

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1938

S.P. 673

In Senate, January 26, 2022

An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA c. 603, sub-c. 5** is enacted to read:

3 **SUBCHAPTER 5**

4 **DISCRIMINATORY PRACTICES REGARDING 340B DRUG PRICING**
5 **PROGRAM**

6 **§2699-A. Discriminatory practices regarding 340B drug pricing program**

7 **1. Definitions.** As used in this subchapter, unless the context otherwise indicates, the
8 following terms have the following meanings.

9 A. "Patient" means an individual seeking medical diagnosis and treatment.

10 B. "Pharmacy" has the same meaning as in Title 32, section 13702-A, subsection 24.

11 C. "Pharmacy benefits manager" has the same meaning as in Title 24-A, section 4347,
12 subsection 17.

13 D. "Provider" means a pharmacist as defined in Title 32, section 13702-A, subsection
14 22.

15 E. "Third party" means:

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

17 (2) Except as provided in this paragraph, a pharmacy benefits manager.

18 "Third party" does not include the Medicaid program or a self-insured governmental
19 health insurance plan or a pharmacy benefits manager for a self-insured governmental
20 health insurance plan.

21 F. "340B drug pricing" means the program established under Section 602 of the federal
22 Veterans Health Care Act of 1992.

23 **2. Third-party requirements.** A 3rd party shall:

24 A. Inform a patient that the patient is not required to use a mail order pharmacy;

25 B. Obtain a signed waiver from a patient before allowing the use of a mail order
26 pharmacy;

27 C. Make drug formulary and coverage decisions based on the 3rd party's normal course
28 of business;

29 D. Allow a patient to use without penalty any pharmacy or any provider the patient
30 chooses, whether or not the pharmacy or provider participates in 340B drug pricing;
31 and

32 E. Eliminate discriminatory contracting as it relates to:

33 (1) Transferring the benefit of 340B drug pricing savings from one entity,
34 including critical access hospitals, federally qualified health centers, other
35 hospitals or 340B drug pricing participants and their patients from underserved

1 areas or populations, to another entity, including without limitation pharmacy
2 benefits managers, private insurers and managed care organizations;

3 (2) Pricing that occurs when offering a lower reimbursement for a drug purchased
4 under 340B drug pricing than for the same drug not purchased under 340B drug
5 pricing;

6 (3) Refusal to cover drugs purchased under 340B drug pricing;

7 (4) Refusal to allow a pharmacy participating in 340B drug pricing to participate
8 in any network; and

9 (5) Charging more than fair market value or seeking profit-sharing in exchange
10 for services involving 340B drug pricing.

11 **3. Third-party and pharmaceutical manufacturer prohibitions.** The following
12 prohibitions apply to 3rd parties and pharmaceutical manufacturers.

13 A. A 3rd party may not:

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

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

16 (3) Discriminate against, lower the reimbursement of or impose any separate terms
17 upon a pharmacy in any other 3rd-party contract on the basis of the pharmacy's
18 participation in 340B drug pricing;

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

22 (5) Require a billing claim to indicate that the claim is a 340B drug pricing claim
23 unless the claim is being billed under the Medicaid program on a fee-for-service
24 basis;

25 (6) Modify a patient's copayment on the basis of a pharmacy's participation in
26 340B drug pricing;

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

29 (8) Establish network adequacy requirements on the basis of a pharmacy's or
30 provider's participation in 340B drug pricing; or

31 (9) Prohibit an entity authorized to participate in 340B drug pricing or a pharmacy
32 under contract with an entity authorized to participate in 340B drug pricing from
33 participating in the 3rd party's provider network on the basis of participation in
34 340B drug pricing.

35 B. A 3rd party that is a pharmacy benefits manager may not base drug formulary or
36 drug coverage decisions upon the 340B drug pricing status of a drug, including price
37 or availability, or whether a dispensing pharmacy participates in 340B drug pricing.

38 C. A pharmaceutical manufacturer may not:

