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ACTION BRIEF

Employer Strategies that Drive Health, Equity and Value

National Alliance of Healthcare Purchaser Coalitions
Driving Health, Equity and Value

EMPLOYERS BEWARE

ALTERNATIVE FUNDING PROGRAMS REQUIRE CAREFUL REVIEW TO AVOID NEGATIVE CONSEQUENCES

ACTION STEPS FOR EMPLOYERS

1. Understand how alternative funding programs work.
2. Explore the potential impact on access.
3. Evaluate the potential harm to patient health.
4. Advocate for affected employees.

As healthcare costs increase, employers and other plan sponsors continue to explore strategies to better manage pharmaceutical costs. Given that prescription drug spending accounts for 18% of all healthcare spending, such strategies focus on the specialty medications that account for a significant share of that spending.

One approach is the use of alternative funding programs (AFPs). AFPs have been gaining traction with employers by marketing strategies that shift the entire financial burden of high-cost specialty medications away from the employer, primarily by directing covered employees to manufacturers' patient assistance programs (PAPs). This practice comes with risks related to equitable access to benefits, timely care, and fiduciary responsibility.

Accordingly, it's important for decision-makers to carefully review with trusted advisors the potential consequences, long-term viability, and actual savings, so they can make well-informed decisions to protect both employers and employees.

Although only about 2% of the workforce uses high-cost specialty drugs, payment for them under existing employer health plans can lead to a huge financial liability that threatens the employer's ability to fund the entire health benefits program. It is this concern regarding economic sustainability that leads employers to consider alternative funding plans. According to PSG's 2023 State of Specialty Spend and Trend Report, 14% of employers were using AFPs in 2022, a significant increase from 6% in 2021. AFP use by health plans, however, dropped from 10% in 2021 to 7% in 2022.

AFP programs can and have resulted in unintended consequences for patients and employers. There are also potential compliance issues with these programs. Employers might consider the adage: *If it sounds too good to be true, it might be.*

Alternative Funding Programs

Alternative funding programs (AFPs) come under many names, each with a slightly different approach to the same end: Tapping charity care funds to cover an employer's specialty drug costs. AFPs seek coverage for prescription drugs through "Patient Assistance Programs" (PAPs), which were originally established by pharmaceutical companies as a safety net for Americans who lack health insurance or who are underinsured. Many experts argue the use of PAPs in this way is inappropriate and potentially discriminatory.

ACTION STEP 1

Understand how alternative funding programs work

AFPs take different shapes, but all employ similar means to the same end. About 20 AFP entities offer varying drug coverage plans, differentiated by specialty-drug coverage based on the PBM's specialty pharmacy. Others simply cover drugs with a manufacturer-sponsored PAP.

Many vendors market these solutions directly to employers. Some recommend the employer exclude coverage of some or all specialty medications to make employees appear uninsured or underinsured and therefore eligible to apply for free products from a manufacturer PAP. Other vendors avoid exclusionary language and instead make applying for a manufacturer PAP a requirement of the prior authorization process. Either way, the fundamental principle is the same.

PAPs predate the passage of the Affordable Care Act. Drug manufacturers fund PAPs and charitable organizations in exchange for goodwill and some tax incentives. When an employer "carves out" certain employees, based on salary or wages, from coverage for specialty drugs, the employees may become eligible for the drugs through these PAPs.

To facilitate access to the drug for carved-out workers, employers and plan sponsors then contract with third-party AFPs to provide access to these specialty drugs. By leveraging charitable care, these plans allow the employer to offer the employee the drug at a lower cost, even after covering AFP costs.

It's worth noting that the high cost of specialty drugs—estimated to average $400,000 in 2023—now accounts for 51% of total pharmacy spending, even though only 2% of the population uses them. This financial burden is leading employers to consider AFPs as a way to maintain their benefit offerings.

Some employers argue that alternative payment plans and other third-party assistance programs enable them to avoid high-deductible health plans that might put specialty drugs out of the reach of low-wage workers. Further, they argue that access to specialty drugs through these programs often results in greater adherence, less care abandonment, and measurable clinical benefit.

While there may be some theoretical validity to those claims, the concerns raised about AFPs outweigh these benefits, so employers should carefully review the negative implications of such approaches through the steps outlined here.

Some 14% of employers were using alternative funding plans by the beginning of 2023, up from 6% in 2021.

ACTION STEP 2

Explore the potential impact on access

Employers are concerned about the growing availability and use of expensive specialty therapies. While AFPs for specialty drugs may appear to help employers maximize value, potential adverse consequences may pose severe risks to both patients and plan sponsors. Among those consequences: A potential violation of ERISA's "participant's best interest" by offering different benefits to different employees.

Major concerns exist in at least five areas:

1. Putting profits, not patients, first

The companies that contract with employers to arrange charity-care payments for covered plan members receive payment for each successful arrangement. They do not exist to improve patient health; rather, their

Potentially Harmful Consequences of Alternative Funding Plans

AFPs access charity assistance to fund drugs for certain (often low-income) employees covered by employer-sponsored health plans upon enrollment in AFPs. To qualify for AFPs, certain covered plan members are disqualified from specified specialty drug coverage under their employer plans.

While this arrangement might save employers money in the near term, it poses potential conflict of interest issues:

- **Charity care is depleted** and not available to unemployed patients.
- Employer coverage switches off, then back on when charity care is not available, creating **confusion and uncertainty among affected employees** seeking life-saving drugs.
- The solution is being **legally challenged** by advocates for patients with critical illnesses and therefore is inherently an unstable payment solution for high-cost drug coverage.

business model is to maximize the number of charity payments for which they receive compensation. Their programs require that employers selectively disqualify covered plan members from drug coverage—which can be confusing, misleading and harmful (and potentially fraudulent) to the plan member, who is already navigating the difficulties of a serious disease. The disqualification notices required to make the covered plan member qualify for charity care often cause undue stress.

