

Stricken language would be deleted from and underlined language would be added to present law.
Act 1103 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/15/21
A Bill

HOUSE BILL 1881

By: Representatives M. Gray, Wardlaw, Murdock, V. Flowers

By: Senator Rapert

For An Act To Be Entitled

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

Subtitle

TO ESTABLISH THE 340B DRUG PRICING
NONDISCRIMINATION ACT.

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

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

Subchapter 6 – 340B Drug Pricing Nondiscrimination Act

23-92-601. Title.

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

23-92-602. Definitions.

As used in this subchapter:

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

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

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

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



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

(ii) A pharmacy benefits manager.

(B) "Third party" does not include:

(i) The Arkansas Medicaid Program;

(ii) A risk-based provider organization as established under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq.; or

(iii) A self-insured governmental plan or a pharmacy benefits manager for a self-insured governmental plan; and

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

23-92-603. Third-party requirements.

A third party shall:

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

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

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

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

(5) Eliminate discriminatory contracting as it relates to:

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

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

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

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

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

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

(a) A third party shall not:

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

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

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

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

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

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

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

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

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

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

(c) A pharmaceutical manufacturer shall not:

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

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

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

23-92-605. Pharmacy claims.

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

23-92-606. Rules.

The Insurance Commissioner shall promulgate rules to implement this subchapter.

/s/M. Gray

APPROVED: 5/3/21