

Blog Post

Drug Pricing Legislation Sent to the President for Enactment into Law

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Two pieces of related legislation that would prohibit so called “gag clauses” in contracts between pharmacists and health plans and pharmacy benefit managers (PBM’s) have been passed by both the Senate and the House. The legislation prohibits any restrictions on the ability of pharmacists to alert consumers to situations where it may be less expensive for them to pay for prescription drugs out-of-pocket, rather than through their insurance benefits. The legislation received bipartisan support in both the Senate and the House, and is expected to be signed into law by the President (in September, President Trump tweeted his support for the legislation).

While the two bills apply to different insurance products, the provisions of both bills are largely the same. S. 2553, the “Know the Lowest Price Act of 2018,” prohibits contractual provisions that forbid a pharmacist from disclosing pricing information to enrollees with respect to Medicare Advantage and Medicare Part D drug plans, while S. 2554, the “Patient Right to Know Drug Prices Act,” eliminates such provisions in employee-sponsored and individual health insurance plans. By eliminating these restrictions, the legislation is designed to permit pharmacists to alert consumers that, on occasion, it may be less expensive for them to purchase drugs out-of-pocket, rather than through their insurance benefits. Notably, S. 2554 also

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amends the Medicare Prescription Drug, Improvement and Modernization Act of 2003 to require the reporting to the Federal Trade Commission of patent settlements between the manufacturers of biologics and biosimilar drugs (currently such reporting only applies to settlements between generic and branded pharmaceutical companies).

Upon passage in the Senate, Senator Susan Collins (R. Maine), one of the principal sponsors of S. 2554, stated that “Insurance is intended to save consumers money. Gag clauses in contracts that prohibit pharmacists from telling patients about the best prescription drug prices do the opposite. Americans have the right to know which payment method provides the most savings when purchasing prescription drugs. I am delighted that our legislation to lower the cost of prescription drugs received overwhelming bipartisan support, and will be signed into law.” Senator Collins also noted that a 2016 industry survey found that nearly 20 percent of pharmacists were limited by these so-called “gag clauses,” increasing costs for consumers.

This new federal legislation follows the enactment of similar legislation over the last several years by several states. Since 2017 alone, over a dozen states have enacted laws prohibiting such restrictions on pharmacies, including Connecticut, Georgia, Maine, Minnesota, Mississippi, North Carolina, South Dakota and Virginia.

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