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H.233 An Act Relating to Pharmacy Benefit Management

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Office of the Health Care Advocate

February 13, 2024

PBM REGULATION IS ...

**CONSUMER
PROTECTION!**



CONSUMER PROTECTIONS IN ACT 131

- **Eliminated** specialty pharmacy networks
- **Prohibited** mandatory mail order pharmacy and other PBM patient steering mechanism
- **Restricted** mid-year formulary changes
- **Instituted** consumer cost protections
- **Banned** copay accumulator adjustment programs (implied language)

H.233 BUILDS UPON ACT 131

H.233 incorporates all of Act 131's consumer protection provisions +

- Requires PBM licensure and grants DFR enforcement, including fines of \$25,000 - \$50,000 per violation
- Allows a private right of action for pharmacies, pharmacists, or “other persons” aggrieved by PBMs
- Allows HCA access to PBM data collected during DFR enforcement, providing for consumer-focused oversight outside of government

Actual Acquisition Cost + Professional Fee

H.233, p. 22; § 3631(e) – modifies 18 VSA § 9473(i)

- A pharmacy benefit manager shall not reimburse a pharmacy in this state less than the PBM pays a PBM affiliate for the same services.
- “The reimbursement amount shall be calculated on a per-unit basis based on the pharmacy’s **actual acquisition cost** and shall include a **professional dispensing fee ...**”



Unravelling the Drug Pricing Blame Game

Analyzing the factors influencing prescription drug costs at U.S. retail pharmacies

Prepared for —
American Pharmacy
Cooperative, Inc (APCI)

September 2023

THRE
EERHT
SIX
ADVISORS

“Our study found that **the greatest harm from our system’s current approach to drug pricing appears to be on patients....**

While these disparate pricing experiences can have a significant impact on pharmacy providers and health plan sponsors, **the most obvious and important impact is felt by the patient**, whose costs for their medicines are often derived by the point-of-sale prices that are yielded by the health benefits plan and PBM.”

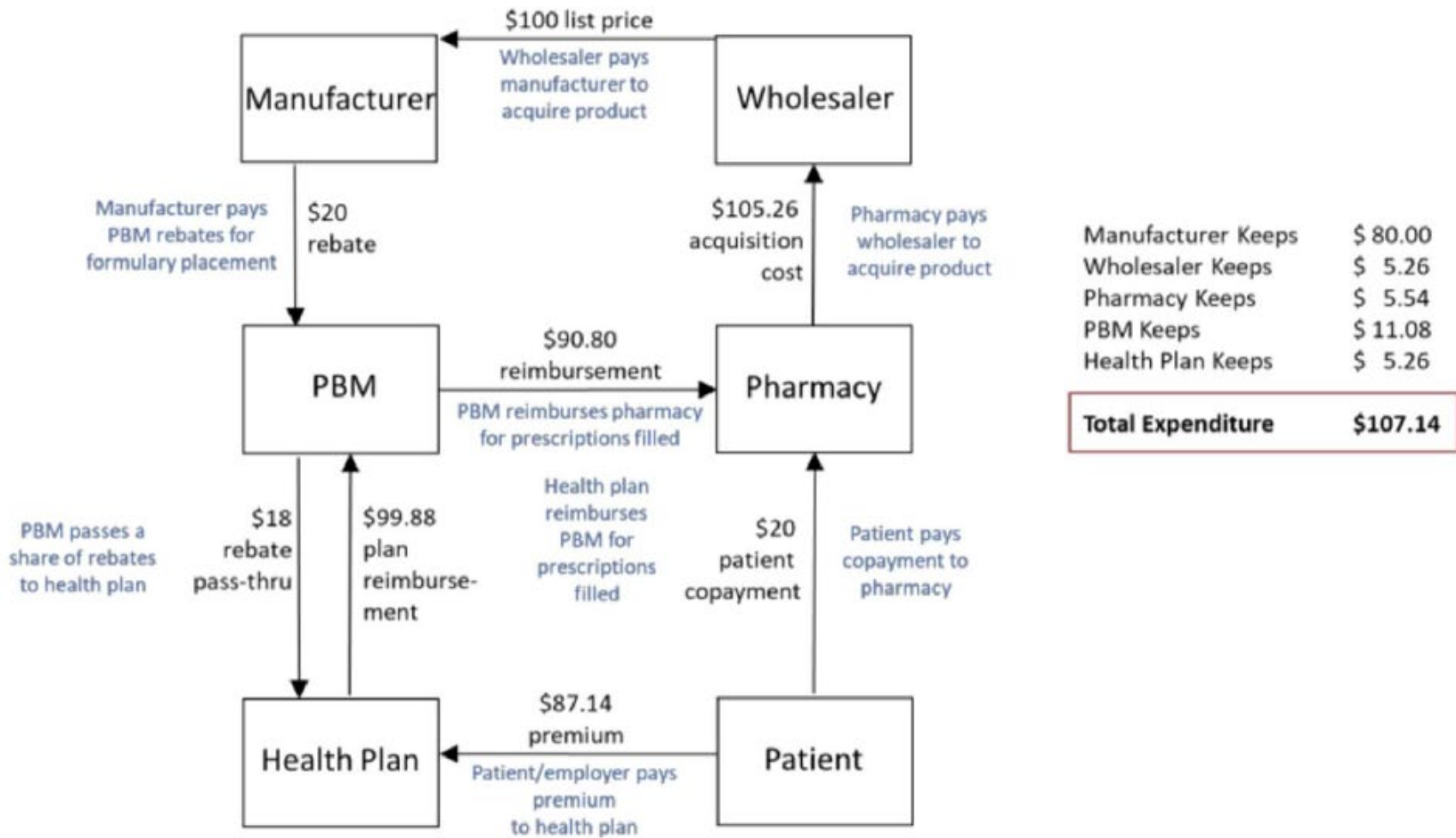
(pages 3-4)

