

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care to which was referred House Bill No. 266
3 entitled “An act relating to protections for 340B covered entities and 340B
4 contract pharmacies” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

8 Subchapter 6. 340B Drug Pricing Program

9 § 4681. DEFINITIONS

10 As used in this subchapter:

11 (1) “340B contract pharmacy” means a pharmacy that has a contract
12 with a 340B covered entity to receive and dispense 340B drugs to the 340B
13 covered entity’s patients on the covered entity’s behalf.

14 (2) “340B covered entity” means an entity participating or authorized to
15 participate in the federal 340B drug pricing program, as described in 42 U.S.C.
16 § 256b. The term includes a 340B covered entity’s pharmacy.

17 (3) “340B drug” means a drug that has been subject to any offer for
18 reduced prices by a manufacturer pursuant to 42 U.S.C. § 256b and is
19 purchased by a 340B covered entity.

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

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

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

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

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

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

13 § 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

14 (a) A manufacturer or its agent shall not deny, restrict, prohibit, or
15 otherwise interfere with, directly or indirectly, the acquisition of a 340B drug
16 by or delivery of a 340B drug to a 340B contract pharmacy on behalf of a
17 340B covered entity unless receipt by the 340B contract pharmacy is
18 prohibited by the U.S. Department of Health and Human Services.

19 (b) A manufacturer or its agent shall not directly or indirectly require a
20 340B covered entity to submit any claims, utilization, encounter, purchase, or
21 other data as a condition for allowing the acquisition of a 340B drug by or

1 delivery of a 340B drug to a 340B contract pharmacy unless the claims or
2 utilization data-sharing is required by the U.S. Department of Health and
3 Human Services.

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

7 (d) A manufacturer or its agent shall offer or otherwise make available
8 340B drug pricing to a 340B covered entity or 340B contract pharmacy in the
9 form of a discount at the time of purchase and shall not offer or otherwise
10 make available 340B drug pricing in the form of a rebate.

11 § 4683. REIMBURSEMENT OF 340B ENTITIES

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

15 (1) Reimburse a 340B covered entity or 340B contract pharmacy for a
16 340B drug at a rate lower than that paid for the same drug to pharmacies that
17 are not 340B covered entities or 340B contract pharmacies or provide lower
18 reimbursement for a claim on the basis that the claim is for a 340B drug.

19 (2) Impose any terms or conditions on any 340B covered entity or 340B
20 contract pharmacy that differ from the terms or conditions applied to non-340B

1 ~~covered entities or non-340B contract pharmacies, including any of the~~
2 ~~following:~~

3 ~~(A) fees, charges, clawbacks, or other adjustments or assessments,~~
4 ~~including placing any additional requirements, restrictions, or burdens on the~~
5 ~~340B covered entity or 340B contract pharmacy that results in administrative~~
6 ~~costs or fees to the 340B covered entity or 340B contract pharmacy that are not~~
7 ~~placed on other entities, including affiliate pharmacies of the health insurer,~~
8 ~~pharmacy benefit manager, or other third party payor;~~

9 ~~(B) dispensing fees that are less than the dispensing fees for non-~~
10 ~~340B covered entities or non-340B contract pharmacies;~~

11 ~~(C) restrictions or requirements regarding participation in standard or~~
12 ~~preferred pharmacy networks;~~

13 ~~(D) requirements relating to the frequency or scope of audits of~~
14 ~~inventory management systems;~~

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

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

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

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

9 ~~(B) For purposes of this subdivision (4), it is considered a~~
10 ~~discriminatory practice that prevents or interferes with a patient's choice to~~
11 ~~receive drugs from a 340B covered entity or 340B contract pharmacy if a~~
12 ~~health insurer, pharmacy benefit manager, or other third-party payor places any~~
13 ~~additional requirements, restrictions, or unnecessary burdens on the 340B~~
14 ~~covered entity or 340B contract pharmacy that result in administrative costs or~~
15 ~~fees to the 340B covered entity or 340B contract pharmacy, including~~
16 ~~requiring a claim for a drug to include any identification, billing modifier,~~
17 ~~attestation, or other indication that a drug is a 340B drug in order to be~~
18 ~~processed, submitted, or resubmitted unless the indication is required by the~~
19 ~~Centers for Medicare and Medicaid Services or the Agency of Human Services~~
20 ~~for the administration of the Vermont Medicaid program.~~

