Bill as Introduced

HB 1741 - AS AMENDED BY THE HOUSE

6Mar2018... 0719h

2018 SESSION

18-2684
01/10

HOUSE BILL *1741*

AN ACT relative to a definition of "contracted copayment" for purposes of the managed care law.

SPONSORS: Rep. Butler, Carr. 7; Rep. Rosenwald, Hills. 30; Rep. Williams, Hills. 4; Rep. Fothergill, Coos 1; Rep. Knirk, Carr. 3

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill establishes a definition of "contracted copayment" for the purposes of the managed care law.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

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Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Managed Care Law; Definitions. Amend RSA 420-J:3, X-a to read as follows:

X-a. ***"Contracted copayment" means a fixed amount an individual is responsible to pay for covered prescriptions as set forth in the health benefit plan, or the price for filling the prescription as contracted between the health carrier or its pharmacy benefits manager and the pharmacy, whichever is less.***

X-b. "Contracted pharmacy" or "pharmacy" means a pharmacy participating in the network of a pharmacy benefit manager through a direct contract or through a contract with a pharmacy services administration organization or group purchasing organization.

2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Senate Health and Human Services Committee

Kyle Baker 271-2609

HB 1741, relative to a definition of "contracted copayment" for purposes of the managed care law.

Hearing Date: March 29, 2018

Time Opened: 1:45pm **Time Closed:** 2:00pm

Members of the Committee Present: Senators Avard, Gray and Hennessey

Members of the Committee Absent : Senators Bradley and Fuller Clark

Bill Analysis: This bill establishes a definition of "contracted copayment" for the purposes of the managed care law.

Sponsors:

Rep. Butler	Rep. Rosenwald	Rep. Williams
Rep. Fothergill	Rep. Knirk	

Who supports the bill: Tyler Brannen, NH Insurance Department; Rep. Barbara Biggie; Rep. Cindy Rosenwald; Holly Stevens, New Futures; Heidi Kroll, AHIP;

Who opposes the bill: Beth Sargent, NH Pharmacists

Who is neutral on the bill: None

Summary of testimony presented in support:

Rep. Cindy Rosenwald – Hillsborough 30

- This bill establishes a definition of "contracted copayment" for the purposes of the managed care law.
- This would put into statute a current insurance rule that would ensure that consumers are always paying the lowest amount possible.

Tyler Brannen – NH Insurance Department

- Supports this bill.
- This clarifies insurance rule and statute.
- Current statute is a little gray and this technical change makes sure they consumer is always paying the lowest price.
    - Sen. Avard – Does this affect the claw back laws that the committee has

been discussing for the last few weeks.
  - Brannen – This would prohibit claw backs.

Heidi Kroll – AHIP

- AHIP supports giving the consumer the lowest price possible at the point of retail sale.
- Happy to continue to work with the committee if there are any questions.

Holly Stevens – New Futures

- This bill would do two things.
  - Clarify New Hampshire law with respect to the amount pharmacies charge for prescriptions covered by insurance.
  - Provide statutory authority to the insurance department rule.
- The policy clarified in this bill is similar to the discussion the committee has been having surrounding the gag clause legislation. The committee has supported this policy in the past and New Futures hopes the committee continues to support transparency in drug pricing for consumers.

Summary of testimony presented in opposition: None

Neutral Information Presented: None

Future Action: Ought to Pass

KRB
Date Hearing Report completed: April 2, 2018

Speakers

Senate Health and Human Services Committee
SIGN-IN SHEET

Date: 3/29/2018 **Time:** 1:45 p.m.

HB 1741 AN ACT relative to ta definition of "contracted copayment" for the purposes of the managed care laws.

Name/Representing ***(please print neatly)***

Name/Representing	Support	Oppose	Speaking?	Yes	No
Heidi Kroll AHIP	☒	☐	Speaking?	☒	☐
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Senate Health and Human Services Committee
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Date: 3/29/2018 **Time:** 1:45 p.m.

HB 1741 AN ACT relative to ta definition of "contracted copayment" for the purposes of the managed care laws.

