

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

As Engrossed: H4/15/21

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

9 AN ACT TO ESTABLISH THE 340B DRUG PRICING
10 NONDISCRIMINATION ACT; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO ESTABLISH THE 340B DRUG PRICING
15 NONDISCRIMINATION ACT.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code Title 23, Chapter 92, is amended to add an
21 additional subchapter to read as follows:
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Subchapter 6 – 340B Drug Pricing Nondiscrimination Act

23-92-601. Title.

26 This subchapter shall be known and may be cited as the "340B Drug
27 Pricing Nondiscrimination Act".
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23-92-602. Definitions.

As used in this subchapter:

31 (1) "Patient" means an individual seeking medical diagnosis and
32 treatment;

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

34 (3) "Provider" means a licensed pharmacist as defined in § 17-
35 92-101;

36 (4)(A) "Third party" means:



1 (i) A payor or the payor's intermediary; or
2 (ii) A pharmacy benefits manager.
3 (B) "Third party" does not include:
4 (i) The Arkansas Medicaid Program;
5 (ii) A risk-based provider organization as
6 established under the Medicaid Provider-Led Organized Care Act, § 20-77-2701
7 et seq.; or
8 (iii) A self-insured governmental plan or a pharmacy
9 benefits manager for a self-insured governmental plan; and
10 (5) "340B drug pricing" means the program established under
11 section 602 of the Veterans Health Care Act of 1992, Pub. L. No. 102-585.
12
13 23-92-603. Third-party requirements.
14 A third party shall:
15 (1) Inform a patient that the patient is not required to use a
16 mail-order pharmacy;
17 (2) Obtain a signed waiver from a patient before allowing the
18 use of a mail-order pharmacy;
19 (3) Make drug formulary and coverage decisions based on the
20 third party's normal course of business;
21 (4) Allow a patient the freedom to use any pharmacy or any
22 provider the patient chooses, whether or not the pharmacy participates in
23 340B drug pricing; and
24 (5) Eliminate discriminatory contracting as it relates to:
25 (A) Transferring the benefit of 340B drug-pricing savings
26 from one (1) entity, including critical access hospitals, federally qualified
27 health centers, other hospitals, or 340B drug-pricing participants and their
28 underserved patients, to another entity, including without limitation
29 pharmacy benefits managers, private insurers, and managed care organizations;
30 (B) Pricing that occurs when offering a lower
31 reimbursement for a drug purchased under 340B drug pricing than for the same
32 drug not purchased under 340B drug pricing;
33 (C) Refusal to cover drugs purchased under 340B drug
34 pricing;
35 (D) Refusal to allow 340B drug-pricing pharmacies to
36 participate in networks; and

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

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4 23-92-604. Third party and pharmaceutical manufacturer – Prohibitions.

5 (a) A third party shall not:

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

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

8 (3) Discriminate, lower the reimbursement, or impose any
9 separate terms upon a pharmacy in any other third party contract on the basis
10 that a pharmacy participates in 340B drug pricing;

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

14 (5) Require a billing modifier to indicate that the drug or
15 claim is a 340B drug-pricing claim unless the drug or claim is being billed
16 to the fee-for-service Arkansas Medicaid Program;

17 (6) Modify a patient's copayment on the basis of a pharmacy's
18 participation in 340B drug pricing;

19 (7) Exclude a pharmacy from a network on the basis of the
20 pharmacy's participation in 340B drug pricing;

21 (8) Establish or set network adequacy requirements based on 340B
22 drug pricing participation by a provider or a pharmacy; or

23 (9) Prohibit an entity authorized to participate in 340B drug
24 pricing or a pharmacy under contract with an entity authorized to participate
25 in 340B drug pricing from participating in the third party's provider network
26 on the basis of participation in 340B drug pricing.

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

31 (c) A pharmaceutical manufacturer shall not:

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

35 (2) Deny or prohibit 340B drug pricing for an Arkansas-based
36 community pharmacy that receives drugs purchased under a 340B drug pricing

1 contract pharmacy arrangement with an entity authorized to participate in
2 340B drug pricing.

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4 23-92-605. Pharmacy claims.

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

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8 23-92-606. Rules.

9 The Insurance Commissioner shall promulgate rules to implement this
10 subchapter.

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12 */s/M. Gray*

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15 **APPROVED: 5/3/21**

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