



**In Opposition to Senate Bill 533 / House Bill 2385  
340B Program Mandate  
January 15, 2025**

**Position: The Pharmaceutical Research and Manufacturers of America (“PhRMA”) respectfully opposes SB 533 / HB 2385.**

**SB 533 / HB 2385 requires manufacturers to ship drugs to all contract pharmacies for 340B providers, and by extension, offer 340B pricing at these locations.**

This bill attempts to add a state requirement to the federal statute. The term “contract pharmacy” does not appear anywhere in the federal 340B statute and was created by the Health Resources and Services Administration (HRSA), which administers the 340B program, solely through guidance, which does not have the force and effect of law.

**Issues related to the contract pharmacy policy are currently being litigated in multiple lawsuits across the country.**

Because there is ongoing litigation across the country about HRSA’s 340B contract pharmacy policy, Oregon should allow the federal courts to address and resolve the relevant issues before considering any legislative action. If the courts hold that the federal 340B law does not authorize a requirement that manufacturers ship drugs to contract pharmacies, that would raise additional constitutional concerns about state legislation related to that issue. In fact, in late January 2023, the U.S. Court of Appeals for the Third Circuit held that “[s]ection 340B [of the federal statute] does not require delivery to an unlimited number of contract pharmacies” and “Congress never said that drug makers must deliver discounted Section 340B drugs to an unlimited number of contract pharmacies.”

It is important for policymakers to ensure the 340B program truly benefits the safety net that serves our underserved communities in Oregon and throughout the country. Unfortunately, over the three decades after it was originally created, the 340B program has deviated from its original mission to instead benefit entities such as hospitals, for-profit pharmacies, and other middlemen, leaving behind the patients that the program is meant to serve and threatening the sustainability of the program for true safety-net entities that provide much needed care to vulnerable communities. In addition to exacerbating existing problems with the 340B program, this bill would impose a significant financial obligation on manufacturers, which could disincentivize participation in the 340B program and impact the Medicaid program.

In 1992, when the 340B program was established by federal law, it was meant to help safety-net entities access affordable drugs to treat their low-income and uninsured patients. Due to weak oversight, the 340B program has expanded in a way that has allowed covered entities to divert to the benefit of the entities’ bottom-line money intended to help patients get better care and afford their medicines. As a result, the

340B program has changed and grown dramatically since its establishment, while charity care at 340B hospitals has declined below national averages.<sup>1</sup>

**There is little evidence to suggest that patients have benefited from contract pharmacy growth.**

Many contract pharmacies may often charge a patient a drug's full retail price because they are not required to share any of the discount with those in need.<sup>2</sup> An analysis of contract pharmacy claims for brand medicines only found evidence that patients were directly receiving a discount for 1.4% of prescriptions eligible for 340B. Additional studies have found that 65% of the roughly 3,000 hospitals that participate in the 340B program are not located in medically underserved areas,<sup>3</sup> and only 26% of contract pharmacies are located in medically underserved areas.<sup>4</sup> Research has also found that more than two-thirds of 340B hospitals provide less charity care than the national average for all hospitals, and they often spend less on charity care and community investment than the estimated value of their tax breaks as nonprofits. In fact, 68% of 340B hospitals in Oregon are below the national average for charity care levels.<sup>5</sup>

**SB 533 / HB 2385 will line the pockets of PBMs, pharmacy chains, and large hospitals.**

Since 2010, the number of contracts with pharmacies has grown by more than 8,000%, with roughly 33,000 pharmacies participating in the program today. Big-box retailers such as Walgreens, CVS Health, and Walmart are major participants in the 340B program through contract pharmacy arrangements. Because of vertical integration in the supply chain, PBMs now own the vast majority of pharmacies, meaning they also make a profit from contract pharmacy arrangements. In fact, the five largest for-profit pharmacy chains comprise 60% of 340B contract pharmacies, but only 35% of all pharmacies nationwide.<sup>6</sup> 340B covered entities and their contract pharmacies generated an estimated \$13 billion in gross profits on 340B purchased medicines in 2018, which represents more than 25% of pharmacies' and providers' total profits from dispensing or administering brand medicines.<sup>7</sup>

**PhRMA respectfully opposes SB 533/HB 2385 and appreciates your consideration prior to advancing this bill.**

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*The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier and more productive lives. Over the last decade, PhRMA member companies have more than doubled their annual investment in the search for new treatments and cures, including nearly \$101 billion in 2022 alone.*

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1 AIR340B Coalition, "Left Behind: An Analysis of Charity Care Provided by Hospitals Enrolled in the 340B Discount Program," November 2019, [https://340breform.org/wp-content/uploads/2019/11/AIR340\\_LeftBehind-v6.pdf](https://340breform.org/wp-content/uploads/2019/11/AIR340_LeftBehind-v6.pdf).

2 Conti, Rena M., and Peter B. Bach. "Cost consequences of the 340B drug discount program." *Jama* 309.19 (2013): 1995-1996.

3 Alliance for Integrity & Reform. "340B – A Missed Opportunity to Address Those That Are Medically Underserved." 2023 Update.

Access: [https://340breform.org/wp-content/uploads/2023/07/340B\\_MUA\\_July23-4.pdf](https://340breform.org/wp-content/uploads/2023/07/340B_MUA_July23-4.pdf).

4 BRG Analysis of HRSA OPAIS Database and Medicare Cost Reports. October 2023

5 <https://340breform.org/340b-hospitals/oregon/>

6 Government Accountability Office, "Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement," GAO-18-480, June 2018.

7 BRG. "For-Profit Pharmacy Participation in the 340B Program". October 2020.