Prohibiting PBM “Gag Clauses” that Restrict Pharmacists from Disclosing Price Options: Recent State Legislation 2016-2018

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Pharmacy-based and mail-order consumer purchases of prescription drugs were a $235 billion market annually in the United States in 2015. Physicians and other prescribers write at least 4.45 billion prescriptions per year in the United States.

Commercial contracts between a pharmacy and a Pharmaceutical Benefit Manager (PBM) are a widespread feature in the distribution and sales chain between original manufacturer and the end consumer.

However, the terms of these arrangements and binding contracts usually are invisible to individual consumers and some purchasers such as employers. In some cases, these arrangements include restrictions that mean a pharmacist is prohibited by a contract with a PBM from informing consumers that the drug they want to buy has purchase options, and could be purchased at a lower cost if the consumers paid out of pocket rather than purchasing through their insurance plan. In financial terms, prescription drug overpayments (also known as “co-pay clawbacks”) also occur when commercially insured patients’ copayments exceed the total cost of the drug to their insurer or pharmacy benefit manager.

These so-called “gag clauses” have come to the attention of state policymakers seeking to lower drug costs, by requiring more extensive transparency at the retail pharmacy level. A rapidly growing number of legislative proposals in 2018 seek to block such commercial PBM or health insurer contracts that may prohibit pharmacies from informing customers about available alternative pricing for medications, including paying out-of-pocket, or including generics or brand products that may be less costly, or comparatively more suitable for a patient. Many bills also address the “co-pay clawback” situation noted above.

RELATED TOPICS
- **Pharmacy Audit Standards - Enacted Legislation** - Audits of pharmacies by pharmacy benefit managers (PBMs) are a common practice to help identify and mitigate fraud, waste and abuse of a prescription drug benefit. Pharmacists have begun to push back on these inspections citing unfair auditing practices which can result in stiff penalties and fees. In response, over the past few years several legislative measures, often referred to as the Fair Pharmacy Audit Act or Pharmacy Audit Bill of Rights, have been enacted in 38 states

Statute Example Gag Clause: North Carolina’s enacted Chapter 2017-116 provides:
"A pharmacy or pharmacist shall have the right to provide an insured information regarding the amount of the insured’s cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for discussing any information described in this section or for selling a lower priced drug to the insured if one is available."
Between 2016 and Aug. 23, 2018, at least **30 states** enacted laws among at least 41 state legislatures that considered prohibiting “gag clauses” in contracts that restrict pharmacists.

The most recent laws, signed in March-June 2018, include Arizona, Colorado, Florida, Indiana, Kansas, Kentucky, Mississippi, New Hampshire, Utah, Virginia and West Virginia.

- **Alaska** (2 filed bills 2018; *H 240* passed Senate and House; to governor 8/22/18)
- **Arizona** (*H 2107*; **enacted law**, 2018)
- **Arkansas** (*H 1010*; **enacted law**, 2018, 2015)
- **California** (2 filed bills 2018)
- **Colorado** (*H 1284*; **enacted law**, 2018)
- **Connecticut** (**enacted law**, 2017)
- **Delaware** (filed bill, *H 425*; passed House and Senate 2018, to governor 8/27/18)
- **Florida** (*H 351*; **enacted law**, 2018)
- **Georgia** (2 enacted laws, 2017)
- **Hawaii** (filed bill 2018; passed Senate and House; failed in Conference Committee)
- **Idaho** (PBM transparency bill filed; failed 2018)
- **Indiana** (2 bills filed 2018; *H 1317*; **enacted law**, 2018)
- **Kansas** (**enacted law**, 2018)
- **Kentucky** (**enacted law**, 2018)
- **Louisiana** (**enacted law**, 2016; 3 filed bills 2018: **SB 241 enacted law**)
- **Maine** (**enacted law**, 2017)
- **Maryland** (**2007 and 2018 enacted laws; S 576**)
- **Michigan** (filed bill 2018; pending)
- **Minnesota** (filed bill 2018; passed House, Failed-Adjourned; previously enacted law)
- **Mississippi** (**limited enacted law**, 2016; expanded application, **enacted law**, 2018)
- **Missouri** (**S 826; enacted law**, 2018)
- **Nebraska** (filed bill 2018; pending)
- **Nevada** (**S 539; enacted law**, 2017)
- **New Hampshire** (**H 1791; enacted law**, 2018)
- **New Jersey** (5 filed bills 2018; pending)
- **New Mexico** (**HB 126; transparency **enacted law**, 2013; expanded gag provision pending)
- **New York** (4 filed bills 2018; Passed Assembly & Senate; to governor; pending)
- **North Dakota** (**enacted law**, 2017)
- **Ohio** (filed bill 2018; pending)
- **Pennsylvania** (filed bill 2018; pending)
- **Rhode Island** (filed bill 2018; pending-held)
- **South Carolina** (**H 5038; enacted law**, 2018)
- **South Dakota** (filed bill; **enacted law**, 2018)
- **Tennessee** (**S 2362; enacted law**, 2018)
- **Texas** (**enacted law**, 2017)
- **Utah** (**S 208; enacted law**, 2018)
- **Vermont** (**S 92**; passed House and Senate; **enacted law**, 2018)
- **Virginia** (filed bill 2018; passed House and Senate; **enacted law**, 2018)
- **Washington** (2 filed bills 2018; 1 passed House; failed-adjourned)
- **West Virginia** (2 filed bills 2018; **S 46 enacted law**, 2018)
- **Wisconsin** (2 filed bills 2018; failed)
- **Wyoming** (filed bill 2018; failed)
The NCSL Insurance Task Force on May 11, 2018 held a special session focused on Pharmacy Costs and PBMs, with new slides and speakers, in Denver

- Pharmacy Costs PBMs-NCSL Presentation by Richard Cauchi, Program Director, NCSL
- Pharmacy Costs PBMs-NCPA Presentation by Matthew Magner, National Community Pharmacists Association
- PBMs-AHIP Presentation by Sara Orange, America's Health Insurance Plans
- Pharmacy Costs PBMs-PCMA Presentation by Lauren Rowley, Pharmacy Care Management Association
- North Dakota State Representative George Keiser, co-chair of the Insurance Task Force, described how pharmacy benefit managers weren’t disclosing price options to the customer, “but they were disclosing it to me and other legislators.” They argued, “We have to have formularies, we have to be able to control them, that’s how we manage costs,” he said, describing lists of covered drugs and prices. But, Keiser said, compared with the examples of cheaper prices “it was clear that was not in the best interests of the consumer.”

- The Trump Administration, also on May 11, 2018, announced a "Blueprint to Lower Prices and Reduce Out-of-Pocket Costs" presenting more than 25 elements including Incentives for Lower List Prices and Lower out-of-pocket Costs," and restricting "gag clauses," for future federal action. - [Read: Fact Sheet | Blueprint Report, 41 pp]

  As part of President Trump’s blueprint to lower drug prices, "CMS is warning Medicare Part D Prescription Drug Plans (PDPs) that so-called “gag clauses” aren’t allowed and that their network pharmacies must disclose when the Part D plan price or copay of a drug is more than the cash price. Yet analysts say it’s likely to affect a small percentage” (5%) of PDPs. That translates to some 2.5 million beneficiaries. (article from AIS, 6/13/18)

- CMS Administrator Seema Verma, wrote on May 17, 2018, “Many patients don’t know that some drugs are actually more expensive when they use their insurance. What’s worse is that some pharmacy benefits managers are preventing pharmacists from telling patients when this is happening, because they get a share of the transaction when the patient uses their insurance. Today we are taking a significant step towards bringing full transparency to all the back-end deals that are being made at the expense of patients.”

Related Media Coverage

- Walmart drug program cheaper for many Medicare patients. - NBC-TV News article

The discount retailer's $4 generic prescriptions beat Medicare's co-pays 21 percent of the time, a study found. "It’s more evidence that patients cannot always rely on their health insurance to get them the lowest prices for their prescription drugs, said Dr. Joseph Ross of the Yale School of Medicine, who led the study. “Patients were paying more out of pocket when
they were using their insurance than when they went to Walmart,” Ross said. “We did this study in part because of all the discussion about pharmacy gag rules. The study published in the Annals of Internal Medicine. (NCSL data cited), NBC-TV News article by Maggie Fox / July 23, 2018.

