

Prohibition of Gag Clauses: Pharmacist Fact Sheet

What just happened?

On October 10, 2018, President Trump signed into law two pieces of legislation that prohibit so-called pharmacist gag clauses in Medicare and private health plans.¹ The force of the law will provide for the freer flow of information between pharmacists and their patients.

What does the new law do?

Medicare plans: All Medicare (Medicare Advantage and Part D) plan sponsors must ensure that the plans they offer do not restrict a pharmacy from or penalize a pharmacy for informing a patient about the difference between the negotiated price, patient's copayment, or patient's coinsurance and a lower price if the drug or biological was obtained without using any health insurance. The new law will apply to Medicare plan years beginning on or after January 1, 2020.

Private insurance: All private insurance plans (including plans on exchanges and from employers) are prohibited from restricting a pharmacy from or penalizing a pharmacy for informing a patient about the difference between the patient's out-of-pocket costs (i.e., a deductible, copayment, or coinsurance) for a drug obtained on insurance and a patient's out-of-pocket costs for a drug obtained off insurance.

In addition, private insurance plans must ensure that the contracts with their PBMs do not restrict a pharmacy from or penalize a pharmacy for informing a patient about the difference between the patient's out-of-pocket costs for a drug obtained on insurance and the patient's out-of-pocket costs if the drug were obtained off insurance.

What should pharmacists do next?

Here are a few helpful tips to ensure that gag clauses are not restricting or penalizing the free flow of information between pharmacist and patient:

- ✓ For patients with Medicare plans, a pharmacist may tell a patient about the difference between the price for a drug obtained on insurance (the pharmacy's negotiated price or the patient's copayment/coinsurance) and a lower price if obtained off insurance.
- ✓ For patients using private insurance plans, a pharmacist may tell a patient about the difference between the patient's out-of-pocket costs (i.e., a deductible, copayment, or coinsurance) for a drug obtained on insurance and the patient's out-of-pocket costs to obtain the drug off insurance.
- ✓ Pharmacists should review their contracts with PBMs in both Medicare and private insurance for gag clause language. A pharmacist should notify the plan or PBM that such provisions are

¹ Know the Lowest Price Act of 2018, S. 2553, 115th Cong. (2018); Patient Right to Know Drug Prices Act, S. 2554, 115th Cong. (2018).

prohibited under the new law. In Medicare contracts, a pharmacist should notify CMS of any violations that occur via contracts for plan years beginning on or after January 1, 2020.²

- ✓ In Medicare contracts, if a pharmacist is kicked out of a network or threatened to be kicked out of a network for providing information pursuant to the new law, pharmacists should inform CMS of such actions that occur via contracts for plan years beginning on or after January 1, 2020.³

² See *CMS Regional Offices*, available at <https://www.cms.gov/About-CMS/Agency-Information/RegionalOffices/index.html?redirect=/Regionaloffices>.

³ *Id.*