Name/Representing ***(please print neatly)***

Name/Representing	Support	Oppose	Speaking?	Yes	No
Tyler Brannen NH Insurance Dept	☑	☐	Speaking?	☑	☐
Barbara Biggie, Hills 23	☒	☐	Speaking?	☐	☒
Cindy Rosenwald Hills 30 - To introduce bill	☑	☐	Speaking?	☑	☐
Holly Stevens New Futures	☑	☐	Speaking?	☑	☐
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Name/Representing	Support	Oppose	Speaking?	Yes	No
Elizabeth Sargent, NH Pharmacists	☐	☒	Speaking?	☐	☒
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	☐	☐	Speaking?	☐	☐

Testimony

March 29, 2018

The Honorable Jeb Bradley, Chairman
Senate Health and Human Services Committee
LOB Room 101
33 North State Street
Concord, NH 03301

Re: New Futures' support for HB 1741

Dear Chairman Bradley and Members of the Committee:

New Futures is a nonpartisan, nonprofit organization that advocates, educates and collaborates to improve the health and wellness of all New Hampshire residents through policy change. New Futures supports HB 1741, relative to a definition of "contracted copayment" for purposes of the managed care law.

HB 1741, as amended, mirrors language already in New Hampshire Insurance Department rules (Ins 2704.02(d)). Having this language in statue would serve two purposes, (1) clarifying New Hampshire law with respect to the amount pharmacies charge for a prescription covered by insurance, and (2) providing statutory authority to the Insurance Department rule. During the public hearing on HB 1741 in the House Commerce and Consumer Affairs committee, there was testimony that only having this definition of "contracted copayment" in rule, but not in statute, was confusing to entities trying to abide by both the rules and the Managed Care law because the language in statue, while not in opposition, was not identical.

The policy behind HB 1741 and Ins 2704.02(d) is similar to that of the "gag clause" bills that this committee heard in the last few weeks; that consumers should be charged the lowest price when they go to the pharmacy regardless of their insurance status. This committee supported that policy regarding the "gag clause" bills, and New Futures hopes that the committee continues to support the same policy here, by recommending HB 1741 Ought to Pass.

Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

Holly A. Stevens, Esq.
Health Policy Coordinator

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The NeedyMeds VOICE

Helping You Make Sense of Health Care

« Affordable Care Act Trumped

National Breast Cancer Awareness Month & You »

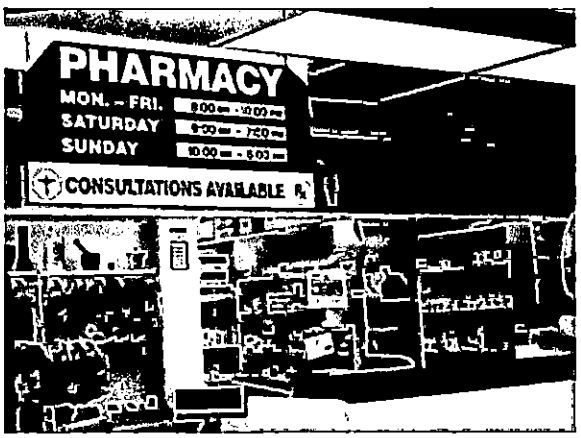
What is a Clawback & How it's Affecting Your Prescription Copays

Drug Discount Card, Health, Healthcare Reform, Prescription Drugs

October 18, 2017

by Evan O'Connor

Americans may be surprised to learn that they could be paying more for their medications with their insurance copay instead of the cash price available to those without insurance. A study published last week found that Pharmacy Benefit Managers (PBMs) undermine claims that negotiated "rebates" with pharmaceutical companies are passed on to consumers. This follows a federal lawsuit filed over the summer after a California woman paid a $164 copay on a medication that can be purchased for $92 from the same pharmacy by anyone not using insurance. This practice is known as "clawback" and is instituted by PBMs who then receive the excess payments from the pharmacy.



Pharmacy Benefit Managers are being found to frequently charge a copay that exceeds a medication's cash price for generic drugs. Moreover, pharmacists around the country are not allowed to disclose the price discrepancy to patients due to "gag clauses" in their contracts that forbid them from discussing the clawback practices with consumers or offering lower-cost options for those unknowingly opting for a higher price. The National Community of Pharmacists Association, representing 22,000 independent pharmacies, say the trend can be tracked to high-deductible health plans where more of the burden of cost is shifted to the consumer. One Texas pharmacist says his patients have lost more than $7,000 in 2017 that are collected from patients and given to PBMs as profit. Texas became one of eleven states that outlaw clawbacks or gag clauses in September.