1 ~~(5) Include any other provision in a contract between a health insurer,~~
2 ~~pharmacy benefit manager, or other third-party payor and a 340B-covered~~
3 ~~entity or 340B-contract pharmacy that discriminates against the 340B-covered~~
4 ~~entity or 340B-contract pharmacy or interferes with a patient's choice to~~
5 ~~receive a prescription drug from a 340B-covered entity or 340B-contract~~
6 ~~pharmacy, including the administration of the drug, in person or through direct~~
7 ~~delivery, mail, or other form of shipment or creation of a restriction or~~
8 ~~additional charge on a patient who chooses to receive drugs from a 340B~~
9 ~~covered entity or 340B-contract pharmacy.~~

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

13 ~~(7) Exclude any 340B-covered entity or 340B-contract pharmacy from~~
14 ~~the health insurer's, pharmacy benefit manager's, or third-party payor network~~
15 ~~on the basis that the 340B-covered entity or 340B-contract pharmacy dispenses~~
16 ~~340B drugs or refusing to contract with a 340B-covered entity or 340B-contract~~
17 ~~pharmacy for reasons other than those that apply equally to non-340B entities.~~

18 § 4683. MEDICAID UNAFFECTED

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

21 § 4684. VIOLATIONS

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

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

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

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

14 § 4685. NO CONFLICT WITH FEDERAL LAW

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

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

18 § 3631. PHARMACY BENEFIT MANAGERS; REQUIRED PRACTICES

19 WITH RESPECT TO PHARMACIES

20 * * *

1 ~~(g)(1) A pharmacy benefit manager or other third party that reimburses a~~
2 ~~340B covered entity for drugs that are subject to an agreement under 42 U.S.C.~~
3 ~~§ 256b through the 340B drug pricing program shall not reimburse the 340B~~
4 ~~covered entity for pharmacy-dispensed drugs at a rate lower than that paid for~~
5 ~~the same drug to pharmacies that are not 340B covered entities, and the~~
6 ~~pharmacy benefit manager shall not assess any fee, charge back, or other~~
7 ~~adjustment on the 340B covered entity on the basis that the covered entity~~
8 ~~participates in the 340B program as set forth in 42 U.S.C. § 256b.~~

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

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

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

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

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

3 ~~[Repealed.]~~

4 Sec. 2. 18 V.S.A. § 9406 is added to read: **(was Sec. 3 of H.202)**

5 § 9406. REPORTING ON PARTICIPATION IN 340B DRUG PRICING

6 PROGRAM

7 Annually on or before July 1, each hospital participating in the federal 340B
8 drug pricing program established by 42 U.S.C. § 256b shall submit to the
9 Green Mountain Care Board a report detailing the hospital's participation in
10 the program during the previous calendar year, which report shall be posted on
11 the Green Mountain Care Board's website and which shall contain at least the
12 following information:

13 (1) the aggregated acquisition cost for all prescription drugs that the
14 hospital obtained through the 340B program during the previous calendar year;

15 (2) the aggregated payment amount that the hospital received for all
16 prescription drugs obtained under the 340B program and dispensed to patients
17 during the previous calendar year;

18 (3) the aggregated payment amount that the hospital made to pharmacies
19 with which the hospital contracted to dispense drugs to its patients under the
20 340B program during the previous calendar year;

1 (4) the aggregated payment amount that the hospital made to any other
2 outside vendor for managing, administering, or facilitating any aspect of the
3 hospital’s 340B drug program during the previous calendar year;

4 (5) all other expenses related to administering the 340B program,
5 including staffing, operational, and administrative expenses, during the
6 previous calendar year;

7 (6) the names of all vendors, including split billing vendors, contract
8 pharmacies, and pharmacy benefit managers with which the hospital
9 contracted to provide services associated with the hospital’s 340B program
10 participation during the previous calendar year;

11 (7) the number of claims for all prescription drugs the hospital obtained
12 through the 340B program during the previous calendar year, including the
13 total number of claims and the number of claims reported separately by payer
14 type, including Medicare, private insurance, and uninsured;

15 (8) a description of the ways in which the hospital uses savings from its
16 participation in the 340B program to benefit its community through programs
17 and services funded in whole or in part by savings from the 340B program,
18 including services that support community access to care that the hospital
19 could not continue without these savings;

20 (9) a description of the hospital’s internal review and oversight of its
21 participation in the 340B program in compliance with the U.S. Department of

1 Health and Human Services, Health Resources and Services Administration’s
2 340B program rules and guidance; and

3 (10) such additional information as the Board may request.

4 Sec. 3. EFFECTIVE DATE

5 This act shall take effect on passage, with the first report under Sec. 2 (18
6 V.S.A. § 9406) due on or before July 1, 2026.

7

8

9

10

11

12

13

14 (Committee vote: _____)

15

16

Representative _____

17

FOR THE COMMITTEE