

## Bulletin No. B-4.82

### Consumer Cost Share for Prescription Drug Benefits

#### I. Background and Purpose

The purpose of this bulletin is to clarify the position of the Division of Insurance (Division) regarding consumer cost sharing variations for prescription drug benefits.

Bulletins are the Division's interpretations of existing insurance law or general statements of Division policy. Bulletins themselves establish neither binding norms nor a final determination of issues or rights.

#### II. Applicability and Scope

This bulletin is intended for all carriers providing health benefit plans to Colorado consumers and all consumers who purchase health benefit plans in the state of Colorado. This bulletin is further intended as guidance for carriers as they develop their health benefit plans for plan years beginning January 1, 2016. It applies separately to health benefit plans offered on and off the Exchange. This bulletin does not apply to the following plan types: catastrophic plans, grandfathered plans, transitional plans, large group plans, and HSA (Health Saving Account) qualified high deductible plans.

#### III. Division Position

In the proposed rule "HHS Notice of Benefit and Payment Parameters,"<sup>1</sup> issued November 26, 2014, the federal government reiterated the prohibition on discrimination found in Section 1302(b)(4) of the Affordable Care Act and at 45 CFR §156.125, and cautioned issuers against the use of plan benefit designs that "would discourage enrollment by individuals based on age or based on health conditions, in effect making those plan designs discriminatory." Therefore, it is the Division's position that health benefit plans utilizing certain cost-sharing structures for prescription drug benefits may constitute a prohibited practice that is in violation of Colorado insurance law and regulations.

- A. In alignment with the proposed federal rule, the Division will view the placement of most or all drugs that are used to treat a specific condition on the highest cost tiers as discrimination against those individuals who have chronic conditions that require treatment with such drugs<sup>2</sup>; and
- B. Carriers are currently utilizing coinsurance as a consumer cost sharing methodology for prescription drug benefits in one or more of the highest cost formulary drug tiers. Other than those health benefit plan types specifically excepted in Section II, for plans

<sup>1</sup> "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016; Proposed Rule," 79 Federal Register 228 (26 November 2014), p. 70674-70760

<sup>2</sup> "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016; Proposed Rule," 79 Federal Register 228 (26 November 2014), p. 70723



issued or renewed on or after January 1, 2016, carriers may only utilize this type of coinsurance cost-sharing arrangement for one or more of the highest cost tiers, in no more than 75% of their filed plan designs for each metal tier in each service area. For example, if a carrier offers four (4) silver plans within a service area, only three (3) of those plans may utilize coinsurance as a cost-sharing mechanism for a prescription drug tier. If the carrier offers the same four (4) plans in a different service area, only three (3) of those plans may use coinsurance.

For the remaining plan designs for each metal tier in each service area, a copayment structure must be applied to the entire drug benefit, including all drug tiers. For example, if a carrier offers three (3) silver plans, at least one (1) of those plan designs must utilize a copayment-only structure for each of the drug benefit tiers.

Carriers must offer at least one (1) plan design in each metal tier offered with an all-copayment structure not subject to a deductible. Any remaining plans, as long as they constitute no more than 75% of the total plans in that metal tier, may utilize a coinsurance structure that may or may not be subject to a deductible. If a carrier offers only a single plan in each metal tier within a service area, that single plan must utilize an all-copayment structure, and not be subject to a deductible. However, the Division encourages carriers to offer more than one (1) plan design within each structure type. Carriers are not required to offer new plans on metal tiers in which they are not currently offering plans.

The requirement to utilize an all copayment cost-sharing structure and provide benefits that are not subject to the deductible in at least one (1) plan design in each metal tier applies to all prescription drug benefits within that plan, regardless of whether they are included in the medical benefit or the drug benefit.

The highest allowable copayment for any of the drug tiers must be no greater than 1/12 of the plan's "individual" annual out-of-pocket maximum for that particular plan design, which must also be in accordance with federal law. For example, if the plan design includes an individual annual out-of-pocket maximum of \$6,000 per calendar year, the plan design cannot contain a maximum monthly copayment greater than \$500 for each drug on the highest cost tier. This copay would apply to each drug on the tier purchased by the covered person. Therefore, if a covered person purchases three (3) drugs in the highest cost tier in a given month, he/she would pay three (3) separate \$500 copayments. Examples are provided in Attachment A of this bulletin.

Carriers should use the allowed out-of-pocket maximum prior to the application of any cost-sharing reductions when calculating the highest allowable copayment.

Cost-sharing arrangements that utilize a coinsurance up to a capped dollar amount maximum are not considered copayments, and cannot be used in plan(s) to meet the all-copayment structure requirement. Carriers may still utilize this arrangement in their other plan offerings.

These requirements must be met separately for plans offered on the Exchange and for plans offered outside of the Exchange.

#### **IV. Additional Division Resources**

##### **A. For More Information**

Colorado Division of Insurance  
Rates and Forms, Life and Health Section  
1560 Broadway, Suite 850  
Denver, CO 80202  
Tel. 303-894-7499

Internet: <http://www.dora.colorado.gov/insurance>

**B. Related Division Regulations**

Colorado Insurance Regulation 4-2-42

**V. History**

- Issued January 28, 2015

## Attachment A

Examples of Current Drug Cost Sharing Structures:

DRUG TIER	Combined Copayment & Coinsurance	All Coinsurance
Generic Drugs	\$20 Copayment	50% Coinsurance
Preferred Brand Drugs	\$30 Copayment	50% Coinsurance
Non-preferred Brand Drugs	\$50 Copayment	50% Coinsurance
Specialty Drugs	50% Coinsurance	50% Coinsurance

Example of an All-copayment Drug Cost Sharing Structure:

DRUG TIER	All Copayments
Generic Drugs	\$20 Copayment
Preferred Brand Drugs	\$30 Copayment
Non-preferred Brand Drugs	\$50 Copayment
Specialty Drugs	\$500 Copayment