Pharmacists reportedly feel complicit in price gouging, and are often not allowed to offer information that could ve patients money. However, if a customer specifically asks for a lower price option they are allowed to provide it. With this in mind, it is always a good idea to ask your pharmacist, "Is that the best price for my medication?" to ensure you are not becoming a victim of clawback.

No one should have to worry about being taken advantage of or sacrificing their health due to a lack in finances. For those without any prescription coverage or those who choose not to use it to avoid clawback, the NeedyMeds Drug Discount Card saves 0-80% on the cash price for prescribed medication. A plastic card can be ordered online or requested by calling our toll-free helpline at 800-503-6897, or a printable version can be found on our website as well as a smartphone app on Apple and Android devices. For those still unable to afford their medications, NeedyMeds has an extensive database of Patient Assistance Programs (PAPs) that provide prescriptions for low or no cost. NeedyMeds also has information on Coupons and Rebates that can help lower the cost of necessary medications

Submitted by Fran Wendelboe on behalf of the NHIPA

Many overpay for prescriptions when co-pays are higher than drug prices: Study

- **BY BRIANA MONTALVO**
  Mar 15, 2018, 6:16 PM ET

People are often overpaying for prescription drugs when they are charged the insurance copay at the pharmacy, according to a new study from the University of Southern California. In many cases, the researchers found a significant price difference between the patient co-pay amount and the rate insurers paid for the drugs -- and the pharmacies are allowed to keep the difference under a policy called a "claw back."

"In 2013, almost one quarter of filled pharmacy prescriptions [23 percent] involved a patient copayment that exceeded the average reimbursement paid by the insurer by more than $2.00," USC's director of health policy and economics, Geoffrey Joyce, and his research team said in the study.

On average, customers overpaid a total of $7.69 for prescription drugs, they said.

The USC study analyzed copayment data information from 25 percent of claims on 9.5 million prescriptions in 2013.

Researchers compared this information to data from the National Average Retail Price (NARP), which contained drug prices paid by insurers, in addition to data from Optum Clinformatics, an organization that sells anonymous claims data.

Consumers overpaid by $135 million during a six-month period, they said. Generic prescription overpayments were more common, on average $7.32, but the less-common brand-name drug overpayments averaged $13.46.

The study notes that it is limited by using 2013 pricing, which could be different than current prices. The researchers also did not know the amount of reimbursements paid on each prescription, so their estimates of overpayments, based on NARP information, could be too high or too low in some cases.

Pharmacy benefit management companies, such as CVS Caremark or OptumRx, enter into contracts with pharmacies to collect patient copays, even if the copay amount exceeds the original cost of the drug.
Claw backs allow pharmacies to keep the full customer copay amounts, even if its more than the reimbursement. For example, if a patient's copay is $10 and the PBM reimburses the pharmacy for the cost of the generic drug plus a dispensing fee for roughly $6, the PBM pockets the extra $4 paid by the patient.

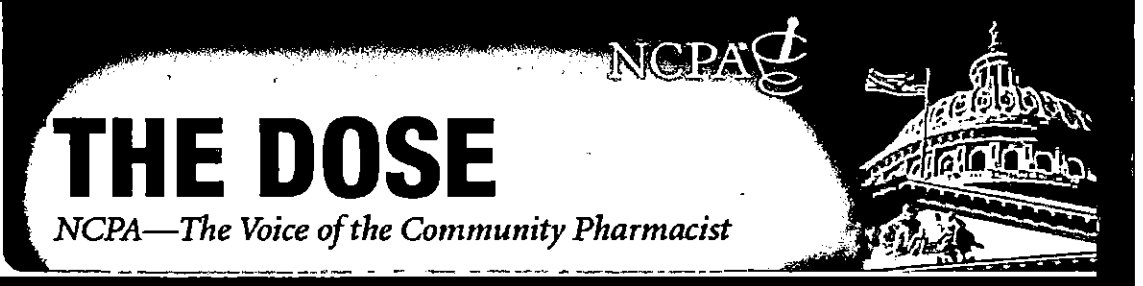
Claw backs are legal, with the exception of federal programs, such as Medicare Part D, which says that patients pay the true cost of the generic drug.
Some pharmacies are under a "gag clause," which says they are not allowed to tell customers about the price difference and the fact that they would pay less for their prescriptions by not using their insurance.

