



## PBM Clawbacks and Gag Order: Legislative Update 3-21-18

### **PROBLEM**

In Indiana and across the country, PBM clawback practices and gag order clauses contribute to increased out-of-pocket expenses for patients with commercial insurance.

### **DEFINITIONS**

#### **What is a PBM/Insurance Clawback?**

- Prescription drug overpayments (also known as “clawbacks”) occur when commercially insured patients’ copayments exceed the total cost of the drug to their insurer or pharmacy benefit manager. <sup>1</sup>
- As standard practice, pharmacies collect the copays per a patient’s insurance/PBM plan. The claw back occurs when the PBM then requests after prescription sale that the pharmacy pay them back the difference between the patient copay and the drug cost.

#### **What is a PBM Gag Order?**

- Clauses PBMs include in their pharmacy network contracts which do not permit pharmacists from disclosing drug prices to patients, unless a patient asks. If a pharmacy wants to be in the PBM network, they are must sign such contract language.

### **RECENT STUDY FINDINGS**

- A first of its kind study, published in March 2018, by authors from the University of Southern California found that **patients overpay for prescriptions 23% of the time.** <sup>1</sup>
- This study analyzed prices paid by 1.6 million people for 9.5 million prescriptions in the first half of 2013. During this 6 month period, overpayments totaled \$135 million.

## **SOLUTION: NEW INDIANA LAW added to section IC 5-10-8-20**

### **HB 1317 HEALTH MATTERS BILL** <sup>2</sup>

- Championed by Indiana State Representative Steve Davisson, a pharmacist, and strongly supported by the Employers’ Forum of Indiana.
- Clawbacks and Gag Orders are no longer permitted in Indiana.
  - Ensures that a patient will not pay a full co-pay if the cost of the medication in the pharmacy- insurance plan agreement is lower.
  - Allows a pharmacist is to inform a patient of cost effective alternatives that may be available before filling the prescription.
- This law is effective on July 1, 2018.

#### References

1. [http://healthpolicy.usc.edu/documents/2018.03\\_Overpaying%20for%20Prescription%20Drugs\\_White%20Paper\\_v.1.pdf](http://healthpolicy.usc.edu/documents/2018.03_Overpaying%20for%20Prescription%20Drugs_White%20Paper_v.1.pdf)
2. <https://iga.in.gov/legislative/2018/bills/house/1317#document-4224a870>