

340B Programs - Pricing, Reimbursement
Recent State Laws

2021 Law*

State	Bill	Status	Summary
Alabama	SB 227	Law; Act 2021-341	Among changes to the regulation of Pharmacy Benefit Managers (PBMs) [largely, 2019 law], the act specifies a PBM cannot decrease or restrict reimbursement on 340B claims or require additional claims data including claim modifiers, with submission of a 340B prescription claim.
Arkansas	HB 1881	Law; Act No. 1103	<p>Establishes the 340B Drug Pricing Nondiscrimination Act (Act).</p> <p>The Act prohibits a third party from engaging in discriminatory practices against a pharmacy that participates in the 340B drug pricing; requires a third party to inform a patient that the patient is not required to use a mail-order pharmacy, obtain a signed waiver from a patient before allowing the use of a mail-order pharmacy, make drug formulary and coverage decisions based on the third party's normal course of business, allow a patient the choice of provider and pharmacy, and eliminate discriminatory contracting related to 340B drug pricing; and prohibits a third party from coercing or requiring a patient to use a mail-order pharmacy, discriminating against a pharmacy for participating in 340B drug pricing, requiring a pharmacy to alter a 340B drug pricing claim unless in normal course of business and not related to 340B drug pricing, requiring a billing modifier for 340B drug pricing, modifying a patient's copayment based on a pharmacy's participating in 340B drug pricing, excluding a pharmacy from a network based on participating in 340B drug pricing, establishing network adequacy requirements based on 340B drug pricing, or prohibiting an entity that participates in 340B drug pricing from participating in the third party's provider network.</p> <p>The Act also prohibits a pharmaceutical manufacturer from prohibiting a pharmacy from contracting or participating with an entity that participates in 340B drug pricing by denying access to drugs and clarifies that all pharmacy claims processed by a pharmacy that participates in 340B drug pricing are final at the point of adjudication.</p>

Indiana	HB 1405	Law; Public Law 196	<p>Addresses insurance matters. Specific to the PBMs, it: prohibits a PBM from imposing limits on a pharmacy's access to medication that differ from those existing for a PBM affiliate or sharing any covered individual's information, except as permitted by the federal Health Insurance Portability and Accountability Act (HIPAA); and prohibits the inclusion of certain provisions in a contract between a PBM and an entity authorized to participate in the federal 340B Drug Pricing Program, with certain exceptions. The bill also contains provisions relating to maximum allowable cost (MAC) pricing and appeals, violations constituting unfair or deceptive acts, and an exclusion in provisions pertaining to prohibitions against rebates.</p> <p>Provisions that cannot be included in a contract include: (1) a reimbursement rate for a prescription drug that would diminish the 340B benefit to a 340B covered entity; (2) a fee or adjustment that is not imposed on a pharmacy that is not a 340B covered entity; (3) A fee or adjustment amount that exceeds the fee or adjusted amount imposed on a pharmacy that is not a 340B covered entity; (4) any provision that prevents or interferes with an individual's choice to receive a prescription drug from a 340B covered entity; (5) any provision that excludes a 340B covered entity from PBM networks based on the covered entity's participation in the 340B Drug Pricing Program; and (6) any provision that discriminates against a 340B covered entity.</p>
North Dakota	HB 1492	Law; Ch. 171	<p>A PBM may not discriminate against or interfere with a 340B covered entity or pharmacy under contract with the 340B Program to provide pharmacy services. This includes refusing to contract with a pharmacy. A PBM may not modify, by contract, provider manual, or other means, the definition of pharmacy, reimburse a lower dollar amount for a drug purchased under 340B than if the drug had been purchased outside 340B, or interfere with any section 340B pharmacy service between the covered entity and the contracted pharmacy.</p>