Gag clauses have recently been challenged in courts and some states do not allow them.

Joyce encourages patients to shop around for the best price on prescriptions to avoid price gouging and to ask pharmacists if paying cash would be cheaper than using insurance.

Fran Wendelboe
NHIPA

Submitted by Fran Wendelboe NHIPA



NCPA's Blog - The Dose

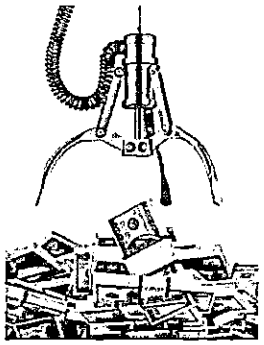
The Great Big Prescription Drug Clawback

by John Norton | May 20, 2016

Recent *Dose* posts

Pharmacy benefit manager (PBM) corporations capitalize on the lack of governmental oversight to rake in profits, often at the expense of patients, health plan sponsors and pharmacies. One of the drug middlemen's most dubious practices are prescription drug "clawbacks," which New Orleans WVUE Fox News 8's investigative team of Lee Zurik and Tom Wright zeroed in on in a recent series.

The first segment, "Zurik: Copay or you-pay? Prescription drug clawbacks draw fire," exposes how patient copayments are now being manipulated to secure additional corporate profits at the expense of the consumer. Fox News 8 stumbled across a gross distortion of this practice in which the patient seems to be the only party making a financial contribution instead of sharing a percentage of the costs:



For example, doctors can prescribe the drug Sprintec to treat severe acne or for contraception. One document given to FOX 8 spells out how the clawback works. It shows the cost of the drug, including tax and pharmacist's fee, is $11.65...But that same document reveals the pharmacy had to charge the customer a copay of $50 for the Sprintec: The remaining $38.35 was sent back to the insurance company's pharmacy benefit manager.

In these instances, instead of a traditional copay, patients are unknowingly footing the entire bill for their prescriptions, or, as it is cleverly described in the piece, a "you-pay," where the PBM corporations pay nothing and make a sizable profit off of the patient. Pharmacies are powerless to stop these shenanigans from happening:

"Whatever the insurance company/PBM tells us to charge as a copay, we have to charge the patient for that," our source says. "We cannot discount it, we cannot forgive it. Our computer calls their computer. They tell us charge the patient this much money."

What is especially frustrating for pharmacists are the gag clauses in their contracts with PBM corporations that necessitate these clinically-trained medication experts to grin and bear it. Not surprisingly, the story questions the legality of this practice on multiple fronts, including whether it runs afoul of the Affordable Care Act (or Obamacare, as it is also known).

The second segment in the series, "Zurik: United/Optum defends prescription 'overpayment program'," attempts to get satisfactory answers from PBM corporations as to why patients appear to be exploited to enrich PBM corporations. The main target is Humana and their PBM corporate subsidiary OptumRx, which was responsible for many of the prescription drug clawbacks in the previously-aired segment. They responded by admitting to their "overpayment" practice with a boilerplate statement:

From: Stearns, Matthew H
Sent: Thursday, May 05, 2016 8:24 PM
To: Zurik, Lee
Subject: From Optum

"OptumRx's Pharmacy Reimbursement Overpayment program helps ensure the millions of people we serve have affordable access to the drugs they need by recouping overpayments pharmacies receive for prescription drugs. Those recouped overpayments are returned to the health plan to reduce overall health plan costs."

