



## Prohibiting PBM “Gag Clauses” that Restrict Pharmacists from Disclosing Price Options Recent State Legislation 2017-2018

**March 14, 2018**

*Compiled by the NCSL Health Program, Richard Cauchi, Program Director*

Pharmacy-based and mail-order consumer purchases of prescription drugs were a \$235 billion market annually in the United States in 2015.

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 options, and could be purchased at a lower cost if the consumers paid out of pocket rather than purchasing through their insurance plan.

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 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 medications, including generics or brand products that may be less costly, or comparatively more suitable for a patient.

**Statute Example:** 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.”*

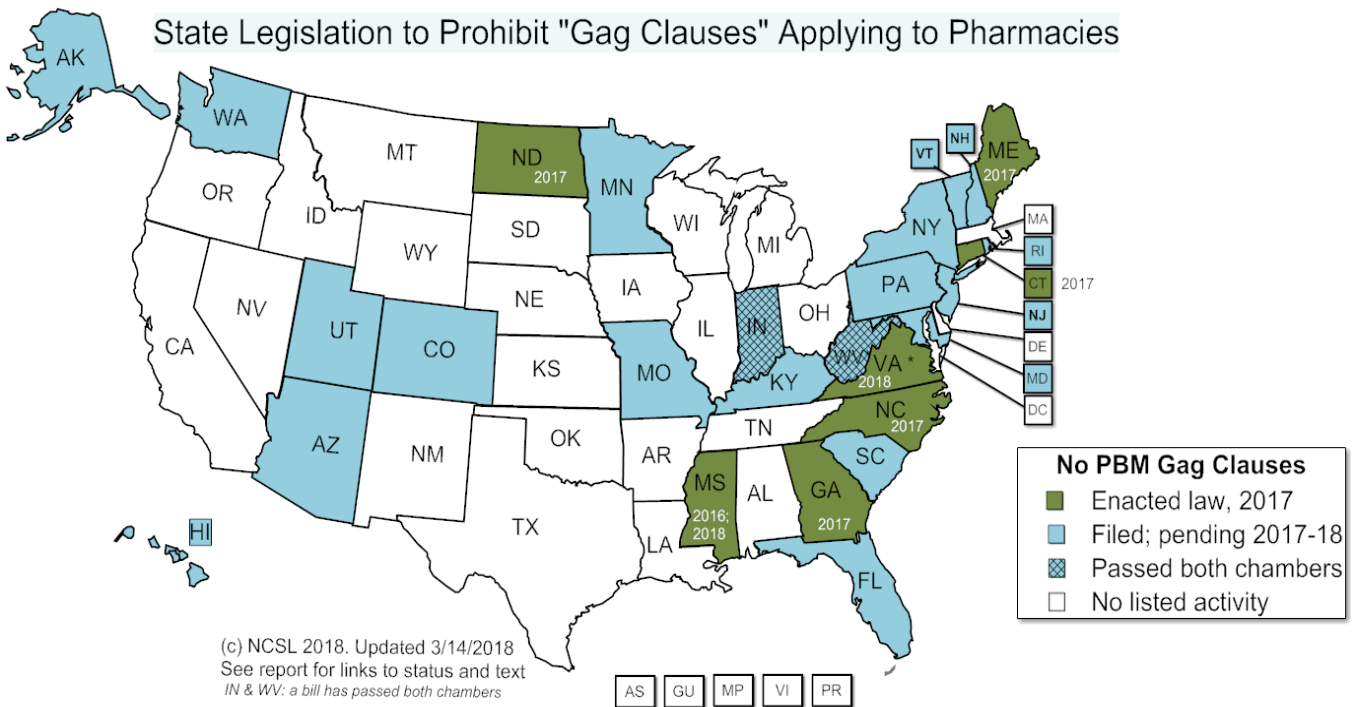
Between 2016 and mid-March 2018, at least **seven states** enacted laws among at least **26** state legislatures that considered prohibiting “gag clauses” in contracts that restrict pharmacists.

The most recent laws, signed in March 2018, are in Mississippi and Virginia.

- **Alaska** (filed bill 2018; pending)
- **Arizona** (2 filed bills 2018; passed House; pending)
- **Colorado** (filed bill 2018; pending) – *new, 3/8/2018*
- **Connecticut** (**enacted law**, 2017)
- **Florida** (2 filed bills 2018; pending)
- **Georgia** (2 **enacted laws**, 2017);
- **Hawaii** (filed bill 2018; passed Senate; pending)
- **Indiana** (2 filed bills 2018; passed House and Senate; pending)
- **Kentucky** (filed bill 2018; passed House; pending) - *new, 2/23/2018*
- **Maine** (**enacted law**, 2017)

