



June 1, 2020

**Via Electronic Communication**

P. Scott Lipps  
Chair  
Ohio House of Representatives  
Health Committee

Janine R. Boyd  
Ranking Member  
Ohio House of Representatives  
Health Committee

Re: Letter in Support H.B. 469

Dear Chairman Lipps, Ranking Member Boyd, and Health Committee Members:

Aimed Alliance is a 501(c)(3) non-profit health policy organization that seeks to protect and enhance the rights of health care consumers and providers. Thank you for providing us the opportunity to comment in support of H.B. 469.

Historically, privately insured individuals who cannot afford their copayments or coinsurance have been able to obtain aid from copayment assistance programs – discount programs in which a pharmaceutical manufacturer may offer a coupon card or rebate to an individual to ease the burden of high out-of-pocket costs. The coupon card or rebate contributes toward the patient’s deductible and maximum out-of-pocket limit. These programs have been especially helpful for individuals enrolled in high deductible health plans in which the patient is required to pay significantly high out-of-pocket costs until the deductible is reached.

Health plans are increasingly implementing copay accumulator programs that prevent the value of a drug manufacturer’s coupon from counting toward a patient’s deductible and maximum out-of-pocket limit.<sup>1</sup> Under such programs, once copayment assistance runs out, the plan enrollee is again faced with an inability to afford his or her medication. In some instances, there are no generic alternatives, and patients may be forced to ration their medications or abandon treatment altogether.<sup>2</sup> As a result, they can experience disease progression, relapse, and other adverse events, thereby increasing health care utilization.<sup>3</sup>

As you know, H.B. 469 prohibits health insurers from adopting copay accumulator programs for a branded drug unless a medically appropriate generic medication is available. The bill is crafted to incentivize patients to use lower cost medications only when such medications are available and deemed medically appropriate, but it recognizes that copay accumulator programs

<sup>1</sup> <https://www.npr.org/sections/health-shots/2018/05/30/615156632/why-some-patients-getting-drugmakers-help-are-paying-more>

<sup>2</sup> <https://www.healthaffairs.org/doi/10.1377/hblog20180824.55133/full/>

<sup>3</sup> <https://www.healthaffairs.org/doi/10.1377/hblog20180824.55133/full/>

are inappropriate where no generic alternative exists. As such, H.B. 469 strikes a balance between the interests of health plans and pharmaceutical manufacturers without unreasonably penalizing patients for relying on financial assistance.

Committee Members should feel confident that H.B. 469 does not conflict with federal law. It is important to note that, currently, no known conflict exists. The Notice of Benefit and Payment Parameters for the 2021 (NBPP 2021), which was recently promulgated by the U.S. Department of Health and Human Services, addresses the use of copay accumulator programs in both Employee Retirement Income Security Act (ERISA) plans and state marketplace exchange plans. The NBPP 2021 explicitly notes that it does not preempt state laws that govern the use of copay accumulator programs in state-regulated health plans. Specifically, the regulation says that states may:

“[R]equire direct drug manufacturer support amounts to be counted by health insurance issuers towards the annual limitation on cost sharing. To the extent states want to require health insurance issuers to count direct drug manufacturer support amounts towards the annual limitation on cost sharing, they can do so when such action would be consistent with other applicable laws and rules (for example, federal non-discrimination requirements).”<sup>4</sup>

However, as an added precaution, H.B. 469 explicitly defers to federal law by noting that “[i]f any requirement . . . is invalid or incapable of being enforced against [an] . . . insurer due to a conflict with federal law, then such requirement shall remain in full force and effect with respect to all sickness and accident insurers in all situations in which no such conflict exists.”

Millions of American across the country rely on cost-sharing assistance to afford their medications. Such assistance is only helpful if it can be counted toward patients’ deductibles or maximum out-of-pocket limits. This is especially problematic during the COVID-19 pandemic when unemployment rates are dramatically increasing every week, and individuals are struggling more than ever to afford their medications. As of April 2020, Ohio’s unemployment rate nearly tripled to 16.8 percent with 823,700 lost jobs.<sup>5</sup> Many of these individuals may now rely on marketplace exchange plans with high out-of-pocket costs. They need additional protections, such as the ones laid out in H.B. 469. As such, we ask that you support H.B. 469 and urge your fellow legislators to pass the bill. Thank you for considering our position on H.B. 469.

Sincerely,

Stacey L. Worthy  
Counsel

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<sup>4</sup> <https://www.govinfo.gov/content/pkg/FR-2020-05-14/pdf/2020-10045.pdf>

<sup>5</sup> <https://www.cleveland.com/datacentral/2020/05/ohios-unemployment-nearly-triples-to-164-in-april.html>