Rebate Pass-through at Point-of-Sale

H.233, p. 11; § 3612(e)(2) – modifies 18 VSA § 9472(f)

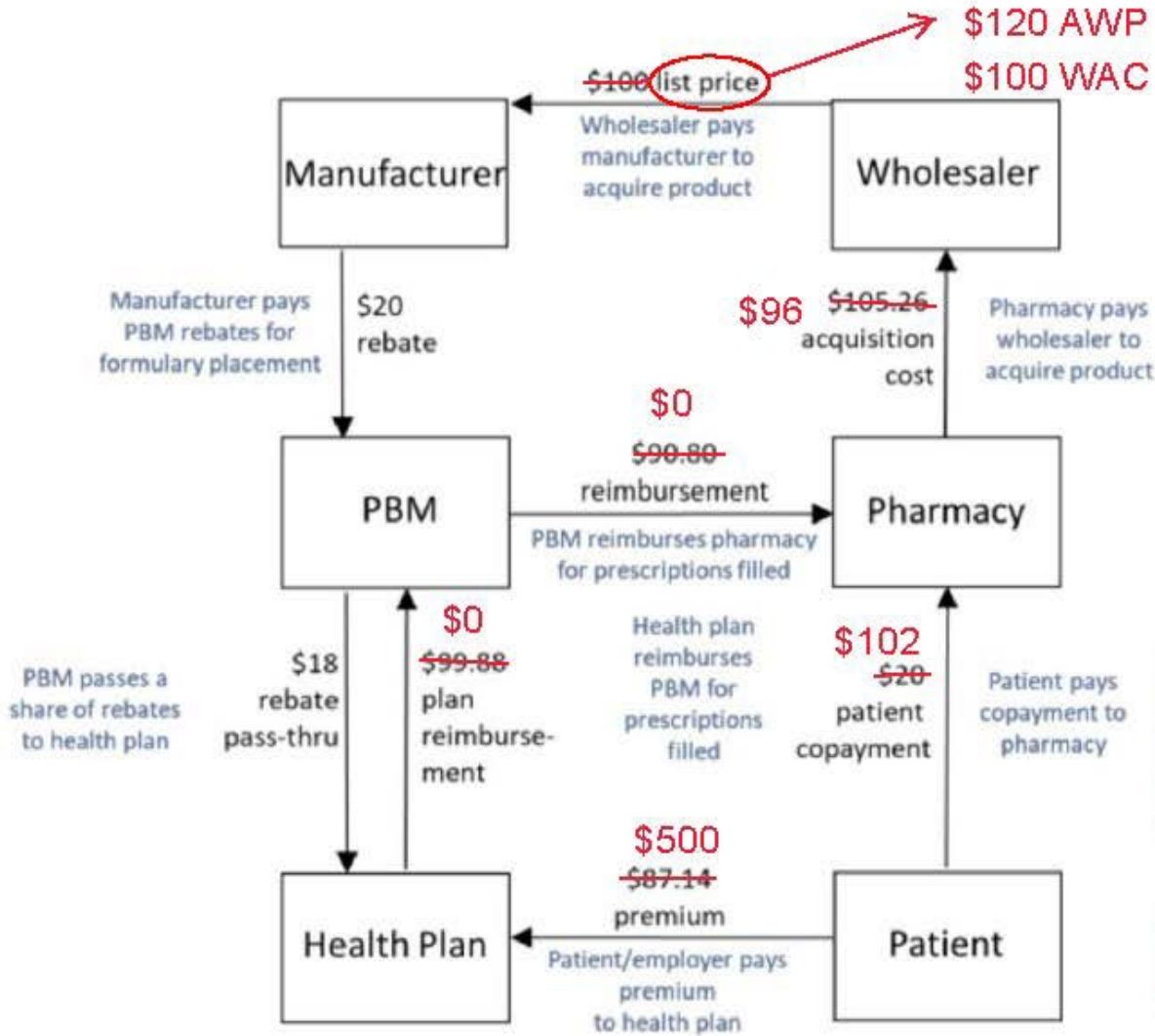
- A PBM shall not require a covered person to pay any amount greater than the lesser of -- cost-sharing under the plan; MAC; or cash
- “As used in this subdivision ... the ‘cost-sharing amount under the terms of the health benefit plan’ shall be calculated at the point of sale based on a price that had been reduced by an amount equal to at least 100 percent of all rebates received, or to be received ... The pharmacy benefit manager shall pass on any remaining rebate in excess of the covered person’s cost-sharing amount to the health benefit plan to reduce premiums.”

