

What You Need to Know About the TX Clawback Ban

TPBC's SB 1076 was signed into law June 12, 2017, barring Texas health plans and the PBMs that represent them from profiteering on high patient prescription co-payments at patient and pharmacy expense. **Although the bill took effect on Sept. 1, 2017, its provisions apply only to PBM provider contracts that are issued, amended or renewed on or after Jan. 1, 2018.**

The law prohibits a health plan or PBM from charging a co-payment for a covered medication that exceeds the lesser of: the standard co-payment, the allowable claim amount for the drug or the pharmacy's cash price. That means a clawback cannot legally occur in a commercial or Medicaid prescription drug plan in Texas if the plan issued a new provider contract on or after Jan. 1, sends you an addendum or revision to that contract by fax, email or mail, or amends or reissues the plan provider manual, which is considered an extension of the provider contract.



Sen. Charles Schwertner

The hard-fought legislation — vigorously opposed by the PBM lobby — was sponsored by Senate Health & Human Services Chairman Charles Schwertner, a longtime TPBC ally. The bill had strong bipartisan backing and was sponsored in the House by Reps. Greg Bonnen, J.D. Sheffield, Rodney Anderson and Tom Oliverson. It was supported by all the state's pharmacy groups, Texas Medical Association, AARP and several other organizations.

TPBC Executive Director Michael Wright said the prohibition will collectively save Texas patients millions of dollars each year in excessive copayments while freeing pharmacies from being forced participants in the practice.

A pharmacist survey conducted by the National Community Pharmacists Association found that 83% of surveyed pharmacists said they experience clawbacks 10 or more times a month. One American Pharmacies/TPBC pharmacy owner identified more than \$7,000 in clawbacks imposed at his pharmacy through the first nine months of 2017.

Texas pharmacies have been barred under many PBM contracts from offering to sell a drug at a lower cash price and have risked expulsion from some PBMs' networks for telling a patient that a copayment exceeds a drug's cash price. **However, Section 843.363 of the Texas Insurance Code protects the right of pharmacists and other Texas providers to communicate in good faith with their patients about the terms and conditions of their health coverage. The Insurance Code also prohibits health plans or PBMs from penalizing, refusing to pay or terminating the network participation of a pharmacy for having such discussions with a patient.**

Monitoring the Law & Reporting Violations

Wright said that although he expects clawbacks to drop significantly after the start of 2018, pharmacists must be vigilant in monitoring claims to ensure PBM compliance. **If you feel you have experienced a clawback in a commercial or Medicaid plan in Texas after January 1, please contact TPBC so we can investigate. You can fax your documentation to TPBC at 512-992-1391 or email a description and claim documentation to mwright@txrxouncil.org.**