

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1881

5 By: Representatives M. Gray, Wardlaw, Murdock, V. Flowers
6 By: Senator Rapert
7

For An Act To Be Entitled

8 AN ACT TO ESTABLISH THE 340B DRUG PRICING
9 NONDISCRIMINATION ACT; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ESTABLISH THE 340B DRUG PRICING
12 NONDISCRIMINATION ACT.
13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
15

16 SECTION 1. Arkansas Code Title 23, Chapter 92, is amended to add an
17 additional subchapter to read as follows:
18

19 Subchapter 6 – 340B Drug Pricing Nondiscrimination Act

20 23-92-601. Title.

21 This subchapter shall be known and may be cited as the "340B Drug
22 Pricing Nondiscrimination Act".
23

24 23-92-602. Definitions.

25 As used in this subchapter:

26 (1) "Patient" means an individual seeking medical diagnosis and
27 treatment;
28

29 (2) "Pharmacy" means the same as defined in § 17-92-101;

30 (3) "Provider" means a licensed pharmacist as defined in § 17-
31 92-101;
32

33 (4) "Third party" means:
34
35
36



1 (A) A payor or the payor's intermediary; or

2 (B) A pharmacy benefits manager; and

3 (5) "340B drug pricing" means the program established under
 4 section 602 of the Veterans Health Care Act of 1992, Pub. L. No. 102-585.

5
 6 23-92-603. Third-party requirements.

7 A third party shall:

8 (1) Inform a patient that the patient is not required to use a
 9 mail-order pharmacy;

10 (2) Obtain a signed waiver from a patient before allowing the
 11 use of a mail-order pharmacy;

12 (3) Make drug formulary and coverage decisions based on the
 13 third party's normal course of business;

14 (4) Allow a patient the freedom to use any pharmacy or any
 15 provider the patient chooses, whether or not the pharmacy participates in
 16 340B drug pricing; and

17 (5) Eliminate discriminatory contracting as it relates to:

18 (A) Transferring the benefit of 340B drug-pricing savings
 19 from one (1) entity, including critical access hospitals, federally qualified
 20 health centers, other hospitals, or 340B drug-pricing participants and their
 21 underserved patients, to another entity, including without limitation
 22 pharmacy benefits managers, private insurers, and managed care organizations;

23 (B) Pricing that occurs when offering a lower
 24 reimbursement for a drug purchased under 340B drug pricing than for the same
 25 drug not purchased under 340B drug pricing;

26 (C) Refusal to cover drugs purchased under 340B drug
 27 pricing;

28 (D) Refusal to allow 340B drug-pricing pharmacies to
 29 participate in networks; and

30 (E) Charging more than fair market value or seeking profit
 31 sharing in exchange for services involving 340B drug pricing.

32
 33 23-92-604. Third party – Pharmaceutical manufacturer – Prohibitions.

34 (a) A third party shall not:

35 (1) Coerce a patient into using a mail-order pharmacy;

36 (2) Require a patient to use a mail-order pharmacy;

1 (3) Pay 340B drug pricing to a pharmacy that participates in the
2 340B drug pricing that is less than what a third party pays to any other
3 pharmacy for the same product and quantity dispensed, including ingredient
4 costs and other fees, reimbursements, adjustments, or recoupments applied to
5 a pharmacy by a third party;

6 (4) Discriminate or impose any separate terms upon a pharmacy on
7 the basis that a pharmacy participates in 340B drug pricing;

8 (5) Require a pharmacy to reverse, resubmit, or clarify a 340B
9 drug-pricing claim after the initial adjudication unless these actions are in
10 the normal course of pharmacy business and not related to 340B drug pricing;

11 (6) Require a billing modifier to indicate that the drug or
12 claim is a 340B drug-pricing claim unless the drug or claim is being billed
13 to the fee-for-service Arkansas Medicaid Program;

14 (7) Modify a patient's copayment on the basis of a pharmacy's
15 participation in 340B drug pricing;

16 (8) Exclude a pharmacy from a network on the basis of the
17 pharmacy's participation in 340B drug pricing;

18 (9) Establish or set network adequacy requirements based on 340B
19 drug pricing participation by a provider or a pharmacy; or

20 (10) Prohibit an entity authorized to participate in 340B drug
21 pricing or a pharmacy under contract with an entity authorized to participate
22 in 340B drug pricing from participating in the third party's provider
23 network.

24 (b) A third party that is a pharmacy benefits manager shall not base
25 the drug formulary or drug coverage decisions upon the 340B drug-pricing
26 status of a drug, including price or availability, or whether a dispensing
27 pharmacy participates in 340B drug pricing.

28 (c) A pharmaceutical manufacturer shall not:

29 (1) Prohibit a pharmacy from contracting or participating with
30 an entity authorized to participate in 340B drug pricing by denying access to
31 drugs that are manufactured by the pharmaceutical manufacturer; or

32 (2) Deny or prohibit 340B drug pricing for an Arkansas-based
33 community pharmacy that receives drugs purchased under a 340B drug pricing
34 contract pharmacy arrangement with an entity authorized to participate in
35 340B drug pricing.

36

1 23-92-605. Pharmacy claims.

2 All pharmacy claims processed by a pharmacy that participates in 340B
3 drug pricing are final at the point of adjudication.

4
5 23-92-606. Rules.

6 The Insurance Commissioner shall promulgate rules to implement this
7 subchapter.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36