



In Opposition to Latest Proposed Amendment in Vermont House Bill 353

April 30, 2022

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes the latest proposed amendment to H.353 which would still require manufacturers to extend 340B pricing to all contract pharmacies in Vermont. Specifically, the latest proposed amendment does not resolve the same constitutional concerns as a similar law being litigated in Arkansas, and there is currently litigation across the country about manufacturers' obligations under the federal 340B law with respect to contract pharmacies. Given this ongoing litigation, we continue to view the latest proposed amendment to H.353 as premature, and Vermont should allow the courts time to resolve this issue before considering any legislative action.

PhRMA represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested more than \$1 trillion in the search for new treatments and cures, including an estimated \$91.1 billion in 2020 alone.

As our nation continues to fight a global pandemic, the need for access to affordable and quality health care feels even more pressing. This is especially true for vulnerable patients who have been disproportionately impacted by COVID-19. It is important for policymakers to ensure the 340B program truly benefits the safety net that serves our underserved communities in Vermont and throughout the country. Unfortunately, nearly three decades after it was originally created, the 340B program has deviated from its original mission to the benefit of entities such as hospitals, for-profit pharmacies, and other middlemen, leaving behind the patients that the program is meant to serve and threatening the sustainability of the program for true safety-net entities that provide much needed care to vulnerable communities.

The latest proposed amendment continues to distort the second largest federal prescription drug program by forcing manufacturers to extend 340B pricing to contract pharmacies, which are not mentioned in the federal 340B statute.

As drafted, the latest proposed amendment provides that manufacturers cannot deny shipment to contract pharmacies, which interferes with the ability of manufacturers to place reasonable conditions on the shipment of 340B drugs to contract pharmacies, consistent with what federal law allows. In doing so, the proposed amendment is still attempting to add a state requirement to the federal statute, which raises constitutional issues.

The contract pharmacy policy is currently being litigated in multiple lawsuits across the country.

As mentioned in our previous statement, because there is ongoing litigation across the country about the contract pharmacy policy, Vermont should allow the federal courts to address and resolve the issue before considering any legislative action. If the courts hold that the federal 340B law does not authorize a requirement that manufacturers

ship drugs to contract pharmacies, requirements such as those included in the proposed amendment could be preempted. In addition, the proposed amendment is similar to Arkansas Act 1103, an Arkansas law that is currently the subject of litigation in the United States District Court for the Eastern District of Arkansas.

If legislators truly want to advocate for meaningful improvements to the 340B program, they should ensure that patients are benefiting from the tens of billions of dollars in discounts that manufacturers provide to program participants. Covered entities and their contract pharmacies must be held accountable for how they use 340B discounts through increased government oversight and transparency requirements to make the 340B program sustainable in the long term. **Mandating that manufacturers ship 340B drugs at 340B prices to contract pharmacies benefits contract pharmacies and covered entities, not patients.**

For these reasons, PhRMA respectfully urges legislators to oppose the latest proposed amendment to H. 353.