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Pharmacists

'Gag' on Discussing Cheaper Drugs at Pharmacy Under Scrutiny (1)

Lawmakers are moving to end “gag” clauses that prevent pharmacists from telling patients about the cheapest drugs available at the pharmacy, with or without insurance coverage.

The full Senate plans to vote Sept. 6 on a bill (S. 2554) that would ban these gag clauses for drug plans providing employee benefits and insurance exchange coverage, congressional staffers told Bloomberg Law. However, the Senate schedule could be affected if Democrats shut down proceedings Sept. 6 over Brett Kavanaugh's Supreme Court nomination.

The Senate unanimously approved a measure (S. 2553) Sept. 4 that would end gag clauses affecting Medicare beneficiaries. And a House panel expressed support for a draft gag clauses bill at a Sept. 5 hearing.

The bills aim to prevent insurers and pharmacy benefit managers (PBMs) from using pharmacy gag clauses to hide prices from patients at the pharmacy counter. Without a gag clause, a pharmacist could tell a patient a drug is cheaper without using insurance.

The three largest pharmacy benefit managers are Express Scripts, CVS Health, and OptumRx, which is part of UnitedHealth Group.

The Pharmaceutical Care Management Association, which represents pharmacy benefit plans, said in a statement to Bloomberg Law about gag clause bills that it “strongly supports legislation that will ensure America's patients always pay the lowest cost for their medications at the pharmacy counter, whether it's the cash price or the copay. Fortunately, the legislation aligns with standard practice used by pharmacy benefit managers in the marketplace.”

Blue Cross and Blue Shield insurers don't use gag clauses, the group representing BCBS plans said in a statement provided to Bloomberg Law. Justine Handelman, senior vice president, office of policy and representation for the Blue Cross Blue Shield Association, added that it's important that consumers “are fully aware of the potential tradeoffs of going outside their insurance benefit.” While some consumers may pay less out of pocket, the drugs bought outside the insurance benefit won't count toward a deductible or maximum out-of-pocket limit, she said.

In addition, she said the BCBS companies and pharmacy benefit managers “have systems in place that check for potentially harmful drug interactions, but prescriptions purchased without insurance will not be in

the system and therefore cannot be tracked for potential harm.”

Draft Bill in House The House panel hearing examined a draft bill from Rep. Buddy Carter (R-Ga.), a pharmacist, that would support the Trump administration's overall policy to drive down the cost of prescription drugs, Energy and Commerce Health Subcommittee Chairman Michael Burgess (R-Texas) said.

Subcommittee ranking member Gene Green (D-Texas) also said he supported the draft bill and said he would like to see the subcommittee work on lowering the cost of prescription drugs. The draft bill would ban group health plans offered by employers and federal managed care and prescription drug benefit plans—Medicare Advantage and Medicare Part D—from preventing pharmacists from disclosing situations where a cash payment would be cheaper than using insurance.

In May, the Centers for Medicare & Medicaid Services notified Medicare Part D plans that gag clauses are prohibited.

Pharmacist Reaction The House hearing featured testimony from Hugh Chancy, a board member of the National Community Pharmacists Association, who said the NCPA supports the draft bill.

Patients aren't aware that they can ask their pharmacist if a cash payment is cheaper than paying through insurance, Chancy said. Pharmacists who violate gag clauses can lose their contract with a pharmacy benefit management company and even go out of business, Chancy said.

Other Cost Solutions The hearing on gag clauses came as a group of Democratic senators led by Tina Smith (D-Minn.) introduced their bill to lower prescription drug prices.

The Democrats' bill, the proposed Affordable Medications Act of 2018, aims to increase the transparency of the price-setting process, end the restriction on the federal Medicare program negotiating lower drug prices for its beneficiaries, and curb drug company practices that can keep prices high and prevent more affordable generics from reaching the market.

Smith's co-sponsors include Sens. Tammy Baldwin (D-Wis.), Richard Blumenthal (D-Conn.), Corey Booker (D-N.J.), Sherrod Brown (D-Ohio), Richard Durbin (D-Ill.), Kirsten Gillibrand (D-N.Y.), Bernie Sanders (I-Vt.), Elizabeth Warren (D-Mass.), and Sheldon Whitehouse (D-R.I.).

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