



February 20, 2024

Oregon State Legislature  
House Committee on Rules  
900 Court Street NE  
Salem, OR 97301

*Submitted electronically via OLIS*

**RE: House Bill 4028 -2 Amendment (340B provision), relating to health care**

Chair Fahey and Members of the Committee:

We appreciate the opportunity to express support for the -2 Amendment of House Bill 4028, regarding the 340B Drug Pricing Program. The -2 Amendment of HB 4028 would protect patients, hospitals, and other 340B covered entities. Pursuant to the -2 Amendment, a manufacturer may not deny, restrict, prohibit or otherwise interfere directly or indirectly with the acquisition of a 340B drug or the delivery of a 340B drug to a pharmacy or drug outlet that has contracted with a covered entity to receive and dispense 340B drugs on behalf of the covered entity unless the acquisition or delivery is prohibited by the United States Department of Health and Human Services. We believe that this legislation is vital to protecting the integrity of the 340B Drug Pricing Program and the value it provides to Oregonians. Without it, we expect drug manufacturers to continue to take actions that are detrimental to patients, hospitals, and other 340B-covered entities. Oregon is not alone in trying to address this issue. Other states have passed or introduced legislation that would prohibit drug companies from denying 340B discounts through contract pharmacy arrangements.

**How the 340B program serves Oregonians through our hospitals**

For more than 30 years, the 340B Drug Pricing Program has provided financial help to hospitals serving vulnerable communities to manage rising prescription drug costs. Section 340B of the Public Health Service Act requires pharmaceutical manufacturers participating in Medicaid to sell outpatient drugs at discounted prices to health care organizations that care for many uninsured and low-income patients, called "covered entities." These organizations include federal grantee organizations and several types of hospitals, including critical access hospitals (CAHs), sole community hospitals (SCHs), rural referral centers (RRCs), and public and nonprofit disproportionate share hospitals (DSH) that serve low-income and indigent populations. These hospitals care for a significant share of Oregon's underserved populations including children, people with cancer, and rural patients.



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## Why the -2 Amendment, HB 4028 is needed

The Department of Health & Human Services has referred multiple drug manufacturers to the Office of the Inspector General related to contract pharmacy issues.<sup>1</sup> The drug manufacturers were instructed by the Health Resources and Services Administration (HRSA) to comply with their 340B statutory obligations and to immediately begin offering covered outpatient drugs at the 340B ceiling price to covered entities that dispense the discounted medications through their contract pharmacy arrangements. After the drug manufacturers continued refusal to comply, HRSA referred the issue to the HHS Office of Inspector General. Drug manufacturers are litigating the issue.

## Contract pharmacies as a vital program partner

HRSA allows 340B participants to contract with outside pharmacies to dispense drugs to their eligible patients.<sup>2</sup> For hospitals, these arrangements allow them to ensure that their patients can access the drugs they need when they need it, especially as patients rely more heavily on specialty drugs, many of which are in limited distribution. For patients, these arrangements make it easier to access their needed drugs without having to travel to the hospital to receive the drug.

According to the American Hospital Association, "Contract pharmacies are particularly important in rural hospitals, many of which do not have their own in-house pharmacies, and therefore solely rely on a network of contracted community and specialty pharmacies to ensure their patients have access to the drugs they need. Approximately half of all eligible 340B hospitals are located in rural areas that often lack adequate access to health care services. More than 80% of rural 340B hospitals use contract pharmacies to ensure their patients have access to needed outpatient drugs, as well as other essential services."<sup>3</sup>

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<sup>1</sup> U.S. HHS Health Resources & Services Administration, 340 Drug Pricing Program, Program Integrity

<https://www.hrsa.gov/opa/program-integrity>

Updated HRSA Letter to Merck Regarding Sales to Covered Entities through Contract Pharmacy Arrangements, October 2022, <https://www.hrsa.gov/sites/default/files/hrsa/opa/programintegrity/updated-hrsa-letter-merckcovered-entity-contract-pharmacy-arrangments.pdf>

Updated HRSA Letter to Boehringer Ingelheim Regarding Sales to Covered Entities through Contract Pharmacy Arrangements, March 2022, <https://www.hrsa.gov/sites/default/files/hrsa/opa/updated-hrsa-letter-boehringer-ingelheim-covered-entities.pdf>

Updated HRSA Letter to AstraZeneca Regarding Sales to Covered Entities through Contract Pharmacy Arrangements, March 2022, <https://www.hrsa.gov/sites/default/files/hrsa/opa/updated-hrsa-letter-astrazeneca-covered-entities.pdf> (Note: This letter has been vacated by a ruling in the *Sanofi Aventis US LLC v. United States HHS, et al* 58 F.4th 696 (3rd Cir. 2023) litigation.)

<sup>2</sup> U.S. Department of Health & Human Services, Advisory Opinion 20-06 on Contract Pharmacies under the 340B Program, December 20, 2020 [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/340B-AO-FINAL-12-30-2020\\_0.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/340B-AO-FINAL-12-30-2020_0.pdf)

<sup>3</sup> American Hospital Association, Fact Sheet: 340B Drug Pricing Program – Contract Pharmacy Arrangements, April 2023, <https://www.aha.org/system/files/media/file/2020/10/fact-sheet-340b-drug-pricing-program-contract-pharmacy-arrangements.pdf>



For those hospitals with an in-house pharmacy, contract pharmacies remain important for quality patient care. Not every hospital can stock every medication that every patient might need. The contract pharmacy creates access to additional (often specialty) medications and supports high-quality patient care.

The -2 Amendment of HB 4028 would prohibit drug companies from denying 340B discounts through contract pharmacy arrangements. The actions that the drug manufacturers have taken support their bottom line at the expense of hospitals serving vulnerable communities and patients. The -2 Amendment of HB 4028 would protect hospitals and patients from this harmful practice.

Sincerely,



Katie Harris  
Director of Rural Health and Federal Policy  
Hospital Association of Oregon

#### **About the Hospital Association of Oregon**

Founded in 1934, the Hospital Association of Oregon Association (HAO) is a mission-driven, nonprofit trade association representing Oregon's 61 hospitals. Together, hospitals are the sixth largest private employer statewide, employing more than 70,000 employees. Committed to fostering a stronger, safer, more equitable Oregon where all people have access to the high-quality care they need, the hospital association supports Oregon's hospitals so they can support their communities; educates government officials and the public on the state's health landscape and works collaboratively with policymakers, community based organizations and the health care community to build consensus on and advance health care policy benefiting the state's 4 million residents.



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