

2023 Regular Session

HOUSE BILL NO. 548

BY REPRESENTATIVE TURNER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

DRUGS/PRESCRIPTION: Provides relative to the 340B drug pricing program

1 AN ACT

2 To enact Chapter 36-A of Title 40 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 40:2881 through 2886, relative to the dispensation of certain  
4 drugs by a healthcare facility; to provide for definitions; to identify certain actions  
5 as discriminatory with respect to drugs discounted by a federal program and the  
6 entities that dispense them; to provide for penalties; and to provide for related  
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 36-A of Title 40 of the Louisiana Revised Statutes of 1950,  
10 comprised of R.S. 40:2881 through 2886, is hereby enacted to read as follows:

11 CHAPTER 36-A. DEFENDING AFFORDABLE PRESCRIPTION DRUG COSTS

12 §2881. Short title

13 This Chapter may be cited as the "Defending Affordable Prescription Drug  
14 Costs Act".

15 §2882. Definitions

16 As used in this Chapter, the following terms have the following meanings:

17 (1) "340B drug" means a drug that has been subject to any offer for reduced  
18 prices by a manufacturer pursuant to 42 U.S.C. 256b and is purchased by a covered  
19 entity as defined in 42 U.S.C. 256b(a)(4).

1           (2) "340B entity" means an entity participating or authorized to participate  
2           in the federal 340B drug discount program, as described in 42 U.S.C. 256b, including  
3           its pharmacy, or any pharmacy contracted with the participating entity to dispense  
4           drugs purchased through the 340B drug discount program.

5           (3) "Health insurance issuer" has the same meaning as provided in R.S.  
6           22:1019.1.

7           (4) "Manufacturer" has the same meaning as defined in R.S. 37:3462(12).

8           (5) "Pharmacy" has the same meaning as defined in R.S. 37:1164(38) except  
9           that residents who are provided pharmacy care shall be physically located in this  
10          state.

11          (6) "Pharmacy benefit manager" has the same meaning as provided in R.S.  
12          40:2863.

13          §2883. Prohibition of certain discriminatory actions related to reimbursement of  
14          340B entities

15          A.(1) With respect to reimbursement to a 340B entity for 340B drugs, a  
16          health insurance issuer, pharmacy benefit manager, other third-party payor, or its  
17          agent shall not do any of the following:

18               (a) Reimburse a 340B entity for 340B drugs at a rate lower than that paid for  
19               the same drug to entities that are not 340B entities or lower reimbursement for a  
20               claim on the basis that the claim is for a 340B drug.

21               (b) Impose any terms or conditions on any 340B entity with respect to any  
22               of the following that differ from such terms or conditions applied to non-340B  
23               entities on the basis that the entity participates in the federal 340B drug discount  
24               program set forth in 42 U.S.C. 256b or that a drug is a 340B drug including, without  
25               limitation, any of the following:

26                       (i) Fees, charges, clawbacks, or other adjustments or assessments. For  
27                       purposes of this Subsection, the term "other adjustment" includes placing any  
28                       additional requirements, restrictions, or unnecessary burdens upon the 340B entity  
29                       that results in administrative costs or fees to the 340B entity that are not placed upon

1 other entities that do not participate in the 340B drug discount program, including  
2 affiliate pharmacies of the health insurance issuer, pharmacy benefit manager, or  
3 other third-party payor.

4 (ii) Dispensing fees that are less than the dispensing fees for non-340B  
5 entities.

6 (iii) Restrictions or requirements regarding participation in standard or  
7 preferred pharmacy networks.

8 (iv) Requirements relating to the frequency or scope of audits of inventory  
9 management systems.

10 (v) Requirements that a claim for a drug include any identification, billing  
11 modifier, attestation, or other indication that a drug is a 340B drug in order to be  
12 processed or resubmitted unless it is required by the Centers for Medicare and  
13 Medicaid Services or the Louisiana Department of Health for the administration of  
14 the Louisiana Medicaid program.

15 (vi) Any other restrictions, conditions, practices, or policies that are not  
16 imposed on non-340B entities.

17 (c) Require a 340B entity to reverse, resubmit, or clarify a claim after the  
18 initial adjudication unless these actions are in the normal course of pharmacy  
19 business and not related to 340B drug pricing.

20 (d) Discriminate against a 340B entity in a manner that prevents or interferes  
21 with any patient's choice to receive such drugs from the 340B entity, including the  
22 administration of such drugs. For purposes of this Subsection, it is considered a  
23 discriminatory practice that prevents or interferes with a patient's choice to receive  
24 drugs at a 340B entity if a health insurance issuer, pharmacy benefit manager, or  
25 other third-party payor places any additional requirements, restrictions, or  
26 unnecessary burdens upon the 340B entity that results in administrative costs or fees  
27 to the 340B entity, including but not limited to requiring a claim for a drug to include  
28 any identification, billing modifier, attestation or other indication that a drug is a  
29 340B drug in order to be processed or resubmitted unless it is required by the Centers

1 for Medicare and Medicaid Services or the Louisiana Department of Health in  
2 administration of the Louisiana Medicaid program.

