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.

Presented by Senator CLAXTON of Androscoggin.
Be it enacted by the People of the State of Maine as follows:

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

SUBCHAPTER 5

DISCRIMINATORY PRACTICES REGARDING 340B DRUG PRICING PROGRAM

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

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

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

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

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

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

E. "Third party" means:

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

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

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

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

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

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

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

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

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

E. Eliminate discriminatory contracting as it relates to:

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

(2) 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;

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

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

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

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

A. A 3rd party may not:

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

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

(3) Discriminate against, lower the reimbursement of or impose any separate terms
upon a pharmacy in any other 3rd-party contract on the basis of the pharmacy's
participation 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 claim to indicate that the claim is a 340B drug pricing claim
unless the claim is being billed under the Medicaid program on a fee-for-service
basis;

(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 network adequacy requirements on the basis of a pharmacy's or
provider's participation in 340B drug pricing; 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 3rd party's provider network on the basis of participation in
340B drug pricing.

B. A 3rd party that is a pharmacy benefits manager may not base 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 may 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 a pharmacy that receives drugs purchased under a 340B drug pricing contract pharmacy arrangement with an entity authorized to participate in 340B drug pricing.

4. Pharmacy claims. A pharmacy claim processed by a pharmacy that participates in 340B drug pricing is final at the point of adjudication.

5. Rules. The Superintendent of Insurance shall adopt rules, which are routine technical rules as described in Title 5, chapter 375, subchapter 2-A, to implement this subchapter.

SUMMARY

This bill prohibits certain discriminatory practices related to the 340B drug pricing program within the United States Department of Health and Human Services, Health Resources and Services Administration, which allows eligible entities to purchase discounted prescription drugs.