

# Close the EHB Loophole to Ensure Patient Access to Lifesaving Medications

Protect Patients From Harmful Insurer & PBM Practices at the Pharmacy Counter

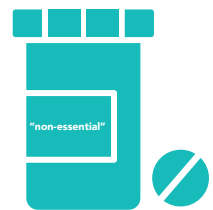
State policymakers must enact legislation to close the Essential Health Benefits (EHB) loophole to ensure copay assistance, an important way for patients to access prescription medication, counts toward patient cost-sharing requirements.



## THE PROBLEM: INSURER & PBM PRACTICES HARM PATIENT ACCESS TO LIFESAVING PRESCRIPTION MEDICATION

A loophole in federal law allows some large group and self-insured health plans to only cover the minimum EHBs in any given state. This is not a “flexible option” that health insurers and PBMs should be able to manipulate for profit to the harm of patients. Federal law simply did not consider the types of schemes that insurers and PBMs may implement to exploit patients and the copay assistance they use to access their medications.

- In practice, this means insurers and PBMs pick and choose what is an EHB and deem certain benefits as “non-essential”. As a result, insurers and PBMs do not count the value of cost-sharing for prescription medication, including copay assistance, toward a patient’s annual deductible or out-of-pocket maximum, instead extracting the full value of copay assistance for themselves.
- Copay maximizer programs, resulting from the EHB loophole, are an offshoot of the copay accumulator model. These harmful tactics coupled with the EHB loophole create treatment affordability and access barriers for patients that often force them to ration or completely abandon their medication.
- Insurers and PBMs often use the EHB loophole to classify specific prescription medication as non-essential, disproportionately impacting individuals with chronic, rare, or complex health conditions who rely on specialty medications for which no alternatives exist.



## PATIENT IMPACT: INSURER & PBM LOOPHOLES INCREASE PATIENT COSTS & DISRUPT THE PATIENT-PROVIDER RELATIONSHIP



### 80% of Prescription Medication

Currently, just [three PBMs control approximately 80% of the prescription medication market](#) in the United States, and because PBMs are vertically integrated, the companies control where and at what price patients can access their medications.



### 163 Million Americans Impacted

[Over 163 million Americans could be impacted by the EHB loophole](#), threatening patient access to critical medication.



### 70% Abandonment

[Nearly 70% of patients stop taking medication](#) when their out-of-pocket costs are above \$250.



### 90% of Plans Can Implement Copay Accumulators

The prevalence of copay accumulator adjustment programs in commercial insurance has dramatically increased, [rising from 44% in 2018 to 89% in 2022](#).



### A 440% Increase in Maximizer Programs

[In 2018, just 14% of plans had copay maximizer programs available to them, with that number rising to 76% by 2022](#), an increase of over 440% in just four years.



## POLICY SOLUTION: CLOSE THE EHB LOOPHOLE TO PROTECT PATIENT ACCESS TO MEDICATION & ENSURE COPAY ASSISTANCE COUNTS

Policymakers must require that any item or service covered by a health plan is considered part of the EHB package to ensure that the full value of copay assistance is counted toward a patient’s out-of-pocket obligation. By closing the EHB loophole, policymakers will protect patients who rely on copay assistance to access and adhere to their prescribed medications.