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## **OLR Bill Analysis**

### **sSB 355**

#### ***AN ACT ESTABLISHING THE 340B DRUG PRICING NONDISCRIMINATION ACT.***

#### **SUMMARY**

Section 340B of the federal Public Health Service Act (i.e., the 340B Drug Pricing Program) requires drug manufacturers participating in Medicaid to sell certain outpatient prescription drugs (“covered drugs”) at discounted prices to health care organizations that care for uninsured and low-income patients. These organizations include federally qualified health centers, children’s hospitals, hospitals that serve a disproportionate number of low-income patients, and other safety net providers (“340B covered entities”). 340B covered entities may dispense the discounted drugs to any of their patients.

This bill prohibits pharmacy benefit managers (PBMs) from (1) discriminating in certain ways against 340B covered entities or their specified pharmacies in connection with dispensing covered drugs and (2) preventing the 340B covered entities from keeping the benefit of the covered drugs’ discounted prices. It applies to all PBMs (including those that contract with the Medicare or HUSKY Health programs if they negotiate or establish payment rates for drugs) and their subsidiaries.

The bill also specifically requires certain drug manufacturers and wholesalers to comply with federal 340B pricing and sales requirements when selling covered drugs to 340B covered entities in Connecticut. It prohibits drug manufacturers from imposing a precondition, limitation, delay, or other barrier to purchasing covered drugs beyond those permitted by federal law.

Lastly, the bill requires the insurance commissioner to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2022

**§ 1 — ACTIVITIES CONSTITUTING DISCRIMINATION BY PBMS**

The bill prohibits PBMs from discriminating against 340B covered entities or their specified pharmacies in connection with dispensing covered drugs. (“Specified pharmacies” are those that the 340B covered entity owns or contracts with, whether the covered drugs are dispensed in person or by mail.) For these purposes, discrimination includes the following:

1. payment terms, reimbursement methodologies, or other terms or conditions that (a) distinguish between covered and non-covered drugs, (b) account for the availability of 340B program discounts when determining reimbursement, or (c) are less favorable than those used for similarly situated entities that are not furnishing or dispensing covered drugs;
2. terms or conditions applicable to 340B covered entities or specified pharmacies based on their (a) furnishing or dispensing covered drugs or (b) status as a 340B covered entity or specified pharmacy, including restrictions or requirements for participating in certain pharmacy networks or audit frequency or scope;
3. requiring 340B covered entities or their specified pharmacies to identify covered drugs or their costs;
4. refusing to contract, or ending a contract, with a 340B covered entity or specified pharmacy, or excluding either from a network, because of its status as a 340B covered entity or specified pharmacy or for any reasons other than those that apply equally to non-340B covered entities and specified pharmacies;
5. retaliating against a 340B covered entity or specified pharmacy because it avails itself of a right or remedy under the bill; and
6. interfering with a person’s choice to receive a covered drug from a 340B covered entity or specified pharmacy, whether in person or by direct delivery, mail, or other shipment method.

**§ 2 — PROHIBITIONS ON DRUG MANUFACTURERS AND WHOLESALERS**

The bill specifically prohibits drug manufacturers and wholesalers subject to the 340B Drug Pricing Program’s rules from imposing preconditions, limitations, delays, or other barriers on 340B covered entities purchasing covered drugs, unless they are required by federal law. The bill specifies that prohibited preconditions, limitations, delays, or other barriers include the following:

1. implementing policies or limitations restricting 340B covered entities’ or specified pharmacies’ ability to dispense covered drugs, including restricting the number or type of locations that may dispense covered drugs;
2. conditioning the sale of covered drugs for 340B covered entities on enrollment with third-party vendors or sharing claims or other data;
3. charging 340B covered entities for covered drugs more than the federal ceiling price, including conditioning discounts on rebate requests;
4. interfering with a person’s choice to receive a covered drug from a 340B covered entity or specified pharmacy, whether in person or by direct delivery, mail, or other shipment method;
5. delaying covered drug shipments compared to non-discounted drugs; and
6. retaliating against a 340B covered entity or specified pharmacy because it avails itself of a right or remedy under the bill.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 16    Nay 1    (03/22/2022)