

Why Your Pharmacist Can't Tell You That \$20 Prescription Could Cost Only \$8

By [ROBERT PEAR](#) FEB. 24, 2018



States are moving to block “gag clauses” that prohibit pharmacists from telling customers that they could save money by paying cash for prescription drugs rather than using their health insurance. Credit Nicole Craine for The New York Times

WASHINGTON — As consumers face rapidly rising drug costs, states across the country are moving to block “gag clauses” that prohibit pharmacists from telling customers that they could save money by paying cash for prescription drugs rather than using their health insurance.

Many pharmacists have expressed frustration about such provisions in their contracts with the powerful companies that manage drug benefits for insurers and employers. The clauses force the pharmacists to remain silent as, for example, a consumer pays \$125 under her insurance plan for an influenza drug that would have cost \$100 if purchased with cash.

Much of the difference often goes to the drug benefit managers.

Federal and state officials say they share the pharmacists’ concerns, and they have started taking action. At least five states have adopted laws to make sure pharmacists can inform patients about less costly ways to obtain their medicines, and at least a dozen others are considering legislation to prohibit gag clauses, according to the National Conference of State Legislatures.

Senator Susan Collins, Republican of Maine, said that after meeting recently with a group of pharmacists in her state, she was “outraged” to learn about the gag orders.

“I can’t tell you how frustrated these pharmacists were that they were unable to give that information to their customers, who they knew were struggling to pay a high co-pay,” Ms. Collins said.

Alex M. Azar II, the new secretary of health and human services, who was a top executive at the drugmaker Eli Lilly for nearly 10 years, echoed that concern. “That shouldn’t be happening,” he said. Pharmacy benefit managers say they hold down costs for consumers by negotiating prices with drug manufacturers and retail drugstores, but their practices have come under intense scrutiny.

The White House Council of Economic Advisers said in a report this month that large pharmacy benefit managers “exercise undue market power” and generate “outsized profits for themselves.”

Steven F. Moore, whose family owns Condo Pharmacy in Plattsburgh, N.Y., said the restrictions on pharmacists' ability to discuss prices with patients were "incredibly frustrating."

Mr. Moore offered this example of how the pricing works: A consumer filling a prescription for a drug to treat diabetes or high blood pressure may owe \$20 if he uses insurance coverage. By contrast, a consumer paying cash might have to pay \$8 to \$15.

Mark Merritt, the president and chief executive of the Pharmaceutical Care Management Association, which represents benefit managers, said he agreed that consumers should pay the lower amount.

As for the use of gag clauses, he said: "It's not condoned by the industry. We don't defend it. It has occurred on rare occasions, but it's an outlier practice that we oppose."

However, Thomas E. Menighan, the chief executive of the American Pharmacists Association, said that such clauses were "not an outlier," but instead a relatively common practice. Under many contracts, he said, "the pharmacist cannot volunteer the fact that a medicine is less expensive if you pay the cash price and we don't run it through your health plan."

A bipartisan measure that took effect in Connecticut this year prohibits the gag clauses. It was introduced by the top Democrat in the Connecticut Senate, Martin M. Looney, and the top Republican, Len Fasano. "This is information that consumers should have," Mr. Looney said in an interview, "but that they were denied under the somewhat arbitrary and capricious contracts that pharmacists were required to abide by."

Mr. Fasano said that consumers were sometimes paying three or four times as much when they used their insurance as they would have paid without it. "That's price gouging," he said in an interview.

The legislation, Mr. Fasano said, encountered "a lot of resistance" from large pharmacy benefit managers and some insurance companies.

In North Carolina, a new law says that pharmacists "shall have the right" to provide insured customers with information about their insurance co-payments and less costly alternatives.

A new Georgia law says that a pharmacist may not be penalized for disclosing such information to a customer. Maine has adopted a similar law.

In North Dakota, a new law explicitly bans gag orders. It says that a pharmacy or pharmacist may provide information that "may include the cost and clinical efficacy of a more affordable alternative drug if one is available."

The North Dakota law also says that a pharmacy benefit manager or insurer may not charge a co-payment that exceeds the actual cost of a medication.

The lobby for drug benefit companies, the Pharmaceutical Care Management Association, has filed suit in federal court to block the North Dakota law, saying it imposes "onerous new restrictions on pharmacy benefit managers."

Specifically, it says, the North Dakota law could require the disclosure of "proprietary trade secrets," including information about how drug prices are set. "P.B.M.-pharmacy contracts typically preclude a pharmacy from disclosing to the patient the amount of a reimbursement," the lawsuit says.

Gov. Asa Hutchinson of Arkansas, a Republican, said this past week that he would call a special session of the State Legislature to authorize the regulation of pharmacy benefit managers by the state's Insurance Department.

He said he feared that some independent pharmacists receiving "inadequate reimbursement" from the benefit managers might go out of business, reducing patients' access to care, especially in rural areas.

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