- **Overpaying for Prescription Drugs: A White Paper** - The Co-pay Clawback Phenomenon; an academic report by USC Schaeffer Center, California, 3/2018 (11 pp, PDF)
- **The 'gag clause'- There might be a cheaper drug, but pharmacists can't tell you that.** (NCSL quoted) Idaho News Tribune News Service, 7/1/2018
- **“There Might Be A Cheaper Drug, But Pharmacists Can’t Tell You That”** - (NCSL report cited) – Stateline, 5/30/2018
- **Ohio pharmacists must reveal cheaper drug options after 'gag order' removed.** "Fill a prescription at a pharmacy, and you might not pay the lowest price available." NCSL research cited.- USA TODAY., 4/5/2018
- **Ohio takes another step toward PBM transparency.** An Ohio House committee on May 22 recommended passage of HB 479, which would crack down on PBM opacity by banning “gag rules” that stop pharmacists from telling their customers about cheaper options for obtaining their medicines. And that’s a step in the right direction. — The Columbus Dispatch, 5/22/2018.
- **Prescription Drug Break Down** (Video 1.54’) – The Columbus Dispatch, 5/22/2018.
- **Independent Druggists Say They Lose Money on Many Rx Sales** - BNA Health Care at Bloomberg Law, 2/26/2018.
- **Patients Overpay For Prescriptions 23% Of The Time, Analysis Shows** - (NCSL report cited) Kaiser Health News, 3/13/2018
- **Louisiana House panel sends bill allowing pharmacists to reveal how much drugs cost** - “Pharmacists would be allowed to tell their customers how much prescriptions actually cost – under a bill that took its first legislative step Wednesday." NCSL research cited. Baton Rouge Advocate.
- **States looking for cure to high drug prices.** "As prescription drug prices have continued to climb, over the last three years all but a handful of states have adopted their own laws aimed at bringing those costs down. NCSL’s Dick Cauchi quoted. - State Net Capitol Journal, 4/2/2018.
- **Drug industry facing onslaught from frustrated states.** – The Hill, 4/20/2018
- **Michigan Bill Clamps Down on Pharmaceutical Gag Clauses** – AP/WWMT-TV Michigan, 4/24/2018

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**ALASKA**

**AK S 209 | 2018**  
**Prescription Drug Pricing**  
**Status:** Pending - Senate Labor and Commerce Committee  
**Date of Last Action:** 2/19/2018  
**Author:** Wielechowski (D)  
**Summary:** Relates to the practice of pharmacy, relates to notifications to consumers regarding prescription drug pricing.  
**History:** 02/19/2018 - INTRODUCED.  
02/19/2018 - To SENATE Committee on LABOR AND COMMERCE & SENATE Committee on JUDICIARY.

**AK H 240 | 2018**  
**Pharmacy Benefits Managers**  
**Status:** Pending - Senate Finance Committee  
**Date of Last Action:** 4/13/2018  
**Author:** Guttenberg (D)  
**Additional Authors:** Gara (D); Kopp (R); Knopp (R); Spohnholz (D); Stutes (R); Ortiz (I); Kito (D); Tarr (D); Kreiss-Tomkins (D); Drummond (D); Tuck (D); Kawasaki (D); Guttenberg (D); Parish (D)  
**Topics:** Pricing and Payment - Industry, Other Prescription Drug Measures, Pharmacy Benefit Managers (PBM)  
**Summary:** Relates to the registration and duties of pharmacy benefits managers (PBM), including procedures, guidelines, and enforcement mechanisms for pharmacy audits, bans gag clauses related to the cost of multi source generic drugs and insurance reimbursement procedures, authorizes a role for the director of the division of insurance affecting drug benefits.  
**History:** 04/28/2017 - To HOUSE Committee on LABOR AND COMMERCE; also, HOUSE Committee on FINANCE.  
02/05/2018 - From HOUSE Committee on LABOR AND COMMERCE: Do pass.  
04/06/2018 - From HOUSE Committee on FINANCE: Do pass with substitute.  
04/13/2018 - Passed HOUSE. ***To SENATE.  
04/20/2018 From SENATE Committee on FINANCE: Do pass. (6-0)

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**ARIZONA**

**AZ H 2107 | 2018**  
**Prescription Drug Costs and Patient Notification**  
**Status:** Enacted - Act No. 133  
**Date of Last Action:** 04/05/2018 - Enacted  
**Author:** Syms (R)  
**Additional Authors:** Barton (R); Boyer (R); Finchem (R); Kern (R); Weninger (R)  
**Summary:** Relates to prescription drug costs: Provides that a PBM (pharmacy benefits manager) or other entity that administers prescription drug benefits "may not prohibit by contract a pharmacy or pharmacist from informing the patient that the patient may be able to procure a prescription medication at a lower cost, including by paying the cash price." (no 'gag' clauses)  
**History:** 01/08/2018 - INTRODUCED.  
01/22/2018 - To HOUSE Committee on HEALTH and HOUSE Committee on RULES.  
02/21/2018 - In HOUSE. Read third time. Passed HOUSE. *****To SENATE.  
03/29/2018 - In SENATE. Read third time. Passed SENATE.  
04/05/2018 - Signed by GOVERNOR as Chapter No. 133

**AZ H 2202 | 2018**  
**Pharmacy Benefits Managers and Pharmacies**  
**Status:** Pending - House Health Committee  
**Author:** Cobb (R)  
**Summary:** Relates to pharmacy benefits managers. A pharmacy benefits manager "may not charge or collect a cost sharing requirement for a prescription or pharmacy service that exceeds the amount retained by the pharmacist or pharmacy from all payment sources for filling the prescription. PBMs may not prohibit a pharmacist or pharmacy from informing an enrollee of the difference in cost sharing requirement and a purchase not using insurance to cover the cost; also allows selling a prescription drug outside of insurance coverage.  
**History:** 01/11/2018 - INTRODUCED.  
01/24/2018 - To HOUSE Committee on HEALTH; Additionally referred to HOUSE Committee on RULES.
**ARKANSAS**

**AR S 542 | 2015**

**Responsibilities of a Pharmacy Benefits Manager**

**Status:** Enacted - Act No. 1025; **Date of Last Action:*** 04/04/2015 - Enacted  
**Author:** Rapert (R)  
**Summary:** Modifies the responsibilities of a pharmacy benefits manager and patient rights regarding payment for pharmacists' services, provides that an individual shall not be required to make a payment for such services in an amount greater than the pharmacist or pharmacy providing the services may retain from all payment sources.  
**History:** 03/27/2015 - Passed HOUSE.  
04/04/2015 - Signed by GOVERNOR; Act No. 1025

**AR H 1010 | 2018**

**Pharmacy Manager Benefits**

**Status:** - Act No. 1, 03/15/2018 - Enacted  
**Author:** Gray (D)  
**Topics:** Pricing and Payment - Industry, Cost Sharing and Deductibles - Consumers, Pharmacy Benefit Managers (PBM)  
**Summary:** Creates the State Pharmacy Benefits Manager Licensure Act. Gag clauses prohibited: "A pharmacy or pharmacist may provide to an insured information regarding the insured's total cost for pharmacist services for a prescription drug. A pharmacy or pharmacist shall not be proscribed by a pharmacy benefits manager from discussing information regarding the total cost for pharmacist services for a prescription drug or from selling a more affordable alternative to the insured if a more affordable alternative is available."  
**History:** 03/13/2018 – INTRODUCED; To HOUSE Committee on INSURANCE AND COMMERCE.  
03/13/2018 - From HOUSE Committee on INSURANCE AND COMMERCE: Do pass.  
03/14/2018 - Passed HOUSE. *****To SENATE.  
03/15/2018 - Passed SENATE.  
03/15/2018 - Signed by GOVERNOR as Act 2018 - Act No. 1

**CALIFORNIA**

**CA S 1021 | 2018**

**Prescription Drugs**

**Status:** Pending - Senate Health Committee  
**Author:** Wiener (D) **Additional Authors:** Atkins (D)  
**Topics:** Pricing and Payment - Industry, Utilization Management - Rx Drugs, Insurance/Coverage - Rx Drugs, Cost Sharing and Deductibles - Consumers, Pharmacy Benefit Managers (PBM)  
**Summary:** Prohibits a drug formulary maintained by a health care service plan or health insurer from containing more than 4 tiers, and permits a biologic with a therapeutic equivalent to be placed on a tier other than tier 4, as specified. Requires a prescription drug benefit to provide that an enrollee or an insured is not required to pay more than the retail price for a prescription drug if a pharmacy's retail price is less than the applicable copayment or coinsurance amount. [  
**History:** 02/07/2018 - INTRODUCED.  
02/14/2018 - To SENATE Committee on HEALTH.  
04/16/2018 - From SENATE Committee on HEALTH with author's amendments.  
05/01/2018- In SENATE. Read second time and amended. Re-referred to Committee on APPROPRIATIONS.

