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Empire Justice Center ☞ Make the Road New York ☞ Medicare Rights Center  
Metro New York Health Care for All Campaign ☞ New Yorkers for Accessible Health Coverage  
New York Immigration Coalition ☞ Project CHARGE  
Public Policy and Education Fund of New York/Citizen Action of New York  
Raising Women's Voices-New York ☞ Schuyler Center for Analysis and Advocacy  
Small Business Majority ☞ Young Invincibles

## **Memo in Support of S. 6940 & A. 8781, Which Would Prohibit Pharmacy Benefit Managers (PBMs) from Imposing “Gag Clauses” that Bar Pharmacies from Disclosing the Costs of Prescription Medicine to Consumers**

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Health Care for All New York (“HCFANY”) is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected.

**HCFANY strongly supports S.6940 and A.8781, which would prohibit Pharmacy Benefit Managers (PBMs) from imposing “gag clauses” on pharmacists to prevent them from disclosing to consumers the cost of prescription drugs, the availability of alternative medications, and alternate means of purchasing the medications. The bill would also prohibit PBMs from collecting copayments in excess of the actual cost of the drug.**

Consumers need fair and accurate information at the pharmacy so they can get their drugs at most affordable price. However, contracts between pharmacies and insurers or pharmacy benefit managers sometimes contain so-called “gag clauses” that forbid or discourage pharmacists from letting customers know that they could get a lower retail price, by paying without their insurance. Several states—including Arkansas, Connecticut, Georgia, Maine, Minnesota, Nevada, North Carolina, and North Dakota—have passed laws banning these types of gag clauses, according to the National Community Pharmacists Association.

In addition, some PBMs direct pharmacies to collect copayments in excess of the actual cost of the drug, which is called a “clawback.” A 2016 survey by the 22,000-member National Community Pharmacists Association (NCPA) revealed that 83% of pharmacists witnessed clawbacks at least 10 times per month.<sup>1</sup> S.6940 and A.8781 would ban PBM gag clauses and clawbacks in New York state, to ensure that consumers can get accurate information from pharmacists regarding the affordability of prescription drugs and ensure that PBMs do not impose copayments that exceed the cost the pharmacy paid for the drug.

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<sup>1</sup> Probasco, J. “Why Pharmacists Can’t Warn You About Overpriced Drugs,” Investopedia, 3/21/17, available at: <https://www.investopedia.com/insights/why-pharmacists-cant-warn-you-about-overpriced-drugs/>