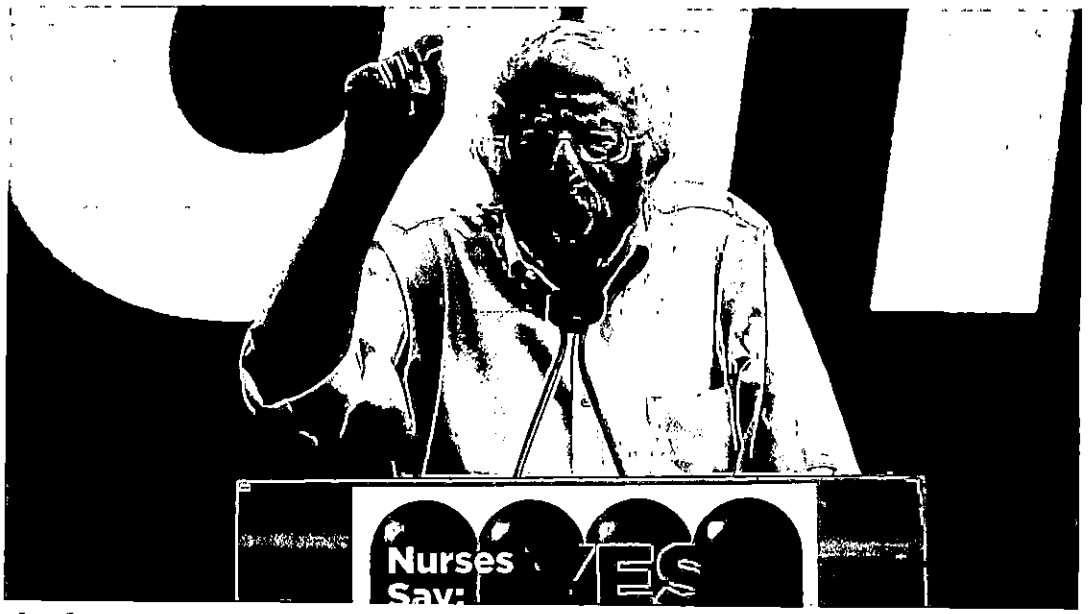
There were follow-up emails with Fox News 8's investigative team that include questionable assertions from OptumRx that *"A consumer doesn't pay any more with this program than they would without it." and "To be clear: this program ensures the customer pays the lowest amount possible within their plan."*

Those declarations run counter to the documentation provided by pharmacists, who had to remain anonymous in the piece to avoid being retaliated against by the PBM corporations. Time after time, the patient was on the hook for a copay that exceeded the actual cost of the drug.

All too often, pharmacists' complaints about PBM corporations fail to move health plan sponsors or elected officials to take action. However, this is not another example of pharmacies being squeezed to the financial breaking point because of an unaccountable system. It's about patients being misled to help pad the bottom lines of PBM corporations. That cannot be allowed to continue. Pharmacists and patients need to amplify their concerns about questionable PBM practices every chance they get. Start by sharing the links that NCPA has provided via our social media channels; you can find the first, second, and third stories on our Facebook page, Twitter account, and Google+ page.

The 'clawback': Another hidden scam driving up your prescription prices

By MICHAEL HILTZIK
AUG 09, 2017 | 2:25 PM



The drug price problem remains unsolved: Former presidential candidate Bernie Sanders speaks in support of a California drug-price initiative before last November's election. The initiative failed. (Rich Pedroncelli / AP)

In July, a Marin County woman named Megan Schultz went to her local CVS drugstore to fill a prescription for a generic drug. She forked over $164.68, the co-pay designated by her health plan. Schultz feels she got ripped off. What she didn't know, according to a federal lawsuit she filed this week, was that she could have acquired the drug at the same store for only $92, if she had chosen to pay cash instead of using her pharmacy insurance benefit. But her pharmacy didn't clue her in.

"CVS remained silent and took her money," her lawsuit states, "knowing full well that no reasonable consumer would make such a choice."

PBM corporations are inserting costs into the system on virtually everyone in order to fuel their profits and reward shareholders.

B. DOUGLAS HOEY, SPOKESMAN FOR COMMUNITY PHARMACIE

Schultz alleges that she's the victim of a practice known as a "clawback," instituted in her case by CVS and OptumRX, a pharmacy benefit manager, or PBM, that functions as a middleman between her insurance plan and pharmacies. PBMs negotiate drug prices with drug companies on behalf of

insurance companies and other payers, then communicate those prices to druggists at the retail level. The druggists are expected to charge consumers whatever portion their insurers designate as a co-pay.

