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## FISCAL IMPACT REPORT

<b>SPONSOR</b> Thomson	<b>LAST UPDATED</b> 2/12/2025
Prohibit Discrimination Against 340B	<b>ORIGINAL DATE</b> 1/30/2025
<b>SHORT TITLE</b> Entities	<b>BILL NUMBER</b> House Bill 78/aHHHC
	<b>ANALYST</b> Esquibel

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications			

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Aging and Long-Term Services Department (ALTSD)  
 Department of Health (DOH)  
 Health Care Authority (HCA)  
 New Mexico Hospital Association (NMHA)  
 Office of Superintendent of Insurance (OSI)  
 University of New Mexico Health Sciences Center (UNM-HSC)

## SUMMARY

### Synopsis of HHC Amendments

The House Health and Human Services Committee (HHHC) amendments to House Bill 78 (HB78) clarify a manufacturer, a manufacturer’s agent, or an affiliate of a manufacturer, shall not directly or indirectly interfere with the ability of a pharmacy contracted with a covered entity to dispense 340B drugs to the covered entity’s eligible patients and shall not require a covered entity to submit any claims, utilization, purchasing or other data as a condition for allowing the acquisition of a 340B drug by a covered entity.

### Synopsis of House Bill 78

House Bill 78 (HB78) proposes changes to the insurance code to prevent insurance companies from interfering with 340B-covered entities’ ability to acquire, deliver, or dispense medication under the federal 340B program that allows qualified entities to buy drugs at a discount. The bill would also protect 340B-covered entities’ ability to use contract pharmacies for 340B services and prevent requiring utilization data for 340B claim audits except what is required by federal law.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

The bill does not include an appropriation.

UNM Hospital (UNMH) reports the bill would help prevent significant fiscal losses and improve the budgetary operating margins of hospitals and other healthcare providers participating in the 340B program. The 340B program was designed to provide financial assistance to hospitals that absorb a disproportionate share of the costs of providing uncompensated healthcare.

The Health Care Authority (HCA) reports, under the provisions of the bill, there is potential for indirect cost savings for the state health benefits program if a covered entity dispenses medications for state health benefit members that are reimbursed by the 340B plan.

## **SIGNIFICANT ISSUES**

HCA reports HB78 has the potential to cause confusion for Medicaid providers and managed care organizations. Although the bill applies to the insurance code and not Medicaid, Medicaid has federal regulatory requirements the bill proposes to prohibit regarding 340B medications. Under Medicaid, it is necessary to collect reports on when 340B medications are dispensed by pharmacies to avoid duplicative medication cost reduction. It is prohibited by federal law to dispense a medication at a 340B rate and then apply an additional Medicaid rebate. The collection of reports allows Medicaid to ensure that duplicative cost reduction does not occur and to maintain compliance with federal law. If this bill is enacted, claims and utilization data would still be required to be collected by Medicaid even though manufacturers would be prohibited from reporting.

UNMH reports 41 manufacturers restricting 340B pricing have significantly affected contract pharmacies since June 2020. The UNMH health system has experienced a decrease in 340B savings because manufacturers have implemented a variety of requirements to reduce safety-net providers' access to the 340B program in New Mexico. HB78 would prevent these workarounds, so safety-net providers statewide could fully access 340B savings and pass those savings on to provide healthcare services.

The New Mexico Hospital Association reports the bill addresses pharmacy benefits managers and insurers implementing reimbursement strategies that negatively impacts 340B entities by setting lower reimbursement for specific medications contained in the 340B program. This means pharmaceutical manufacturers retain savings meant for 340B provider entities, which in turn limits the investments in access to healthcare that 340B entities would otherwise use the savings to invest in. Participants in the state's 340B program include hospitals, federally qualified health centers, public health offices, and Urban Indian Health Centers.

## PERFORMANCE IMPLICATIONS

HCA notes Section 340B of the Public Health Service Act requires pharmaceutical manufacturers participating in Medicaid to sell outpatient drugs at discounted prices to healthcare organizations that serve uninsured and low-income patients. These organizations include community health centers, children's hospitals, hemophilia treatment centers, critical access hospitals, sole community hospitals, rural referral centers, and public and nonprofit disproportionate share hospitals that serve low-income and indigent populations.

The program allows 340B hospitals to stretch limited federal resources to reduce the price of outpatient pharmaceuticals for patients and expand health services. Hospitals use 340B savings to provide free care for uninsured patients, offer free vaccines, provide services in mental health clinics, and implement medication management and community health programs.

While institutions have strict requirements to become 340B covered entities, they can contract some 340B services to private, for-profit contract pharmacies. Medicaid programs can deny members from getting medications from these contracted pharmacies. New Mexico currently allows the use of contracted 340B contracted pharmacies.

## ADMINISTRATIVE IMPLICATIONS

HCA reports, under the state's Turquoise Care Medicaid program, HCA's Medical Assistance Division has chosen to require the managed care contracts' pharmacy benefit managers (PBMs) to follow Office of Superintendent of Insurance (OSI) rules. Should this bill pass, the Medical Assistance Division would need to amend the MCO contracts to clarify OSI has review authority, not HCA. If OSI rules were followed without further clarification for Medicaid plans, there would be potential for noncompliance with federal rules.

## TECHNICAL ISSUES

HCA stipulates if this bill is enacted, it must be clear to healthcare providers that pharmaceutical claims and utilization data would still be required to be collected by Medicaid even though manufacturers would be prohibited from doing so.

UNMH notes the bill could be enhanced by including clauses for federal preemption, severability, and violations.

OSI reports it does not regulate prescription drug manufacturers, manufacturer's agents, or an affiliate of a manufacturer, and does not regulate any of the covered entities as defined in the bill. Prescription drug manufacturers are regulated under the Pharmacy Act and accordingly, OSI reports it does not have authority to enforce compliance and suggests the Board of Pharmacy may be more aligned to administer the provisions of the bill and ensure compliance.

## OTHER SUBSTANTIVE ISSUES

UNMH writes 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 become 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 to 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 340B program, the revenue generated by 340B sales are returned to the safety-net providers.

The Aging and Long-Term Services Department reports 88.6 percent of older adults (age 65 and older) took prescription medication within a year between 2021 through 2022. The 340B program is important to New Mexico's older adults and those living with disabilities who access their medications from entities covered under 340B pricing, including federally qualified health centers. Nationally in 2023, 340B covered entities purchased \$66.3 billion in covered outpatient drugs.

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