

# T1International #insulin4all



## Understanding New York's Insulin Copay Caps and Out of Pocket Maximums

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Of New York's [20 million people](#), approximately [12.3%](#) (or nearly 2.5 million people) have been diagnosed with diabetes. These 2.5 million New Yorkers need to navigate the complex insurance system to figure out **whether their insulin is covered and how much they must pay for insulin per month.**

While New York has passed insulin copay caps, these caps only cover some populations, depending on insurance status, and New Yorkers cannot easily understand how much they should be paying or predict how much they will pay when they pick up their insulin.

### Key Takeaways:

- About **one in three New Yorkers** (6.4 million people) have **no legal protections** regarding the maximum costs of insulin, because they are on federally-regulated health plans, and the state has no authority to force their insurance companies to lower the costs of insulin.
- For the 1 million **uninsured New Yorkers**, the **only protections** regarding out-of-pocket maximums for insulin come from recent settlements. These settlement provisions are **hard to enforce** and **end in 2028**. Starting in 2029, uninsured New Yorkers will again have **no protections** against paying high prices for insulin.
- For about **one in five** New Yorkers, including **everyone on Medicare**, the federal government sets **copay caps** and has total power to remove insulin copay caps.
- Copay caps and out-of-pocket maximums require **enforcement** to ensure insurers and pharmacists both **understand and comply with** the law. When

there is non-compliance, New Yorkers must buy **more expensive insulin** and then fight for coverage after-the-fact.

## **Copay Caps by Insurance Type<sup>1</sup>:**

### **I. New Yorkers on Public Insurance:**

#### *A. Medicare:*

[Medicare](#) is a federally-regulated and -funded health insurance program that provides health insurance coverage for all U.S. citizens over the age of 65, as well as some citizens who are younger than 65 but have specified disabilities.

Approximately [18.9% of New Yorkers](#), or about 3.7 million people, are insured through Medicare. As mentioned, Medicare, including prescription drug coverage under Medicare, is regulated by the federal government, meaning the state has no control over Medicare. Broadly speaking, the Inflation Reduction Act set a **\$35/month copay cap** for insulin for all Medicare beneficiaries. Because these caps are set by federal statute, only an act of Congress could change this copay cap.

#### *B. Medicaid and Other Means-Tested Insurance:*

Approximately [28.1% of New Yorkers](#), about 5.5 million people, receive insurance through Medicaid, Child Health Plus, or the Essential Plan.<sup>2</sup> These are three different types of means-tested public health insurance.

Medicaid, the most famous of these plans, covers U.S. citizens and certain lawfully-present immigrants whose income falls [below a specific level](#). Generally, adults in New York are eligible for Medicaid if their income is below [138% of the federal poverty level](#). This income level is [higher](#) for children, some new adults, and pregnant women and parents of infants. Medicaid is a [state-federal partnership](#), meaning that the state and federal governments share both the funding of Medicaid services and responsibility for the regulation of Medicaid.

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<sup>1</sup> As a note, the percentages of New Yorkers covered by different types of insurance adds up to over 100% because a significant number of New Yorkers have more than one form of insurance. These numbers are incomplete, imperfect, and may be outdated. The overall breakdowns come from data from the American Community Survey from 2024, and more detailed data about types of Employer-Sponsored Insurance is taken from a 2025 analysis by AHIP, a trade group representing the health insurance industry.

<sup>2</sup> It is difficult to separate out the breakdown of insurance coverage within this 5.5 million people.

For New Yorkers insured by **Medicaid**, there is a New York state program called [NYRx](#) that provides prescription drug coverage.<sup>3</sup> New Yorkers on Medicaid will **not pay more than \$3** as a [copay for a brand name drug](#) and **not more than \$1** as a [copay for a generic drug](#). This includes insulin. These maximums seem to be set by state statute (N.Y. Consolidated Laws, Social Services Law §367-a), so they would be difficult to change without state legislative action.

