

By: Representative Barton

To: Drug Policy

HOUSE BILL NO. 728

1 AN ACT TO BE KNOWN AS THE DEFENDING AFFORDABLE PRESCRIPTION
 2 DRUG COSTS ACT; TO PROVIDE DEFINITIONS FOR THE PURPOSE OF THE ACT;
 3 TO PROHIBIT HEALTH INSURANCE ISSUERS, PHARMACY BENEFIT MANAGERS
 4 AND OTHER THIRD PARTY PAYORS AND DRUG MANUFACTURERS AND
 5 DISTRIBUTORS FROM ENGAGING IN CERTAIN DISCRIMINATORY ACTIONS
 6 RELATING TO ENTITIES THAT ARE PARTICIPATING OR AUTHORIZED TO
 7 PARTICIPATE IN THE FEDERAL 340B DRUG DISCOUNT PROGRAM; TO PROVIDE
 8 THAT THE COMMISSION OF ANY ACT PROHIBITED BY THIS ACT IS
 9 CONSIDERED A VIOLATION OF THE CONSUMER PROTECTION ACT; TO AMEND
 10 SECTION 75-24-5, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 11 PRECEDING PROVISION; AND FOR RELATED PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1. Short title.** This act may be cited as the
 14 "Defending Affordable Prescription Drug Costs Act".

15 **SECTION 2. Definitions.** As used in this act, the following
 16 terms have the following meanings:

17 (a) "340B drug" means a drug that has been subject to
 18 any offer for reduced prices by a manufacturer pursuant to 42 USC
 19 256b and is purchased by a covered entity as defined in 42 USC
 20 256b(a)(4).

21 (b) "340B entity" means an entity participating or
 22 authorized to participate in the federal 340B drug discount



23 program, as described in 42 USC 256b, including its pharmacy, or
24 any pharmacy contracted with the participating entity to dispense
25 drugs purchased through the 340B drug discount program.

26 (c) "Health insurance issuer" means an entity subject
27 to the insurance laws and regulations of this state, or subject to
28 the jurisdiction of the Commissioner of Insurance, that contracts
29 or offers to contract, or enters into an agreement to provide,
30 deliver, arrange for, pay for, or reimburse any of the costs of
31 health care services, including an accident and sickness insurance
32 company, a health maintenance organization, a preferred provider
33 organization or any similar entity, or any other entity providing
34 a health insurance plan as defined in Section 73-21-153.

35 (d) "Manufacturer" has the same meaning as defined in
36 Section 73-21-73.

37 (e) "Pharmacy" has the same meaning as defined in
38 Section 73-21-73.

39 (f) "Pharmacy benefit manager" has the same meaning as
40 defined in Section 73-21-153.

41 **SECTION 3. Prohibition of certain discriminatory actions**

42 **related to reimbursement of 340B entities.** (1) (a) With respect
43 to reimbursement to a 340B entity for 340B drugs, a health
44 insurance issuer, pharmacy benefit manager, other third-party
45 payor, or its agent shall not do any of the following:

46 (i) Reimburse a 340B entity for 340B drugs at a
47 rate lower than that paid for the same drug to entities that are



48 not 340B entities or lower reimbursement for a claim on the basis
49 that the claim is for a 340B drug.

50 (ii) Impose any terms or conditions on any 340B
51 entity with respect to any of the following that differ from such
52 terms or conditions applied to non-340B entities on the basis that
53 the entity participates in the federal 340B drug discount program
54 set forth in 42 USC 256b or that a drug is a 340B drug including,
55 without limitation, any of the following:

56 1. Fees, charges, clawbacks, or other
57 adjustments or assessments. For purposes of this item 1, the term
58 "other adjustment" includes placing any additional requirements,
59 restrictions, or unnecessary burdens upon the 340B entity that
60 results in administrative costs or fees to the 340B entity that
61 are not placed upon other entities that do not participate in the
62 340B drug discount program, including affiliate pharmacies of the
63 health insurance issuer, pharmacy benefit manager, or other
64 third-party payor.

