

update

Public Sector Benefits Compliance News

November 8, 2018

New Laws Prohibit Restrictions on Pharmacists Discussing Drug Costs with Patients

On October 10, 2018, President Trump signed into law two bills that ban pharmacist “gag clauses,” sometimes included in contracts between pharmacies and pharmacy benefit managers (PBMs), which prohibit pharmacists from telling patients the price of drugs purchased without health insurance. Plan sponsors will need to take steps to ensure that their PBMs are in compliance with these new laws.

The New Laws

The two laws are similar but not identical. The Patient Right to Know Drug Prices Act (Public Law No: 115-263) affects group health plans and insurers while the Lowest Price Act of 2018 (Public Law No: 115-262) affects Medicare Part D and Medicare Advantage (MA) plans.¹

The Law Affecting Group Health Plans and Insurers

This law prohibits group health plans (including multiemployer, public sector and private sector single employer plans) from restricting, directly or indirectly, any pharmacy that dispenses a prescription drug to a participant from informing a plan participant of the difference between the participant’s out-of-pocket costs (deductible, copayment or coinsurance) under the plan and the amount the individual would pay to purchase the medication without using any health plan or insurance coverage. Plans also cannot penalize pharmacies for providing this information. In addition, group health plans and insurers must ensure that their PBMs do not similarly restrict pharmacies.

Although this law does not have an effective date, major PBMs have indicated they will remove such clauses from their agreements.

The Law Affecting Medicare Part D and MA Plans

For Medicare Part D and MA plans, the companies sponsoring the plans cannot restrict or penalize pharmacies from telling patients the difference between the negotiated price of (or out-of-pocket costs for) a drug or biological² and a lower price the individual could pay without insurance.

In addition, the law requires patent settlements between biologic and biosimilar companies to be reported to the Federal Trade Commission and Justice Department. This is an attempt to bring transparency to arrangements between manufacturers that may prevent generic drugs from coming to market more quickly.

This law is effective for plan years beginning on or after January 1, 2020.



Health Compliance News Highlights:

- Plan sponsors must ensure that their PBMs do not impose “gag clauses” on participating pharmacies.
- Written confirmation that the PBM does not impose such conditions is required.

¹ When the laws are available online, they will be accessible from the [govinfo website](https://www.govinfo.gov/).

² A biological drug is made from a living organism.

Action Necessary

Generally, gag clauses would be in contracts between a PBM and its contracted pharmacies, not between the PBM and a group health plan. However, the law requires group health plans to assure that these laws do not apply to their participants. Consequently, plan sponsors should confirm in writing with their PBM that the PBM does not impose such gag clauses.

We do not expect the law to affect plan prescription drug costs. Some PBMs have already removed the gag clause. Many group health plans have language built into their PBM contracts that eliminates gag clauses. However, to ensure that there are no problems with the gag clauses, PBM contracts should require that copayments follow “lesser-of” logic, which prevents members from paying too much for a prescription drug.³

Request written confirmation from your PBM that it does not impose gag clauses on pharmacies.

How Segal Can Help

Segal can help plan sponsors contact their PBM to ensure that the PBM does not impose a gag clause on participating pharmacies. Segal can also assist plan sponsors to negotiate with PBMs on other plan prescription drug cost issues. Our view of the pharmacy market, knowledge of the latest drug trends and various contracting techniques is expansive and allows us to negotiate best-in-class terms for our clients.

Questions?

For more information about how the new anti-gag rule laws may affect your plan, please contact your Segal consultant.

³ “Lesser-of” logic ensures that the copayment is the lesser of the discounted drug price, the usual and customary price or the maximum allowable cost list price.

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