



Biotechnology Innovation Organization
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February 27, 2024

The Honorable Joseline A. Pena-Melnyk, Chair
House Government and Operations Committee
House Office Building, Room 241
Annapolis, Maryland 21401

Re: Testimony in **Opposition** of House Bill 1056: State Board of Pharmacy - Prohibition on Discrimination Against 340B Drug Distribution

Submitted By: The Biotechnology Innovation Organization (BIO), Washington, DC

Dear Chair Pena-Melnyk and Members of the Committee:

Thank you for the opportunity to present testimony in opposition to HB 1056. BIO respectfully opposes HB 1056, as it does not help patients lower their out-of-pocket costs, makes it more difficult for the state, payers, and manufacturers to identify illegal duplicate discounts and diversion (and waste in the system), and codifies contract pharmacy in state statute, a part of the program that has led to inappropriate growth, is not included in the federal statute, and is subject to pending litigation.

HB 1056 would codify the practice of pharmacies contracting with 340B covered entities, which is not included in the federal 340B statute and is the subject of current litigation. Contract pharmacies have contributed to exponential growth in the program. In 2014, discounted purchases under the 340B Drug Discount Program totaled roughly \$9 billion.¹ In 2021, the program reached approximately \$44 billion, equating to approximately 14% of gross US sales of brand-name drugs.² An October 2020 study found that from April 2010 to April 2020 contract pharmacy arrangements (CPAs) in the program grew by 4,228%.³ In 2010, there were roughly 1,300 unique pharmacy locations with approximately 2,321 CPAs.^{4,5} In 2022, there are approximately 32,000 unique pharmacy locations that have approximately 168,500 CPAs.⁶ This explosive growth has occurred because it is extremely profitable for pharmacies to share in the 340B discount provided to covered entities. A contract pharmacy's average gross profit margin on a 340B medicine dispensed at a contract pharmacy is estimated at 72%, compared to just 22% when dispensed by an independent pharmacy.⁷ HB 1056 would further legitimize and expand

¹ Fein, Adam, "New HRSA Data: 340B Program Reached \$29.9 Billion in 2019; Now Over 8% of Drug Sales," Drug Channels, June 9, 2020. Accessed: <https://www.drugchannels.net/2020/06/new-hrsa-data-340b-program-reached-299.html>

² Fein, Adam, "The 340B Program Climbed to \$44 Billion in 2021—With Hospitals Grabbing Most of the Money," Drug Channels, August 15, 2022. Accessed: January 4, 2023. <https://www.drugchannels.net/2022/08/the-340b-program-climbed-to-44-billion.html#:~:text=For%202021%2C%20discounted%20purchases%20under,of%20these%20skyrocketing%20340B%20purchases.>

³ Vandervele, Aaron, et al., For-Profit Pharmacy Participation in the 340B Program, BRG Group, October 2020.

⁴ Ibid.

⁵ Fein, Adam, "Exclusive: Five Pharmacy Chains and PBMs Dominate 2022's Still-Booming 340B Contract Pharmacy Market," July 12, 2022. Accessed: January 4, 2023. <https://www.drugchannels.net/2022/07/exclusive-five-pharmacies-and-pbms.html>

⁶ Ibid.

⁷ Vandervele, October 2020.



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contract pharmacy arrangements, which would benefit contract pharmacies and covered entities, not the vulnerable patients the 340B program seeks to protect and serve.

The legislation prohibits manufacturers from withholding 340B-discounted drug products from a pharmacy that has contracted with a 340B covered entity. The issue of contract pharmacy is currently being litigated in several federal courts, as there is no statutory requirement for manufacturers to extend 340B prices to contract pharmacies. Contract pharmacy was created through federal guidance. A guidance that the Health Resources and Services Administration (HRSA) – the agency that issued it— itself has acknowledged is legally unenforceable.⁸ We oppose legislation to address federal 340B issues that are not in the statute and are subject to pending litigation.

HB 1056 contains language that erroneously implies manufacturers can select which pharmacies can participate as a 340B contract pharmacy. Manufacturers are not involved with contracts between pharmacies and another provider, including a 340B covered entity. Furthermore, the 340B program’s requirement is for manufacturers to provide discounted drugs to 340B covered entities, and they are not required to facilitate distribution to their contract pharmacies. Therefore, it is not appropriate for legislation to dictate whether a manufacturer must allow for distribution of drugs to any pharmacy regardless of participation in the 340B program.

For these reasons, BIO opposes HB 1056 and urges the Committee not to move forward with the bill. Please do not hesitate to contact us for any further information.

Sincerely,

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⁸ “HRSA Urges Pharma to Continue 340B Discounts at Contract Pharmacies,” *Inside Health Policy*, August 20, 2020.