



Monday, March 10, 2025

The Honorable Judy Lee
Human Services Committee, North Dakota Senate
600 East Boulevard Avenue
Bismarck, ND, 58501

Dear Chairman Lee and Honorable Members of the Senate Human Services Committee,

On behalf of National Taxpayers Union (NTU), America's oldest taxpayer advocacy organization, I respectfully urge you to oppose HB 1473, a contract pharmacy mandate that fundamentally changes how the federal 340B Drug Pricing Program functions in North Dakota.

The federal 340B Drug Pricing Program was conceived as a targeted method of providing affordable medicines to low-income and uninsured families. Since its creation in 1992, the 340B program has become controversial amid allegations that providers are "gaming" its structure to earn revenues and distribute medications well outside the communities the program was supposed to serve.

What do I mean by "gaming" the structure? As the program has expanded, it has been [criticized](#) for an overall lack of transparency and accountability resulting in the ability for entities who receive discounted drugs from pharmaceutical companies to profit from the discount instead of assisting poorer patients.

Instead of serving the most vulnerable as the program was intended — those living in low-income areas — there has been a proliferation of 340B pharmacies in more affluent neighborhoods. These expansion pharmacies are owned by for-profit Pharmacy Benefit Managers (PBMs) and chain drug stores. A [2024 Pioneer Institute Report](#), found 70% of 340B North Dakota pharmacies supposedly serving the poor are in affluent neighborhoods.

The report also found that North Dakota's 340B hospitals provided a mere 0.87% charity care component, compared to the national average of 2.28%. A goal of the 340B program, from its inception, was to pass the discounted savings afforded by the pharmaceutical companies on to the needy through charity care. This does not appear to be occurring in North Dakota.

There are lessons to be learned from other states. A recently released [PEHP](#) fiscal analysis of similar 340B contract pharmacy mandate legislation in Utah found that this policy could increase pharmacy costs for the state's public employee health program. The report conservatively expects a 10% increase in drugs purchased through the 340B program resulting in a loss of \$1,987,674 in rebates - a cost the state will need to cover. The [Utah 340B mandate bill](#) failed to pass out of a senate committee last month.

In North Carolina, 340B entities are billing insured patients in state health plans at higher costs than their discounted acquisition costs and copays are based on a list price not the discounted price. A recent [report](#) released by North Carolina State Treasurer Dale Folwell shows the extent to which hospitals in the 340B Program in North Carolina are overcharging cancer patients through the state's health plan. Patients are being charged at an average rate greater than five times the cost of cancer drugs. These higher rates are being borne on the backs of patients and all taxpayers in North Carolina. This report only considers cancer medications, so the full extent to which patients and taxpayers are being burdened is not known. Currently, the North Carolina State Health Plan faces a [\\$32 billion unfunded healthcare liability](#).

In November, the Minnesota Department of Health (MDH) analyzed [data](#) from Minnesota providers participating in the 340B Drug Pricing Program. Their report details the extent to which 340B hospitals are profiting from the program. Providers earned a net revenue of at least \$630 million in 2023, which may only represent half of the total. The state's largest 340B hospitals benefited the most from the program.

One final - and not minor - reason to reject HB 1473 is the very real constitutional concern this bill raises. The 340B program is wholly governed by federal law, therefore states are not in a position to create additional requirements to the program. Based on our research, some half dozen states are currently embroiled in lawsuits over this issue. Also, just this past December, the U.S. District Court for the Southern District of West Virginia enjoined that state's 340B law once it appeared likely that the plaintiffs would succeed on their claim that the federal law superseded state law.

Rather than expand the 340B program to more entities, the North Dakota Legislature ought to support measures to increase transparency and accountability for participating pharmacies and hospitals and to share this information with members of your federal delegation. The 340B program is a federal program and care should be taken to not codify state law to include aspects of a poorly designed federal program. Indeed, NTU is among many organizations that has advocated [reforms](#) to 340B through Congress.

Given all of the concerns raised here, I urge you to oppose HB 1473 and instead work to develop measures for evaluating a federal program that is clearly fraught with controversy. I humbly offer this advice as both a former pediatric nurse practitioner who worked with the very patients for whom the 340B Drug Pricing Program was intended and as a former Wisconsin state senator who understands how contentious and challenging it is to allocate taxpayer dollars wisely.

Please do not hesitate to contact me if you have further questions or concerns.

Respectfully submitted,

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