

H.266

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) “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.

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

4 (7) “Pharmacy benefit manager” has the same meaning as in section
5 3602 of this title.

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

10 § 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

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

16 (b) A manufacturer or its agent shall not directly or indirectly require a
17 340B covered entity to submit any claims, utilization, encounter, purchase, or
18 other data as a condition for allowing the acquisition of a 340B drug by or
19 delivery of a 340B drug to a 340B contract pharmacy unless the claims or
20 utilization data-sharing is required by the U.S. Department of Health and
21 Human Services.

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

4 (d) A manufacturer or its agent shall offer or otherwise make available
5 340B drug pricing to a 340B covered entity or 340B contract pharmacy in the
6 form of a discount at the time of purchase and shall not offer or otherwise
7 make available 340B drug pricing in the form of a rebate.

8 § 4683. MEDICAID UNAFFECTED

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

11 § 4684. VIOLATIONS

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

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

1 § 4685. NO CONFLICT WITH FEDERAL LAW

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

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

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

7 (a) Annually on or before January 31, each hospital participating in the
8 federal 340B drug pricing program established by 42 U.S.C. § 256b shall
9 submit to the Green Mountain Care Board, in a form and manner prescribed
10 by the Board, a report detailing the hospital's participation in the program
11 during the previous hospital fiscal year, which report shall be posted on the
12 Green Mountain Care Board's website and which shall contain at least the
13 following information:

14 ~~(1) The annual estimated savings to the hospital from participating in the~~
15 ~~340B program, comparing the acquisition price of drugs under the 340B~~
16 ~~program to group purchasing organization pricing. If group purchasing~~
17 ~~organization pricing is not available for a specific drug, the hospital shall~~
18 ~~compare the acquisition price under the 340B program to the price from~~
19 ~~another generally accepted pricing source.~~

1 (1)(A) For prescription drugs that the hospital or any entity acting
2 on behalf of the hospital obtained through the 340B program and
3 dispensed or administered to patients during the previous calendar year:

4 (i) the aggregated acquisition cost for all such prescription
5 drugs; and

6 (ii) the aggregated payment amount that the hospital received
7 for all such prescription drugs, with information reported separately for
8 each of the following distribution channels:

9 (I) dispensed drugs from an in-house pharmacy;

10 (II) dispensed drugs from a contract pharmacy;

11 (III) administered drugs paid separately; and

12 (IV) administered drugs paid by bundled payments.

13 (B) For administered drugs for which payment was bundled with
14 payment for other services, as set forth in subdivision (A)(ii)(IV) of this
15 subdivision (1), the hospital shall estimate the payment amount by
16 comparing the actual acquisition cost for a drug to the wholesale
17 acquisition cost for that drug.

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

1 (3) 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 hospital fiscal year.

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

6 (4) A description of the ways in which the hospital uses **savings**
7 **revenue** from its participation in the 340B program to benefit its community
8 through programs and services funded in whole or in part by **savings revenue**
9 from the 340B program, including services that support community access to
10 care that the hospital could not continue without **these savings this revenue.**

11 (5) A description of the hospital's internal review and oversight of its
12 participation in the 340B program in compliance with the U.S. Department of
13 Health and Human Services, Health Resources and Services Administration's
14 340B program rules and guidance.

15 **(b) In addition to the vendor information required pursuant to**
16 **subdivision (a)(3) of this section, each hospital shall also provide to the**
17 **Board a list of the names of all vendors that managed, administered, or**
18 **facilitated any aspect of the hospital's 340B program during the previous**
19 **calendar year, along with a brief description of the work performed by**
20 **each vendor. The vendor information reported pursuant to this**
21 **subsection shall be exempt from public inspection and copying under the**

Public Records Act and shall be kept confidential, except that the Board shall provide the information to the Office of the Health Care Advocate, which shall not further disclose this confidential information.

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. 8 V.S.A. § 4089j is amended to read: **(NEW)**

§ 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

* * *

(d)(1) A health insurer or pharmacy benefit manager shall permit a participating network pharmacy to perform all pharmacy services within the lawful scope of the profession of pharmacy as set forth in 26 V.S.A. chapter 36.

* * *

~~(4) A health insurer or pharmacy benefit manager shall not, by contract, written policy, or written procedure, require that a pharmacy designated by the health insurer or pharmacy benefit manager dispense a medication directly to a health care setting for a health care professional to administer to a patient.~~

[Repealed.]

* * *

1 Sec. 5. 8 V.S.A. § 4089j is amended to read: **(NEW)**

2 § 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

3 * * *

4 (d)(1) A health insurer or pharmacy benefit manager shall permit a
5 participating network pharmacy to perform all pharmacy services within the
6 lawful scope of the profession of pharmacy as set forth in 26 V.S.A. chapter
7 36.

8 * * *

9 (4) ~~{Repealed.}~~ A health insurer or pharmacy benefit manager shall not,
10 by contract, written policy, or written procedure, require that a pharmacy
11 designated by the health insurer or pharmacy benefit manager dispense a
12 medication directly to a health care setting for a health care professional to
13 administer to a patient.

14 * * *

15 Sec. 6. GREEN MOUNTAIN CARE BOARD; WHITE BAGGING;

16 REPORT **(NEW)**

17 On or before January 15, 2029, the Green Mountain Care Board, in
18 consultation with the Department of Financial Regulation, shall report to the
19 House Committee on Health Care and the Senate Committee on Health and
20 Welfare regarding the impact of the repeal of 8 V.S.A. § 4089j(d)(4) on

1 hospital budgets, on health insurance premiums, and on health insurer
2 solvency.

3 Sec. 7. EFFECTIVE DATE

4 **(a) Sec. 5 (restoring language in 8 V.S.A. § 4089j(d)(4)) shall take effect**
5 **on January 1, 2030.**

6 **(b) The remainder of t** this act shall take effect on passage, with the first
7 report under Sec. 2 (18 V.S.A. § 9406) due on or before January 31, 2026.