Most insured consumers assume their co-pay is a discount from the full drug price. But that's not always so. What happens if the negotiated price is less than the co-pay? Much of that, the lawsuit alleges, is passed by the drugstore back to the PBM — as a "clawback."

According to the arrangement in effect for Schultz's prescription, the lawsuit says, "the consumer pays the amount negotiated by the PBM and CVS even if that amount exceeds the price of the drug without insurance." The drugstore, the lawsuit asserts, "remits the excess payments back to the PBMs."

The allegations point to an obscure aspect of America's drug distribution system that hampers efforts to force prescription prices down: the role of PBMs.

As middlemen occupying the space between drugmakers and insurers, and between insurers and retail drugstores, PBMs "are sitting at the center of a big black box," drug marketing consultant Linda Cahn told me in June, in connection with my earlier reporting on PBMs. "They're the only ones who have knowledge of all the moving pieces."

PBMs originated as intermediaries to help process claims for health plans and allow insurers to combine their customer bases for greater leverage in negotiations with drug manufacturers.

But over time, they became just another special interest. Today the firms extract billions of dollars in price concessions and obscure fees from drug companies eager to remain in their good graces, as well as rebates and other fees from drug retailers. "PBM corporations are inserting costs into the system on virtually everyone in order to fuel their profits and reward shareholders," B. Douglas Hoey, head of the National Community Pharmacists Assn., which represents independent drugstores, complained last year.

The extent of clawbacks is unclear, in part because of the confidentiality of contracts tying insurers, drug companies, retailers and PBMs together. The biggest PBM, Express-Scripts, says it doesn't engage in clawbacks, which it calls an "anti-patient practice."

Other firms in the system say co-pays are set by insurance companies, not PBMs or drugstores. CVS says the Schultz lawsuit is "without merit." It says prescription co-pays "are determined by a patient's prescription coverage plan, not by the pharmacy. ... CVS has not overcharged patients for prescription co-pays." The company says CVS Caremark, its PBM subsidiary, doesn't engage in clawbacks.

OptumRX, which is not named as a defendant in the Schultz lawsuit, says it does not "require pharmacies to charge the member the copay amount even when the cash price is lower. Pharmacists should never charge our members more than the cash price, which is a price set by the pharmacy and what an individual without insurance would pay the pharmacy for a prescription."

The company says its contractual policies with retail drugstores "are designed to ensure pharmacists always charge the lowest amount outlined in a member's health plan when filling prescriptions."

But that leaves unsaid whether pharmacists feel empowered to volunteer information to customers that a cash price would be cheaper. Some 59% of independent pharmacists answering a survey by the National Community Pharmacists Assn. said they were subject to "gag clauses" prohibiting them from volunteering such information. "In other words," the organization said, "the patient has to affirmatively ask about pricing."

Even if the gag rule isn't explicit, implicit warnings about circumventing co-pays abound. An OptumRX "provider manual" filed with Schultz's lawsuit compels pharmacies in the OptumRX network to charge customers using their insurance the required co-pay "and only this amount." Waiving the co-pay is "strictly prohibited."

And UnitedHealth Group, the parent of OptumRX, said in May in a motion to dismiss a clawback lawsuit filed in Minneapolis federal court that the insurance enrollees who brought the case "are entitled to pay the member contribution amounts set forth in their plans — nothing more and nothing less."

Just because "there might be some *other* lower price [the customers] might wish to pay" doesn't give them grounds for a lawsuit, the company argued.

Some state legislatures plainly feel that customers are vulnerable to abuse via PBM contracts with drugstores. Anti-clawback laws have been enacted in Louisiana, Georgia, North Dakota and Maine — and most recently, Connecticut passed a law barring insurers or PBMs from prohibiting or penalizing pharmacists from disclosing such information to customers as "less expensive methods of purchasing the prescription, including paying the cash price." Such action by a Legislature in a state that's home to several major insurers is a clear indication that the problem exists.

Keep up to date with Michael Hiltzik. Follow @hiltzikm on Twitter, see his Facebook page, or email michael.hiltzik@latimes.com.

This article submitted by Fran Wendelboe NHIPA