



NEW YORK STATE SENATOR

Kemp Hannon

## SENATE GIVES FINAL PASSAGE TO MEASURE PROTECTING NEW YORKERS FROM OVERPAYING FOR PRESCRIPTION MEDICATIONS

KEMP HANNON March 9, 2018

| ISSUE: **GAG CLAUSES**, **CLAWBACKS**



The New York State Senate this week gave final passage to a bill that helps fight the high cost of prescriptions by preventing consumers from overpaying for medications. This new measure (S6940) sponsored by Senator Kemp Hannon (R-Nassau), helps consumers become better informed about the price of drugs and prohibits two costly practices – gag clauses and clawbacks – used by pharmacy benefit managers (PBMs). Each have come into question

recently as prescription drug prices continue to rise.

Senator Kemp Hannon, Chair of the Health Committee, said, “With prescription drug costs skyrocketing, this legislation is necessary to ensure people are being afforded the opportunity to pay lower drug prices when possible. Co-pays should not exceed the cost of a drug and pharmacists should be allowed to tell a consumer when the cost of a drug is in fact cheaper if they pay out of pocket. Clawbacks and pharmacy gag practices are unacceptable and not a good status quo.”

The measure prohibits PBMs from imposing “gag clauses” in their contracts with pharmacies. Gag clauses prohibit pharmacists from telling consumers information regarding the price of medication, the availability of alternative medications, or that the drug may actually cost less if they pay out of pocket. According to the National Community Pharmacists Association, Arkansas, Connecticut, Georgia, Maine, Minnesota, Nevada, North Carolina, and North Dakota have already passed laws banning these types of gag clauses.

This bill will also prohibit the practice of clawbacks in PBM contracts, which often result in profits generated for pharmacy benefit managers at the expense of unsuspecting customers. These clawbacks occur when a patient pays the pharmacy a copayment that is more than the actual cost of the drug. The PBM then recoups or “claws back” the excess cost collected by the pharmacy and actually makes money on the transaction. The legislation prohibits PBMs from charging a co-pay higher than the cost of the drug and prohibits them from taking additional discounts and fees from the pharmacy after the prescription has been dispensed and the claim adjudicated.

The bill has passed the Assembly and will be sent to the Governor.

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#### RELATED LEGISLATION

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## 2017-S6940

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- Introduced
- - In Committee Assembly
  - In Committee Senate
- - On Floor Calendar Assembly
  - On Floor Calendar Senate
- - Passed Assembly
  - Passed Senate
- Vetoed By Governor
- Signed By Governor
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Prohibits pharmacy benefit managers from restricting access to certain drug information and collecting certain payments

November 13, 2017

Senate Floor Calendar

Sponsored by **Kemp Hannon**

Do you support this bill?

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