**COLORADO**

**CO H 1284 | 2018**

**Disclosure of Prescription Costs at Pharmacies**

**Status:** Session Law Chaptered. Chapter No. 181  
**Author:** Buckner (D) **Additional Authors:** Kefalas (D);Wilson J (R);Martinez (R)  
**Summary:** Concerns the cost of prescription drugs purchased at a pharmacy. Prohibits contracts that “gag” or penalize a pharmacy or pharmacist from providing a covered person information on the amount of the covered person's cost share for the covered person's prescription drug and the clinical efficacy of any more affordable alternative drugs
CONNECTICUT
CT S 445 | 2017
Pharmacy Benefits Manager and Records
Status: Enacted - Act No. 17-241 Date of Last Action: 07/10/2017 - Enacted
Author: Looney (D) Additional Authors: Fasano (R);Camillo (R);Elliott (D);Storms (R);Logan (R);Borer (D)
Summary: Concerns contracts between a pharmacy and a pharmacy benefits manager. Would prohibit future legislation preventing pharmacists from disclosing specified information to an individual purchasing a drug (i.e. the availability of any alternative less expensive medications). Would prohibit a health carrier or PBM from requiring an individual to pay for a covered prescription in an amount greater than the lesser of the applicable copayment, (2) allowable claim amount (i.e. the amount the health carrier or PBM agreed to pay the pharmacy), or (3) amount an individual would pay for the drug if he or she had no insurance plan, benefits, or discounts. Authorizes the insurance commissioner to audit pharmacy services' contracts for compliance and to enforce violations by voiding contracts that contain unfair trade practices.
History: 01/19/2017 – INTRODUCED; 01/19/2017 - To JOINT Committee on PUBLIC HEALTH.
04/11/2017 - Committee Substitute reported out of Legislative Commissioner's Office.
05/24/2017 - SENATE adopted SENATE Amendment; Passed SENATE. *****To HOUSE..
06/07/2017 - Passed HOUSE. *****To SENATE for concurrence..
07/10/2017 - Signed by GOVERNOR; Public Act No. 17-241
Also see CT S 1502 a of 2017 for related action

DELAWARE
DE H 425
Permitted Prescription Drug Disclosures
Status: filed 5/30/2018
Summary: Establishes that a contract between a pharmacy benefits manager and a pharmacy may not prohibit a pharmacy or pharmacist from doing any of the following; provides an insured with information regarding the retail price of a prescription drug or the amount of the cost share for which the insured is responsible for a prescription drug.
History: 05/30/2018 INTRODUCED; To HOUSE Comm. on ECONOMIC DEVELOPMENT, Banking/Insurance And Commerce.

FLORIDA
FL H 351 | 2018
Pharmacy Benefits Managers
Status: 03/23/2018 - Signed by GOVERNOR. - Enacted
Author: Santiago (R) Additional Authors: La Rosa (R);Plasencia (R);Payne (R)
Associated Bills: FL S 1494 - Similar
Summary: Relates to pharmacy benefits managers; prohibits a managed care plan from contracting with a pharmacy benefits manager to manage the prescription drug coverage provided under the plan unless certain requirements are met; pharmacist "shall inform customers of a less expensive, generically equivalent drug product for her or his prescription and whether her or his cost-sharing obligation exceeds the retail price of the prescription in the absence of prescription drug coverage."
History: 10/16/2017 – PREFILED; 01/09/2018 – INTRODUCED; HOUSE HEALTH INNOVATION SUBCOMMITTEE.
02/15/2018 - From HOUSE Committee on HEALTH AND HUMAN SERVICES COMMITTEE: Reported favorably with substitute..
03/01/2018 - In HOUSE. Passed HOUSE. *****To SENATE.
03/07/2018 - In SENATE. Substituted on SENATE floor for SB 1494
03/08/2018 - In SENATE. Passed SENATE.
**FL S 1494** | 2018

**Prescription Drug Price Transparency**

**Status:** Pending - Senate Banking and Insurance Committee  
**Author:** Montford (D)  
**Additional Authors:** Grimsley (R); Powell (D)  
**Associated Bills:** FL H 351 - Similar  
**Summary:** Relates to prescription drug pricing transparency, requires a pharmacist to inform a customer of a lower cost alternative to a prescription and of whether the customers cost-sharing obligation exceeds the retail price of the prescription, defines the term pharmacy benefit manager, requires a pharmacy benefit manager to register with the Office of Insurance Regulation.  
**History:** 01/03/2018 – PREFILED; 01/09/2018 - INTRODUCED.  
01/12/2018 - To SENATE Committee on HEALTH POLICY.  
02/08/2018 - To SENATE Committee on BANKING AND INSURANCE; In SENATE. On Committee agenda 02/20/18.

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**GEORGIA**

**GA H 276** | 2018

**Pharmacy Benefit Managers**

**Status:** Enacted - Act No. 195  
**Date of Last Action:** 05/08/2017 - Enacted  
**Author:** Knight (R)  
**Additional Authors:** Meadows (R); Hatchett (R)  
**Summary:** Relates to pharmacy benefits managers, “Prohibiting a pharmacist or pharmacy from providing an insured individual information on the amount of the insured's cost share for such insured's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for disclosing such information to an insured or for selling to an insured a more affordable alternative if one is available;” authorizes the Commissioner of Insurance to investigate matters with regard to pharmacy benefits managers, prohibits pharmacy benefits managers from requiring the use of mail-order pharmacies under certain conditions, prohibits a pharmacy from providing direct delivery or charging a copayment that exceeds total charges.  
**History:** 02/07/2017 – INTRODUCED; To HOUSE Committee on INSURANCE.  
02/24/2017 - From HOUSE Committee on INSURANCE: Favorably reported as substituted.  
02/28/2017 - In HOUSE. Read third time. Passed HOUSE. *****To SENATE.  
03/16/2017 - In SENATE. Read third time. Passed SENATE.  
05/08/2017 - Signed by GOVERNOR; 05/08/2017 - Act No. 195

**GA S 103** | 2017

**Pharmacy Benefits Managers**

**Status:** Enacted - Act No. 196;  
**Date of Last Action:** 05/08/2017 - Enacted  
**Author:** Mullis (R)  
**Summary:** Relates to pharmacy benefits managers, “Prohibiting a pharmacist or pharmacy from providing an insured individual information on the amount of the insured's cost share for such insured's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for disclosing such information to an insured or for selling to an insured a more affordable alternative if one is available;” authorizes the Commissioner of Insurance to investigate matters with regard to pharmacy benefits managers, prohibits pharmacy benefits managers from requiring the use of mail-order pharmacies under certain conditions, prohibits a pharmacy from providing direct delivery or charging a copayment that exceeds total charges.  
**History:** 01/31/2017 - INTRODUCED.  
02/23/2017 - From SENATE Committee on INSURANCE AND LABOR: Favorably reported as substituted.  
02/28/2017 - In SENATE. Read third time. Passed SENATE. ***To HOUSE.  
03/09/2017 - From HOUSE Committee on INSURANCE: Favorably reported.  
03/16/2017 - In HOUSE. Read third time. Passed HOUSE.  
05/08/2017 - Signed by GOVERNOR as Act No. 196
**HAWAII**

**HI S 3104 | 2018**

**Pharmacy Benefit Managers**

**Status:** In CONFERENCE Committee; failed – adjourned | **Date of Last Action:** 04/26/2018

**Author:** Baker (D) **Additional Authors:** Taniguchi (D);Inouye (D);English (D);Kim (D);Kidani (D);Keith-Agaran (D)

**Topics:** Pharmaceutical Pricing and Payment

**Associated Bills:** HI H 2644 - Companion

**Summary:** Establishes requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists and bring complaints, within the purview of the Department of Commerce and Consumer Affairs, rather than the Department of Health, clarifies the available penalties for violations of maximum allowable cost requirements, removes requirement that prohibits a contracting pharmacy from disclosing the maximum allowable cost list.

**History:** 01/24/2018 - INTRODUCED.

03/06/2018 - In SENATE. Read third time. Passed SENATE. ***To HOUSE

04/06/2018 - From HOUSE Committee on FINANCE: Do pass.
04/06/2018 - In HOUSE. Read third time. Passed HOUSE. ***To SENATE for concurrence.

04/26/2018 In CONFERENCE Committee: Meeting will Reconvene.; failed - adjourned

**IDAHO**

**ID S 1289 2018**

**Pharmacy Benefit Manager Transparency**

**Status:** Failed - Adjourned - Senate Commerce and Human Resources Committee

**Date of Last Action:** 2/9/2018

**Author:** Commerce and Human Resources Cmt

**Topics:** Pricing and Payment - Industry, Utilization Management - Rx Drugs, Pharmacy Benefit Managers (PBM)

**Summary:** Adds to existing law to provide transparency for pharmacy benefit managers. A PBM shall provide to a covered entity all financial and utilization information requested by the covered entity related to providing benefits to covered individuals through that covered entity and all financial and utilization information related to services to that covered entity. A PBM providing information under this section may designate that material as confidential. PBMs may substitute a lower-priced generic or therapeutically equivalent drug for a higher-priced prescribed drug, with regard to substitutions in which the substitute drug costs more than the prescribed drug, the substitution must be made for medical reasons that benefit the covered individual. Does not specifically ban gag clauses.

