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FISCAL IMPACT REPORT

SPONSOR	<u>House Judiciary Committee</u>	LAST UPDATED	<u>3/21/2025</u>
		ORIGINAL DATE	<u>1/30/2025</u>
			<u>CS/CS/House Bill</u>
SHORT TITLE	<u>Prohibit Discrimination Against 340B Entities</u>	BILL NUMBER	<u>78/HJCS/HJCS/aSFl#1</u>
		ANALYST	<u>Esquibel</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications			

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Aging and Long-Term Services Department (ALTSD)

Department of Health (DOH)

Health Care Authority (HCA)

New Mexico Hospital Association (NMHA)

Office of Superintendent of Insurance (OSI)

University of New Mexico Health Sciences Center (UNM-HSC)

SUMMARY

Synopsis of Senate Floor Amendment to House Bill 78

The Senate floor amendment to the House Judiciary Committee substitute for House Bill 78 (HB78) changes the effective date of the legislation to January 1, 2026.

Synopsis of HJC Substitute for House Bill 78

The House Judiciary Committee substitute for House Bill 78 proposes to prevent insurance companies and pharmacy benefits managers (PBMs) from interfering with 340B participating entities' ability to acquire, deliver, or dispense medication under the federal 340B program that allows applicable entities to buy pharmaceuticals at a discount. The HJC second substitute narrows the definition of an "applicable entity" to include organizations that receive federal grant funding, federally qualified health centers (FQHCs), or entities similar to an FQHC. The substitute would also protect 340B applicable entities' ability to use contract pharmacies for 340B discounted pharmaceuticals.

FISCAL IMPLICATIONS

The University of New Mexico (UNM) Hospital reports the bill would help prevent significant fiscal losses and improve the budgetary operating margins of hospitals and other healthcare providers participating in the 340B program. The 340B program was designed to provide financial assistance to hospitals and other healthcare organizations that absorb a disproportionate share of the costs of providing uncompensated or indigent healthcare.

SIGNIFICANT ISSUES

The 340B program is a federal program that requires pharmaceutical producers to sell discounted drugs to certain healthcare organizations, which then reinvest the savings into healthcare services for low-income, indigent persons. The program allows 340B hospitals to stretch limited federal resources to reduce the price of outpatient pharmaceuticals for patients and expand health services. Hospitals use 340B savings to provide reduced cost care for uninsured patients, offer reduced-price vaccines, provide services in mental health clinics, and implement medication management and community health programs.

UNM Hospital reports 41 manufacturers restricting 340B pricing have significantly affected contract pharmacies since June 2020. The UNM health system has experienced a decrease in 340B savings because manufacturers have implemented a variety of requirements to reduce safety-net providers' access to the 340B program in New Mexico.

The New Mexico Hospital Association reports the bill addresses pharmacy benefits managers and insurers implementing reimbursement strategies that negatively impacts 340B entities by setting lower reimbursement for specific medications contained in the 340B program. This means pharmaceutical manufacturers retain savings meant for 340B provider entities, which in turn limits the investments in access to healthcare that 340B entities would otherwise use the savings to invest in.

Participants in the 340B program include hospitals, children's hospitals, critical access hospitals, sole community hospitals, federally qualified health centers (FQHCs), community health centers, rural referral centers, public health offices, Urban Indian health centers, participating family planning programs, HIV/AIDS service providers, sexually transmitted disease clinics, tuberculosis clinics, hemophilia diagnostic treatment centers, and public and nonprofit disproportionate share hospitals that serve low-income and indigent populations.

PERFORMANCE IMPLICATIONS

While institutions have strict requirements to become 340B covered entities, they can contract some 340B services to private, for-profit contract pharmacies. Medicaid programs can deny members from getting medications from these contracted pharmacies. New Mexico currently allows the use of contracted 340B contracted pharmacies.

TECHNICAL ISSUES

UNM Hospital notes the bill could be enhanced by including clauses for federal preemption, severability, and violations.

The Office of Superintendent of Insurance suggests the Board of Pharmacy may be more aligned to administer the provisions of the bill and ensure compliance, although the current version of the bill does not include any reporting or enforcement mechanisms.

OTHER SUBSTANTIVE ISSUES

UNM Hospital writes the 340B program generates valuable savings for safety-net hospitals and health centers providing uncompensated care across New Mexico. These savings help providers stretch limited resources to enhance patient services and access to care. The 340B program enables safety-net providers to purchase prescription drugs at discounted prices. The pharmacy that is under contract with safety-net providers then dispenses those prescription drugs to their patients at the price determined by the patient's insurance coverage. The savings generated become operating revenue for the safety-net providers. The safety-net providers are then able to use the savings to provide services to the populations they serve. For example, the UNMH health system uses dollars saved to offset the cost of uncompensated care, to provide additional services to their patients, and to provide formulary medications at no cost to the patient.

The 340B program is applicable only to outpatient prescriptions. UNMH operates outpatient pharmacies and contracts with retail pharmacies to dispense 340B medications. The contracts between safety-net providers and retail pharmacies permit the retail pharmacies to be paid for their dispensing services, but consistent with the 340B program, the revenue generated by 340B sales are returned to the safety-net providers.

The Aging and Long-Term Services Department reports 88.6 percent of older adults (age 65 and older) took prescription medication within a year between 2021 through 2022. The 340B program is important to New Mexico's older adults and those living with disabilities who access their medications from entities covered under 340B pricing. Nationally in 2023, 340B entities purchased \$66.3 billion in covered outpatient drugs.

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