2. Inequitable access

When an employer carves out a low-income worker to make the employee eligible for charitable drug coverage, the employer is potentially setting up two classes of health benefits that may be unequal. This could be viewed as discriminatory under the newly promulgated Section 1557 regulations of the Affordable Care Act. Employees receiving drugs through the alternative payment plan may also face delays or additional step-therapy barriers before accessing a specialty drug that is more readily available to highly compensated employees. Such delays could compromise the patient's care and health status.

3. Fiduciary confusion

Employers who sponsor fully self-funded health plans have discretion and therefore are fiduciaries. They must act solely in the interest of plan participants and their beneficiaries and with the exclusive purpose of providing benefits to them. When subcontracting for specialty drugs with AFPs, employers are dividing fiduciary responsibility with, or assigning it to, a third party—one that may not have the systems and resources to show prudent responsibility for the assigned employees. This becomes an ERISA risk for plan sponsors.

4. Legal and financial consequences

By ceding prescription drug decisions based on availability through AFPs, employers and pharmacy benefit managers may risk non-compliance with healthcare laws and regulations, leading to legal challenges and reputation damage. Further, if the AFP makes more money for costlier drugs, its incentive to make the drug available is not necessarily based on the least expensive but effective pharmaceutical choice.

5. Sustainability issues

In one analysis, 60% of responding payers were concerned that no safeguards exist for AFPs to secure consistent funding. Insufficient safeguards (and charity care funds) could force plan sponsors to change benefit designs midyear, returning excluded drugs to their formularies—or not covering them for any plan member.

ACTION STEP 3

Evaluate the potential harm to patient health

In the best scenario for effective care, the patient receives the most effective and affordable medication for their condition, as determined by healthcare professionals. Neither drug companies nor AFPs should have input into specific clinical decisions.

Sudden High Prescription Charges Harm Health

AFPs suddenly dropping patients would have a devastating impact on patient health. In a recent Arthritis Foundation survey of 600 patients:

41% have high-deductible health plans.

32% say a large, unexpected charge for a prescription would cause them not to fill the prescription and take the medication.

However, complex rebates, discounts, and other financial arrangements between pharmacy benefits managers (PBMs), AFPs, and drug manufacturers may subvert the relationship between the patient and healthcare team. Financial incentives for, and between, these third parties may lead to incentives for specialty drugs that the patient's physician would not have prescribed. Additionally, the complex administration of drug access through PBMs, AFPs, and drug manufacturer programs might lead to prescribing delays. Both situations may cause adverse health effects, as well as confusion about ongoing drug coverage.

Some specialty drugs may be non-preferred because they are expensive and not effective, but under the AFP, the patient might get funding to use them. In some rare instances, there can be a cheaper generic drug that is effective but gets overlooked because of how AFPs are incentivized.

Changes in copay structures or delays in medication access can reduce patient adherence to prescribed medications, which can lead to poor clinical outcomes.

To partially administer prescription drug plans by circumventing the plan formulary, AFPs require paperwork from the employee/patient. This may include step therapy, prior authorization, power of attorney from the patient, and financial information (including their Social Security number) to show they qualify for the program. Conducting these informational transactions can delay access to the drug—a delay the plan's highly compensated employees may not face.

Perhaps the most concerning facet of these programs is that charitable care is finite. When AFPs exhaust these funds, the employee or their family member must pay the full deductible and copay for the specialty medication.

As employers move toward high-deductible health plans, employees who can benefit from specialty drugs face having to meet high deductibles before coverage begins. Not surprisingly, the rate at which these employees with high deductibles abandon high-cost drugs can be as high as 69%—10 times the abandonment rate when the employee has no deductible. When employees stop treatment, they may develop costly co-existing conditions (adding to employer health plan costs), miss more work time, and be less productive at work.

ACTION STEP 4

Advocate for affected employees

Employers can take proactive and remedial steps to advocate for covered plan members affected by AFPs.

Do not participate in AFPs

Weigh the consequences and maintain coverage, avoiding engagement with AFPs.

Join or monitor civil suits against alternative payment plans

AFPs are being taken to court, deemed by plaintiffs to be deceptive, fraudulent, misleading and coercive by forcing specialty drug makers to admit patients into charity care. (See example from the Cystic Fibrosis Foundation.)

"A Slimy Process" from the Patient's Perspective

A Woodinville, Washington family got a letter from an AFP on behalf of the husband's employer and his work-based insurance plan, saying the family would face a $1,000-a-month copay for their daughter's juvenile arthritis medication unless they signed on for charity care.

After much confusion, the family agreed to the charity care. Their daughter now receives the drug without a copay.

Said the mother: "The whole process seems kind of slimy to me. Patients find themselves in the middle between the drug industry and the insurance industry, each trying to get as much money as possible."

RESOURCES

- Complementary Resources and News About Managing High-cost Claims, National Alliance of Health Care Purchaser Coalitions
- The High Cost of Alternative Funding, Alliance for Patient Access, June 2023
- Compliance Issues with Alternative Funding, VIVIO
- Oncolytics Today, Fall 2023
- Federal HELP Copays Act (YouTube)
- Jonathan Levitt, Esq. on why oncology practices should be aware of co-pay aggregators (YouTube)
- Relentless Health Value on Maximizer Schemes
- Drug Channels Institute, PBMs, and the Battle Over Patient Support Funds
- Industry Experts Question Alternative Funding Companies, AIS Health
- Hemophilia Community Takes Aim at Alternative Funding Companies, Managed Healthcare

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