Tennessee	HB 1398	Law; Pub. Ch. 569 (Comp. bill, SB 1617)	<p>Prohibits health insurance issuers, PBMs, and other third-party payers from: reimbursing a 340B entity for pharmacy-dispensed drugs at a rate lower than the rate paid for the same drug by national drug code (NDC) number to pharmacies that are not 340B entities; assessing a fee, chargeback, or other adjustment upon a 340B entity that is not equally assessed on non-340B entities; and excluding 340B entities from its network of participating pharmacies based on criteria that is not applied to non-340B entities.</p> <p>The law also prohibits, with respect to a patient eligible to receive drugs subject to an agreement under the federal law provisions governing limitations on prices of drugs purchased by covered entities, a PBM or third party that makes payment for those drugs, from discriminating against a 340B entity in a manner that prevents or interferes with the patient's choice to receive those drugs from the 340B entity.</p> <p>The law further prohibits a PBM from charging a covered entity an amount greater than the reimbursement paid by a PBM to a contracted pharmacy for the prescription drug or device.</p>
Utah	S.B. 140	Law; Ch. 317	<p>Pharmacy Benefit amendments, amending provisions relating to pharmacies that are operated by or contract with a federally qualified health center (FQHC) that participates in the 340B Drug Discount Program. An insurer may not vary the amount that it reimburses to an FQHC for a drug on the basis of whether the drug is a 340B drug or the pharmacy is a 340B entity (this provision does not apply to a drug reimbursed by the Medicaid program). An insurer or its pharmacy service may not, on the basis that an FQHC participates in the 340B Drug Discount Program: (1) assess a fee, charge-back, or other adjustment on an FQHC; restrict access to the insurer's pharmacy network; require the FQHC to enter into a contract with a specific pharmacy to participate in the insurer's pharmacy network; (2) create a restriction or an additional charge on a patient who chooses to receive drugs from an FQHC; or (3) create any additional requirements or restrictions on the FQHC. In addition, the insurer or its pharmacy service may not require a claim for a drug to include a modifier to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the Medicaid program.</p>
Vermont	H.439	Law; Act 74 Budget bill-Sec. E.227.1-3	<p>Pharmacy Benefit Managers, required practices with respect to pharmacies (amending 18 V.S.A. § 9473). Prohibits a PBM from either requiring a claim for a drug to include a modifier or supplemental transmission (or both) to indicate that the drug is a 340B drug unless the claim is for payment by Medicaid or restricting access to a pharmacy network or adjusting reimbursement rates based on a pharmacy's participation in a 340B contract pharmacy arrangement. Requires a report, on or before January 15, 2022, of the Department of Financial Regulation regarding national activity affecting participation in the 340B Drug Pricing Program.</p>

West Virginia	HB 2263, CS for	Law, Chapter 164	Insurance topics, including the regulation of PBMs (adds new sections §33-51-11 pertaining to consumer choice and §33-51-12 pertaining to reporting requirements). Requires rebates to be passed on to consumers. PBM network discrimination provisions are effective January 1, 2022.
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* Note: An additional 5 states, including Kansas, have bills carrying forward to their respective 2022 Sessions with topics that include "PBM" and "340B" or "42 U.S.C. § 256b". [Hawaii, Kansas (SB 128 and HB 2260), Nebraska, New York, and Wisconsin]

2019-2020 Law

Georgia	SB 313	2020 Law; Act No. 584	Amends provisions pertaining to PBMs include regulation, licensure, practices, and prohibited activities. Provides, on and after January 1, 2021, a PBM shall not discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the PBM's network on the basis that the pharmacy dispenses drugs subject to a 340B agreement. Prohibits a PBM from engaging in any practice that: bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics; imposes a point-of-sale fee or retroactive fee; or derives any revenue from a pharmacy or insured in connection with providing pharmacy benefit management services.
Kentucky	SB 50	2020 Law; Acts ch. 70	Establishes additional requirements on the State PBM (for Medicaid managed care), including requiring all Medicaid MCOs to contract with this PBM. Provides that reimbursement methodologies established by administrative regulations shall not discriminate against pharmacies owned or contracted by a health care facility that is registered as a covered entity pursuant to 42 U.S.C. sec. 256b ("340B"), to the extent allowable by the federal Centers for Medicare and Medicaid Services (CMS).
Minnesota	S.F. 278	2019 Law; Ch. 39	Establishes the Minnesota Pharmacy Benefit Manager Licensure and Regulation Act (provisions broader than, but including 340B entities). In provisions pertaining to pharmacy services, the law provides: A PBM or health carrier must not prohibit an entity authorized to participate in the federal 340B Drug Pricing Program or a pharmacy under contract with such entity to provide pharmacy services from participating in the PBM's or health carrier's provider network. The PBM or health carrier also must not reimburse an entity or a pharmacy under contract with such an entity participating in the federal 340B Drug Pricing Program differently than other similarly situated pharmacies.

