



HB 1473 – Testimony by Amgen Inc.

H.B. 1473 would mandate that drug manufacturers facilitate delivery of their deeply discounted 340B-priced products to commercial pharmacies in an improper expansion of the federal 340B program. This bill contradicts federal court rulings, exacerbates program integrity concerns, and increases costs for patients and employers.

The 340B program was established in 1992 to help safety-net providers and their patients, but its expansion, particularly via significant growth in contract pharmacy arrangements, has greatly transformed the program. Instead of serving low-income and uninsured patients, large hospital systems and their for-profit pharmacy partners are exploiting the program’s lack of oversight. For instance, a report by the North Carolina State Treasurer, found that NC 340B hospitals charged state employees an average markup of 5.4 times the acquisition cost for cancer drugs.¹

Recent research published by IQVIA found that, in 2023, the 340B program increased costs to employers by \$6.6B and state and local governments by \$1B because 340B discounts displaced manufacturer rebates on the same drug.² According to the study, contract pharmacy legislation is increasing costs due to further expansion of 340B utilization, representing an additional \$1.9B in cost to employer-sponsored plans and \$273M to state and local government plans. In 2023, North Dakota had the second highest rate of 340B drug sales per capita in the country resulting in the forfeiture of over \$53 million in rebates that would otherwise have reduced costs for employers and the state.³

In recent years, investigative journalism by the Wall Street Journal^{4,5} and New York Times⁶ has exposed that a significant portion of 340B revenue is not reinvested into patient care but is instead retained as additional revenue for hospitals and contract pharmacies. This exploitation calls into question whether 340B is fulfilling its purpose or simply enriching intermediaries at the expense of manufacturers, patients, and employers.

H.B. 1473 is contrary to two recent federal Courts of Appeals rulings. In 2023, the U.S. Court of Appeals for the Third Circuit held that “[s]ection 340B [of the federal

¹ North Carolina State Health Plan for Teachers and State Employees. Overcharged: State Employees, Cancer Drugs, and the 340B Drug Pricing Program (2024).

<https://www.shpnc.org/documents/overcharged-state-employees-cancer-drugs-and-340b-drug-price-program/download?attachment>.

² IQVIA. The Cost of the 340B Program to States. February 2025.

<https://www.iqvia.com/locations/united-states/library/white-papers/the-cost-of-the-340b-program-to-states>

³ Ibid.

⁴ Wall Street Journal. “Hospitals Often Don’t Help Needy Patients, Even Those Who Qualify.” November 2022.

⁵ Wall Street Journal. “Many Hospitals Get Big Drug Discounts. That Doesn’t Mean Markdowns for Patients.” December 2022.

⁶ The New York Times. “Profits over Patients: How a Hospital Chain Used a Poor Neighborhood to Turn Huge Profits.” September 2022.

statute] does not require delivery to an unlimited number of contract pharmacies” and “Congress never said that drug makers must deliver discounted Section 340B drugs to an unlimited number of contract pharmacies.”⁷ In 2024, the U.S. Court of Appeals for the D.C. Circuit unequivocally reinforced this ruling.⁸ Thus, the 340B statute, which governs all aspects of participation in the program, does not require manufacturers to deliver discounted drugs to an unlimited number of contract pharmacies.

Further, H.B. 1473 is preempted by federal law. H.B. 1473 offends the Supremacy Clause because it would thrust North Dakota into the middle of a complex federal healthcare regime and meddle with the substantive rules and enforcement mechanisms that Congress created to govern it. H.B. 1473 attempts to regulate the price at which drug products are sold to pharmacies, not any aspect of delivery or safety that might normally be a state concern. Because federal law exclusively mandates which entities are entitled to the federal 340B discount, the bill’s attempts to expand that universe are improper and preempted.

This bill conflicts with these precedents and risks legal challenges.

Amgen urges the rejection of H.B. 1473. Rather than reinforcing a flawed contract pharmacy model, reforms should focus on ensuring that 340B discounts directly benefit patients. The expansion of contract pharmacy mandates is preempted by federal law, contradicts federal rulings, increases costs, and undermines program integrity. North Dakota should not pursue legislation that ultimately increases the financial burden on patients while benefiting intermediaries that operate beyond the original intent of the 340B program.

⁷ *Sanofi Aventis U.S. LLC v. United States Dep’t of Health & Hum. Servs.*, 58 F.4th 696 (3d Cir. 2023).

⁸ *Novartis Pharms. Corp. v. Johnson*, Nos. 21-5299, 21-5304 (D.C. Cir. May 21, 2024).