

1 H.266

2 Introduced by Representative Black of Essex

3 Referred to Committee on

4 Date:

5 Subject: Health; prescription drugs; 340B drug pricing program; 340B covered  
6 entities; 340B contract pharmacies

7 Statement of purpose of bill as introduced: This bill proposes to protect 340B  
8 covered entities and 340B contract pharmacies, and their patients, from  
9 discrimination or interference by drug manufacturers and by health insurers,  
10 pharmacy benefit managers, and other payors.

11 An act relating to protections for 340B covered entities and 340B contract  
12 pharmacies

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 18 V.S.A. chapter 91, subchapter 6 is added to read:

15 Subchapter 6. 340B Drug Pricing Program

16 § 4681. DEFINITIONS

17 As used in this subchapter:

18 (1) “340B contract pharmacy” means a pharmacy that has a contract  
19 with a 340B covered entity to receive and dispense 340B drugs to the 340B  
20 covered entity’s patients on the covered entity’s behalf.

1           (2) “340B covered entity” means an entity participating or authorized to  
2           participate in the federal 340B drug pricing program, as described in 42 U.S.C.  
3           § 256b. The term includes a 340B covered entity’s pharmacy.

4           (3) “340B drug” means a drug that has been subject to any offer for  
5           reduced prices by a manufacturer pursuant to 42 U.S.C. § 256b and is  
6           purchased by a 340B covered entity.

7           (4) “Discount” means a reduction in the amount a 340B covered entity  
8           is charged for a 340B drug at the time of purchase.

9           (5) “Health insurer” has the same meaning as in section 9402 of this  
10          title.

11          (6) “Manufacturer” has the same meaning as in 26 V.S.A. § 2022.

12          (7) “Pharmacy” means a place licensed by the Vermont Board of  
13          Pharmacy at which drugs, chemicals, medicines, prescriptions, and poisons are  
14          compounded, dispensed, or sold at retail.

15          (8) “Pharmacy benefit manager” has the same meaning as in section  
16          3602 of this title.

17          (9) “Rebate” means a discount in which the terms are fixed and are  
18          disclosed in writing to a 340B covered entity at the time of the initial purchase  
19          of the 340B drug to which the discount applies, but which discount is not  
20          applied at the time of purchase.

1        § 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

2            (a) A manufacturer or its agent shall not deny, restrict, prohibit, or  
3            otherwise interfere with, directly or indirectly, the acquisition of a 340B drug  
4            by or delivery of a 340B drug to a 340B contract pharmacy on behalf of a  
5            340B covered entity unless receipt by the 340B contract pharmacy is  
6            prohibited by the U.S. Department of Health and Human Services.

7            (b) A manufacturer or its agent shall not directly or indirectly require a  
8            340B covered entity to submit any claims, utilization, encounter, purchase, or  
9            other data as a condition for allowing the acquisition of a 340B drug by or  
10           delivery of a 340B drug to a 340B contract pharmacy unless the claims or  
11           utilization data-sharing is required by the U.S. Department of Health and  
12           Human Services.

13           (c) A manufacturer or its agent shall not interfere with the ability of a  
14           pharmacy contracted with a 340B covered entity to dispense 340B drugs to  
15           eligible patients of the 340B covered entity.

16           (d) A manufacturer or its agent shall offer or otherwise make available  
17           340B drug pricing to a 340B covered entity or 340B contract pharmacy in the  
18           form of a discount at the time of purchase and shall not offer or otherwise  
19           make available 340B drug pricing in the form of a rebate.

1     § 4683. REIMBURSEMENT OF 340B ENTITIES

2           (a) With respect to reimbursement to a 340B covered entity or 340B  
3     contract pharmacy for 340B drugs, a health insurer, pharmacy benefit manager,  
4     or other third-party payor, or is agent, shall not do any of the following:

5           (1) Reimburse a 340B covered entity or 340B contract pharmacy for a  
6     340B drug at a rate lower than that paid for the same drug to pharmacies that  
7     are not 340B covered entities or 340B contract pharmacies or provide lower  
8     reimbursement for a claim on the basis that the claim is for a 340B drug.

9           (2) Impose any terms or conditions on any 340B covered entity or 340B  
10    contract pharmacy that differ from the terms or conditions applied to non-340B  
11    covered entities or non-340B contract pharmacies, including any of the  
12    following:

13           (A) fees, charges, clawbacks, or other adjustments or assessments,  
14    including placing any additional requirements, restrictions, or burdens on the  
15    340B covered entity or 340B contract pharmacy that results in administrative  
16    costs or fees to the 340B covered entity or 340B contract pharmacy that are not  
17    placed on other entities, including affiliate pharmacies of the health insurer,  
18    pharmacy benefit manager, or other third-party payor;

19           (B) dispensing fees that are less than the dispensing fees for non-  
20    340B covered entities or non-340B contract pharmacies;

1           (C) restrictions or requirements regarding participation in standard or  
2 preferred pharmacy networks;

3           (D) requirements relating to the frequency or scope of audits of  
4 inventory management systems;

5           (E) requirements that a claim for a drug include any identification,  
6 billing modifier, attestation, or other indication that a drug is a 340B drug in  
7 order to be processed or submitted, unless the indication is required by the  
8 Centers for Medicare and Medicaid Services or the Agency of Human Services  
9 for the administration of the Vermont Medicaid program; or

10          (F) any other restrictions, conditions, practices, or policies that are  
11 not imposed on non-340B entities.

