

## **AB434 – Revises provisions governing prescription drugs**

Proposed Amendment

Submitted by Steve Messinger, Policy Director, Nevada Primary Care Association

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**Intent:** (a) To clarify that the provisions of this bill do not apply to the Nevada Medicaid Fee for Service program, and to expressly state this in the Proposed Amendment; (b) to make some minor clarifications to certain terms and examples in the bill.

### **Justifications:**

- (1) The Medicaid Fee for Service program operates under certain reimbursement rules, and we do not intend to alter that structure with this bill. Rather, we intend to maintain the status quo. Below, we suggest adding language based on the Indiana bill that similarly excludes Medicaid Fee for Service from its anti-340B discrimination law.
- (2) Sec. 1 (1)(d) is amended to make clear that cost-sharing is considered a restriction on access to 340B drugs.
- (3) Sec. 1 (2)(a) and Sec. 2 (2)(a) of the current draft make every drug dispensed by a 340B provider subject to other provisions of this bill. The amendment makes it clear that the applicable drugs must be 1. Purchased by a covered entity and 2. Purchased through the 340B Program.
- (4) Sec. 8 (1)(b) clarifies that a patient's deductible is included in the "other cost-sharing obligation." While this is implied in the current language, the amended language makes this express.

**Conceptual language:** A number of other states have enacted 340B anti-discriminatory reimbursement laws, and some have expressly carved out Medicaid Fee for Service, but not Medicaid Managed Care. Our Proposed Amendment adopts this approach. We propose adding language to the Proposed Amendment along the lines of this Indiana law:

SECTION 23. IC 27-1-24.5-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 19.5. (a) This section:

- (1) applies to a Medicaid managed care organization (as defined in 42 U.S.C. 1396b(m)); and
- (2) does not apply to the state Medicaid program when Medicaid provides reimbursement for covered outpatient drugs (as defined in 42 U.S.C. 1396r-8(k)) on a fee for service basis.

For further reference, we provide West Virginia's language:

[W.Va.](#) Code - (d) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager 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 340B entity: **Provided, That this section, does not apply to the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. §1396r-8(k), on a fee-for-service basis: Provided, however, That this subsection does apply to a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m).** For purposes of this subsection, it shall be considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a pharmacy benefit manager places additional requirements, restrictions or unnecessary burdens upon a 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager or any other third-party, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug: Provided further, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.

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EXPLANATION: Matter in (1) black plain font is new language in the original bill; (2) variations of **green bold underlining** is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Section 1. Chapter 683A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A pharmacy benefit manager shall not:
  - (a) Discriminate against a covered entity, a contract pharmacy or a 340B drug in the amount of reimbursement for any item or service or the procedures for obtaining such reimbursement;
  - (b) Assess any fee, chargeback, clawback or adjustment against a covered entity or contract pharmacy on the basis that the covered entity or contract pharmacy dispenses a 340B drug or otherwise limit the ability of a covered entity or contract pharmacy to receive the full benefit of purchasing the 340B drug at or below the ceiling price, as calculated pursuant to 42 U.S.C. § 256b(a)(1);
  - (c) Exclude a covered entity or contract pharmacy from any network because the covered entity or contract pharmacy dispenses a 340B drug;
  - (d) Restrict the ability of a person to receive a 340B drug **including by restricting coverage for or imposing different cost-sharing on a drug on the basis that it is a**

### 340B drug;

(e) Restrict the methods by which a covered entity or contract pharmacy may dispense or deliver a 340B drug or the entity through which a covered entity may dispense or deliver such a drug in a manner that does not apply to drugs that are not 340B drugs; or

(f) Prohibit a covered entity or contract pharmacy from purchasing a 340B drug or interfere with the ability of a covered entity or contract pharmacy to purchase a 340B drug.

2. As used in this section:

(a) "340B drug" means a prescription drug that is purchased by a ~~an~~ covered entity ~~that participates in~~ under the 340B Program. ~~and that is dispensed by a covered entity.~~

(b) "340B Program" means the drug pricing program established by the United States Secretary of Health and Human Services pursuant to section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as amended.

(c) "Contract pharmacy" means a pharmacy that enters into a contract with a covered entity to dispense 340B drugs and provide related pharmacy services to the patients of the covered entity.

(d) "Covered entity" has the meaning ascribed to it in 42 U.S.C. § 256b(a)(4).

(e) "Network" means a defined set of providers of health care who are under contract with a pharmacy benefit manager or third party to provide health care services to covered persons.

Sec. 2. NRS 683A.171 is hereby amended to read as follows:

683A.171 As used in NRS 683A.171 to 683A.179, inclusive, and section 1 of this act, unless the context otherwise requires, the words and terms defined in NRS 683A.172 to 683A.176, inclusive, have the meanings ascribed to them in those sections.