**History:** 02/09/2018 - INTRODUCED.

02/12/2018 - To SENATE Committee on COMMERCE AND HUMAN RESOURCES.

**INDIANA**

**IN H 1317 2018**

**Health Matters**

**Status:** Enacted - Act No. 209-2018 - 03/25/2018 - **Enacted**

**Author:** Clere (R)

**Summary:** Provides that a state employee plan may not prohibit a pharmacy, upon dispensing a drug, from providing to the covered individual information concerning a drug, including the cost and clinical efficacy of an available, more affordable, alternative drug. A state employee plan may not require a covered individual to pay more upon receiving a covered drug than the least of the following: (1) The amount of the deductible or copayment for the drug under the state employee plan. (2) The amount payable to the pharmacy for the drug under the state employee plan’s contract with the pharmacy. (3) The amount the pharmacy would charge for the drug if the covered individual did not have coverage or an applicable discount for the drug.
IN H 1158  2018
Pharmaceutical Matters
Status: Failed - Adjourned
Author: Davisson (R)
Summary: Relates to pharmaceutical matters, requires a state employee plan, health insurer, and health maintenance organization to perform certain activities with respect to a maximum allowable cost list used for prescription drug reimbursement, including compilation and updating of the list, and pharmacy appeals, prohibits certain actions by health plans concerning pharmacy disclosure of pricing information and the amount payable upon receiving a prescription drug.
History: 01/08/2018 – INTRODUCED; To HOUSE Committee on INSURANCE.

KANSAS
KS S 351  2018
Pharmacy Patients Fair Practices Act
Status: Enacted - Signed by Governor, 03/29/2018; Chapter No. 2018-23 - Enacted
Author: Public Health and Welfare Cmt
Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)
Summary: Enacts the Kansas Pharmacy Patients Fair Practices Act, states that a pharmacy or pharmacist shall have the right to provide a covered person with information regarding the amount of the covered person's cost share for a prescription drug, provides that co-payments applied by a health carrier for a prescription drug may not exceed the total submitted charges by the network pharmacy.
History: 02/01/2018 - INTRODUCED.
02/15/2018 - From SENATE Committee on FINANCIAL INSTITUTIONS AND INSURANCE: Recommended as amended..
02/22/2018 - Passed SENATE. ***To HOUSE.
03/08/2018 - From HOUSE Committee on INSURANCE: Recommended passage.
03/22/2018 - Passed HOUSE.
03/29/2018 - Signed by GOVERNOR. 04/25/2018 as Chapter No. 2018-23

KENTUCKY
KY H 463  2018
Pharmacy Benefits
Status: Enacted - Act No. 144, 04/10/2018 Enacted
Author: Meredith (R) Additional Authors: Greer (D);Meredith (R);Rowland (R);Miller J (R);Wells (R)
Topics: Cost Sharing and Deductibles - Consumers, Pharmacy Benefit Managers (PBM)
Summary: Defines cost sharing, prohibits an insurer, pharmacy benefit manager (PBM) or other administrator from requiring payment for prescription drugs in excess of certain amounts, prohibits an insurer, pharmacy benefit manager, or other administrator from imposing a 'gag clause' or penalty on a pharmacist or pharmacy for complying as required. "A pharmacist shall have the right to provide an insured information regarding the applicable limitations on his or her cost-sharing pursuant to this section for a prescription drug." (4) Any amount paid by an insured under subsection (2)(a) of this section shall be attributable toward any annual out-of-pocket maximums under the insured's health benefit plan.
History: 02/23/2018 - INTRODUCED.
02/28/2018 - From HOUSE Committee on BANKING AND INSURANCE: Reported favorably with Substitute.
03/07/2018 - Passed HOUSE. ***To SENATE.
03/09/2018 - To SENATE Committee on BANKING AND INSURANCE
03/29/2018 - Passed SENATE.
04/10/2018 - Signed by GOVERNOR as Act No. 144
LOUISIANA
LA S 241; LA S 324 and LA H 436
2018
Pharmaceuticals
Status: S 241 Pending - Passed HOUSE; To SENATE for concurrence. (97-0)
Date of Last Action: 3/12/2018
Author (S 241): Morrell (D) Additional Authors: Barrow (D); Mills (R); Perry (R); Price (D); Luneau (D)
Author (S 324): Mills (R)
Author (H 436): Johnson (D) Additional Authors: LeBas (D)
Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)
Summary: Provides that "No pharmacy benefit manager or other entity that administers prescription drug benefits in Louisiana shall prohibit by contract a pharmacy or pharmacist from informing a patient of all relevant options when acquiring their prescription medication, including but not limited to the cost and clinical efficacy of a more affordable alternative if one is available and the ability to pay cash if a cash payment for the same drug is less than an insurance copayment or deductible payment amount. [Updated 5/4/2018]
History (S 241): 03/01/2018 - PREFILED. To SENATE Committee on HEALTH AND WELFARE.
03/12/2018 - INTRODUCED. 03/14/2018 - From SENATE Committee on HEALTH AND WELFARE: Reported favorably.
03/19/2018 - Passed SENATE. ***To HOUSE.
05/03/2018 - Passed HOUSE; ***To SENATE for concurrence. (97-0)
History (H 324): 03/12/2018 - To SENATE Committee on HEALTH AND WELFARE
History (H 436): 03/29/2018 - Passed HOUSE. *****To SENATE.

MAINE
ME S 10 2018
Clean Claims Submitted by Pharmacies
Status: Enacted - Act No. 44; Date of Last Action: 05/05/2017 - Enacted
Author: Gratwick (D) Additional Authors: Dill J (D); Katz (R); Foley (R); Tucker (D); Cyrway (R); Deschambault (D); Sylvester (D); Carpenter (D)
Summary: Prohibits a health insurance carrier or pharmacy benefits manager from imposing on an enrollee a copayment or other charge that exceeds the claim cost of a prescription drug, prohibits a carrier or pharmacy benefits manager from penalizing a pharmacy provider for providing information ("gag clause") related to an enrollee’s out-of-pocket cost or the clinical efficacy of a prescription drug or alternative medication. “Prohibition on excessive copayments or charges, disclosure not penalized. A carrier or pharmacy benefits manager may not impose on an enrollee a copayment or other charge that exceeds the claim cost of a prescription drug. If information related to an enrollee's out-of-pocket cost or the clinical efficacy of a prescription drug or alternative medication is available to a pharmacy provider, a carrier or pharmacy benefits manager may not penalize a pharmacy provider for providing that information to an enrollee.
History: 01/05/2017 – INTRODUCED; 01/05/2017 - Filed as LR 193.
01/05/2017 - Refers to JOINT Committee on INSURANCE AND FINANCIAL SERVICES..
04/07/2017 - From JOINT Committee on INSURANCE AND FINANCIAL SERVICES: Ought to Pass as Amended.
04/25/2017 - In HOUSE. Passed to be engrossed.
04/27/2017 - In HOUSE. Passed to be enacted.
05/05/2017 - Signed by GOVERNOR; Public Law No. 44

MARYLAND
Maryland ch. 638. Of 2007
2007 - Signed by Governor - Enacted
Insurers, health maintenance organizations and nonprofit health service plans that provide coverage for prescription drugs and devices under health insurance policies or contracts or through a pharmacy benefit manager “may not impose
a copayment or coinsurance requirement for a covered prescription drug or device that exceeds the retail price of the prescription drug or device." (Explicit "gag clause" prohibition language not included).

**History:** Maryland. Insurance Code Section 15-842

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**MD H 736 | 2018**

**Pharmacy Benefits Managers**

**Status:** Enacted 4/24/2018 as Chapter No. 217

**Author:** Bromwell (D)

**Associated Bills:** MD S 576 - Crossfiled with

**Summary:** Prohibits a pharmacy benefits manager from prohibiting a pharmacy or pharmacist from providing a beneficiary with certain information regarding the retail price of a prescription drug or the amount of the cost share for a prescription drug for which the beneficiary is responsible, prohibits a pharmacy benefits manager from prohibiting a pharmacy or pharmacist from discussing with a beneficiary a certain retail price or certain cost share for a prescription drug, provides for the construction of the Act.

**History:**
- 02/01/2018 - INTRODUCED.
- 03/16/2018 - From HOUSE Committee on HEALTH AND GOVERNMENT OPERATIONS: Reported as amended.
- 03/19/2018 - Passed HOUSE. ***To SENATE.***
- 03/28/2018 - From SENATE Committee on FINANCE: Reported favorably.
- 03/29/2018 - Passed SENATE.
- 04/24/2018 - Signed by GOVERNOR as Chapter No. 217

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**MD S 576 | 2018**

**Pharmacy Benefits Managers**

**Status:** Enacted 4/24/2018 as Chapter No. 218

**Author:** Klausmeier (D)

**Associated Bills:** MD H 736 - Crossfiled with

**Summary:** Prohibits a pharmacy benefits manager from prohibiting a pharmacy or pharmacist from providing a beneficiary with information regarding the retail price of a prescription drug or the amount of the cost share for a prescription for which the beneficiary is responsible, prohibits a pharmacy benefits manager from prohibiting a pharmacy or pharmacist from discussing with a beneficiary a certain retail price or certain cost share for a prescription drug, provides for the construction of the Act.

**History:**
- 01/31/2018 - INTRODUCED.; To SENATE Committee on FINANCE.
- 01/31/2018 - To SENATE Committee on FINANCE; Hearing Scheduled 2/28 at 1:00 p.m.
- 04/24/2018 - Signed by GOVERNOR as Chapter No. 218

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**MICHIGAN**

**MI H 5858 | 2018**

**Pharmacy benefits managers**

**Status:** Pending; Introduced 4/24/2018

**Author:** Rep. Whiteford (R)

**Summary:** Requires contracts with third party administrators to allow pharmacies to disclose current drug prices. Bans a pharmacy benefits manager from including a "gag clause": "A contract between a pharmacy benefit manager and a pharmacy must provide that the pharmacy may disclose the current selling price of a drug."

**History:**
- 04/24/2018 - 04/24/2018 INTRODUCED; to Committee on HEALTH POLICY

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**MINNESOTA**

**MN S 2836 | Health Care (PBMs)**

**Status:** Substituted for HOUSE Bill 3024

**Last Amend:** 04/09/2018
**Disposition:** Pending
**Location:** House Second Reading
**Summary:** Relates to health care; prohibits a health plan company from contractually preventing a pharmacist from informing a patient of a price differential.

**History:**
- 05/03/2018 Substituted for HOUSE Bill 3024
- 03/01/2018 INTRODUCED.
- 04/09/2018 From SENATE Committee on HEALTH and HUMAN SERVICES: Do pass as amended.
- 05/01/2018 Passed SENATE. ***To HOUSE. (67-0)
- 05/03/2018 Substituted for HOUSE Bill 3024
- 05/03/2018 In HOUSE. Second Reading.

**MN S 2669** and
**MN H 3016**

**2018**

**Health Care**

**Status:** Pending - Senate Health and Human Services Finance and Policy Committee

**Date of Last Action:** 2/23/2018

**Author:** Jensen S (R)

**Associated Bills:** MN H 3016 - Companion

**Summary:** Relates to health care, prohibits a health plan company from contractually preventing a pharmacist from informing a patient of a price differential.

**History:**
- 02/23/2018 - INTRODUCED.
- 02/26/2018 - To SENATE Committee on HEALTH and HUMAN SERVICES FINANCE and POLICY.
- 04/09/2018 - From HOUSE Committee on HEALTH AND HUMAN SERVICES FINANCE: Do pass as amended.
- 04/09/2018 - In HOUSE. Second Reading
- 05/03/2018 - Indefinitely postponed. See S.B. 2836

**MN H 3024** 2018

**Health Care**

**Status:** 05/03/2018 Indefinitely postponed. See S.B. 2836

**Date of Last Action:** 5/3/2-18

**Author:** Dean (R)

**Topics:** Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)

**Associated Bills:** MN S 2836 - Companion

**Summary:** Relates to health care, prohibits a health plan company from contractually preventing a pharmacist (because of a "gag clause") from informing a patient of a price differential, establishing a standard for prescription cost to consumers.

**History:**
- 02/26/2018 - INTRODUCED.
- 04/09/2018 - From HOUSE Committee on HEALTH AND HUMAN SERVICES FINANCE: Do pass as amended.
- 04/09/2018 - In HOUSE. Second Reading
- 05/03/2018 - Indefinitely postponed. See S.B. 2836

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**MISSISSIPPI**

**MS H 456 | 2016**

**Pharmacy**

**Status:** Enacted - Signed by Governor; Date of Last Action: 05/03/2016 - Enacted

**Author:** Mims (R)

**Summary:** Provides that a network pharmacy or pharmacist that has a contract with a pharmacy benefit manager to provide covered drugs at a negotiated reimbursement rate may decline to provide certain drugs or services if the network pays less than the acquisition cost for the product. “If the network pharmacy or pharmacist declines to provide such drug or service, the pharmacy or pharmacist shall provide the customer with adequate information as to where the prescription for the drug or service may be filled.” *(Variation on gag clause, with limited applicability)*

**History:**
- 02/08/2016 - INTRODUCED.
- 02/16/2016 - From HOUSE Committee on PUBLIC HEALTH AND HUMAN SERVICES: Do pass.
- 02/29/2016 - Passed HOUSE. *****To SENATE.
- 03/30/2016 - Committee amendment adopted; passed SENATE. *****To HOUSE for concurrence.
- 04/16/2016 - CONFERENCE Committee Report adopted by HOUSE.
- 05/03/2016 - Signed by GOVERNOR.

**MS H 709 | 2018**
**Prescription Drugs Alternative**

**Status:** Enacted - Signed by Governor

Date of Last Action: 03/08/2018 - Enacted

Author: Mims (R)  Additional Authors: Mettetal (R); Holloway (D); Mims (R); Arnold (R); Bain (D); Eubanks (R); Sanford (R); Sykes (D); Gibbs D (D)

**Summary:** Establishes the Prescription Drugs Consumer Affordable Alternative Payment Options Act; provides for pharmacist communication with patients, “Pharmacists may provide additional information to a patient to allow them an opportunity to consider affordable alternative payment options when acquiring their prescription medication. Any provision of any contract or agreement contrary to the provisions of this act shall be considered in violation of public policy and shall be void.” Provides that compliance with this Act shall not constitute a violation of any contract or any agreement to which the pharmacist or pharmacy is a party, provides that a pharmacist, his agents, and employees shall not be liable for any act or failure to act under this Act.

**History:**
01/09/2018 – INTRODUCED; To HOUSE Committee on PUBLIC HEALTH AND HUMAN SERVICES.
02/01/2018 - Passed HOUSE. *****To SENATE.
03/08/2018 - Signed by GOVERNOR

**Missouri**

**MS H 426 | 2018**

**Pharmacist No Gag Rule**

**Status:** Failed - Died

**Author:** Bell C (D)  Additional Authors: Banks (D); Karriem (D); Dortch (D); Burnett (D); Faulkner (D); Jackson L (D); Williams-Barnes (D); Clark B (D); Calhoun (D); Holloway (D); Hines (D); Paden (D)

**Summary:** Creates the no gag rule on pharmacists act,

**History:**
01/05/2018 - INTRODUCED.
01/30/2018 - Died in committee.

**Missouri**

**MO S 826 | 2018**

**Pharmacy Benefits Managers**

**Status:** - Signed by Governor ; Date of Last Action:* 07/06/2018 - Enacted -

**Author:** Sater (R)

**Summary:** “No pharmacy benefits manager shall include a provision in a contract entered into or modified on or after August 28, 2018, with a pharmacy or pharmacist that requires a covered person to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of: (1) The copayment amount as required under the health benefit plan; or (2) The amount an individual would pay for a prescription if that individual paid with cash. ... A pharmacy or pharmacist shall have the right to provide to a covered person information regarding the amount of the covered person's cost share for a prescription drug, the covered person's cost of an alternative drug, and the covered person's cost of the drug without adjudicating the claim through the pharmacy benefits manager. Neither a pharmacy nor a pharmacist shall be proscribed by a pharmacy benefits manager from discussing any such information or from selling a more affordable alternative to the covered person.”  (Updated 12/1/2018)

**History:**
04/25/2018 - Passed HOUSE. *****To SENATE for concurrence.
02/22/2018 - Passed SENATE. *****To HOUSE
07/06/2018 - Signed by GOVERNOR.

