

H.266

Introduced by Representative Black of Essex

Referred to Committee on

Date:

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

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

~~An act relating to regulations for 340B covered entities and 340B contract  
pharmacies~~

*An act relating to the 340B prescription drug pricing program*

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

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

Subchapter 6. 340B Drug Pricing Program

§ 4681. DEFINITIONS

~~As used in this subchapter,~~

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

4 (2) “340B covered entity” means an entity participating or authorized to  
5 participate in the federal 340B drug pricing program, as described in 42 U.S.C.  
6 § 256b. The term includes a 340B covered entity’s pharmacy.

7 (3) “340B drug” means a drug that has been subject to any offer for  
8 reduced prices by a manufacturer pursuant to 42 U.S.C. § 256b and is  
9 purchased by a 340B covered entity.

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

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

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

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

18 (8) “Pharmacy benefit manager” has the same meaning as in section  
19 3602 of this title.

20 (9) “Rebate” means a discount in which the terms are fixed and are  
21 disclosed in writing to a 340B covered entity at the time of the initial purchase

1 ~~of the 340B drug to which the discount applies, but which discount is not~~  
2 applied at the time of purchase.

3 § 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

4 (a) A manufacturer or its agent shall not deny, restrict, prohibit, or  
5 otherwise interfere with, directly or indirectly, the acquisition of a 340B drug  
6 by or delivery of a 340B drug to a 340B contract pharmacy on behalf of a  
7 340B covered entity unless receipt by the 340B contract pharmacy is  
8 prohibited by the U.S. Department of Health and Human Services.

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

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

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

§ 4682. REIMBURSEMENT OF 340B ENTITIES

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

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

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

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

(B) dispensing fees that are less than the dispensing fees for non-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  
8 contract pharmacy for reasons other than those that apply equally to non-340B  
9 entities.

10 § 4684. MEDICAID UNAFFECTED

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

13 § 4685. VIOLATIONS

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

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

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

4 (2) For purposes of section 4683 of this chapter, a prohibited act is  
5 defined as each day that a health insurer, pharmacy benefit manager, third-  
6 party payor, or agent engages in a discriminatory action toward a single  
7 covered entity.

8 § 4686. NO CONFLICT WITH FEDERAL LAW

9 Nothing in this subchapter shall be construed or applied to conflict with or  
10 to be less restrictive than federal law for a person regulated by this subchapter.

11 Sec. 2. 18 V.S.A. § 3631 is amended to read:

12 § 3631. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES  
13 WITH RESPECT TO PHARMACIES

14 \* \* \*

15 ~~(g)(1) A pharmacy benefit manager or other third party that reimburses a~~  
16 ~~340B covered entity for drugs that are subject to an agreement under 42 U.S.C.~~  
17 ~~§ 256b through the 340B drug pricing program shall not reimburse the 340B~~  
18 ~~covered entity for pharmacy-dispensed drugs at a rate lower than that paid for~~  
19 ~~the same drug to pharmacies that are not 340B covered entities, and the~~  
20 ~~pharmacy benefit manager shall not assess any fee, charge-back, or other~~



1 ~~adjustment on the 340B covered entity on the basis that the covered entity~~  
2 ~~participates in the 340B program as set forth in 42 U.S.C. § 256b.~~

3 (2) ~~With respect to a patient who is eligible to receive drugs that are~~  
4 ~~subject to an agreement under 42 U.S.C. § 256b through the 340B drug pricing~~  
5 ~~program, a pharmacy benefit manager or other third party that makes payment~~  
6 ~~for the drugs shall not discriminate against a 340B covered entity in a manner~~  
7 ~~that prevents or interferes with the patient's choice to receive the drugs from~~  
8 ~~the 340B covered entity.~~

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

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

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

15 (2) ~~restrict access to a pharmacy network or adjust reimbursement rates~~  
16 ~~based on a pharmacy's participation in a 340B contract pharmacy~~  
17 ~~arrangement. [Repealed.]~~

18 Sec. 3. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

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

*Subchapter 6. 340B Drug Pricing Program*

§ 4681. DEFINITIONS

As used in this subchapter:

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

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

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

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

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

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

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

(8) “Rebate” means a discount in which the terms are fixed and are disclosed in writing to a 340B covered entity at the time of the initial purchase

of the 340B drug to which the discount applies, but which discount is not applied at the time of purchase.

§ 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

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

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

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

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

§ 4683. MEDICAID UNAFFECTED

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

§ 4684. VIOLATIONS

(a) A 340B covered entity, 340B contract pharmacy, or other person injured by a manufacturer's or its agent's violation of this subchapter may bring an action in Superior Court for injunctive relief, compensatory and punitive damages, costs and reasonable attorney's fees, and other appropriate relief.

(b) A violation occurs each time a prohibited act is committed. For purposes of section 4682 of this subchapter, a prohibited act is defined as each package of 340B drugs that is subject to a discriminatory action by a manufacturer or its agent.

§ 4685. NO CONFLICT WITH FEDERAL LAW

Nothing in this subchapter shall be construed or applied to conflict with or to be less restrictive than federal law for a person regulated by this subchapter.

Sec. 2. 18 V.S.A. § 9406 is added to read:

§ 9406. REPORTING ON PARTICIPATION IN 340B DRUG PRICING PROGRAM

Annually on or before January 31, each hospital participating in the federal 340B drug pricing program established by 42 U.S.C. § 256b shall submit to

the Green Mountain Care Board a report detailing the hospital's participation in the program during the previous hospital fiscal year, which report shall be posted on the Green Mountain Care Board's website and which shall contain at least the following information:

(1) The annual estimated savings to the hospital from participating in the 340B program, comparing the acquisition price of drugs under the 340B program to group purchasing organization pricing. If group purchasing organization pricing is not available for a specific drug, the hospital shall compare the acquisition price under the 340B program to the price from another generally accepted pricing source.

(2) The aggregated payment amount that the hospital made to pharmacies with which the hospital contracted to dispense drugs to its patients under the 340B program during the previous hospital fiscal year.

(3) The aggregated payment amount that the hospital made to any other outside vendor for managing, administering, or facilitating any aspect of the hospital's 340B drug program during the previous hospital fiscal year.

(4) The number of claims for all prescription drugs the hospital obtained through the 340B program during the previous hospital fiscal year.

(5) A description of the ways in which the hospital uses savings from its participation in the 340B program to benefit its community through programs and services funded in whole or in part by savings from the 340B program.

including services that support community access to care that the hospital could not continue without these savings.

(6) A description of the hospital's internal review and oversight of its participation in the 340B program in compliance with the U.S. Department of Health and Human Services, Health Resources and Services Administration's 340B program rules and guidance.

*Sec. 3. REPEAL*

Sec. 2 (18 V.S.A. § 9406; reporting on participation in 340B drug pricing program) is repealed on January 1, 2031.

*Sec. 4. EFFECTIVE DATE*

This act shall take effect on passage, with the first report under Sec. 2 (18 V.S.A. § 9406) due on or before January 31, 2026.