- **Maryland** (filed bill 2018; pending)
- **Minnesota** (filed bill 2018; pending)
- **Mississippi** (limited **enacted law**, 2016; expanded application, **enacted law**, 2018)
- **Missouri** (filed bill 2018; pending)
- **New Hampshire** (filed bill 2018; pending)
- **New Jersey** (filed bill 2018; pending)
- **New York** (3 filed bills 2018; Passed Assembly; pending)
- **North Carolina** (**enacted law**, 2017).
- **North Dakota** (**enacted law**, 2017)
- **Pennsylvania** (filed bill 2018; pending)
- **Rhode Island** (filed bill 2018; pending)
- **South Carolina** (filed bill 2018; pending)
- **Utah** (filed bill 2018; pending)
- **Vermont** (filed bill 2018; pending)
- **Virginia** (filed bill 2018; passed House and Senate; **enacted law** 2018)
- **Washington** (2 filed bills 2018; 1 passed House and pending)
- **West Virginia** (filed bill 2018; pending; passed House and Senate)

This research reviewed measures from all 50 states, but may not include every bill or older statute that contains this type of restriction. 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.



## Related Media Coverage

- ◆ "Why Your Pharmacist Can't Tell You That \$20 Prescription Could Cost Only \$8" (cites NCSL data) published by the New York Times, 2/25/2018.
- ◆ [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 | [Business section](#), Los Angeles Times 3/14/2018

## 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.

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## Arizona

[AZ H 2107](#)

2018`

### Prescription Drug Costs and Patient Notification

**Status:** Pending - HOUSE

**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.

[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.

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## Colorado

[CO H 1284](#)

2018

### Disclosure of Prescription Costs at Pharmacies

**Status:** Pending - House Health, Insurance & Environment Committee

**Date of Last Action:** 3/8/2018

**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

**History:** 03/08/2018 - INTRODUCED.

03/08/2018 - To HOUSE Committee on HEALTH, INSURANCE, & ENVIRONMENT.

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## 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

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## Florida

[FL H 351](#)

2018 `

### Pharmacy Benefits Managers

**Status:** Pending - HOUSE

**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.

01/17/2018 - From HOUSE HEALTH INNOVATION SUBCOMMITTEE: Reported favorably with substitute.

02/06/2018 - From HOUSE Committee on APPROPRIATIONS: Reported favorably.

02/15/2018 From HOUSE Committee on HEALTH AND HUMAN SERVICES: Reported favorably with substitute.

[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.

01/12/2018 - Referred to SENATE Committee on BANKING AND INSURANCE and SENATE Committee on APPROPRIATIONS.

02/06/2018 - From SENATE Committee on HEALTH POLICY: Reported favorably with substitute.

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**; 05/08/2017 - Act No. 196

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## Hawaii

HI S 3104

2018 `

### Pharmacy Benefit Managers

**Status:** Pending - Senate Ways and Means Committee

**Date of Last Action:** 2/16/2018

**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.

01/26/2018 - To SENATE Committee on COMMERCE, CONSUMER PROTECTION, AND HEALTH.

01/26/2018 - Subsequent referral set for: SENATE Committee on WAYS AND MEANS.

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

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## Indiana

[IN H 1158](#)

2018 `

### Pharmaceutical Matters

**Status:** Pending - House Insurance Committee

**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.

01/08/2018 - To HOUSE Committee on INSURANCE.

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[IN H 1317](#)

2018 `

### Health Matters

**Status:** Pending – Conference Committee

**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.

**History:** 01/12/2018 - INTRODUCED.

01/30/2018 - From HOUSE Committee on PUBLIC HEALTH: Do pass as amended.

02/05/2018 - Passed HOUSE. \*\*\*\*\*To SENATE.

03/06/2018 - Passed SENATE. \*\*\*\*\*To HOUSE for concurrence.

03/08/2018 - HOUSE refused to concur in SENATE amendments.

03/08/2018 - \*\*\*\*\*To CONFERENCE Committee..

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## Kentucky

[KY H 463](#)

2018

**Author:** [Michael Lee Meredith \(R-019\)](#)

**Title:** **Pharmacy Benefits**

**Introduced:** 02/23/2018

**Disposition:** Pending



**Version:** Introduced

**Location:** HOUSE

**Summary:** Defines cost sharing; prohibits an insurer, pharmacy benefit manager (PBM) or other administrator from requiring payment for prescription drugs in excess of available price choices; 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." Any amount paid by an insured under this section shall be attributable toward any annual out-of-pocket maximums under the insured's health benefit plan.

**History:** 02/23/2018 INTRODUCED.

03/07/2018 - Passed HOUSE. \*\*\*\*\*To SENATE.

03/09/2018 - To SENATE Committee on BANKING AND INSURANCE

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## 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. [Updated]

**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

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## Maryland

MD S 576

2018`

### Pharmacy Benefits Managers

**Status:** Pending - Senate Finance Committee

**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.

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[MD H 736](#)

2018`

### Pharmacy Benefits Managers

**Status:** Pending - House Health and Government Operations Committee

**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.

02/01/2018 - To HOUSE Committee on HEALTH AND GOVERNMENT OPERATIONS.

02/14/2018 - Hearing Scheduled 3/08 at 1:00 p.m.