Manufacturer A: \$100 list price with 20% rebate



Source: USC Schaeffer Center for Health Policy and Economics, letter to Lina Khan, Chair, U.S. Federal Trade Commission, 10 (May 25, 2022), available at <https://healthpolicy.usc.edu/wpcontent/uploads/2022/06/Van-Nuys-et-al.-Public-Comments-to-FTC-on-PBMs.pdf>.

Manufacturer A: \$100 list price with 20% rebate



Manufacturer Keeps	\$ 80.00
Wholesaler Keeps	\$ 5.26
Pharmacy Keeps	\$ 5.54
PBM Keeps	\$ 11.08
Health Plan Keeps	\$ 5.26
Total Expenditure	\$107.14

Patient pays \$102 for net \$80 Rx.
 Health plan keeps \$18 rebate.
 PBM keeps \$2 rebate
 Pharmacy makes \$6.

With premiums the patient pays \$602.

Copay Accumulator Adjustment Programs

Cigna Pharmacy Management
NS-RXD-CDL
P.O. Box 3050
Easton, PA 18043-3050

001017

December 8, 2021

Charles Becker
[REDACTED]
[REDACTED]

What's changing as of January 1, 2022.

The value of manufacturer coupons used for specialty medications dispensed by Accredo, a Cigna specialty pharmacy, will no longer count toward your deductible and out-of-pocket maximum.* **Only the amount you pay out of your own pocket, or from a health savings or health reimbursement account, will apply.**

Your plan is making a change to how certain manufacturer coupons apply to your deductible and/or out-of-pocket maximum. Please continue reading to learn more about what this means for you.

Hello Charles,

Specialty medications can cost a lot of money. That's one reason why many people use manufacturer coupons (also called "copay assistance") to help lower the amount of money they pay out-of-pocket for their medication. We're writing to let you know about an upcoming change to the way your plan will apply this copay assistance.

What's changing as of January 1, 2022.

The value of manufacturer coupons used for specialty medications dispensed by Accredo, a Cigna specialty pharmacy, will no longer count toward your deductible and out-of-pocket maximum.* **Only the amount you pay out of your own pocket, or from a health savings or health reimbursement account, will apply.**

What this means for you.

Depending on the medication you're using, you'll decide whether using a manufacturer coupon is under your benefit plan. On the one hand, it can help lower the amount of money you pay out-of-pocket for your medication. On the other hand, it may no longer meet your deductible and/or out-of-pocket maximum.

Use the myCigna® app or website to keep track of your spending.

The online tools will help you keep track of how much you've spent so far and how much money you still have left to spend before you meet your deductible and out-of-pocket maximum.

It's important to know that it may take a few days after your covered prescription is processed for our online tools to show the amount you actually paid out-of-pocket, or from a health savings or health reimbursement account, for your specialty medication.

