

## Prohibition of Gag Clauses: Pharmacist Fact Sheet

SCPhA wishes to express our deepest congratulations to NCPA and NACDS for bringing the anti-Gag-Clause fight to Congress and all the way up to the White House for signature by the president. This was a critical victory for community pharmacy and their patients. NCPA has developed a '*Tip Sheet*' to help pharmacists better understand the just how important these two bills are to your patients. This according to NCPA:

### ***What just happened?***

On October 10, 2018, President Trump signed into law two pieces of legislation that prohibit so-called pharmacist gag clauses in Medicare and private health plans. The force of the law will provide for the freer flow of information between pharmacists and their patients. **The two bills signed by the president are S. 2553, the *Know the Lowest Price Act of 2018*, and S. 2554, the *Patient Right to Know Drug Prices Act*,** which give community pharmacists *more flexibility* in informing patients they could pay less out of pocket for a prescription than by using their health insurance.

### ***What does the new law do?***

#### **Medicare plans:**

- *All Medicare (Medicare Advantage and Part D) plan sponsors* must ensure that the plans they offer do not restrict a pharmacy from or penalize a pharmacy for informing a patient about the difference between the negotiated price, patient's copayment, or patient's coinsurance and a lower price if the drug or biological was obtained without using any health insurance. ***The new law will apply to Medicare plan years beginning on or after January 1, 2020.***

#### **Private insurance:**

- *All private insurance plans* (including plans on exchanges and from employers) are *prohibited from restricting* a pharmacy from or penalizing a pharmacy for informing a patient about the difference between the patient's out-of-pocket costs (i.e., a deductible, copayment, or coinsurance) for a drug obtained on insurance and a patient's out-of-pocket costs for a drug obtained off insurance;
- In addition, private insurance plans must ensure that the contracts with their PBMs *do not restrict* a pharmacy from or penalize a pharmacy for informing a patient about the difference between the patient's out-of-pocket costs for a drug obtained on insurance and the patient's out-of-pocket costs if the drug were obtained off insurance.

### ***What should pharmacists do next?***

Here are a few helpful tips to ensure that gag clauses are not restricting or penalizing the free flow of information between pharmacist and patient:

- For patients with Medicare plans, a pharmacist may tell a patient about the difference between the price for a drug obtained on insurance (the pharmacy's negotiated price or the patient's copayment/coinsurance) and a lower price if obtained off insurance;
- For patients using private insurance plans, a pharmacist may tell a patient about the difference between the patient's out-of-pocket costs (i.e., a deductible, copayment, or coinsurance) for a drug obtained on insurance and the patient's out-of-pocket costs to obtain the drug off insurance;
- Pharmacists should review their contracts with PBMs in both Medicare and private insurance for gag clause language.
- A pharmacist should notify the plan or PBM that such provisions are prohibited under the new law.
- In Medicare contracts, a pharmacist should notify CMS of any violations that occur via contracts for plan years beginning on or after January 1, 2020.<sup>2</sup>
- In Medicare contracts, if a pharmacist is kicked out of a network or threatened to be kicked out of a network for providing information pursuant to the new law, pharmacists should inform CMS of such actions that occur via contracts for plan years beginning on or after January 1, 2020.