12          (3) Require a 340B covered entity or 340B contract pharmacy to  
13 reverse, resubmit, or clarify a claim after the initial adjudication unless these  
14 actions are in the normal course of pharmacy business and not related to 340B  
15 drug pricing.

16          (4)(A) Discriminate against a 340B covered entity or 340B contract  
17 pharmacy in a manner that prevents or interferes with any patient's choice to  
18 receive drugs from the 340B covered entity or 340B contract pharmacy,  
19 including for the administration of the drugs.

20          (B) For purposes of this subdivision (4), it is considered a  
21 discriminatory practice that prevents or interferes with a patient's choice to

1 receive drugs from a 340B covered entity or 340B contract pharmacy if a  
2 health insurer, pharmacy benefit manager, or other third-party payor places any  
3 additional requirements, restrictions, or unnecessary burdens on the 340B  
4 covered entity or 340B contract pharmacy that result in administrative costs or  
5 fees to the 340B covered entity or 340B contract pharmacy, including  
6 requiring a claim for a drug to include any identification, billing modifier,  
7 attestation, or other indication that a drug is a 340B drug in order to be  
8 processed, submitted, or resubmitted unless the indication is required by the  
9 Centers for Medicare and Medicaid Services or the Agency of Human Services  
10 for the administration of the Vermont Medicaid program.

11 (5) Include any other provision in a contract between a health insurer,  
12 pharmacy benefit manager, or other third-party payor and a 340B covered  
13 entity or 340B contract pharmacy that discriminates against the 340B covered  
14 entity or 340B contract pharmacy or interferes with a patient's choice to  
15 receive a prescription drug from a 340B covered entity or 340B contract  
16 pharmacy, including the administration of the drug, in person or through direct  
17 delivery, mail, or other form of shipment or creation of a restriction or  
18 additional charge on a patient who chooses to receive drugs from a 340B  
19 covered entity or 340B contract pharmacy.

1           (6) Require or compel the 340B covered entity or 340B contract  
2           pharmacy to submit ingredient costs or pricing data pertaining to 340B drugs  
3           to any health insurer, pharmacy benefit manager, or third-party payor.

4           (7) Exclude any 340B covered entity or 340B contract pharmacy from  
5           the health insurer's, pharmacy benefit manager's, or third-party payor network  
6           on the basis that the 340B covered entity or 340B contract pharmacy dispenses  
7           340B drugs or refusing to contract with a 340B covered entity or 340B contract  
8           pharmacy for reasons other than those that apply equally to non-340B entities.

9           § 4684. MEDICAID UNAFFECTED

10           Nothing in this subchapter shall be deemed to apply to the Vermont  
11           Medicaid program as payor.

12           § 4685. VIOLATIONS

13           (a) A 340B covered entity, 340B contract pharmacy, or other person  
14           injured by a manufacturer's, health insurer's, pharmacy benefit manager's,  
15           other third-party payor's, or agent's violation of this subchapter may bring an  
16           action in Superior Court for injunctive relief, compensatory and punitive  
17           damages, costs and reasonable attorney's fees, and other appropriate relief.

18           (b) A violation occurs each time a prohibited act is committed.

19           (1) For purposes of section 4682 of this subchapter, a prohibited act is  
20           defined as each package of 340B drugs that is subject to a discriminatory  
21           action by a manufacturer or its agent.





1 ~~program, a pharmacy benefit manager or other third party that makes payment~~  
2 ~~for the drugs shall not discriminate against a 340B covered entity in a manner~~  
3 ~~that prevents or interferes with the patient's choice to receive the drugs from~~  
4 ~~the 340B covered entity.~~

5 ~~(3) As used in this section, "other third party" does not include Vermont~~  
6 ~~Medicaid. [Repealed.]~~

7 ~~(h) A pharmacy benefit manager shall not:~~

8 ~~(1) require a claim for a drug to include a modifier or supplemental~~  
9 ~~transmission, or both, to indicate that the drug is a 340B drug unless the claim~~  
10 ~~is for payment, directly or indirectly, by Medicaid; or~~

11 ~~(2) restrict access to a pharmacy network or adjust reimbursement rates~~  
12 ~~based on a pharmacy's participation in a 340B contract pharmacy arrangement.~~

13 ~~[Repealed.]~~

14 Sec. 3. EFFECTIVE DATE

15 This act shall take effect on passage.