65 2. Dispensing fees that are less than the
66 dispensing fees for non-340B entities.

67 3. Restrictions or requirements regarding
68 participation in standard or preferred pharmacy networks.

69 4. Requirements relating to the frequency or
70 scope of audits of inventory management systems.

71 5. Requirements that a claim for a drug
72 include any identification, billing modifier, attestation, or



73 other indication that a drug is a 340B drug in order to be
74 processed or resubmitted unless it is required by the Centers for
75 Medicare and Medicaid Services or the Division of Medicaid for the
76 administration of the Mississippi Medicaid program.

77 6. Any other restrictions, conditions,
78 practices, or policies that are not imposed on non-340B entities.

79 (iii) Require a 340B entity to reverse, resubmit,
80 or clarify a claim after the initial adjudication unless these
81 actions are in the normal course of pharmacy business and not
82 related to 340B drug pricing.

83 (iv) Discriminate against a 340B entity in a
84 manner that prevents or interferes with any patient's choice to
85 receive such drugs from the 340B entity, including the
86 administration of such drugs. For purposes of this subparagraph
87 (iv), it is considered a discriminatory practice that prevents or
88 interferes with a patient's choice to receive drugs at a 340B
89 entity if a health insurance issuer, pharmacy benefit manager, or
90 other third-party payor places any additional requirements,
91 restrictions, or unnecessary burdens upon the 340B entity that
92 results in administrative costs or fees to the 340B entity,
93 including but not limited to requiring a claim for a drug to
94 include any identification, billing modifier, attestation or other
95 indication that a drug is a 340B drug in order to be processed or
96 resubmitted unless it is required by the Centers for Medicare and



97 Medicaid Services or the Division of Medicaid in administration of
98 the Mississippi Medicaid program.

99 (v) Include any other provision in a contract
100 between a health insurance issuer, pharmacy benefit manager, or
101 other third-party payor and a 340B entity that discriminates
102 against the 340B entity or prevents or interferes with an
103 individual's choice to receive a prescription drug from a 340B
104 entity, including the administration of the drug, in person or via
105 direct delivery, mail, or other form of shipment, or creation of a
106 restriction or additional charge on a patient who chooses to
107 receive drugs from a 340B entity.

108 (vi) Require or compel the submission of
109 ingredient costs or pricing data pertaining to 340B drugs to any
110 health insurance issuer, pharmacy benefit manager, or other
111 third-party payor.

112 (vii) Exclude any 340B entity from the health
113 insurance issuer, pharmacy benefit manager, or other third-party
114 payor network on the basis that the 340B entity dispenses drugs
115 subject to an agreement under 42 USC 256b, or refusing to contract
116 with a 340B entity for reasons other than those that apply equally
117 to non-340B entities.

118 (2) Nothing in this act applies to the Mississippi Medicaid
119 program as payor when Medicaid provides reimbursement for covered
120 outpatient drugs as defined in 42 USC 1396r-8(k).



121 **SECTION 4.** **Prohibition of certain discriminatory actions by**
122 **a manufacturer or distributor related to 340B entities.** (1) A
123 manufacturer or distributor shall not deny, restrict, prohibit, or
124 otherwise interfere with, either directly or indirectly, the
125 acquisition of a 340B drug by, or delivery of a 340B drug to, a
126 pharmacy that is under contract with a 340B entity and is
127 authorized under such contract to receive and dispense 340B drugs
128 on behalf of the covered entity unless such receipt is prohibited
129 by the United States Department of Health and Human Services.

130 (2) A manufacturer or distributor shall not interfere with a
131 pharmacy contracted with a 340B entity.

