

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred House Bill
3 No. 266 entitled “An act relating to the 340B prescription drug pricing
4 program” respectfully reports that it has considered the same and recommends
5 that the Senate propose to the House that the bill be amended by striking out all
6 after the enacting 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) “Manufacturer” has the same meaning as in 26 V.S.A. § 2022.

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

5 (7) “Pharmacy benefit manager” has the same meaning as in section
6 3602 of this title.

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

11 § 4682. DISCRIMINATION AGAINST 340B ENTITIES PROHIBITED

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

17 (b) A manufacturer or its agent shall not directly or indirectly require a
18 340B covered entity to submit any claims, utilization, encounter, purchase, or
19 other data as a condition for allowing the acquisition of a 340B drug by or
20 delivery of a 340B drug to a 340B contract pharmacy unless the claims or

1 utilization data sharing is required by the U.S. Department of Health and
2 Human Services.

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

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

10 § 4683. MEDICAID UNAFFECTED

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

13 § 4684. VIOLATIONS

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

19 (b) A violation occurs each time a prohibited act is committed. For
20 purposes of section 4682 of this subchapter, a prohibited act is defined as each

1 package of 340B drugs that is subject to a discriminatory action by a
2 manufacturer or its agent.

3 § 4685. NO CONFLICT WITH FEDERAL LAW

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

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

7 § 9406. REPORTING ON PARTICIPATION IN 340B DRUG PRICING
8 PROGRAM

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

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

19 (i) the aggregated acquisition cost for all such prescription drugs;
20 and

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

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

5 (II) dispensed drugs from a contract pharmacy;

6 (III) administered drugs paid separately; and

7 (IV) administered drugs paid by bundled payments.

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

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

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

19 (4) A description of the ways in which the hospital uses revenue from its
20 participation in the 340B program to benefit its community through programs
21 and services funded in whole or in part by revenue from the 340B program,

1 including services that support community access to care that the hospital
2 could not continue without this revenue.

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

7 (b) In addition to the vendor information required pursuant to subdivision
8 (a)(3) of this section, each hospital shall also provide to the Board a list of the
9 names of all vendors that managed, administered, or facilitated any aspect of
10 the hospital’s 340B program during the previous calendar year, along with a
11 brief description of the work performed by each vendor. The vendor
12 information reported pursuant to this subsection shall be exempt from public
13 inspection and copying under the Public Records Act and shall be kept
14 confidential, except that the Board shall provide the information to the Office
15 of the Health Care Advocate, which shall not further disclose this confidential
16 information.

17 Sec. 3. REPEAL

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

1 Sec. 4. 8 V.S.A. § 4089j is amended to read:

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

13 [Repealed.]

14 * * *

15 Sec. 5. 8 V.S.A. § 4089j is amended to read:

16 § 4089j. RETAIL PHARMACIES; FILLING OF PRESCRIPTIONS

17 * * *

18 (d)(1) A health insurer or pharmacy benefit manager shall permit a
19 participating network pharmacy to perform all pharmacy services within the
20 lawful scope of the profession of pharmacy as set forth in 26 V.S.A. chapter
21 36.

* * *

(4) ~~[Repealed.]~~ 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.

* * *

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

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

Sec. 7. EFFECTIVE DATES

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

(b) The remainder of 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.

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5 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE