

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CMS NEWS

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CMS Sends Clear Message to Plans: Stop Hiding Information from Patients
Part of the continued roll-out of American Patients First, CMS sends letter to Part D plans explaining that gag clauses that keep patients from knowing how to get the best deal are completely unacceptable

Today, the Centers for Medicare & Medicaid Services (CMS) sent a letter to companies that provide Medicare prescription drug coverage in Part D explaining that so-called “gag clauses” are unacceptable, as part of the Administration-wide “American Patients First” initiative to lower prescription drug costs.

In Part D, Medicare pays prescription drug plans to cover medicines, which beneficiaries buy at a pharmacy. Gag clauses are provisions in contracts that insurance plans and their pharmacy benefit managers enter into with pharmacies. These clauses prevent pharmacists from telling patients when they could pay less for a drug by paying cash, instead of billing their insurance and paying the required copay or deductible.

“President Trump and Secretary Azar are committed to lowering drug prices, and CMS today took another important step to help patients who are feeling the pain,” said CMS Administrator Seema Verma. “Many patients don’t know that some drugs are actually more expensive when they use their insurance. What’s worse is that some pharmacy benefits managers are preventing pharmacists from telling patients when this is happening, because they get a share of the transaction when the patient uses their insurance. Today we are taking a significant step towards bringing full transparency to all the back-end deals that are being made at the expense of patients.”

A copy of the letter that was sent to all Part D Plan Sponsors today is included below, and to learn more about the President’s blueprint to lower prescription drug costs, please visit: <http://hhs.gov/drugpricing>.

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The Office of the Administrator

Date: May 17, 2018
To: All Part D Plan Sponsors
From: Seema Verma, Administrator, Centers for Medicare & Medicaid Services
Subject: Unacceptable Pharmacy Gag Clauses

On May 11th, President Trump proposed a bold set of changes to lower the price of prescription drugs for the American people. The President’s American Patients First blueprint is more sweeping than any other drug-pricing initiative ever and includes strategies that will improve competition, support better negotiation of drug discounts, create incentives for pharmaceutical companies to lower list prices, and reduce consumer out-of-pocket spending at the pharmacy and other care settings.

An important step in putting patients first and lowering out-of-pocket costs is addressing “gag clauses” that some health plans and pharmacy benefit managers include in their contracts with pharmacies. Gag clauses are contracting terms and conditions that prevent pharmacies from telling customers about the availability of lower cash prices. Specifically, they prevent pharmacies from sharing with customers that their copay is more than the total cost of the drug and that they could pay less out-of-pocket by not using insurance.

We are committed to empowering patients with the information they need to make informed decisions about their care. This includes ensuring that all patients have access to drug price information that can help them save money and get the most value from their insurance coverage. In Medicare Part D, our existing policy requires plan sponsors to ensure enrollees pay the lesser of the Part D negotiated price or copay, or be subject to CMS compliance actions. We want to make it clear that CMS finds any form of “gag clauses” unacceptable and contrary to our efforts to promote drug price transparency and lower drug prices.

We also remind Part D plan sponsors that they must require their network pharmacies to disclose any differential between the price of a Part D drug and the price of the lowest cost therapeutically-equivalent generic version of that Part D drug.

Questions concerning this memo may be directed to PartDPolicy@cms.hhs.gov.