

SB 939 (Pan) Prescription Drug Pricing CHC Talking Points

April 11, 2022



Background/Overview

- Today, more than 1,300 community health centers (CHCs) provide high-quality, comprehensive care to more than 7.2 million people in California each year – that is roughly 1 in 5 Californians. CHCs provide the full spectrum of care, from primary to specialty care, servicing patients in rural and urban settings throughout the state.
- The federal 340B program was established to help qualified providers access discounted drugs. CHCs then reinvest the savings from the discounted drugs into other medically necessary services, such as patient navigation, transportation, and other critical services.
- Drug manufacturers, Pharmacy Benefit Managers (PBMs), and health insurers are imposing contract requirements and other technology innovations to track, restrict, and take back the savings that CHCs use to serve their patients.
- Even though the Medical Rx transition has significantly reduced health center savings in 340B there are still pathways to achieve savings through private payors, Medicare and on certain types of drugs, particularly those used for the treatment of HIV and AIDS.
- SB 939 would protect against actions from PBMs & manufacturers that attempt to limit access to 340B discounted drugs for patients while also protecting the remaining 340B savings.

Pick Pocketing aka Discriminatory Contracting Practices

- *How does 340B pickpocketing occur?* The most common way is for an outside group with whom health centers must do business (e.g., insurers, PBMs) to force them to accept contracts that offer lower reimbursement for drugs simply because they were purchased under 340B.
- *Why does pick-pocketing occur?* PBMs and manufacturers are fighting out who keeps CHCs 340B savings. Manufacturers pay PBM rebates for drugs unless that drug is purchased under 340B. The rebate system is used by manufacturers to induce PBMs to put their drugs on lower co-pay tiers, or to hit certain market share targets. However, PBMs will reduce reimbursement or otherwise seek to make up for the lost rebates by increasing fees for 340B providers and therefore taking savings for themselves.
- *Is pick-pocketing legal?* Nothing in the current state or federal statute prohibits pickpocketing. While HRSA has repeatedly expressed concern over these practices, it lacks the authority to stop them. However, SB 939 would help to provide protections against these practices.

Discount vs. Rebate Issue

- A new platform has been created that would allow manufacturers to remove up-front 340B discounts for CHCs and instead provide this as a rebate on the back end. All health center pharmacy services, including both in-house pharmacies and contract pharmacy arrangements, will be impacted.
- Essentially, the CHC would have to pay full price for its drugs on the front end and submit a request to be provided the 340B discount on the back end, without guarantee that the manufacturer would approve this request.
- Given the soaring prices for drugs, this action by manufacturers will exacerbate cash-flow issues already presented at the health centers and lead to patients having to pay full price for drugs because the CHC may not have the funding needed to provide the patient a discounted rate that the CHC has not yet received.
- Under current practice, covered entities can obtain 340B drug discounts on qualifying drugs and are able to pass those discounts to patients at the point of sale.
- However, this new system would remove this discretion from CHCs and instead allow manufacturers to decide if the CHC and their patients will be able to access 340B priced drugs.

Protecting Contract Pharmacy Relationships

- In the last couple of years, manufacturers have taken actions to limit access to 340B drugs at contract pharmacies.
- CHCs rely on contract pharmacies to expand access to care for vulnerable patients, especially in rural parts of the state. Without the use of contract pharmacies, many CHCs would not be able to participate in the 340B program due to the significant costs associated with opening an in-house pharmacy.

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- Although the pharmacy transition has removed the need for contract pharmacies in Medicaid, contract pharmacies are still used for privately insured patients and those on Medicare.
- The Health Resources and Services Administration (HRSA) put out a guidance requiring manufacturers to send 340B drugs to contract pharmacies, but that is now under litigation. As a result, State action to protect this program will ensure that patients most in need get access to these drugs.

Removing Mail in Order Requirements

- Some PBMs require drugs to be provided to patients via mail. This concerns CHCs since it removes the ability for patients to choose how they acquire their needed prescription drugs.
- This would create significant barriers for homeless patients, or patients living in shared spaces to obtain their drugs.
- Pharmacists are also often the best source of accurate information about medication efficacy and side effects, which remain among the most persistent concerns related to drugs like PrEP in BIPOC communities with deep-rooted mistrust of the pharmaceutical and health care industries.
- Mandatory mail/courier delivery would also result in significant privacy and safety issues for some clients, including youth and others living in congregate settings, people experiencing domestic violence, people living in rural areas and others who may need to protect their confidential medical information.
- If patients do not have the option to discreetly pick up their medication at a local pharmacy, medications arriving via mail/courier delivery may be intercepted by someone who is not aware of their medical condition – threatening their housing, employment, or even physical security.
 - These concerns are particularly salient for LGBTQ individuals, who may not be out to friends and family and could face stigma, discrimination, rejection, and violence should their sexual orientation and/or gender identity be revealed.

Solution: State Protection 340B Bill

- This bill would ensure that 340B savings remain with CHCs, and their medically underserved patients -- rather than being taken by PBMs and payers.
- Specifically, this bill would prohibit PBMs / manufactures from:
 - Treating 340B providers and their contract pharmacies differently from other similarly situated providers and pharmacies.
 - Interfering in patients' choice to receive drugs from a 340B pharmacy, whether in person or my mail.
 - Requiring 340B providers or pharmacies to identify 340B drugs, other than for Medicaid purposes.
 - Requiring manufacturers to send 340B priced drugs to CHCs and their contracted pharmacies without delay or prohibitions; and
 - Protecting 340B discounts from becoming rebates