



In Opposition to Proposed Amendment in Vermont House Bill 353

April 19, 2022

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) respectfully opposes the proposed amendment to H.353 which would require manufacturers to extend 340B pricing to all contract pharmacies in Vermont. PhRMA opposes the proposed amendment because it further distorts a federal policy that has allowed for-profit pharmacies to divert savings intended for safety net care and for lowering drug costs for low income and vulnerable individuals. Furthermore, the proposed amendment raises 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, the proposed amendment to H.353 is 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 proposed amendment further distorts 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.

In 1992, when the 340B program was established by federal law (42 U.S.C § 256b), it was meant to help safety-net entities access affordable drugs to treat their low-income and uninsured patients. Due to weak oversight, the 340B program has expanded in a way that has allowed covered entities to divert and benefit the entities' bottom-line money intended to help patients get better care and afford their medicines use the program. As a result, 340B has changed and grown dramatically since its establishment, while charity care at 340B hospitals has declined below national averages.¹

¹ AIR340B Coalition, "Left Behind: An Analysis of Charity Care Provided by Hospitals Enrolled in the 340B Discount Program," November 2019, https://340breform.org/wp-content/uploads/2019/11/AIR340_LeftBehind-v6.pdf.

There is little evidence to suggest that patients have benefited from contract pharmacy growth. Many contract pharmacies may often charge a patient a drug's full retail price because they are not required to share any of the discount with those in need.² Big-box retailers such as Walgreens, CVS Health and Walmart are major participants in the 340B program through contract pharmacy arrangements. In fact, the five largest for-profit pharmacy chains comprise 60 percent of 340B contract pharmacies, but only 35 percent of all pharmacies nationwide.³ 340B covered entities and their contract pharmacies generated an estimated \$13 billion in gross profits on 340B purchased medicines in 2018, which represents more than 25% of pharmacies' and providers' total profits from dispensing or administering brand medicines.⁴

The term "contract pharmacy" does not appear anywhere in the federal 340B statute and was created by the Health Resources and Services Administration (HRSA) solely through guidance, which does not have the force and effect of law. The proposed amendment would require manufacturers to ship drugs to all contract pharmacies for Vermont 340B providers, and by extension, offer 340B pricing at these locations, essentially attempting to add a state requirement to the federal statute. The bill would impose a significant financial obligation on manufacturers, which could disincentivize participation in the 340B program and impact the Medicaid program.

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

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 proposed amendment to H. 353.

2 Conti, Rena M., and Peter B. Bach. "Cost consequences of the 340B drug discount program." *Jama* 309.19 (2013): 1995-1996.

3 Government Accountability Office, "Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement," GAO-18-480, June 2018.

4 Berkeley Research Group. For-Profit Pharmacy Participation in the 340B Program. October 2020.