Sec. 3. Chapter 687B of NRS is hereby amended by adding thereto a new section to read as follows:

1. A pharmacy benefit manager shall not:

(a) Discriminate against a covered entity, a contract pharmacy or a 340B drug in the amount of reimbursement for any item or service or the procedures for obtaining such reimbursement;

(b) Assess any fee, chargeback, clawback or adjustment against a covered entity or contract pharmacy on the basis that the covered entity or contract pharmacy dispenses a 340B drug or otherwise limit the ability of a covered entity or contract pharmacy to receive the full benefit of purchasing the 340B drug at or below the ceiling price, as calculated pursuant to 42 U.S.C. § 256b(a)(1);

(c) Exclude a covered entity or contract pharmacy from any network because the covered entity or contract pharmacy dispenses a 340B drug;

(d) Restrict the ability of a person to receive a 340B drug;

(e) Restrict the methods by which a covered entity or contract pharmacy may dispense or deliver a 340B drug or the entity through which a covered entity may dispense or deliver such a drug in a manner that does not apply to drugs that are not 340B drugs; or

(f) Prohibit a covered entity or contract pharmacy from purchasing a 340B drug or interfere with the ability of a covered entity or contract pharmacy to purchase a 340B drug.

2. As used in this section:

(a) "340B drug" means a prescription drug that is purchased by a covered entity ~~that participates in~~ under the 340B Program. ~~and that is dispensed by a covered entity.~~

(b) "340B Program" means the drug pricing program established by the United States Secretary of Health and Human Services pursuant to section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as amended.

(c) "Contract pharmacy" means a pharmacy that enters into a contract with a covered entity to dispense 340B drugs and provide related pharmacy services to the patients of the covered entity.

(d) "Covered entity" has the meaning ascribed to it in 42 U.S.C. § 256b(a)(4).

(e) "Pharmacy benefit manager" has the meaning ascribed to it in NRS 683A.174.

Sec. 4. NRS 687B.600 is hereby amended to read as follows:

687B.600 As used in NRS 687B.600 to 687B.850, inclusive, and section 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 687B.602 to 687B.665, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 687B.670 is hereby amended to read as follows:

687B.670 If a health carrier offers or issues a network plan, the health carrier shall, with regard to that network plan:

1. Comply with all applicable requirements set forth in NRS 687B.600 to 687B.850, inclusive [;] , and section 3 of this act;

2. As applicable, ensure that each contract entered into for the purposes of the network plan between a participating provider of health care and the health carrier complies with the requirements set forth in NRS 687B.600 to 687B.850, inclusive [;] , and section 3 of this act; and

3. As applicable, ensure that the network plan complies with the requirements set forth in NRS 687B.600 to 687B.850, inclusive [.] , and section 3 of this act.

Sec. 6. NRS 287.010 is hereby amended to read as follows:

287.010 1. The governing body of any county, school district, municipal corporation, political subdivision, public corporation or other local governmental agency of the State of Nevada may:

(a) Adopt and carry into effect a system of group life, accident or health insurance, or any combination thereof, for the benefit of its officers and employees, and the dependents of officers and employees who elect to accept the insurance and who, where necessary, have authorized the governing body to make deductions from their compensation for the payment of premiums on the insurance.

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Sec. 8. Chapter 439 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the Department administers a program pursuant to NRS 439.529:

(a) The program may not prohibit or interfere with the ability of a covered provider or contract pharmacy to purchase, administer or dispense, as applicable, a 340B drug, regardless of whether the drug is dispensed or administered to a person participating in the program or whether the program pays all, part or none of the cost of the drug.

(b) When a covered provider or contract pharmacy dispenses or administers a drug that is eligible to be a 340B drug to a person participating in the program and the program pays the insurance premium of the person and the copayment, coinsurance, deductible or other cost-sharing obligation of the person, the program shall pay to the covered provider or contract pharmacy the full amount of the copayment, coinsurance, deductible or other cost-sharing obligation, regardless of whether the drug is a 340B drug.

(c) The program may not deny a request from a covered provider or contract pharmacy to be included in the network of the program if the covered provider or contract pharmacy:

(1) Meets the terms and conditions for participation in the network of the program; and

(2) Requests to participate in the network of the program.

(d) The program shall not treat a covered provider or contract pharmacy differently from an entity that does not participate in the 340B Program or a pharmacy that has contracted with a covered provider, as applicable, in any manner, including, without limitation:

(1) In any regulation, guidance, policy, procedure or contract;

(2) With regard to participation in the network of the program; or

(3) In any matter relating to the dispensing of drugs or billing and reimbursement for drugs.

2. As used in this section:

(a) “340B drug” means a prescription drug that is purchased under the 340B Program.

(b) “340B Program” means the drug pricing program established by the United States Secretary of Health and Human Services pursuant to section 340B of the Public Health Service Act, 42 U.S.C. § 256b, as amended.

(c) “Contract pharmacy” means a pharmacy that enters into a contract with a covered provider to dispense 340B drugs and provide related pharmacy services to the patients of the covered provider.

(d) “Covered entity” has the meaning ascribed to it in 42 U.S.C. § 256b(a)(4).