North Dakota Legislators Should Reject 340B Expansion - Americans for Tax Reform

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Next week, North Dakota HB 1473 will be heard in the Industry Business and Labor Committee of the North Dakota House of Representatives. Americans for Tax Reform (ATR) and our supporters across North Dakota strongly oppose HB 1473 which would expand the second largest federal drug program: 340B. Expanding 340B would result in taxpayers footing the bill against costly lawsuits as well as a number of unintended negative consequences for patients across North Dakota.

Today, the biopharmaceutical industry is one of the most heavily regulated industries in the United States. It costs more than $2.5 billion and can take over a decade for just one new drug to make it through the Food and Drug Administration (FDA) approval process. Introducing even more layers of government intervention and bureaucratic red tape at the state level would only exacerbate the current problems and make pharmaceutical development that much more costly and complicated. Additionally, the 340B program is a comprehensive federal program that is governed exclusively by federal law – not state law. State governments do not have the authority to create new requirements that are not in the federal statute or that conflict with requirements in said statute.

Specifically, HB 1473 would require biopharmaceutical manufacturers to ship 340B drugs to all contract pharmacies that contract with 340B "covered entities" and by extension offer 340B pricing at these locations. The legislation makes no effort to address concerns about patient access and would only exacerbate existing problems with the 340B program.

While the 340B program was originally designed to help hospitals serve vulnerable populations, its unintended consequences have been dramatic. The norm has become that instead of directing savings towards patient care, hospitals use 340B to buy drugs at discounted prices and then bill significantly higher amounts to patients with commercial and employer-based insurance. This practice has inflated healthcare costs for both these patients and their employers. According to a 2024 report from the North Carolina State Auditor, North Carolina hospitals in the 340B program billed the North Carolina State Health Plan, the plan which covers teachers and state employees, at an 84.8% higher price markup than hospitals outside of the program. A recent analysis by IQVIA similarly showed that the 340B program has not saved costs as intended. According to the analysis, the 340B program increased state and local governments' health care costs by $1.9 billion in 2022 alone.

Additionally, the program has evolved into a giveaway for pharmacy benefit managers, who often negotiate deals with hospitals to further profit from discounted prices.

Continued escalation of 340B – far greater than originally intended – would leave manufacturers with even fewer resources available to invest in research and development for the next generation of lifesaving, life-improving medications. This would jeopardize pharmaceutical innovation as well as access to current medicines, resulting in the people of North Dakota being left with even fewer, lower-quality choices. Despite the remarks of those in favor of HB 1473 and other similarly passed legislation across the country, expanding 340B would actually lead to higher healthcare costs over the long term.

HB 1473 would also require manufacturers to ship 340B drugs to all contract pharmacies that contract with 340B covered entities and by extension offer 340B pricing at these locations. Currently, there is ongoing litigation in two other states which passed similar legislation over the question of whether manufacturers can be required to ship drugs to contract pharmacies for 340B providers. Expanding the 340B program before there is a judgment in these other lawsuits will guarantee costly legal battles for the state of North Dakota, bills foot by the North Dakota taxpayer.

Americans for Tax Reform strongly opposes expanding the 340B program and urges all North Dakota legislators to vote against HB 1473.

https://atr.org/north-dakota-legislators-should-reject-340b-expansion/

5 REASONS HB1473 IS WRONG FOR NORTH DAKOTANS

1. $5.2 BILLION in HEALTHCARE COSTS TO EMPLOYERS

How the 340B Program Impacts Federal & State Tax Liability
Magnolia Market Access, January, 2025

The 340B program has often been touted as cost-free to taxpayers, as the discounted pricing comes from drug manufacturers directly. However, a recent IQVIA study found that contrary to this narrative, discounted pricing on drugs sold under the 340B program displaces manufacturer rebates to commercial health insurance plans (including employer health plans) as duplicative discounts in the commercial market are often prohibited by contracts. This displacement of manufacturer commercial rebates in favor of 340B discounted pricing corresponded to a **$5.2B increase in healthcare costs for self-insured employers and workers in 2021**. The increase in healthcare costs associated with drugs sold under the 340B program corresponds to a decrease in taxable income for affected employers and workers, resulting in lost tax revenue for the federal and state governments.

The combined increase of $7.8B in healthcare costs for both self-insured and fully insured employers and workers from forgone manufacturer rebates due to the 340B program resulted in $1.8 billion in lost federal and state tax revenue in 2021.

Forgone commercial rebates are just one way 340B drives up costs for employers, the government and taxpayers. Research suggests 340B also contributes to increased spending by incentivizing the use of more and higher-cost medicines, shifting care to more expensive settings, and driving provider consolidation.

2. STATE HEALTH PLANS OVERCHARGED

Overcharged: State Employees, Cancer Drugs, and the 340B Drug Pricing Program
North Carolina State Treasurer, May 2024

Despite the charitable mission of the program, 340B hospitals billed the State Health Plan at an **84.8% higher price markup** than hospitals outside of the program, according to an analysis of medical claims from the North Carolina State Health Plan for Teachers and State Employees from 2020 to 2022.

3. WINDFALL FOR CHAIN PHARMACIES AND PBM'S

340B: An Out-of-Control Federal program with no oversight
Fix340B, Domestic Policy Caucus, 2025

State-by-state 340B expansion over the years has given more and more economic power to the already-monstrous, national chain pharmacies that have driven many local, mom-and-pop pharmacies out of business over the past several years.

Pharmacies are essential to the communities they serve. Yet throughout America, rural independent drugstores are struggling.

4. 340B ABUSE SHOULD TOP DEPT. OF GOVERNMENT EFFECIENCY LIST

340B Program Should Be a Priority for DOGE
Brooklyn Roberts, ALEC, January, 2025

Rule changes by the Health Resources and Services Administration (HRSA) allowed participating hospitals to contract with an unlimited number of outside pharmacies to fill 340B prescriptions—allowing the hospitals, pharmacies, and pharmacy benefit managers (PBMs) to share the profits. Patients, insurers, employers and taxpayers are bearing the brunt of the cost.

Hospitals have identified ways to maximize profits from the program, including through the state legislative process. Despite 340B being a federal program, bills have been introduced in states across the country to require drug manufacturers to sell to all pharmacies that participate in the program (called "contract pharmacies") at 340B prices.

5. PATIENTS AREN'T BENEFITTING

Medicaid's "340B" drug program is exploding – and driving up insurance costs
Dean Clancy, Americans for Prosperity, June, 2024

Evidence suggests most covered entities are *not* passing the discounts on to the intended beneficiaries. According to one comprehensive study, discounts reach as few as 1.4% of patients. The study concludes: "It's clear the majority of low income, uninsured, 340B-eligible patients at contract pharmacies are not directly benefiting from 340B discounts."

The number of covered entities has boomed, rising from 2,140 in 2014 to 12,700 in 2020 — a 600% increase in six years. Non-safety net providers lobby to get themselves included in the program. Some sneak in through a side door, buying up local safety-net providers and capturing their 340B profits for themselves. This is fueling local **hospital market consolidation, which means less competition, higher prices, and higher insurance premiums and out-of-pocket costs for everyone.**

A 2022 Milliman analysis found the average cost of an outpatient medicine administered at a 340B hospital is more than 150% higher than the average cost of an outpatient drug administered at a non-340B hospital.

There's evidence the program's explosive growth is driving up Medicare Part B premiums, which, if you think about it, means seniors are subsidizing hospital corporations.