

LFC Requester:	RubyAnn Esquibel
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/22/2025 *Check all that apply:*
Bill Number: HB78 Original Correction
 Amendment Substitute

Sponsor: Rep. Elizabeth Thomson **Agency Name and Code** University of New Mexico-952
Short Title: Prohibit Discrimination Against 340B Entities **Number:** _____
Person Writing Kelly O'Donnell
Phone: 505-659-5702 **Email** kodonnell@unm.edu

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 78 ensures availability of discounted drug pricing for covered entities under the 340B drug pricing program and the prohibition of discrimination against covered entities.

Section 340B of the Public Health Service Act of 1992 requires drug manufacturers participating in the Medicaid Drug Rebate Program to sign an agreement with Secretary of the Health and Human Services that limits the price manufacturers may charge covered entities (CE) for covered outpatient drugs. The resulting program is called 340B Drug Pricing Program. The 340B program is administered by the federal Office of Pharmacy Affairs (OPA), which is a part of Health Resources and Services Administration.

UNM Hospitals qualifies for 340B as a Disproportion Share Hospital (DSH). Our recently filed Medicare Cost Report lists our current disproportionate share adjustment at 38.76%, which significantly surpasses the 11.75% disproportionate share adjustment percentage requirement. Upon registration on the OPAIS database as a participant in the 340B Program, CEs agree to abide by all specific statutory requirements and prohibitions of the Program.

House Bill 78 relates to prescription drugs and adds new language to the New Mexico Insurance Code prohibiting discrimination against entities participating in the federal 340B drug pricing program.

The new section 1 defines terms that will be added to the New Mexico Insurance Code and used in subsection 1B.

The new section 1B states that third parties cannot discriminate against entities that participate in the 340B program by:

- Denying, restricting, prohibiting, or interfering with the acquisition or delivery of a 340B drug to a pharmacy that is under contract with a covered entity and is authorized to receive and dispense 340B drugs on behalf of the covered entity
- Interfering with a pharmacy contracted with a covered entity
- Requiring a covered entity to submit any claims or utilization data as a condition for allowing the acquisition or delivery of a 340B drug to a covered entity

FISCAL IMPLICATIONS

This bill would help prevent significant losses and improve the operating margins of hospitals participating in the 340B program, including UNMH. The 340B program was designed to provide financial assistance to hospitals, like UNMH, that absorb a disproportionate share of the costs of providing uncompensated care.

Each year, UNM Hospital provides tens of millions of dollars in uncompensated medical care to patients throughout the state, including services for cancer, pediatrics, surgery, primary care, and maternity care. UNMH also offers financial assistance, including self-pay discount program and charity care programs, to help patients access the services they need. During the fiscal year 2024, UNM Hospital provided \$65,476,032 in charity care (at cost) and an additional \$55,278,682 in

cost of care provided to patients who are either uninsured or underinsured and who do not meet the criteria for financial assistance.

SIGNIFICANT ISSUES

UNM Hospital does not identify any issues and fully supports this bill.

The 340B program generates valuable savings for safety-net hospitals and health centers providing uncompensated care across New Mexico. This savings helps providers stretch limited resources to enhance patient services and access to care. The 340B program enables safety-net providers to purchase prescription drugs at discounted prices. The pharmacy that is under contract with safety-net providers then dispense those prescription drugs to their patients at the price determined by the patient's insurance coverage. The savings generated by the provision of those prescription drugs becomes operating revenue for the safety-net providers. The safety-net providers are then able to use the savings to provide services to the populations they serve. For example, the UNMH health system uses dollars saved to offset the cost of uncompensated care, to provide additional services to their patients, and provide formulary medications at no cost to the patient.

The 340B program is applicable only to outpatient prescriptions. UNMH operates outpatient pharmacies and contracts with retail pharmacies to dispense 340B medications on its behalf. The contracts between safety-net providers and retail pharmacies permit the retail pharmacies to be paid for their dispensing services, but consistent with the purposes of 340B, the revenue generated by 340B sales are returned to the safety-net providers.

Since June 2020, there are 41 manufacturers restricting 340B pricing that have significantly affected contract pharmacies. The UNMH health system has experienced a dramatic and sudden decrease in 340B savings as manufacturers have implemented a variety of requirements to reduce safety-net providers access to the 340B program in New Mexico. House Bill 78 will prevent these workarounds, so safety-net providers statewide can fully access 340B savings and provide care to the vulnerable populations that they serve.

New Mexico has a large percentage of low-income patients with significant access issues for adequate healthcare services. With a high percentage of the population living in poverty (20.8%), and large numbers of Medicaid patients, a reduction in 340B Program savings has a significant negative impact on the vulnerable populations we serve.

PERFORMANCE IMPLICATIONS

340B savings allows us to have an impact in the community we serve by increasing access to medical services, improving health literacy, delivering culturally sensitive care, and maintaining programs that are unique to only the care we provide

ADMINISTRATIVE IMPLICATIONS

UNM Hospital depends upon the 340B savings to fund additional services that are provided to our patients.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

The bill could be enhanced by including clauses for federal preemption, severability, and violations.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Safety-net hospitals and health centers across New Mexico depend on the revenue generated by 340B to be able to care for the vulnerable populations they serve. Drug manufacturers have worked to limit safety-net providers' access to 340B benefits, depriving them of needed resources with which to deliver care. Without that savings, UNM Hospital cannot continue to provide the level of services it provides to the vulnerable population it serves.

Contract pharmacy restrictions to 340B drugs by pharmaceutical companies will impact the amount of financial assistance, affordable drugs and services UNM Hospital can provide to the patients we serve and would have to be pared back or discontinued completely.

UNM's Comprehensive Cancer Center is in the top 3% of cancer centers in the country. Sixty percent of adults and almost every child with cancer in New Mexico gets their care here at UNMH. Many of these patients are disadvantaged and/or do not have insurance to cover the treatment. 340B savings are essential to providing advanced new treatments that are not available at many other facilities in New Mexico.

AMENDMENTS

Responses received from:

Michael Chicarelli
Chief Operating Officer
UNM Hospital