



SPONSOR: Rep. Bennett & Sen. Henry & Sen. Pettyjohn
Reps. Baumbach, Bentz, Heffernan, Keeley, Kowalko,
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Sens. McDowell, Poore

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 425

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO PERMITTED DISCLOSURES
RELATED TO PRESCRIPTION DRUGS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 33A, Title 18 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 Subchapter III. Permitted Disclosures Related to Prescription Drugs.

4 § 3331A. Definitions.

5 As used in this subchapter:

6 (1) "Health insurance" means as defined in § 903 of this title.

7 (2) "Insured" means an individual covered by health insurance offered by an insurer.

8 (3) "Insurer" means any entity that provides health insurance in this State.

9 (4) "Pharmacist" means as defined in § 2502 of Title 24.

10 (5) "Pharmacy" means as defined in § 2502 of Title 24.

11 (6) "Pharmacy benefit manager" means as defined under § 3302A of this title.

12 § 3332A. Permitted disclosures related to prescription drugs.

13 A contract between a pharmacy benefits manager and a pharmacy may not prohibit a pharmacy or pharmacist from
14 doing any of the following:

15 (1) Providing an insured with information regarding the retail price of a prescription drug or the amount of the
16 cost share for which the insured is responsible for a prescription drug.

17 (2) Discussing with an insured information regarding the retail price of a prescription drug or the amount of
18 the cost share for which the insured is responsible for a prescription drug.

19 (3) If a more affordable, therapeutically equivalent prescription drug is available, selling the more affordable,
20 therapeutically equivalent prescription drug to the insured.

21 Section 2. This Act is applicable to contracts between pharmacy benefit managers and pharmacies that are entered
22 into, renewed, or extended on or after the effective date of this Act.

SYNOPSIS

This Act establishes that a contract between a pharmacy benefits manager and a pharmacy may not prohibit a pharmacy or pharmacist from doing any of the following:

(1) Providing an insured with information regarding the retail price of a prescription drug or the amount of the cost share for which the insured is responsible for a prescription drug.

(2) Discussing with an insured information regarding the retail price of a prescription drug or the amount of the cost share for which the insured is responsible for a prescription drug.

(3) If a more affordable, therapeutically equivalent prescription drug is available, selling the more affordable, therapeutically equivalent prescription drug to the insured.

In some cases, contracts between pharmacy benefits managers and pharmacies have provisions that prohibit pharmacies or pharmacist from informing consumers that they have options related to a prescription drug they want to buy and that the prescription drug could be purchased at a lower cost if the consumer paid out of pocket rather than through their health insurance plan. These provisions are often known as “gag clauses.” At least 7 states have enacted laws prohibiting these “gag clauses.”