

**Representative Steve Eliason** proposes the following substitute bill:

**PRESCRIPTION DRUG AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: Evan J. Vickers

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to drug pricing.

**Highlighted Provisions:**

This bill:

- ▶ modifies provisions relating to reimbursement and contracting for pharmaceutical drugs;
- ▶ enacts new prohibitions on pharmacy benefit managers regarding drug pricing and contracting for 340B entities and 340B drugs;
- ▶ prohibits a pharmaceutical manufacturer from engaging in certain types of actions with respect to pharmacies and 340B entities; and
- ▶ provides an immediate effective date for the bill.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

This bill provides revisor instructions.

**Utah Code Sections Affected:**

AMENDS:



26 **31A-46-309**, as enacted by Laws of Utah 2020, Chapter 275

27 ENACTS:

28 **31A-46-311**, Utah Code Annotated 1953

29 **Utah Code Sections Affected by Revisor Instructions:**

30 **31A-46-309**, as enacted by Laws of Utah 2020, Chapter 275



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **31A-46-309** is amended to read:

33 **31A-46-309. Reimbursement -- Prohibitions.**

34 (1) This section applies to a contract that is entered into, amended, or renewed on or  
35 after [~~January 1, 2021~~] the effective date of this bill, between a pharmacy benefit manager and  
36 a pharmacy.

37 (2) A pharmacy benefit manager may not vary the amount it reimburses a pharmacy for  
38 a drug on the basis of whether:

- 39 (a) the drug is a 340B drug; or
- 40 (b) the pharmacy is a 340B entity.

41 (3) Subsection (2) does not apply to a drug reimbursed, directly or indirectly, by the  
42 Medicaid program.

43 (4) A pharmacy benefit manager may not:

44 (a) on the basis that a 340B entity participates, directly or indirectly, in the 340B drug  
45 discount program:

- 46 (i) refuse to contract with the 340B entity;
- 47 ~~[(i)]~~ (ii) assess a fee, charge-back, or other adjustment on the 340B entity;
- 48 ~~[(ii)]~~ (iii) restrict access to the pharmacy benefit manager's pharmacy network;
- 49 ~~[(iii)]~~ (iv) require the 340B entity to enter into a contract with a specific pharmacy to  
50 participate in the pharmacy benefit manager's pharmacy network;

51 ~~[(iv)]~~ (v) create a restriction or an additional charge on a patient who chooses to  
52 receive drugs from a 340B entity; [or]

53 (vi) modify a copayment or other cost-sharing requirement of a patient of the 340B  
54 entity; or

55 ~~[(v)]~~ (vii) create any additional requirements or restrictions on the 340B entity; [or]  
56

57 (b) require a claim for a drug to include a modifier to indicate that the drug is a 340B  
58 drug unless the claim is for payment, directly or indirectly, by the Medicaid program[-];

59 (c) require a pharmacy to reverse, resubmit, or clarify a claim for a drug after an initial  
60 adjudication for the purpose of determining whether the drug is a 340B drug;

61 (d) base a drug formulary decision or a drug coverage decision on whether:

62 (i) a drug is a 340B drug; or

63 (ii) a pharmacy is a 340B entity;

64 (e) transfer the benefit of 340B drug discount program savings from a 340B entity to  
65 another entity;

66 (f) unilaterally modify the definition of pharmacy in a way that is inconsistent with  
67 state law through a contract, a provider manual, or other means; or

68 (g) directly or indirectly charge or hold a 340B entity responsible for a fee related to a  
69 claim:

70 (i) that is not apparent at the time of claim processing;

71 (ii) that is not reported on the remittance advice of an adjudicated claim; or

72 (iii) after the initial claim is adjudicated at the point of sale.

73 Section 2. Section **31A-46-311** is enacted to read:

74 **31A-46-311. Prohibited acts by pharmaceutical manufacturers.**

75 A pharmaceutical manufacturer, or any person involved in the distribution of a  
76 pharmaceutical manufacturer's products, may not:

77 (1) prohibit a pharmacy from contracting or participating with a 340B entity by  
78 denying the pharmacy or 340B entity access to drugs manufactured by the pharmaceutical  
79 manufacturer; or

80 (2) deny or prohibit 340B drug discount program pricing for a 340B entity.

81 Section 3. **Effective date.**

82 If approved by two-thirds of all the members elected to each house, this bill takes effect  
83 upon approval by the governor, or the day following the constitutional time limit of Utah  
84 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
85 the date of veto override.

86 Section 4. **Revisor instructions.**

87 The Legislature intends that the Office of Legislative Research and General Counsel, in

88 preparing the Utah Code database for publication, replace the references in Subsection  
89 [31A-46-309](#)(1) from "the effective date of this bill" to the bill's actual effective date.