**Nebraska**

**NE L 324 | 2017**

**Author:** Mark Kolterman (NP-024)

**Title:** Pharmacy Benefit Fairness and Transparency

**Disposition:** Failed - Adjourned

**Location:** Banking, Commerce and Insurance Committee

**Summary:** Adopts the Pharmacy Benefit Fairness and Transparency Act.

**History:** 01/12/2017 INTRODUCED.
01/17/2017 - To Committee on BANKING, COMMERCE, AND INSURANCE.
02/02/2017 - Notice of hearing for February 27, 2017.
06/07/2017- 105th Legislature -- First Regular Session Adjourned - 05/23/2017 - Carried Over to Second Regular Session; Failed
NEVADA

Status: Enacted - Act No. 592

Date of Last Action:* 06/15/2017 - Enacted

Author: Roberson (R)

Topics: Pricing and Payment - Industry, Insurance/Coverage - Rx Drugs

Summary: Relates to prescription drugs price transparency, requiring the Department of Health and Human Services to compile lists of certain prescription drugs that are used to treat diabetes, requiring the manufacturer of a drug included on such lists and a pharmacy benefit manager to provide certain information to the Department, requiring the Department to compile a report based on such information, requiring submitting a list of each pharmaceutical sales representative who markets prescription drugs in this State. Also eliminates the “gag rule” statewide for all products to ensure that pharmacists and pharmacies are not prohibited from discussing less expensive drugs that will meet the needs of the patient. Health care nonprofits shall disclose contributions they receive from pharmaceutical companies by requiring the disclosure of contributions from PBMs and insurers as well. Also requires that any administrative penalties imposed on manufacturers, PBMs or nonprofits for failing to disclose the required information go toward funding diabetes education programs.

History:
05/16/2017 – INTRODUCED; To SENATE Committee on HEALTH AND HUMAN SERVICES.
06/03/2017 - From SENATE Committee on HEALTH AND HUMAN SERVICES: Without recommendation.
06/04/2017 - Passed SENATE. ***To ASSEMBLY.
06/05/2017 - Passed ASSEMBLY.
06/15/2017 - Signed by GOVERNOR as Chapter No. 592

NEW HAMPSHIRE

Status: Enacted; signed into law 6/7/2018

Author: Soucy D (D) Additional Authors: Reagan (R); Myler (D); Hennessey (R); Luneau (I)

Summary: Prohibits a pharmacy benefits manager or insurer from charging or holding a pharmacy responsible for a fee related to a claim under certain circumstances. This bill also prohibits a pharmacy benefits manager or insurer from charging higher copayments and or inserting gag clauses in contracts.

History:
12/12/2017 – PREFILED; To SENATE Committee on COMMERCE.
01/03/2018 – INTRODUCED; To SENATE Committee on COMMERCE.
03/21/2018 S 354 Passed SENATE. ***To HOUSE.
04/26/2018 Passed HOUSE. ***To SENATE for concurrence.
05/02/2018 ***To CONFERENCE Committee.
06/07/2018 - Signed by GOVERNOR as - Chapter No. 2018-164

NEW JERSEY

Status: Pending - Assembly Financial Institutions and Insurance Committee

Author: Asm. Dancer (R); Sen. Diegnan (D)

Summary: Prohibits pharmacy benefits managers from collecting copayments in excess of certain amounts as clawbacks, requires language prohibiting gag clauses in contracts with pharmacists.

History:
01/29/2018 - FILED.
02/01/2018 - To ASSEMBLY Committee on FINANCIAL INSTITUTIONS AND INSURANCE.
04/05/2018- S 2438 – Filed and To SENATE Committee on COMMERCE.
NJ S 2690 & NJ A 3993

Sponsor: Joseph P. Cryan (D-020)
Title: Pharmacy Benefit Clawback Copayment
Introduced: 06/11/2018; Pending
Location: Senate Commerce Committee

Summary: Prohibits pharmacy benefits managers from collecting clawback copayments; requires certain language prohibiting gag clauses in contracts with pharmacists; provides certain penalties.

NJ S 2727

Sponsor: M. Teresa Ruiz (D-029)
Title: Clawback and Gag Clause Prohibition
Prefiled: 06/11/2018; Pending
Location: SENATE

Summary: Prohibits pharmacy benefits managers from engaging in clawback and gag clause practices; requires certain price disclosures by pharmacists; requires Commissioner of Health to conduct public information campaign.

NEW MEXICO

NM HB 126 | 2014
Transparency enacted law, 2014; enacted expanded gag provision refiled 2018)

NEW YORK

NY A 8781 | 2018
Pharmacy Benefit Managers

Status: Passed Assembly and Senate
Author: Rosenthal (D) Additional Authors: Gottfried (D); Lavine (D); Buchwald (D); McDonald J (D); Skoufis (D)
Associated Bills: NY S 6940 - Same as

Summary: Amends the Public Health Law, prohibits pharmacy benefit managers from prohibiting pharmacies from disclosing to consumers the cost of prescription medication, the availability of alternative medications or alternative means of purchasing prescription medications, prohibits pharmacy benefit managers from collecting copayments from consumers of prescription medications.

History: 11/27/2017 - INTRODUCED - To ASSEMBLY Committee on HEALTH.
01/17/2018 - From ASSEMBLY Committee on HEALTH; To ASSEMBLY Committee on CODES.
02/05/2018 - Passed ASSEMBLY. *****To SENATE.
02/05/2018 - To SENATE Committee on HEALTH.
03/06/2018 Substituted for S6940
03/06/2018 Passed SENATE. (60-0)

NY S 6940 | 2018
Pharmacy Benefit Managers

Status: Pending - SENATE
Date of Last Action:* 11/13/2017
Author: Hannon (R) Additional Authors: Addabbo (D); Avella (D); Carlucci (D); Akshar (R)
Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)

Associated Bills: NY A 8781 - Same as

Summary: Amends the Public Health Law, prohibits pharmacy benefit managers from prohibiting pharmacies from disclosing to consumers the cost of prescription medication, the availability of alternative medications or alternative means of purchasing prescription medications, prohibits pharmacy benefit managers from collecting copayments from consumers of prescription medications.

History: 11/13/2017 – INTRODUCED; To SENATE Committee on RULES.
02/06/2018 - From SENATE Committee on HEALTH.
03/06/2018 - Substituted by A8781 (see above)

NY A 9893 | 2018
Pharmaceutical Transparency and Consumer Protection
**Status:** Pending - Assembly  
**Date of Last Action:** 2/20/2018  
**Author:** Brindisi (D)  
**Additional Authors:** Brindisi (D)  
**Associated Bills:** NY S 7191 - Same as  
**Summary:** Relates to enhancing pharmaceutical transparency and consumer protection between pharmacies and pharmacy benefit managers.  
**History:** 02/20/2018 – INTRODUCED; To ASSEMBLY Committee on INSURANCE.

**NY S 7191 | 2018**  
**Pharmacies and Pharmacy Benefit Managers**  
**Status:** Pending - Senate  
**Author:** Griffio (R)  
**Additional Authors:** Griffio (R)  
**Summary:** Relates to enhancing pharmaceutical transparency and consumer protection between pharmacies and pharmacy benefit managers, provides that no contract for pharmacy services entered into in the state between a health insurance carrier or a pharmacy benefit manager, shall contain a provision prohibiting or penalizing, including through increased utilization review, reduced payments or other financial disincentives, a pharmacist's disclosure to an individual purchasing prescription medication.  
**History:** 12/29/2017 – PREFILED- To SENATE Committee on HEALTH.  
02/08/2018 - Amended in SENATE Committee on HEALTH.

**North Carolina**  
**NC H 466 | 2017**  
**Pharmacy Benefit Managers**  
**Status:** Enacted - Act No. 2017-116  
**Author:** Jones Br (R)  
**Additional Authors:** Willingham (D)  
**Associated Bills:** NC S 384 - Same as  
**Summary:** Relates to the regulation of pharmacy benefit managers, provides for consumer protections and for pharmacy and pharmacist protections. "A pharmacy or pharmacist shall have the right to provide an insured information regarding the amount of the insured's cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for discussing any information described in this section or for selling a lower priced drug to the insured if one is available."  
**History:** 03/23/2017 – FILED; 03/27/2017 - INTRODUCED.  
04/25/2017 - From HOUSE Committee on INSURANCE: Reported favorably with substitute.  
04/26/2017 - In HOUSE. Read third time. Passed HOUSE. *****To SENATE.  
06/28/2017 - In SENATE. Read third time. Passed SENATE.  
07/18/2017 - Signed by GOVERNOR as Session Law Number 2017-116

**North Dakota**  
**ND S 2258 | 2017**  
**Author:** Jerry Klein (R)  
**Additional Authors:** Keiser (R), Vigesaa (R), Dockter (R), Armstrong (R), Casper (R)  
**Title:** Pharmacy Claim Fees and Pharmacy Rights  
**Enacted:** 04/05/2017 - Enacted  
**Effective Date:** 08/01/2017  
**Location:** Chaptered, Act 161  
**Summary:** Relates to pharmacy rights and pharmacy benefit managers; “A pharmacy or pharmacist may provide relevant information to a patient if the patient is acquiring prescription drugs. This information may include the cost and clinical efficacy of a more affordable alternative drug if one is available. Gag orders of such a nature placed on a pharmacy or pharmacist are prohibited.” Provides that pay for performance pharmacy networks shall utilize the electronic quality improvement platform for plans and pharmacies or other unbiased nationally recognized entity; prohibits a fee requirement from a pharmacy benefits manager if metrics fall within the criteria for improvement.  
**History:** 01/16/2017 INTRODUCED.  
02/10/2017 Passed SENATE. ***To HOUSE.  
03/27/2017 From HOUSE Committee on INDUSTRY, BUSINESS AND LABOR: Do pass.
OHIO
OH H 479 | 2018
Authors: Lipps (R), West (D)
From HOUSE Comm., Do pass- 05/22/2018

