



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.