[NYRx does not cover](#) New Yorkers who are on the Essential Plan or New Yorkers on Child Health Plus, which is New York's version of the Child Health Insurance Plan (CHIP).

The [Essential Plan](#) is a Basic Health Program (BHP), which is a type of plan [authorized by the Affordable Care Act](#). BHPs are [primarily funded](#) by the federal government, and the state provides the remainder of the funding. The [Essential Plan covers](#) adults who have incomes up to 200% of the federal poverty level not eligible for Medicaid or employer-sponsored insurance, as well as lawfully-present immigrants with incomes up to 133% of the federal poverty level not eligible for Medicaid or employer-sponsored insurance.

For the **Essential Plan**, the New York State Department of Health has [announced](#) that it will cover all copayments for treatment, including insulin, [related to a primary diagnosis of diabetes](#). In practice, this means that New Yorkers on the Essential Plan essentially have **no copayment** for insulin (\$0 cap). However, this special rule for diabetes is not set by statute, nor are there any general copayment caps in statute.<sup>4</sup> Therefore, the state could choose to impose a copayment for insulin relatively easily in future years. This may be a concern, because federal funding for the Essential Plan is [decreasing](#) under the Trump Administration.

The final of these plans, **Child Health Plus**, is a health insurance [plan for children](#). It provides health care coverage for children in households with incomes [above the Medicaid cutoff but below 400% of the federal poverty level](#). Child Health Plus is funded as a [state-federal partnership](#) and is primarily managed by the [state](#). In New York, Child Health Plus is entirely [administered through contracts](#) with private insurance companies.

For **Child Health Plus**, there are currently [no copayments](#) for any prescription drugs, including insulins (**\$0 copay**). However, like with the Essential Plan, this cap does not seem to be codified in legislation or regulation. Instead, these caps are likely codified in contracts between the state and the insurance companies that administer the plans.

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<sup>3</sup> NYRx was created in 2023 as a part of the New York State Department of Health. It covers the pharmacy benefit for all Medicaid members.

<sup>4</sup> Copayments for the Essential Plan are left to regulation.

### *C. Insurance for Military Personnel, Veterans, and Family Members:*

In New York, only about 420,000 people (2.1% of New Yorkers) are covered by military health coverage, either Veterans Affairs coverage or TRICARE insurance. **VA health care** is [paid for, provided, and regulated](#) by the U.S. Department of Veterans Affairs (the VA), and it is [available for veterans](#) who meet certain service and discharge requirements. For VA health care, the VA seemingly has the ability to set its own **maximum copayment** rates for medications. This means that copayments can increase from year to year. Currently, however, the [highest copayment](#) that someone would pay for a 30-day supply of any prescription drug is **\$11**.

**TRICARE** is a [health care plan](#) that covers active duty service members and their families, as well as military retirees and their families. TRICARE is [federally funded and regulated](#) through the U.S. Department of Defense. Pharmaceutical copay caps are set by law and can be adjusted by regulation by the Department of Defense.<sup>5</sup> Currently, there are no specific caps for insulin, but, generally, the [highest copay](#) for prescription drugs is **\$48 per month** for a drug on TRICARE's formulary.

## **II. New Yorkers on Private Insurance:**

### *A. Employer-Sponsored Insurance:*

[55% of New Yorkers](#) (about 10.8 million people) receive health insurance through their or a family member's employer. Employer-sponsored insurance (ESI) is [generally offered](#) to employees and to their spouses and dependents.

ESI is subject to complicated regulatory guidelines. New York State is generally considered the [primary regulator](#) of ESI. However, a federal statute called the Employee Retirement Income Security Act of 1974 (ERISA) [preempts state regulation of most self-funded ESI](#).

In practice, this means that New York State regulates employer-sponsored fully-insured plans. These are plans offered and paid for by the employer; however, the employer purchases the plan from an insurance company for a set cost, meaning that the [insurance company bears the risk](#) of these plans.