132 **SECTION 5.** **Violations.** The commission of any act prohibited
133 by this act is considered a violation of the Consumer Protection
134 Act, Sections 75-24-1 through 75-24-29, and subjects the violator
135 to any and all actions, including investigative demands, remedies,
136 and penalties provided for in those sections, except there shall
137 be no right to bring a private action. A violation occurs each
138 time a prohibited act is committed.

139 **SECTION 6.** **Federal preemption.** (1) Nothing in this act is
140 to be construed or applied to be less restrictive than federal law
141 for a person or entity regulated by this act.

142 (2) Nothing in this act is to be construed or applied to be
143 in conflict with any of the following:

144 (a) Applicable federal law and related regulations.



145 (b) Other laws of this state if the state law is
146 compatible with applicable federal law.

147 (3) Limited distribution of a drug required under 21 USC
148 355-1 is not to be construed as a violation of this act.

149 **SECTION 7.** Section 75-24-5, Mississippi Code of 1972, is
150 amended as follows:

151 75-24-5. (1) Unfair methods of competition affecting
152 commerce and unfair or deceptive trade practices in or affecting
153 commerce are prohibited. Action may be brought under Section
154 75-24-5(1) only under the provisions of Section 75-24-9.

155 (2) Without limiting the scope of subsection (1) of this
156 section, the following unfair methods of competition and unfair or
157 deceptive trade practices or acts in the conduct of any trade or
158 commerce are * * * prohibited:

159 (a) Passing off goods or services as those of another;

160 (b) Misrepresentation of the source, sponsorship,
161 approval, or certification of goods or services;

162 (c) Misrepresentation of affiliation, connection, or
163 association with, or certification by another;

164 (d) Misrepresentation of designations of geographic
165 origin in connection with goods or services;

166 (e) Representing that goods or services have
167 sponsorship, approval, characteristics, ingredients, uses,
168 benefits, or quantities that they do not have or that a person has



169 a sponsorship, approval, status, affiliation, or connection that
170 he does not have;

171 (f) Representing that goods are original or new if they
172 are reconditioned, reclaimed, used, or secondhand;

173 (g) Representing that goods or services are of a
174 particular standard, quality, or grade, or that goods are of a
175 particular style or model, if they are of another;

176 (h) Disparaging the goods, services, or business of
177 another by false or misleading representation of fact;

178 (i) Advertising goods or services with intent not to
179 sell them as advertised;

180 (j) Advertising goods or services with intent not to
181 supply reasonably expectable public demand, unless the
182 advertisement discloses a limitation of quantity;

183 (k) Misrepresentations of fact concerning the reasons
184 for, existence of, or amounts of price reductions;

185 (l) Advertising by or on behalf of any licensed or
186 regulated health care professional which does not specifically
187 describe the license or qualifications of the licensed or
188 regulated health care professional;

189 (m) Charging an increased premium for reinstating a
190 motor vehicle insurance policy that was cancelled or suspended by
191 the insured solely for the reason that he was transferred out of
192 this state while serving in the United States Armed Forces or on
193 active duty in the National Guard or United States Armed Forces



194 Reserve. It is also an unfair practice for an insurer to charge
195 an increased premium for a new motor vehicle insurance policy if
196 the applicant for coverage or his covered dependents were
197 previously insured with a different insurer and canceled that
198 policy solely for the reason that he was transferred out of this
199 state while serving in the United States Armed Forces or on active
200 duty in the National Guard or United States Armed Forces Reserve.
201 For purposes of determining premiums, an insurer shall consider
202 such persons as having maintained continuous coverage. The
203 provisions of this paragraph (m) shall apply only to such
204 instances when the insured does not drive the vehicle during the
205 period of cancellation or suspension of his policy;

206 (n) Violating the provisions of Section 75-24-8; * * *

207 (o) Violating the provisions of Section 73-3-38 * * *;

208 and

209 (p) Violating any of the provisions of Sections 1
210 through 6 of this act.

211 **SECTION 8.** This act shall take effect and be in force from
212 and after July 1, 2024.