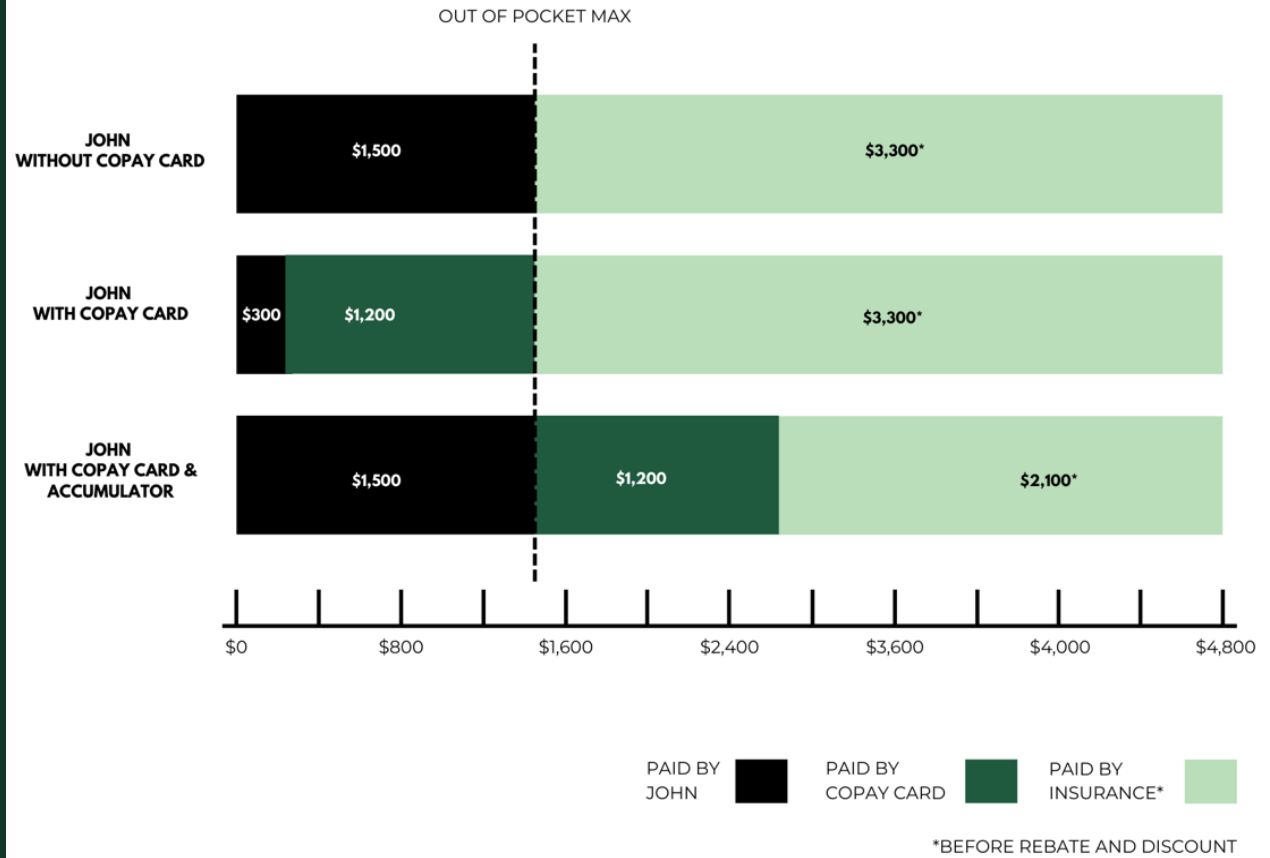
At first, both the amount you paid out-of-pocket and any manufacturer coupon you use will be applied to your deductible and out-of-pocket maximum. **This means it may look like you've met your deductible and/or out-of-pocket maximum when you really haven't.** After a few days, our system will correct your claims and subtract the amount of payment assistance you received to show the correct deductible and out-of-pocket maximum under your plan.

It's important to know that it may take a few days after your covered prescription is processed for our online tools to show the amount you actually paid out-of-pocket, or from a health savings or health reimbursement account, for your specialty medication. At first, both the amount you paid out-of-pocket and any manufacturer coupon you use will be applied to your deductible and out-of-pocket maximum. **This means it may look like you've met your deductible and/or out-of-pocket maximum when you really haven't.** After a few days, our system will correct your claims and subtract the amount of payment assistance you received to show the correct deductible and out-of-pocket maximum under your plan.



