



Monday, February 10, 2025

The Honorable Jonathan Warrey
North Dakota House Industry, Business and Labor Committee
600 E. Boulevard Avenue
Bismarck, ND 58501

Dear Chairman Warrey and members of the North Dakota House Industry, Business and Labor Committee,

On behalf of National Taxpayers Union (NTU), America's oldest taxpayer advocacy organization, I respectfully urge you to oppose HB 1473, a bill which would ban prescription drug manufacturers from imposing reasonable limits on contract pharmacies and Pharmacy Benefit Managers (PBMs) for procuring heavily discounted drugs offered through the federal 340B program.

I have three lenses from which to observe and analyze the merits and flaws of the 340B program. First, as a former pediatric nurse practitioner who worked with the very patients for whom this program was designed. I have personally witnessed the value this program has provided in its original intent and design.

Second, I look at this issue through the lens of a former state senator who served on the finance committee in my home state of Wisconsin where, as you are well aware, decisions regarding the allocation of precious taxpayer dollars can be quite contentious and challenging. I understand the pressure you are under to make sure these dollars are spent wisely and efficiently and that those in most need of government assistance are prioritized.

And lastly, I look at this program in my current role as senior VP of state affairs for National Taxpayers Union where I am in a position to advocate on behalf of taxpayers across the entire country.

With that as a backdrop, let me implore you to fully and thoughtfully evaluate this issue before being swept into supporting legislation that will harm those who desperately rely on the helping hand of government. As you know, the 340B federal drug 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 340B 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.

Additionally, 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.

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.

Additionally, as you examine HB 1473, please consider the effects this bill may have on overall healthcare spending in your state, specifically the cost of providing healthcare to the nearly 10,000 North Dakota state employees. Many 340B entities are billing insured patients in state health plans at higher costs than their discounted acquisition costs. In the case of state employees, this means their 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](#).

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.

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 understand what it is like to be in your shoes as stewards of the taxpayers. You face significant pressure to properly utilize and allocate precious taxpayer dollars to your citizens and to programs designed to provide a helping hand to those in need. Support for this bill puts these individuals at greater risk - a consequence I know you would not intend.

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

Respectfully submitted,

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