

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 78

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

AN ACT

RELATING TO PRESCRIPTION DRUGS; PROHIBITING DISCRIMINATION
AGAINST ENTITIES PARTICIPATING IN THE FEDERAL 340B DRUG PRICING
PROGRAM; REQUIRING REPORTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [~~NEW MATERIAL~~] PROHIBITION OF DISCRIMINATION
AGAINST 340B ENTITIES.--

A. As used in this section:

(1) "340B drug" means a drug that is purchased
at a discount in accordance with the 340B program requirements;

(2) "340B program" means the federal drug
pricing program created pursuant to 42 U.S.C. Section 256b;

(3) "affiliate" means a person that directly
or indirectly controls, is controlled by or is under common
control with a manufacturer;

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1 (4) "applicable entity" means one of the
2 following types of organizations that is also certified to
3 participate in the 340B program:

4 (a) an organization that receives
5 federal grant funding and is: 1) a federally qualified health
6 center; 2) a family planning project participating in the
7 family planning program established by Title X of the federal
8 Public Health Service Act of 1944, as amended; 3) a human
9 immunodeficiency virus outpatient early intervention service
10 provider that receives federal grants pursuant to Title XXVI of
11 the federal Public Health Service Act of 1944, as amended; 4)
12 an acquired immune deficiency syndrome drug purchasing
13 assistance program operated by the state; 5) a comprehensive
14 hemophilia diagnostic treatment center; 6) a sexually
15 transmitted disease clinic; or 7) a tuberculosis clinic;

16 (b) a federally qualified health center
17 lookalike;

18 (c) a state or local government unit
19 providing outpatient prescription pharmacy treatment or
20 services;

21 (d) a critical access hospital;

22 (e) a sole community hospital;

23 (f) an urban Indian health organization;

24 or

25 (g) a university of New Mexico hospital

1 or health sciences center patient access point; and

2 (5) "manufacturer" means an entity licensed to
3 manufacture prescription drugs pursuant to the Pharmacy Act.

4 B. A manufacturer, a manufacturer's agent or an
5 affiliate of a manufacturer shall not directly or indirectly:

6 (1) deny, restrict, prohibit or interfere with
7 the acquisition of a 340B drug by, or delivery of a 340B drug
8 to, a pharmacy physically located in the state or contractually
9 obligated with an applicable entity and is authorized to
10 receive and dispense 340B drugs on behalf of the applicable
11 entity unless receipt of the 340B drugs is prohibited by the
12 United States department of health and human services;

13 (2) interfere with the ability of a pharmacy
14 contracted with an applicable entity to dispense 340B drugs to
15 the applicable entity's eligible patients; or

16 (3) require an applicable entity to submit any
17 claims, utilization, purchasing or other data as a condition
18 for allowing the acquisition of a 340B drug by, or delivery of
19 a 340B drug to, an applicable entity unless the sharing of
20 claims or utilization data is required by federal law.

21 C. By July 1, 2027 and annually thereafter, each
22 applicable entity shall report to the department of health the
23 following information and data from all sites and contract
24 pharmacy arrangements operated by the applicable entity during
25 the preceding year:

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- 1 (1) the applicable entity's:
- 2 (a) name;
- 3 (b) service address;
- 4 (c) 340B program identification number;
- 5 (d) specific designation that identifies
- 6 the type or types of organizations listed in Paragraph (4) of
- 7 Subsection A of this section that the applicable entity
- 8 qualifies as;
- 9 (e) operational costs related to
- 10 participation in and compliance with the 340B program,
- 11 including costs paid to outside vendors; and
- 12 (f) use of any savings from
- 13 participating in the 340B program, including the amount of
- 14 savings used for the provision of charity care, discounted
- 15 care, community benefits or discounted health care to the
- 16 indigent;
- 17 (2) the aggregate acquisition cost for all
- 18 prescription drugs obtained under the 340B program;
- 19 (3) the aggregate payment amount received for
- 20 all drugs obtained, dispensed and administered under the 340B
- 21 program;
- 22 (4) a copy of the applicable entity's policy
- 23 for providing low-income patients with financial assistance
- 24 toward the cost of 340B drugs;
- 25 (5) the number and percentage of the

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1 applicable entity's patients who received a discount on either
2 a prescription drug dispensed or administered under the 340B
3 program or another service provided by the applicable entity;
4 and

5 (6) the financial demographics of the
6 applicable entity's patients, including the percentage of:

7 (a) uninsured patients;

8 (b) patients who are medicaid

9 beneficiaries; and

10 (c) patients who are beneficiaries of
11 the children's health insurance program.

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