Montana*	SB 335	2019 Law; Ch. 215	<p>Establishes a definition for "federally qualified health entity" (a 340B covered entity as described in 42 U.S.C. 256b(a)(4)) and provides for contract provisions, including a penalty for discrimination. Specifies a PBM (or other issuer) may not include in a contract with a federally certified health entity ("entity") provisions that allow: (a) payment for a prescription drug to the entity or a contract pharmacy at less than the state rate determined by surveys used to develop national average drug acquisition costs for CMS, or, if a national average drug acquisition cost has not been calculated, a payment less than the wholesale acquisition cost ("WAC") [42 U.S.C. 1395w-3a(c)(6)(B)]; or (b) an additional fee or charge or other adjustment that is imposed only on the entity or its contract pharmacy.</p> <p>*2021 SB 395 designates statutes and designates the act as the Montana Pharmacy Benefit Manager Oversight Act.</p>
Ohio	SB 263	2020 Law; S.L. No. 88 (Effective, 04/12/21)	<p>Amends and enacts law to prohibit a PBM from taking certain actions with respect to reimbursements made to health care providers that participate in the federal 340B Drug Pricing Program. The act prohibits health plan issuers and MCOs, including third-party administrators of either, from including any of the following provisions in a contract with a 340B covered entity: (1) a reimbursement or payment rate for a prescription drug that is less than the national average drug acquisition cost rate for the drug as determined by CMS measured at the time the drug is administered or dispensed, or, if that rate is not available at that time, a reimbursement rate that is less than the wholesale acquisition cost of the drug as defined in federal law; (2) a fee that is not imposed on a health care provider that is not a 340B covered entity; or (3) a fee that exceeds a fee imposed on a health care provider that is not a 340B covered entity. Both health plan issuers and MCOs are prohibited from discriminating against 340B covered entities in a manner that prevents or interferes with an enrollee or recipient's choice to receive a prescription drug from a 340B covered entity or its contracted pharmacies.</p> <p>The act requires contracts between a terminal distributor of dangerous drugs and a 340B covered entity to provide, when paying a 340B covered entity for dispensing a dangerous drug to a patient, the terminal distributor must pay the full amount the terminal distributor receives from the patient and the patient's health insurer (including a third-party administrator or MCO) except that the terminal distributor may deduct a fee agreed on in writing between the terminal distributor and the 340B covered entity.</p>
Oregon	HB 2185	2019 Law; Chapter No. 526	<p>Among provisions, pertaining to PBMs, the new law provides a registered PBM may not reimburse a 340B pharmacy differently than any other network pharmacy based on its status as a 340B pharmacy.</p>

South Dakota	HB 1137	2019 Law; Ch. 213	Revises and adds provisions pertaining to PBMs. Adds a requirement specifying no PBM may discriminate against a pharmacy participating in a health plan as an entity authorized to participate in a 340B program, or any pharmacy under contract with such an entity to provide prescriptions.
Utah	S.B. 138	2020 Law; Ch. 275	Amends provisions pertaining to PBMs, specifically prohibits for contracts issued on or after January 1, 2021, PBMs from varying the reimbursement rate for a pharmacy based on whether the drug is a 340B drug or the pharmacy is a 340B pharmacy. A PBM is also prohibited from other discriminatory practices (e.g., assessing fees or other adjustments, restricting pharmacy network access or requiring a 340B entity to enter into a contract with a specific pharmacy to participate in network).
West Virginia	SB 489, CS for	2019 Law; Chapter 145	Relating to the regulations of PBMs, including prohibiting different treatment of a federal 340B drug discount program; prohibits a PBM or other third party reimbursing a 340B entity from reimbursing such entities at rates lower than those paid for the same drug to pharmacies similar in prescription volume that are not 340B entities. Also prohibits PBMs from assessing fees, charge-backs, or other adjustments upon the 340B entity on the basis it participated in the 340B Drug Discount Program. Provides that a PBM shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient's choice to receive such drugs from the entity.

Sources: Bill Information Service query (StateNet/ National Conference of State Legislatures (NCSL); NCSL Prescription Drug Law database; state legislative websites and bill summaries