3 (e) Include any other provision in a contract between a health insurance  
4 issuer, pharmacy benefit manager, or other third-party payor and a 340B entity that  
5 discriminates against the 340B entity or prevents or interferes with an individual's  
6 choice to receive a prescription drug from a 340B entity, including the administration  
7 of the drug, in person or via direct delivery, mail, or other form of shipment, or  
8 creation of a restriction or additional charge on a patient who chooses to receive  
9 drugs from a 340B entity.

10 (f) Require or compel the submission of ingredient costs or pricing data  
11 pertaining to 340B drugs to any health insurance issuer, pharmacy benefit manager,  
12 or other third-party payor.

13 (g) Exclude any 340B entity from the health insurance issuer, pharmacy  
14 benefit manager, or other third-party payor network on the basis that the 340B entity  
15 dispenses drugs subject to an agreement under 42 U.S.C. 256b, or refusing to  
16 contract with a 340B entity for reasons other than those that apply equally to  
17 non-340B entities.

18 B. Nothing in this Chapter applies to the Louisiana Medicaid program as  
19 payor when Medicaid provides reimbursement for covered outpatient drugs as  
20 defined in 42 U.S.C. 1396r-8(k)).

21 §2884. Prohibition of certain discriminatory actions by a manufacturer or distributor  
22 related to 340B entities

23 A. A manufacturer or distributor shall not deny, restrict, prohibit, or  
24 otherwise interfere with, either directly or indirectly, the acquisition of a 340B drug  
25 by, or delivery of a 340B drug to, a pharmacy that is under contract with a 340B  
26 entity and is authorized under such contract to receive and dispense 340B drugs on  
27 behalf of the covered entity unless such receipt is prohibited by the United States  
28 Department of Health and Human Services.

1           B. A manufacturer or distributor shall not interfere with a pharmacy  
2           contracted with a 340B entity.

3           §2885. Violations

4           The commission of any act prohibited by this Chapter is considered a  
5           violation of the Unfair Trade Practices and Consumer Protection Law, provided for  
6           in R.S. 51:1401 et seq. and subjects the violator to any and all actions, including  
7           investigative demands, remedies, and penalties provided for in the Unfair Trade  
8           Practices and Consumer Protection Law, except there shall be no right to bring a  
9           private action pursuant to R.S. 51:1409. A violation occurs each time a prohibited  
10          act is committed.

11          §2886. Federal preemption

12           A. Nothing in this Chapter is to be construed or applied to be less restrictive  
13          than federal law for a person or entity regulated by this Chapter.

14           B. Nothing in this Chapter is to be construed or applied to be in conflict with  
15          any of the following:

16           (1) Applicable federal law and related regulations.

17           (2) Other laws of this state if the state law is compatible with applicable  
18          federal law.

19           C. Limited distribution of a drug required under 21 U.S.C. 355-1 is not to be  
20          construed as a violation of this Chapter.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 548 Engrossed

2023 Regular Session

Turner

**Abstract:** Prohibits discriminatory practices that directly or indirectly limit the monetary benefit that entities participating in the federal 340B Drug Pricing Program receive as result of dispensing drugs discounted by the program.

Proposed law creates the "Defending Affordable Prescription Drug Costs" Act.

Proposed law provides for definitions for certain terms including "340B drug" and "340B entity".

Proposed law prohibits practices by a health insurance issuer, pharmacy benefit manger, or other third-party payor that would limit or impose conditions that would indirectly lower the amount of reimbursement for a drug discounted according to the federal 340B drug pricing program that was dispensed by an entity participating in the 340B drug pricing program.

Proposed law prohibits actions by a manufacturer or distributor that would deny, restrict, prohibit, or otherwise interfere with the acquisition of a 340B discounted drug to a pharmacy that is under contract with a healthcare facility that participates in the 340B drug discount program.

Proposed law provides that the commission of any act prohibited by proposed law constitutes a violation Unfair Trade Practices and Consumer Protection Law.

Proposed law provides that nothing in proposed law will be less restrictive than or construed to conflict with federal law.

(Adds R.S. 40:2881-2886)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Remove any reference to the creation of a private cause of action when a 340B entity is discriminated against by a health insurance issuer, pharmacy benefit manager, or third-party payor.
2. Make technical changes.