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<sup>5</sup> The relevant legislation is 10 U.S. Code § 1074g, and regulations can be found in 32 Code of Federal Regulations § 199.21.

By contrast, because of ERISA preemption, the federal government regulates most self-funded employer-sponsored plans. However, ESI for state and local government employees is [specifically carved out of ERISA regulation](#). This means that self-funded ESI plans for state and local government entities are [state-regulated](#), just like fully insured plans.

According to AHIP, [about 7.6 million](#) New Yorkers are covered by self-funded employer-sponsored plans, meaning the rest (approximately 3.2 million) are on employer-sponsored plans that are fully insured.

As discussed, fully-insured employer-sponsored plans are state-regulated. For these plans, Chapter 58 of the Laws of 2024 applies. This law explicitly requires that there be [no copay for insulin](#) (\$0 cap).

Additionally, as discussed, New York regulates self-funded plans covering state or local employees.

In New York, the most important of these plans is the [New York State Health Insurance Plan](#), a health plan funded by the state that covers state employees and their families, most retired state employees and families, some local government employees and families, and certain graduate students. There are about [1.2 million New Yorkers](#) on NYSHIP.

Because NYSHIP is regulated by New York, Chapter 58 of the Laws of 2024 [applies](#) to NYSHIP beneficiaries. For any NYSHIP beneficiaries, there is **no** insulin copay (there is a **\$0 cap**).

Approximately 6.4 million New Yorkers are in non-NYSHIP self-funded plans.<sup>6</sup> ERISA preempts state regulation for these plans, and there is no federal cap on copays for insulin specifically or for prescription drugs generally. This means that New Yorkers covered by self-funded plans subject to ERISA preemption have no protections regarding the costs of insulin.

#### *B. Direct Purchase Insurance:*

Approximately [13.3% of New Yorkers](#), or about 2.6 million people, purchase individual insurance directly through the New York marketplace, [NY State of Health](#). Plans

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<sup>6</sup> This was calculated by subtracting the 1.2 million NYSHIP beneficiaries from the 7.6 people on self-funded plans in New York.

purchased through NY State of Health are all state-regulated, and they are also [subject to Chapter 58 of the Laws of 2024](#). This means that there is a maximum **\$0 copay** for insulin for New Yorkers who directly purchase individual insurance.

### III. Uninsured New Yorkers:

[5.1% of New Yorkers](#), or close to 1 million people, have no insurance. For New Yorkers without insurance, there are no legislative or regulatory caps on the cost of insulin. However, the New York AG has [settled](#) with each of the major insulin manufacturers. Under these [settlement agreements](#), there is an out-of-pocket monthly maximum of **\$35 per month** for uninsured New Yorkers. However, the settlement agreements will end at the end of 2028, and, after that point, there will be no protections for uninsured New Yorkers, and manufacturers will be able to charge more for insulin if they so choose. Therefore, long-term, it would make sense to pass other protections to ensure that uninsured New Yorkers do not face astronomical out-of-pocket costs for insulin.

#### Conclusion:

As a reminder, about **one in three New Yorkers** (about 6.4 million people) are **not** protected by any insulin copay caps. Furthermore, starting in 2029, **uninsured** New Yorkers will not have any protections ensuring an out-of-pocket maximum cost for insulin.

Beyond those who are explicitly not covered by copay caps, many more New Yorkers can pay **high prices** due to **imperfect enforcement of copay caps**. These laws and regulations describe how much New Yorkers **should** be paying for insulin, based on their insurance status. In practice, it is likely that many New Yorkers are paying more than the law requires. This is because this current web of legislation and regulations is complex and confusing. Furthermore, the requirement that ensures an out-of-pocket maximum for uninsured New Yorkers is administratively complicated, because it requires the manufacturers to create a system to automatically notify pharmacists of the cap when uninsured patients try to fill their prescriptions.

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