PENNSYLVANIA
PA S 637 | 2018
Pharmaceutical Transparency Commission
Status: Pending - Senate
Author: White D (R)
Summary: Amends the state Insurance Company Law, revises provisions relating to the Pharmaceutical Transparency Commission, requires the Insurance Department to annually collect information on pharmaceutical retail pricing, prohibits insurer contracts from prohibiting pharmacists from disclosing information to a customer that would reduce the customer's out of pocket costs for prescription drugs.
History: 04/18/2017 – FILED; INTRODUCED.
12/13/2017 - From SENATE Committee on BANKING AND INSURANCE. Reported as amended; In SENATE. Read first time.
03/20/2018 - Rereferred to SENATE Committee on APPROPRIATIONS.

PA H 2211 | 2018
Consumer Prescription Drug Pricing Disclosure
Sponsor: Judy Ward (R)
History: 05/29/2018 INTRODUCED; To HOUSE Committee on HEALTH.

RHODE ISLAND
RI S 2406 |2018
Prescription Drug Benefits
Status: Pending - Senate
Date of Last Action: 2/15/2018
Author: Sosnowski (D) Additional Authors: Miller (D); Crowley (D); Nesselbush (D)
Topics: Pharmaceutical Pricing and Payment, Cost Sharing and Deductibles
Summary: Would allow a pharmacist to provide information to patients including less expensive prescription alternatives. This act would also limit charges for drugs to the lesser of usual price or co-pay, provide restrictions on credit for insurance coverage gaps, and prohibit pharmacy benefit managers from placing a pharmacy logo to be placed on an insurance or savings cards. This act would take effect upon passage.
History: 02/15/2018 – INTRODUCED; To SENATE Committee on HEALTH AND HUMAN SERVICES.
03/01/2018 - SENATE Committee on HEALTH AND HUMAN SERVICES recommends measure to be held for further study.

SOUTH CAROLINA
SC H 5038
2018
Pharmacy Benefit Manager Duties
Status: Enacted - Act No. 177 ; Date of Last Action: * 05/03/2018 - Enacted
Author: Atwater (R) Additional Authors: Rutherford (D); Henderson (R); Bernstein (D); Douglas (D); Gagnon (R); Newton (R); Norrell (D); Ridgeway (D); Ott R (D); Bradley (R); Clary (R); Kirby (D); Elliott (R);Hewitt (R); Wheeler (D); (R);Tallon (R);Willis (R);Cobb-Hunter (D);Sandifer (R);Howard (D);Hayes J (D);Huggins (R);Smith G (R);Toole (R);Anthony (D);Anderson C (R);Ballentine (R);Alexander T (D);Spires (R);Erickson (R);McEachern (D);McGinnis (R)
Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)
Associated Bills: SC H 5044 - Similar; SC S 815 - Similar
Summary: Establishes prohibited acts for a pharmacy benefit manager, provides that a pharmacy benefit manager may not prohibit (by “gag clause”) a pharmacist or pharmacy from providing an insured information on the amount of the insured's cost share for a prescription drug, from offering and providing direct and limited delivery services to an insured as an ancillary service of the pharmacy, charge or collect a copayment, charge off hold a pharmacist or pharmacy responsible for certain fees, or retaliate for exercising rights.

History: 03/01/2018 - INTRODUCED.
03/08/2018 - From HOUSE Committee on LABOR, COMMERCE AND INDUSTRY: Reported favorably with amendment.
03/22/2018 - Passed HOUSE. *****To SENATE.
04/26/2018 - Passed SENATE.
05/03/2018 - Signed by GOVERNOR.
05/14/2018 - Act No. 177

SC S 815  2018
Prohibited Acts for Pharmacy Benefit Managers
Status: Senate Banking and Insurance Committee - Reported favorably with amendment.
Author: Gambrell (R)
Summary: Establishes prohibited acts for pharmacy benefit managers; requires a pharmacy benefit manager to reimburse a provider within seven business days of payment by a payor. Prohibits “a pharmacist or pharmacy from providing an insured information on the amount of the insured’s cost share for a prescribed drug and the clinical efficacy of an alternative drug, if available. The pharmacist or pharmacy may not be penalized by a pharmacy benefit manager for disclosing such information to an insured or for selling an available alternative drug.”
History: 12/06/2017 – PREFILED; To SENATE Committee on BANKING AND INSURANCE.
01/09/2018 – INTRODUCED; To SENATE Committee on BANKING AND INSURANCE.
02/20/2018 - From SENATE Committee on BANKING AND INSURANCE: Reported favorably with amendment.

SOUTH DAKOTA
SD S 141  2018
Pharmacy Benefits Managers
Status: Enacted - Signed by Governor; Date of Last Action: 02/27/2018 - Enacted
Author: Solano (R) Additional Authors: Peters (R);Gosch S (R);Steinhauer (R);Rusch (R);Peterson K (R);McCleerey (D);Stevens (R);Sutton (D);Willadsen (R);Cronin (R);Maher (R);Lake (R)
Topics: Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)
Summary: Establishes provisions regarding pharmacy benefits management. “A pharmacy benefits manager may neither prohibit nor penalize a pharmacist or pharmacy for providing cost-sharing information on the amount a covered individual may pay for a particular prescription drug.” Such acts are declared to be false, misleading, deceptive, or unfair.”
History: 01/24/2018 - INTRODUCED.
02/02/2018 - From SENATE Committee on HEALTH AND HUMAN SERVICES: Do pass.
02/05/2018 - Passed SENATE. *****To HOUSE.
02/08/2018 - From HOUSE Committee on HEALTH AND HUMAN SERVICES: Do pass.
02/12/2018 - Passed HOUSE.
02/27/2018 - Signed by GOVERNOR.

TENNESSEE
TN S 2362 | 2018
Health Care/no gag clauses
Status: Enacted - Act No. 1015; Date of Last Action:* 05/21/2018 - Enacted
Authors: Crowe (R); Haile (R);Massey (R);Bowling (R);Green (R);Bailey (R);Briggs (R);Reeves (R)
Associated Bills: TN H 2219 - Same as
Summary: Revises provisions relating to health care, requires the Department of Health to include a determination of a hospital's compliance with reporting requirements in its annual inspections, provides for involuntary commitments,
provides that a pharmacy or pharmacist has the right to provide an insured information regarding the amount of the insured's cost share for a prescription drug and shall not be penalized for doing such.

**History:** 04/19/2018 - In SENATE. Read third time. Passed SENATE. *****To HOUSE.
04/19/2018 - In HOUSE. Read third time. Passed HOUSE. *****To SENATE for concurrence.
05/21/2018 - **Signed by GOVERNOR** as Chapter No. 1015

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**TEXAS**  
**TX S 94 | 2015**  
**Pharmacy Benefit Claims**  
**Last Action:** 05/15/2015 - **Enacted** - Act No. 10  
**Author:** Hinojosa (D)  
**Summary:** Prohibits a health benefit plan issuer or a PBM from charging or holding a pharmacist or pharmacy responsible for a fee for any step of or component or mechanism related to the claim adjudication process, including the adjudication of a pharmacy benefit claim, the processing or transmission of a pharmacy benefit claim, the development or management of a claim processing or adjudication network, or the participation in a claim processing or adjudication network. (No “clawback payments”)  
**History:** 04/09/2015 - Passed SENATE. *****To HOUSE.  
05/01/2015 - Passed HOUSE.  
05/15/2015 - **Signed by GOVERNOR.**  
06/23/2015 - Filed with Secretary of State.

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**UTAH**  
**UT S 208 | 2018**  
**Pharmacy Benefits Manager or Coordinator Amendments**  
**Status:** Signed by Governor - 04/02/2018 **Enacted**  
**Author:** Vickers (R)  
**Summary:** Amends the Pharmacy Practice Act, requires a pharmacy benefits manager or coordinator that uses direct or indirect remuneration to report certain information to pharmacies, prohibits a pharmacy benefits manager or coordinator from preventing a pharmacist from disclosing cost information to a patient.  
**History:** 02/20/2018 – INTRODUCED; 02/20/2018 - From SENATE Committee on RULES. To SENATE Standing Committee.  
02/22/2018 - From SENATE Committee on HEALTH AND HUMAN SERVICES: Reported favorably as substituted.  
03/01/2018 - Passed SENATE. ***To HOUSE.**  
03/07/2018 - Substituted on HOUSE floor.  
03/07/2018 - Passed HOUSE. ***To SENATE for concurrence.  
03/19/2018 - **Signed by GOVERNOR;** 04/02/2018 - Chaptered. Chapter No. 305

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**VERMONT**  
**VT H 886 | 2018**  
**Prescription Drug Price Disclosure**  
**Status:** Pending - House  
**Author:** Harrison (R)  
**Summary:** Relates to allowing pharmacists to disclose the cash price of prescription drugs. Prohibits any provision in a contract (gag clauses) between a pharmacy benefit manager or other entity paying pharmacy claims and a pharmacy that would limit a pharmacist's ability to disclose to a customer the cash price of a prescription drug.  
**History:** 02/06/2018 - INTRODUCED.  
02/07/2018 - To HOUSE Committee on HEALTH CARE.

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**VIRGINIA**  
**VA H 1177 | 2018**  
**Pharmacists and Pharmacy Practices**
**Status:** Signed by GOVERNOR. - Enacted

**Author:** Pillion (R) Additional Authors: Byron (R); Kilgore (R); Hodges (R); O'Quinn (R); Ransone (R)

**Summary:** Relates to pharmacists and pharmacy practices, prohibits a pharmacy benefits manager from prohibiting a pharmacist or pharmacy from providing an enrollee individual information on the amount of the enrollee's cost share for the enrollee's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available.

**History:**
01/10/2018 - INTRODUCED.
02/06/2018 - Engrossed by HOUSE as substituted.
02/07/2018 - Passed HOUSE. *** Passed Senate (40-0) 02/22/2018
03/09/2018 - Signed by GOVERNOR as Acts of Assembly Chapter No. 245

VA H 1302 (Variation; not a gag clause legal prohibition)

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**WASHINGTON**

**WA S 6026 2018**

**Prescription Drugs**

**Status:** Failed - Adjourned - Senate Ways and Means Committee

**Author:** Kuderer (D)

**Summary:** Prohibits health carriers and pharmacy benefit managers from using “gag clause” contracts to prevent pharmacists from telling their customers about cheaper ways to buy prescription drugs

**History:**
12/15/2017 - PREFILED.
01/08/2018 – INTRODUCED; To SENATE Committee on HEALTH CARE & LONG TERM CARE.
01/11/2018 - Public hearing scheduled.; 01/22/2018 - Public hearing scheduled.
01/29/2018 - From SENATE Committee on HEALTH CARE & LONG TERM CARE: Do pass as substituted.
01/30/2018 - To SENATE Committee on WAYS AND MEANS.
02/05/2018 - Public hearing scheduled.; Failed - Adjourned

**WA HB 2296**

**Status** - Failed - Adjourned - HOUSE

**Author:** Rep. Vandana Slatter

**Summary:** Protects consumers from excess charges for prescription medication. Bans the use of 'gag clauses' stating that a contract between a health carrier or a pharmacy benefit manager and a pharmacist or pharmacy may not penalize, including through increased utilization review, reduced payments, or other financial disincentives, a pharmacist's or pharmacy's disclosure to a person purchasing prescription medication of information regarding the cost of the prescription medication or the availability of any therapeutically equivalent alternative medications or alternative methods of purchasing the prescription medication including, but not limited to, paying the cash price."

**History:**
12/15/2017 - PREFILED.
01/08/2018 - INTRODUCED.
01/08/2018 - To HOUSE Committee on HEALTH CARE AND WELLNESS.
01/31/2018 - From HOUSE Committee on HEALTH CARE AND WELLNESS: Do pass as substituted.
02/08/2018 - Committee substitute adopted on HOUSE floor.
02/08/2018 - Passed HOUSE. ***To SENATE.
02/22/2018- From SENATE Committee on HEALTH CARE & LONG TERM CARE: Do pass.
02/23/2018- In SENATE: Passed to RULES Committee for 2nd Reading; 3/8/2018- Failed - Adjourned - HOUSE

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**WEST VIRGINIA**

**WV S 46 2018**

**Prescribed Drugs Cost Alternatives Information**

**Status:** - Signed by Governor, 03/21/2018 - Enacted

**Author:** Cline (R)

**Topics:** Pharmaceutical Pricing and Payment, Cost Sharing and Deductibles

**Summary:** Permits pharmacists to inform customers of lower cost alternative drugs.

**History:**
01/10/2018 – INTRODUCED; To SENATE Committee on HEALTH AND HUMAN RESOURCES.
01/26/2018 - From SENATE Committee on HEALTH AND HUMAN RESOURCES: Do pass as substituted.
Passed SENATE. *****To HOUSE.

Passed HOUSE. *****To SENATE for concurrence.

CONFERENCE Committee Report adopted by HOUSE and SENATE.

Signed by GOVERNOR.

**WISCONSIN**

WI A 800, 2018 and
WI S 669

**Prescription Drug Cost Disclosure**

**Status:** Failed - Failed to Pass

**Date of Last Action:** 12/28/2017

**Author:** Hebl G (D) **Additional Authors:** Berceau (D); Anderson J (D); Subeck (D); Spreitzer (D); Meyers (D); Shankland (D); Sargent (D); Kolste (D); Taylor C (D); Zamarripa (D); Bewley (D); Milroy (D); Vinehout (D); Taylor L (D); Zepnick (D); Pope (D); Risser (D); Vruwinkel (D)

**Topics:** Pricing and Payment - Industry, Insurance/Coverage - Rx Drugs, Pharmacy Benefit Managers (PBM)

**Associated Bills:** WI S 669 - See Also

**Summary:** Relates to disclosures of prescription drug costs under health insurance policies and plans. No self-insured health plan that provides a prescription drug benefit may include in a contract for pharmacy services, or allow a pharmacy benefit manager (PBM) or another entity to include in a contract for pharmacy services, a provision that prohibits or penalizes, including by increased utilization review, reduced reimbursement, or other financial disincentives, "a disclosure of any of the following by a pharmacist to an individual purchasing a prescribed drug or device: (a) The cost of the prescribed drug or device to the individual. (b) The availability of any therapeutically equivalent alternative prescribed drugs."

**History:**
12/28/2017 - INTRODUCED.
12/28/2017 - To ASSEMBLY Committee on INSURANCE.
03/28/2018 - Failed to pass pursuant to Senate Joint Resolution 1.

**Wyoming**

WY H 107

2018

**Pharmacy Benefit Managers**

**Status:** Failed - Withdrawn from further consideration

**Date of Last Action:** 2/12/2018

**Author:** Kirkbride (R) **Additional Authors:** Zwonitzer Dan (R); Larsen (R); Blackburn (R); Pappas (R); Boner (R); Brown L (R); Furphy (R); Sweeney (R)

**Topics:** Pricing and Payment - Industry, Pharmacy Benefit Managers (PBM)

**Summary:** Relates to pharmacy benefit managers, prohibits specified practices by pharmacy benefit managers and insurers, authorizes specified audits, establishes civil liability for specified violations, makes conforming amendments, specifies applicability of certain provisions, provides for an effective date.

**History:** 02/06/2018 - PREFILED.
02/12/2018 - INTRODUCED.
02/13/2018 - Withdrawn from further consideration.

**Views from Stakeholders**

**Number of Prescriptions Dispensed Annually to 2016:** Physicians and other prescribers write at least 4.45 billion dispensed prescriptions per year in the United States.

**The National Community Pharmacists Association** in a member survey taken in June 2016, provided examples. The survey of 650 pharmacists found that more than 38 percent said they were unable to tell patients about cheaper cash prices 10 to 50 times in the previous month. One told surveyors that a major PBM required the pharmacy to collect a $35 copay for a generic allergy spray, then took $30 back from the pharmacy. Another said a PBM charged a $15 copay for insomnia drug Zolpidem, then took back $13.05. Patients were charged $30 above the cash price for a generic cholesterol medication at another pharmacy. [full article in Kaiser Health News, 6/24/2016]
The Pharmaceutical Care Management Association, with Mark Merritt, president and CEO of the benefit managers' trade association blames pharmacists, whom he says should simply offer customers the cash price of the drugs — if cheaper — bypassing their insurance plans altogether. “Not everything has to go through the plan... The only reason [for pharmacies] to process the claim is to keep the copay for themselves.” [ibid, Kaiser Health News, 6/24/2016]

Most legislation and details have been excerpted from the online NCSL Prescription Drug Database, which includes bill status updated weekly and complete full text links. Other resources include Westlaw and state sponsored websites.

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