Example:

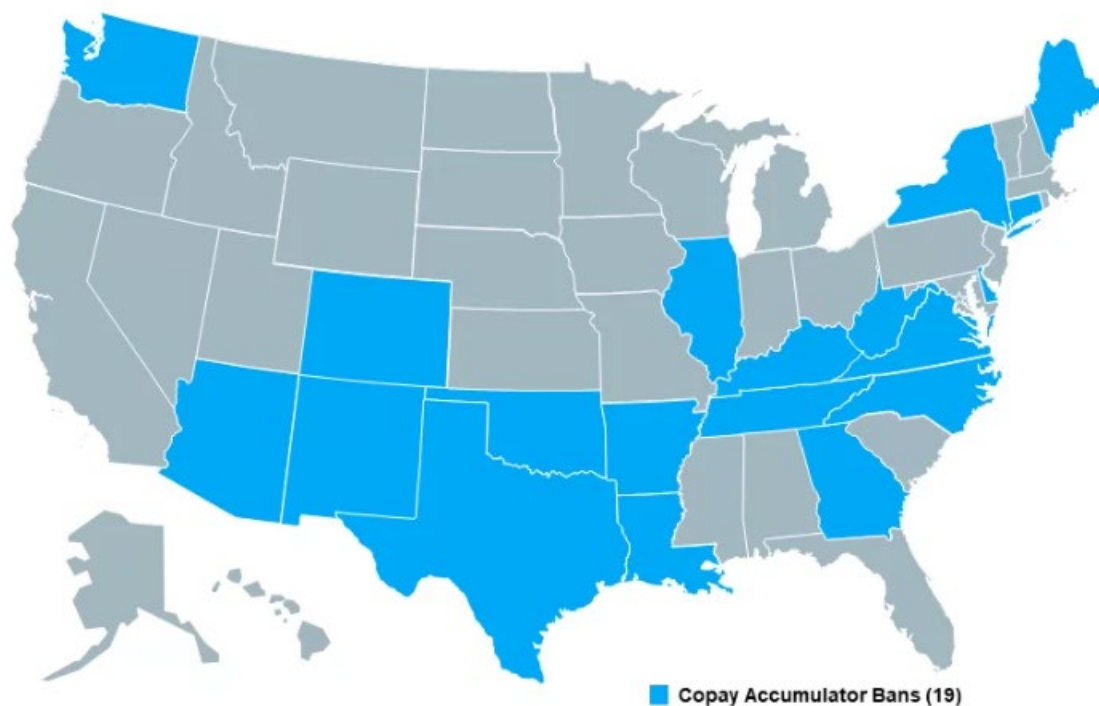
John has a Silver High Deductible Health Plan that he purchased on Vermont Health Connect. The plan has a prescription deductible and out-of-pocket maximum of \$1,500 per year. John takes one prescription for his arthritis that costs \$400 per month. The drug manufacturer offers \$1,200 in annual copay assistance to help people like John afford their medication.



Status of Copay Accumulators in Vermont

“Any amount paid by a covered person under subdivision (1) of this section shall be attributed toward any deductible and, to the extent consistent with Sec. 2707 of the Public Health Services Act (42 U.S.C. § 300gg-6), the annual out-of-pocket maximums under the covered person’s health benefit plan.”
Act 131, 18 V.S.A. § 9472(f)(2)

Figure 1. States with Laws Banning Copay Accumulator Use



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*Note: State-level activity current as of June 21, 2023.
Puerto Rico has also enacted a copay accumulator ban.*

Copay Accumulator Adjustment Program Ban

H.233 p. 11 - § 3612(e)(3) & p. 26 - 8 VSA § 4089j(d)(2)(F)

Amend 18 V.S.A. 9472(f)(2) to read:

A pharmacy benefit manager shall attribute any amount paid by or on behalf of a covered person under subdivision (1) of this subsection, including any third-party payment, financial assistance, discount, coupon, or any other reduction in out-of-pocket expenses made by or on behalf of a covered person for prescription drugs, toward any deductible, and to the extent consistent with Sec. 2707 of the Public Health Service Act (42 U.S.C. § 300gg-6), the annual out-of-pocket maximums under the covered person's health benefit plan.

Amend 8 V.S.A. § 4089j to read:

(d)(2) A health insurer or pharmacy benefit manager shall not do any of the following:

(F) Exclude any amount paid by or on behalf of a covered person, including any third-party payment, financial assistance, discount, coupon, or other reduction, when calculating a covered person's contribution to any deductible or, to the extent not inconsistent with Sec. 2707 of the Public Health Service Act, 42 U.S.C. § 300gg-6, out-of-pocket maximums applicable to the covered person's health benefit plan.

Drug Manufacturer Copay Assistance Cards



PBM REGULATION IS ...

