premiums and out-of-pocket expenses.

This bill is not sufficiently tailored and, because of this, will have an even greater negative impact on patients' costs. As discussed, we have concerns with curtailing insurers' programs to address drugmakers' market manipulation through copay coupons for prescription drugs. However, the reach of this bill is much broader than just copay coupons and, as a result, it will have even greater negative consequences. Applying the bill's requirements to all "health care services" will lead to broad negative impacts for patients because it would allow any provider to steer patients towards their practice with the promise of paying a portion of the patients' cost sharing amount. For example, an out-of-network provider with rates twice as high as in-network providers could obtain patients by subsidizing a patient's cost-sharing, leaving the insurer on the hook for twice the amount they would pay an in-network provider. This will effectively nullify insurers' ability to design cost-effective networks, putting a financial strain on employers paying health care costs.

Wakely's analysis found that proposals like this one that are not tailored to prescription drugs will cause even greater harm than bills only applying to prescription drugs, increasing health care spending and undermining cost-saving networks by allowing providers to direct patients to higher-cost out-of-network facilities.[xv]

The harm is further compounded by the failure of this bill to be limited even to *covered* health care services. This means that plans costs are driven up even further as cost sharing payments are used to satisfy deductibles or out-of-pocket maximums for services that are not even covered by the plan, increasing the costs that must be borne by employers and individuals.

The proliferation of copay coupons has raised questions about whether and how these third-party payments can count towards a patient's deductible and associated potential tax implications. To gain insight on the impact of a state law requiring health plans to count copay coupons payments towards enrollees' cost sharing requirements on the ability of an individual to contribute to an HSA, the Illinois Department of Insurance requested guidance from the IRS. The Internal Revenue Service responded:

> "… the minimum annual deductible may only be satisfied by actual medical expenses the covered individual incurred. For 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**."[xvi]

Considering this guidance, a bill such as H.6209 that requires health plans to count copay coupons payments towards enrollees' cost sharing requirements could impact an enrollee's ability to contribute to their HSA. We urge the state to avoid putting enrollees' health savings accounts at risk.

The legislature should focus on solutions that forbid market manipulation. Instead of taking away the few tools that health plans and employers use to address ever increasing drug prices, the legislature should focus on fixing the market distortion caused by drug manufacturer pricing schemes, including copay coupons. We support a ban on copay coupons, especially in cases where less expensive generic alternatives are available, as California and Massachusetts have done.[xvii] This has been proposed by a group of prestigious health care scholars looking at ways to offer evidence-based steps for reforming health care spending in the US.[xviii]

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

AHIP Recommendation. Respectfully, we strongly urge the Committee not to pass H.6209 because it eliminates valuable tools used in the effort 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,

Sarah Lynn Geiger, MPA
Regional Director, State Affairs

America's Health Insurance Plans (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.

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[i] *Where Does Your Health Care Dollar Go?* AHIP. October 2024.

[ii] Here, the term "copay coupons" is used to represent all payments provided by a third party towards a patient's cost sharing (copay, coinsurance, deductible). This includes coupons directly from drug manufacturers, but also third-party payments and discount programs from patient assistance programs.

[iii] *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.

[iv] *Notice of Benefit and Payment Parameters for 2020.* Final Rule. April 25, 2019.

[v] *Drug Pricing Investigation, Majority Staff Report*. U.S. House Committee on Oversight and Reform. December 10, 2021.

[vi] *Drug Pricing Investigation: Novartis-Gleevec, Staff Report.* U.S. House Committee on Oversight and Reform. October 2020.

[vii] Dafny, Ody & Schmitt. *When Discounts Raise Costs: The Effect of Copay Coupons on Generic Utilization*. October 2016.

[viii] Dafny, Ho & Kong. *How Do Copayment Coupons Affect Branded Drug Prices and Quantities Purchased?* NBER Working Paper Series. February 2022.

[ix] *Prescription Drug Discount Coupons and Patient Assistance Programs*. Congressional Research Service. June 15, 2017.

[x] *Id.*, Dafney, Ody & Schmitt. *Eliminating Prescription Drug Copay Coupons*. 1% Steps for Health Care Reform.

[xi] Herman, Bob. *The growing evidence against drug copay cards.* Axios. February 15, 2022.

[xii] Humer, Caroline and Michael Erman. *Walmart, Home Depot adopt health insurer tactic in drug copay battle*. Reuters. November 13, 2018.

[xiii] *Notice of Benefit and Payment Parameters for 2020.*

[xiv] *Implications of Third-Party Payments on Commercial Market*. Wakely. July 15, 2024.

[xv] *Id.*

[xvi] Department of the Treasury; *Letter Number 2021-0014*. April 16, 2021.

[xvii] *CA Health and Safety Code § 132000- 132008.; Mass. Gen. Laws Ann. ch. 175H, § 3*.

[xviii] *Eliminating Prescription Drug Copay Coupons*.