

January 25, 2023

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE HB 1413

CHAIRMAN LOUSER AND COMMITTEE MEMBERS:

My name is Jack McDonald, and I am testifying today on behalf of America's Health Insurance Plans (AHIP).¹

AHIP respectfully opposes HB 1413, which would require health insurance providers to count copay coupons² and other third-party payments towards an enrollee's cost sharing or out-of-pocket maximum.

Everyone should be able to get the medications they need at a cost they can afford. However, drug prices continue to rise out of control, and pharmacy costs now represent over 22 cents³ out of every dollar of premium spent on health care.

Unfortunately, HB 1413 does not control the soaring prices of prescription drugs for patients. Instead, it would financially reward drug manufactures for steering patients towards expensive brand-name drugs.

Drug manufacturers intentionally use copay coupons to keep drug prices high

Drug manufacturers acknowledge their drugs are unaffordable for patients. But rather than simply lowering their prices, they offer copay coupons to offset cost-sharing expenses.

Drug manufacturers offer these promotions only to very specific patients for a very short period of time. Once a patient hits their deductible, drug manufacturers discontinue the patient's coupons – which hides the underlying prices from patients, enticing them to continue with the most expensive drug, when there are less expensive drugs available.

These tactics incent patients to use very expensive drugs rather than equally effective, less expensive alternatives (such as generics, biosimilars, and other therapeutic substitutes). As stated by the editor of Kaiser Health News, Dr. Rosenthal writes “coupons

¹ 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.

²Here, 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.

³ *Where Does Your Health Care Dollar Go?* America's Health Insurance Plans. November 12, 2020. <https://www.ahip.org/health-care-dollar/>

create a mirage that perpetuates our system's reckless spending. They cover up a drug's true price, much of which our insurers pay... and contributes to our escalating insurance premiums and deductibles year after year."⁴

It is important to note, the federal government considers copay coupons illegal kickbacks in federal health care programs like Medicare and Medicaid because these coupons induce a patient to use a specific drug.⁵

Because the commercial market is the only market where drug manufacturers may offer copay coupons, they are aggressively seeking policy proposals, like HB 1413, that would codify their financial gains.

These promotions are used to increase sales, raising costs for everyone

Rather than protecting North Dakotans from high drug prices, copay coupons are another way for drug companies to insulate themselves from public scrutiny, skirt transparency, and maximize profits by protecting their out-of-control pricing practices.

There are multiple studies by Harvard⁶, the Congressional Research Service⁷, and others, that found that Pharma uses patient assistance programs as a sales tool – focusing on their rates of return, encouraging patients to stay on 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 high-priced drug.

- For example, a recent study found that for just one category of drugs used to treat multiple sclerosis, the study estimates that coupons raise negotiated prices by 8% and result in just under \$1 billion in increased U.S. spending annually.⁸
- The United States House Oversight Committee's investigation into drug pricing found that for one cancer treatment, one manufacturer projected a potential rate of return of \$8.90 for every \$1 spent on their copay assistance program.⁹

⁴Is My Drug Copay Coupon a Form of Charity – Or a Bribe? Kaiser Health News, April 21, 2022 <https://khn.org/news/article/drug-companies-copay-assistance-program-charity-or-bribe/>

⁵ See 42 U.S.C § 1320a-7b; *Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons*. HHS Office of the Inspector General. September 2014. https://oig.hhs.gov/documents/special-advisory-bulletins/878/SAB_Copayment_Coupons.pdf.

⁶ 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. https://www.hbs.edu/ris/Publication%20Files/DafnyOdySchmitt_CopayCoupons_32601e45-849b-4280-9992-2c3e03bc8cc4.pdf

⁷ Prescription Drug Discount Coupons and Patient Assistance Programs (PAPs). Congressional Research Service. June 15, 2017. <https://crsreports.congress.gov/product/pdf/R/R44264/5>.

⁸ Dafny, et.al. *How do copayment coupons affect branded drug prices and quantities purchased?* NationalBureauofEconomicResearch.February2022. https://www.nber.org/system/files/working_papers/w29735/w29735.pdf.

⁹ Drug Pricing Investigation: Majority Staff Report. US House Committee on Oversight and Reform. December 2021. <https://www.house.gov/committees/oversight/documents/2021/12/21/20211221APPENDIX%20v3.pdf>.

Health insurance providers have limited tools to hold drug manufacturers accountable for their high prices

Employers and health insurance providers have worked hard to develop programs to hold drug companies accountable, to shed light on these pricing schemes, and keep costs low for North Dakotans. One such program allows patients to save money with a coupon but does not count the coupon's value toward patients' out-of-pocket cost obligations. The Centers for Medicare & Medicaid Services (CMS) agrees that these programs are important to protect taxpayers. In addition to deeming coupons illegal kickbacks in federal programs, CMS explicitly allowed such programs to continue in the Exchange Marketplaces.¹⁰

Legislation banning these programs by requiring health plans to count all third-party payments towards an enrollee's cost sharing obligations will eliminate incentives for drug companies to lower prices. As a result, drug companies will make more money while North Dakota families and businesses continue to foot the bill through higher premiums, higher out-of-pocket expenses, and higher federal insurance subsidies.

Policymakers can take steps to protect North Dakotans from bait and switch gaming that threatens health care affordability.

Instead of taking away the few tools that health plans have to lower drug spending, we recommend that North Dakota legislators focus on fixing the market distortion caused by pricing schemes, including copay coupons.

AHIP stands ready to work together with policymakers on real solutions to ensure every patient has access to the high-quality drugs that they need and improve health care affordability.

Thank you for your time and consideration. I'd be glad to answer any questions.

¹⁰ *Notice of Benefit and Payment Parameters for 2021*. Centers for Medicare & Medicaid Services. June 13, 2020. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-10045.pdf>.