

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE HEALTH AND HUMAN SERVICES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 540

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
ENACTING A NEW SECTION OF THE NEW MEXICO INSURANCE CODE TO
PROHIBIT DISCRIMINATION AGAINST ENTITIES PARTICIPATING IN THE
FEDERAL 340B DRUG PRICING PROGRAM; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the New Mexico Insurance Code
is enacted to read:

"[NEW MATERIAL] PROHIBITION ON DISCRIMINATION AGAINST A
COVERED ENTITY.--

A. As used in this section:

(1) "340B drug" means a drug that is purchased
at a discount in accordance with the 340B program requirements;

(2) "340B program" means the federal drug
pricing program created pursuant to 42 U.S.C. Section 256b;

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underscored material = new
[bracketed material] = delete

1 (3) "covered entity" means an entity
2 participating in the 340B program; and

3 (4) "pharmacy benefits manager" means an
4 entity that provides pharmacy benefits management services.

5 B. A pharmacy benefits manager or a third party
6 shall not discriminate against a covered entity on the basis of
7 its participation in the 340B program by:

8 (1) reimbursing a covered entity for a 340B
9 drug at a rate lower than that paid for the same drug to
10 pharmacies, similar in prescription volume, that are non-
11 covered entities;

12 (2) assessing a fee, chargeback or other
13 adjustment to the covered entity that is not assessed to non-
14 covered entities;

15 (3) imposing a provision that prevents or
16 interferes with a person's choice to receive 340B drugs from a
17 covered entity; or

18 (4) imposing terms or conditions that differ
19 from terms or conditions imposed on a non-covered entity,
20 including:

21 (a) restricting or requiring
22 participation in a pharmacy network;

23 (b) requiring more frequent auditing or
24 a broader scope of audit for inventory management systems using
25 generally accepted accounting principles;

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1 (c) requiring a covered entity to
2 reverse, resubmit or clarify a claim after the initial
3 adjudication, unless these actions are in the normal course of
4 pharmacy business and not related to the 340B program; or

5 (d) charging an additional fee or
6 provision that prevents or interferes with an individual's
7 choice to receive a 340B drug from a covered entity."

8 SECTION 2. EMERGENCY.--It is necessary for the public
9 peace, health and safety that this act take effect immediately.