

**In Opposition to HB 4028-2
340B Program Mandate
February 19, 2024**

Position: The Pharmaceutical Research and Manufacturers of America respectfully opposes HB 4028-2.

HB 4028-2 requires manufacturers to ship drugs to all contract pharmacies for 340B providers, and by extension, offer 340B pricing at these locations, thereby attempting to add a state requirement to the federal statute. Issues related to the contract pharmacy policy are currently being litigated in multiple lawsuits across the country.

The term “contract pharmacy” does not appear anywhere in the federal 340B statute and was created by the Health Resources and Services Administration (HRSA), which administers the 340B program, solely through guidance, which does not have the force and effect of law.

Because there is ongoing litigation across the country about HRSA’s 340B contract pharmacy policy, Oregon should allow the federal courts to address and resolve the relevant issues before considering any legislative action. If the courts hold that the federal 340B law does not authorize a requirement that manufacturers ship drugs to contract pharmacies, that would raise additional constitutional concerns about state legislation related to that issue. In fact, in late January 2023, the U.S. Court of Appeals for the Third Circuit held that “[s]ection 340B [of the federal statute] does not require delivery to an unlimited number of contract pharmacies” and “Congress never said that drug makers must deliver discounted Section 340B drugs to an unlimited number of contract pharmacies.”

It is important for policymakers to ensure the 340B program truly benefits the safety net that serves our underserved communities in Oregon and throughout the country. Unfortunately, over the three decades after it was originally created, the 340B program has deviated from its original mission to instead benefit entities such as hospitals, for-profit pharmacies, and other middlemen, leaving behind the patients that the program is meant to serve and threatening the sustainability of the program for true safety-net entities that provide much needed care to vulnerable communities.

In 1992, when the 340B program was established by federal law, it was meant to help safety-net entities access affordable drugs to treat their low-income and uninsured patients. Due to weak oversight, the 340B program has expanded in a way that has allowed covered entities to divert to the benefit of the entities’ bottom-line money intended to help patients get better care and afford their medicines. As a result, the 340B program has changed and grown dramatically since its establishment, while charity care at 340B hospitals has declined below national averages.¹

¹ AIR340B Coalition, “Left Behind: An Analysis of Charity Care Provided by Hospitals Enrolled in the 340B Discount Program,” November 2019, https://340breform.org/wp-content/uploads/2019/11/AIR340_LeftBehind-v6.pdf.

There is little evidence to suggest that patients have benefited from contract pharmacy growth. Many contract pharmacies may often charge a patient a drug's full retail price because they are not required to share any of the discount with those in need.² Big-box retailers such as Walgreens, CVS Health, and Walmart are major participants in the 340B program through contract pharmacy arrangements. In fact, the five largest for-profit pharmacy chains comprise 60 percent of 340B contract pharmacies, but only 35 percent of all pharmacies nationwide.³ 340B covered entities and their contract pharmacies generated an estimated \$13 billion in gross profits on 340B purchased medicines in 2018, which represents more than 25% of pharmacies' and providers' total profits from dispensing or administering brand medicines.⁴

In addition to exacerbating existing problems with the 340B program, HB 4028-2 would impose a significant financial obligation on manufacturers, which could disincentivize participation in the 340B program and impact the Medicaid program.

PhRMA respectfully opposes the provisions outlined above and appreciates your consideration prior to advancing HB 4028-2.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier and more productive lives. Since 2000, PhRMA member companies have invested more than \$1.1 trillion in the search for new treatments and cures, including \$102.3 billion in 2021 alone.

2 Conti, Rena M., and Peter B. Bach. "Cost consequences of the 340B drug discount program." *Jama* 309.19 (2013): 1995-1996.

3 Government Accountability Office, "Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement," GAO-18-480, June 2018.

4 Berkeley Research Group. For-Profit Pharmacy Participation in the 340B Program. October 2020.