

LD 1938, An Act To Prohibit Discriminatory Practices Related to the 340B Drug Pricing Program

SUMMARY:

The bill prohibits certain discriminatory practices related to the 340B drug pricing program within the United States Department of Health and Human Services, Health Resources and Services Administration, which allows eligible entities to purchase discounted prescription drugs.

As amended by the sponsor, the amendment reallocates the provisions to the Maine Insurance Code, Title 24-A, chapter 56-C which regulates pharmacy benefits managers and payors of prescription drug benefits. The amendment retains the substantive provisions included in the bill that prohibit certain discriminatory practices related to the 340B drug pricing program within the United States Department of Health and Human Services, Health Resources and Services Administration, which allows eligible entities to purchase discounted prescriptions, except that it removes language from the bill related to decisions about prescription drug formularies and related to requiring a waiver from a covered person before allowing the use of a mail order pharmacy.

TESTIMONY: Written testimony can be found at this [link](#)

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ISSUES FOR CONSIDERATION:

1. Under the [federal 340B law](#), manufacturers participating in Medicaid agree to sell outpatient drugs at discounted prices to covered entities, which are defined in the law and include community health centers, children's hospitals, hemophilia treatment centers, critical access hospitals (CAHs), sole community hospitals (SCHs), rural referral centers (RRCs), and public and nonprofit disproportionate share hospitals (DSH) that serve low-income and indigent populations. The program allows 340B participants to use 340B savings to provide health care services to the populations they serve.
2. As drafted, LD 1938 is modeled on [Arkansas law](#). Concerns were raised in testimony that Arkansas law is the subject of ongoing legislation challenging its constitutionality. See [PhrMA complaint](#). Consider impact of ongoing legislation? In addition, federal rules related to the 340B program are also currently subject of federal litigation.
3. As drafted, the bill as amended addresses both the use of mail-order pharmacies and contracting practices related to 340B program participation. Provisions related to mail-order pharmacies apply without regard to participation in 340B program.
4. Consider impact of current practices on 340B program participants? Concerns raised in testimony from proponents that contracting practices that remove 340B discounts to pharmacies contracted with covered healthcare institutions providing prescription dispensing services will affect the provision of health care services provided by these entities.

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ISSUES FOR CONSIDERATION (cont'd):

5. Consider impact on carriers and employers? Concerns raised in testimony that provisions would prohibit efforts to negotiate lower contracted rates that reflect the same discounts from the 340B program both directly and through the use of mail order pharmacies not affiliated with the hospitals.

6. If the committee moves forward, consider the following technical issues raised in Bureau of Insurance testimony opposing the bill:

- The lack of definition for terms used in the bill , such as “coercion”, and “payors”;
- The bill does not say when or how often the notice must be given of a consumer’s right to use a mail-order pharmacy, or whether a carrier and its contracted PBM must both deliver duplicate notices to the same consumer;
- It is unclear what constitutes “discriminatory” contracting that “relates to” one of the five topics enumerated in proposed section 2699-A 2(E)(1) through (5);
- The language requires all payors to allow patients to use any pharmacy provider the patient chooses whether or not the provider is in the insurer’s or PBM’s provider network;
- Although the bill would not apply to MaineCare and self-insured government employee plans, it does not exclude private self-insured plans specifically. If the bill is meant to apply to them, this would raise ERISA preemption concerns;

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ISSUES FOR CONSIDERATION (cont'd) :

- The bill would require the Bureau to enact rules regarding a federal program that the Bureau has no connection with; and
- The bill would impose prohibitions on manufacturers and pharmacies. The Bureau does not regulate them, and we would have no authority to enforce their compliance.

FISCAL INFORMATION:

Not yet determined