

Department of Legislative Services  
Maryland General Assembly  
2022 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1274

(Delegate Kipke)

Health and Government Operations

Finance

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Prescription Drugs - Pharmacy Benefits Managers - Federal 340B Program

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This bill establishes requirements and prohibitions on a pharmacy benefits manager (PBM) relating to coverage and reimbursement of prescription drugs purchased under the federal 340B Drug Pricing Program (340B).

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Fiscal Summary

**State Effect:** Any additional workload on the Maryland Insurance Administration can be handled with existing budgeted resources. Revenues are not affected. No effect on the State Employee and Retiree Health and Welfare Benefits Program. The bill does not apply to Medicaid managed care organizations.

**Local Effect:** None.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** “Covered entity” has the meaning stated in § 602 of the federal Veterans Health Care Act of 1992. “Pharmacies or pharmacists that participate in the 340B program” means a pharmacy owned or operated by a covered entity that is eligible to or is actively participating in 340B or a pharmacy or pharmacist under contract with a covered entity to dispense drugs purchased under 340B to patients of the covered entity.

A PBM must (1) make formulary and coverage decisions for a pharmacy or pharmacist that participates in 340B based on the normal course of business of the PBM and (2) allow a beneficiary to use any in-network pharmacy or pharmacist that the beneficiary chooses, without regard to whether the pharmacy or pharmacist participates in 340B.

A PBM may not:

- transfer 340B savings from a pharmacy or pharmacist that participates in 340B to a PBM;
- offer lower reimbursement for a prescription drug purchased under 340B than if it were not purchased under 340B;
- refuse to cover prescription drugs purchased under 340B;
- refuse to allow pharmacies or pharmacists that participate in 340B to participate in the PBM's network on the sole basis that the pharmacy or pharmacist participates in 340B;
- impose different reimbursement or network participation contract terms on pharmacies or pharmacists that participate in a PBM's network based on whether a pharmacy or pharmacist participates in 340B;
- impose different fees, chargebacks, or other adjustments on pharmacies or pharmacists based on whether a pharmacy or pharmacist participates in 340B;
- modify a beneficiary's copayment on the basis of whether a pharmacy or pharmacist participates in 340B;
- establish or set network adequacy requirements based on whether a pharmacy or pharmacist participates in 340B; or
- prohibit a covered entity authorized to participate in 340B or a pharmacy or pharmacist under contract with a covered entity from participating in the PBM's network on the basis of the covered entity's participation in 340B.

A PBM may not base formulary or prescription drug coverage decisions on the price of the prescription drug under 340B or whether the dispensing pharmacy or pharmacist participates in 340B.

**Current Law:** The federal 340B Drug Pricing Program requires pharmaceutical manufacturers to sell outpatient drugs to covered entities (certain hospitals and federal grantees like health centers and clinics) at reduced prices in order to have their drugs covered under Medicaid.

Under Maryland law, a pharmacy registered under 340B may apply to a carrier to be a designated pharmacy for the purpose of enabling the pharmacy's patients with hepatitis C to receive the copayment or coinsurance maximum if the pharmacy is owned by a federally qualified health center that provides integrated and coordinated medical and pharmaceutical services to hepatitis C patients, and the prescription drugs are covered specialty drugs for the treatment of hepatitis C.

**Additional Comments:** In recent years, covered entities under 340B and PBMs have been in dispute over reimbursement rates for drugs in 340B. PBMs have tried to negotiate lower

reimbursement rates for 340B drugs, claiming that, because the covered entity pays less for the drug, the PBM is entitled to reimburse the covered entity at a lesser amount. Covered entities argue that this practice is inappropriate, and they are entitled to the benefits of the difference between the preferential 340B drug pricing and the standard reimbursement rate.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** American Bar Association; Department of Budget and Management; Maryland Department of Health; Maryland Insurance Administration; Department of Legislative Services

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