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### Minnesota

[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.

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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.**

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[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**

[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, states legislative findings and declarations, defines certain terms, prohibits health insurers and pharmacy benefits managers from requiring contracts with pharmacists to include provisions that penalize pharmacists for disclosing prescription drug cost information, including the availability of more affordable alternative medications, to customers.

**History:** 01/05/2018 - INTRODUCED.

01/30/2018 - Died in committee.

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## **Missouri**

[MO H 1542](#)

2018`

### **Pharmacy Benefits Managers**

**Status:** Pending - HOUSE

**Author:** Morris (R)

**Summary:** Prohibits certain actions by pharmacy benefits managers. “No pharmacy benefits manager shall restrict or interfere with a pharmacist's ability to provide pharmacy care to a covered person, including providing pharmacist-patient communications and discussing alternative drug options. No pharmacy benefits manager shall charge or hold a pharmacist or pharmacy responsible for any fee that is related to a claim unless the amount of the fee can be determined and has been disclosed to the pharmacist or pharmacy at the time of the claim's adjudication.”

**History:** 12/07/2017 - PREFILED.

01/03/2018 - INTRODUCED.

02/15/2018 - To HOUSE Committee on INSURANCE POLICY;

02/20/2018 Public Hearing completed.

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## **New Hampshire**

[NH S 354 and](#)

[NH H1791](#)

2018

### **Pharmacy Claim Fees and Copayments**

**Status:** Pending - Senate Commerce Committee

**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.

02/01/2018 - Hearing: 02/13/2018.

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## New Jersey

[NJ A 2214](#)

2018`

### Pharmacy Benefits Manager Copayment Collection

**Status:** Pending - Assembly Financial Institutions and Insurance Committee

**Author:** Dancer (R)

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

**History:** 01/29/2018 - FILED.

02/01/2018 - To ASSEMBLY Committee on FINANCIAL INSTITUTIONS AND INSURANCE.

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## New York

[NY A 8781](#)

2018

### Pharmacy Benefit Managers

**Status:** Pending - 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.

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[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:** Griffo (R) **Additional Authors:** Griffo (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.

01/03/2018 – INTRODUCED - To SENATE Committee on HEALTH.

02/08/2018 - Amended in SENATE Committee on HEALTH.

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## North Carolina

NC H 466

2018`

### Pharmacy Benefit Managers

**Status:** Enacted - Act No. 2017-116 - **Enacted**

**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." *Note:* Senate version, S 384 was amended by substitution to a non-health topic. [Updated 2/15/2018]

**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;** 07/18/2017 - Session Law Number 2017-116

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### 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

**Introduced:** 01/16/2017

**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.

03/28/2017 Passed HOUSE.

04/05/2017 **Signed by GOVERNOR**

07/05/2017 Chapter Number 161

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### 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.

04/18/2017 - INTRODUCED.

04/18/2017 - To SENATE Committee on BANKING AND INSURANCE.

12/13/2017 - From SENATE Committee on BANKING AND INSURANCE. Reported as amended.

12/13/2017 - In SENATE. Read first time.

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## 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.

02/23/2018 - Scheduled for hearing and/or consideration 03/01/2018.

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## South Carolina

[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.

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## Utah

[UT S 208](#)

2018

### Pharmacy Benefits Manager or Coordinator Amendments

**Status:** Pending - SENATE

**Date of Last Action:** 2/22/2018

**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.

02/22/2018 - Placed on 2nd Reading calendar.

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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. \*\*\*\*\*To SENATE. Passed SENATE. (40-0)

02/22/2018

03/09/2018 - **Signed by GOVERNOR.**

03/09/2018 - Acts of Assembly. Chapter No. 245

[VA H 1302](#) (*Variation; not a gag clause legal prohibition*)

2018`

### Health Insurance Prescription Drugs Copayments

**Status:** Failed - Tabled in Committee

**Author:** Byron (R) **Additional Authors:** Wright (R); McGuire (R)

**Summary:** Relates to health insurance and copayments prohibits any contract between a health carrier or its pharmacy benefits manager and a pharmacy or pharmacist from containing a provision that requires an enrollee to make a copayment for a covered prescription drug in an amount that exceeds the least of the applicable copayment for the prescription drug or the cash price the enrollee would pay for the prescription drug.

**History:** 01/10/2018 - INTRODUCED.

02/01/2018 - In HOUSE Committee on COMMERCE AND LABOR: Tabled.

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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:** Pending - Eligible for GOVERNOR'S desk.

**Date of Last Action:\*** 3/2/2018

**Author:** Cline (R)

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

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

**History:** [Click for 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.

01/31/2018 - Passed SENATE. \*\*\*\*\*To HOUSE.

03/02/2018 - Passed HOUSE. \*\*\*\*\*To SENATE for concurrence.

03/10/2018 - CONFERENCE Committee Report adopted by HOUSE and SENATE.

03/10/2018 - \*\*\*\*\***Eligible for GOVERNOR'S desk.**

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