

## End of Pharmacy 'Gag' on Discussing Cheap Drugs Clears Congress

By Shira Stein

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- Bills prohibit "gag clauses" by insurers that prevent pharmacists from discussing cheaper drugs
- House follows Senate, and bills head to President Trump's desk for signature

Two bills to outlaw pharmacy contract provisions that ban pharmacists from telling some insured patients about the cheapest available drugs passed the House Sept. 25.

Both bills passed the House by a voice vote, and now head to President Donald Trump's desk for his signature. The bills would prohibit "gag" clauses for Medicare, most employer group health plans, and individual market plans.

One of the bills (S. 2553), which would prohibit the gag clauses for Medicare, was sponsored by Sen. Debbie Stabenow (D-Mich.) and passed the Senate unanimously Sept. 4. The bill (S. 2554) addressing employer and individual market plans, sponsored by Sen. Susan Collins (R-Maine), passed the Senate 98-2 in a Sept. 17 vote.

### Trump's Support

The measures have the support of the White House. "Americans deserve to know the lowest drug price at their pharmacy, but 'gag clauses' prevent your pharmacist from telling you! I support legislation that will remove gag clauses and urge the Senate to act," Trump tweeted Sept. 17 ahead of the vote on Collins' bill.

Lindsay Bealor Greenleaf, director at the life sciences consulting firm ADVI Health, told Bloomberg Law the legislation could help "fix the distortion in the supply chain" caused by prescription benefit managers and the deals they cut with pharmacies, like gag clauses.

Ending gag clauses could save Americans as much as \$135 million per year, Greenleaf said. Greenleaf's estimate is based on a University of Southern California study from March.

Both bills are supported by CVS, Express Scripts, the American Pharmacists Association, America's Health Insurance Plans, AARP, and the ERISA Industry Committee.

Twenty-three percent of prescriptions cost more to patients if filed through insurance, according to a 2018 article from the Journal of the American Medical Association, which looked at insurance copayments that can exceed the cost of a drug.

Twenty-six states enacted laws prohibiting the gag clauses between 2016 and Aug. 21, 2018, according to the National Conference of State Legislatures.

### Another Bill

Rep. Buddy Carter (R-Ga.) had introduced a bill (H.R. 6733) that would prohibit gag clauses for Medicare and private health insurance plans. That bill was approved by the House Energy and Commerce Committee.

Carter, a pharmacist, said his bill would have gone further than the two Senate bills by deeming "any contract containing gag clauses null and void," he said. Carter said his bill would have ensured patients were notified of the lowest price for the drugs and told them about any less expensive generic equivalents.

—With assistance from Alex Ruoff

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