

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

Amend the bill by striking out everything after the enacting clause and inserting before the summary the following:

**Sec. 1. 24-A MRSA §4347, sub-§20** is amended to read:

**20. 340B drug pricing.** "340B drug pricing" means the program established under Section 602 of the federal Veterans Health Care Act of 1992.

**Sec. 2. 24-A MRSA §4349-A** is amended to read:

**§4349-A. Discriminatory practices regarding 340B drug pricing program**

**1. Requirements.** A carrier, or a pharmacy benefits manager under contract with a carrier, shall:

**A. Inform a covered person that the covered person is not required to use a mail order pharmacy;**

**B. Allow a covered person to use without penalty any pharmacy provider that the covered person chooses, whether or not the pharmacy provider participates in 340B drug pricing; and**

**C. Eliminate discriminatory contracting as it relates to:**

**(1) Transferring the benefit of 340B drug pricing savings from one entity, including critical access hospitals, federally qualified health centers, other hospitals or 340B drug pricing participants and their patients from underserved areas or populations, to another entity, including without limitation pharmacy benefits managers, carriers, health maintenance organizations and other managed care organizations;**

**(2) Pricing that occurs when offering a lower reimbursement for a drug purchased under 340B drug pricing than for the same drug not purchased under 340B drug pricing;**

**(3) Refusal to cover drugs purchased under 340B drug pricing;**

**(4) Refusal to contract with a 340B entity based solely on 340B entity status.**

**(5) Charging more than fair market value or seeking profit-sharing in exchange for services involving 340B drug pricing.**

**2. Discriminatory practices of carrier or pharmacy benefits manager.** A carrier, or a pharmacy benefits manager under contract with a carrier, may not:

**A. Coerce a covered person into using a mail order pharmacy;**

**B. Require a covered person to use a mail order pharmacy;**

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C. Discriminate against, lower the reimbursement of or impose any separate terms upon a pharmacy provider in any other 3rd-party contract on the basis of the pharmacy provider's participation in 340B drug pricing;

D. Require a pharmacy provider to reverse, resubmit or clarify a 340B drug pricing claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing;

E. Require a billing claim to indicate that the claim is a 340B drug pricing claim unless the claim is being billed under the Medicaid program on a fee-for-service basis;

F. Increase a covered person's copayment on the basis of a pharmacy provider's participation in 340B drug pricing;

G. Exclude a pharmacy provider from a network on the basis of the pharmacy' provider's participation in 340B drug pricing;

H. Establish network adequacy requirements on the basis of a pharmacy provider's participation in 340B drug pricing; or

I. Prohibit an entity authorized to participate in 340B drug pricing or a pharmacy provider under contract with an entity authorized to participate in 340B drug pricing from participating in the carrier's or pharmacy benefits manager's network on the basis of participation in 340B drug pricing.

**3. Discriminatory practices of pharmaceutical manufacturers.** A pharmaceutical manufacturer may not:

A. Prohibit a pharmacy provider from contracting or participating with an entity authorized to participate in 340B drug pricing by denying access to drugs that are manufactured by the pharmaceutical manufacturer; or

B. Deny or prohibit 340B drug pricing for a pharmacy provider that receives drugs purchased under a 340B drug pricing contract pharmacy arrangement with an entity authorized to participate in 340B drug pricing.

**4. Pharmacy claims.** Notwithstanding section 4317, a pharmacy claim processed by a pharmacy provider that participates in 340B drug pricing is final at the point of adjudication.

**5. Rules.** The superintendent shall adopt rules necessary to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## SUMMARY

This bill amendment replaces the bill. The amendment reallocates the provisions to the Maine Insurance Code, Title 24-A, chapter 56-C which regulates pharmacy benefits managers and payors of

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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.

DRAFT