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VIA E-Mail

July 14, 2021

Chairwoman Pamela Hunter
711 East Genesee Street
2nd Floor
Syracuse, NY 13210-1540

Re: Draft NCOIL Accumulator Adjustment Program Model Act

Dear Chairwoman Hunter,

On behalf of AHIP¹, we offer the following comments regarding the draft NCOIL Accumulator Adjustment Program Model Act, which incentivizes drug manufacturers to employ practices deemed illegal kickbacks in the Medicaid and Medicare programs.²

Everyone should be able to get the prescription drugs they need at a cost they can afford. But drug prices are out of control, and hardworking families face the consequences every day. The problem is the price – which is set by drug manufacturers and raised by them year after year – often multiple times in the same year. Drug makers must be held accountable for the prices that they, and they alone, set and control.

Unfortunately, this draft Model does not control the soaring prices of prescription drugs for patients. Instead, it financially rewards drug makers for steering patients towards expensive brand-name drugs. With 96% of voters agreeing that lowering drug prices is an important challenge facing Americans, and 86% of voters saying drug makers are responsible for rising prices, we believe Americans want policymakers to address the high price of drugs.³ This Model Act takes the wrong direction, and patients' access to affordable health care will be negatively impacted by this draft Model Act.

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

Pharmacy costs now represent over 21 cents out of every dollar of premium spent on health care.⁴

Drug manufacturers acknowledge their drugs are unaffordable for patients. But rather than choose to lower their prices, they offer copay coupons, vouchers, discounts, or reimbursements (collectively, “copay coupons”) to offset cost-sharing expenses. These coupons are offered only to a narrow set of patients, for

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. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

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.

³ *Memo to CSRXP from Morning Consult*. January 2021. Available at <https://www.csrxp.org/wp-content/uploads/2021/01/CSRXP-Memo-Final.pdf>.

⁴ *Where Does Your Health Care Dollar Go?* America's Health Insurance Plans. November 12, 2020. Available at <https://www.ahip.org/health-care-dollar/>

a narrow selection of drugs, and often only for a limited period, until the patient has hit their deductible. By offering coupons for just a few months to help a patient reach their deductible, drug makers are shifting the costs so that patients still pay these very high prices in the form of higher premiums, rather than at the pharmacy counter.

Data shows that, while coupons may lower the cost for some patients, they have much larger, negative consequences for all patients purchasing coverage through many different markets:

- Coupons mask the actual price of brand-name medications by shifting the high price from one patient to all patients.
- Coupons steer 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 negotiate with drug manufacturers and lower costs for all health care consumers.

Indeed, the federal government considers copay coupons illegal kickbacks in 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 that would codify their financial gains.

Drug Coupons Raise Costs for Everyone.

A case study done conducted by economists at Harvard, Northwestern, and 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 5 years after generic entry.⁶

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

Accumulator Programs 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 Americans.⁷ Policymakers could refrain from approving policy proposals that prohibit these important transparency tools.

⁵ See 42 U.S.C § 1320a-7b; *Special Advisory Bulletin: Pharmaceutical Manufacturer Copayment Coupons*.

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

⁷ 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>.

July 14, 2021
Page 3

It is important to note that the federal government has not only deemed coupons illegal kickbacks, but to protect taxpayers and purchasers of pharmacy care, the Centers for Medicare & Medicaid Services (CMS) has explicitly allowed accumulator programs to continue in the Exchange Marketplaces. In allowing health insurance providers to use these transparency pools, CMS recognized 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.”⁸

Legislation banning accumulator programs like this model will eliminate incentives for drug companies to lower prices. Drug manufacturers will continue to use coupons as a work around to lowering the prices they set. As a result, drug companies will make more money while American families and businesses continue to foot the bill through higher premiums, higher out-of-pocket expenses, and higher federal insurance subsidies.

The Legislature Should Focus on Solutions that Limit Pricing Schemes.

Instead of taking away the few tools that purchasers of health care use to lower drug prices, we recommend NCOIL focus on fixing the market distortion caused by pricing schemes, including copay coupons.

If you wish to allow the use of coupons to continue, we recommend reforms that require drug manufacturers to offer coupons in a fair and equitable way that limits the market manipulation caused by coupons. This includes requiring:

- Coupons to be given to all patients prescribed a drug,
- The assistance to be provided for the entire plan year, and
- Manufacturers to inform health plans when they are providing a coupon or other type of financial assistance to an enrollee of that health plan.

We have attached some amendments for your consideration. 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,



Brendan H. Peppard
Regional Director, State Affairs

c. Hon. Jason Rapert
Tom Considine
Will Melofchick

⁸ *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>.