HB 4028 - 2 & the 340B Program

HB 4028 - 2 preserves decades-long precedent of 340B medication savings, supporting work of Oregon's safety net hospitals and clinics

340B is a federal pharmacy program created to allow covered entities "to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services." H.R. Rept. No. 102–384(II), at 12 (1992). The program allows safety net clinics and hospitals to purchase medications at a discount, and then requires these providers to use those savings to support the services of underserved Oregonians.

This bill would prohibit drug manufacturers from restricting covered entities access to the the 340B program. PhRMA via contract is currently disallowing eligible 340B eligible providers from receiving the drug pricing discount when patients fill their medications at certain pharmacy locations. HB 4028 - 2 would prohibit this practice in Oregon.

As the Health Resources and Services Administration (HRSA, the agency primarily responsible for administering the 340B Program) has explained in prior guidance, a substantial number of covered entities are practically constrained to rely on contract pharmacies to access the 340B Program. If manufacturers can simply shut off this means of access, the program's effectiveness will be greatly diminished.

Who is eligible for 340B drug pricing discounts?

The "covered entities" deemed eligible by the federal government to participate in the program are those providers who predominantly serve Medicaid, uninsured, and underinsured patients and include:

- Federally Qualified Health Centers
- Ryan White HIV/AIDs clinics
- Hemophilia clinics
- Black Lung clinics receiving funds under section 937(a) of title 30
- Urban Indian organizations receiving funds under title V of the Indian Health Care Improvement Act
- Sole Community Hospitals
- Critical Access Hospitals
- DSH Hospitals that provide a significant amount of care to underinsured and uninsured patients

Bipartisanship in other states

This legislation, while adamantly opposed by PhRMA in other states, was not partisan. It was introduced in Louisiana by Rep. Christopher Turner (R) and passed with near unanimous support in the House (97-2), and with unanimous support in the Senate.

In Arkansas, it was introduced by Rep. Michelle Gray (R), Rep. Jeff Wardlaw (R), Rep. Reginald Murdock (D), and Sen. Stephanie Flowers (D). It passed unanimously in the Senate and had just 14 opposed in the House (65 in support).

In Virginia, similar legislation moved unanimously out of the Senate on February 4, 2024.

The following states are running similar legislation this year: Florida, Iowa, Kentucky, Massachusetts, Michigan, Missouri, Nebraska, New York, Oklahoma, West Virginia.

HB 4028 - 2 & the 340B Program

Audits and reinvestment

This program is audited by HRSA to insure compliance and to prevent fraud, waste and abuse. Duplicate discounts are avoided through a nationally recognized deduplicate process managed by OHA through the "340B Mailbox." In addition, pharmaceutical manufacturers can and do regularly audit covered entities themselves to ensure compliance. PhRMA legislating via contract doesn't prevent waste fraud and abuse; their ability to directly audit covered entities should.

The program is working as intended in Oregon. Both DSH hospitals and FQHCs are not allowed to turn anyone away. The savings from reduced drug costs are used to support access to health care services for Oregonians who otherwise wouldn't have access to care. HRSA audits this reinvestment. A couple of examples include offering patients drug cards to cover their copays, providing care to undocumented or indigent individuals, or expanding access by hiring behavioral health or dental professionals.

What happens if this doesn't pass?

You can hear from the Director of Pharmacy for Neighborhood Health Center in Washington and Clackamas counties who states they have lost $2M per year in her testimony, and you can hear from the Director of Pharmacy at Mosaic Community Health in central Oregon who states they have lost over $3.7M from contract pharmacy restrictions in her testimony. These are just three of the 34 FQHCs in Oregon. If you do not hold PhRMA accountable, we may have to come back next session to ask the Legislature to fill this funding gap.

Is PhRMA negatively impacted by this legislation?

No. This would ensure manufacturers comply with federal law in Oregon and prevent further erosion of necessary 340B savings and reinvestment for Oregonians. The bill ensures that drug manufacturers hold up their end of the agreement to support safety net clinics and hospitals. Given this program has operated for decades, it is likely the cost of this program to manufacturers is already included in their business model.

Contact

Cassie Bruske, cassie@eames.consulting
Julie Hanna, hannaju@ohsu.edu
Sean Kolmer, skolmer@oahhs.org