

**SENATE . . . . . No. 704**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Pavel M. Payano***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act prohibiting discrimination against 340b drug discount program participants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Pavel M. Payano</i>	<i>First Essex</i>	
<i>John J. Cronin</i>	<i>Worcester and Middlesex</i>	<i>1/30/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/2/2023</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>2/2/2023</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/8/2023</i>
<i>Vanna Howard</i>	<i>17th Middlesex</i>	<i>2/9/2023</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/21/2023</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>3/1/2023</i>

**SENATE . . . . . No. 704**

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By Mr. Payano, a petition (accompanied by bill, Senate, No. 704) of Pavel M. Payano, John J. Cronin, Joanne M. Comerford, Thomas M. Stanley and other members of the General Court for legislation to prohibit discrimination against 340b drug discount program participants. Financial Services.

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**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act prohibiting discrimination against 340b drug discount program participants.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 32A of the General laws, as appearing in the 2020 Official Edition,  
2 is hereby amended by inserting after Section 33, the following new section:-

3 Section 34

4 (a) DEFINITIONS. For purposes of this section:

5 (1) “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
6 Title 42 of the United States Code.

7 (2) “Contract pharmacy” means a pharmacy operating under contract with a 340B-  
8 covered entity to provide dispensing services to the 340B-covered entity as described in 75 Fed.  
9 Reg. 10,272 (Mar. 5, 2010).

10 (3) “Drug coverage” means:

11 (i) An insurance company organized under this Chapter providing reimbursement for  
12 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
13 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

14 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
15 amounts paid by an individual on his or her own behalf or on behalf of another individual.

16 (b) TERMS OF AGREEMENTS. No drug coverage that reimburses a 340B-covered  
17 entity or its contract pharmacy for drugs that are subject to an agreement under section  
18 256b(a)(1) of Title 42 of the United States Code:

19 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
20 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
21 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
22 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
23 pharmacy dispenses 340B drugs.

24 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
25 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
26 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
27 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the  
28 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
29 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

30 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
31 with respect to any of the following that differ from such terms or conditions applied to other  
32 similarly situated entities or pharmacies that are not 340B-covered entities or contract

33 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
34 pharmacy or that the entity or pharmacy dispenses 340B drugs:

35 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

36 (B) Professional dispensing fees.

37 (C) Restrictions or requirements regarding participation in standard or preferred  
38 pharmacy networks.

39 (D) Requirements relating to the frequency or scope of audits or to inventory  
40 management systems using generally accepted accounting principles.

41 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
42 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
43 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

44 (c) Patient's Choice. With respect to a patient eligible to receive drugs that are subject to  
45 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
46 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
47 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or  
48 otherwise interferes with the patient's choice to receive such drugs from the 340B-covered entity  
49 or its contract pharmacy.

50 SECTION 2. Chapter 175 of the General laws, as appearing in the 2020 Official Edition,  
51 is hereby amended by inserting after Section 47tt, the following new section:-

52 Section 47uu

53 (a) DEFINITIONS. For purposes of this section:

54 (1) “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
55 Title 42 of the United States Code.

56 (2) “Contract pharmacy” means a pharmacy operating under contract with a 340B-  
57 covered entity to provide dispensing services to the 340B-covered entity as described in 75 Fed.  
58 Reg. 10,272 (Mar. 5, 2010).

59 (3) “Drug coverage” means:

60 (i) An insurance company organized under this Chapter providing reimbursement for  
61 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
62 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

63 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
64 amounts paid by an individual on his or her own behalf or on behalf of another individual.

65 (b) TERMS OF AGREEMENTS. No drug coverage that reimburses a-340B-covered  
66 entity or its contract pharmacy for drugs that are subject to an agreement under section  
67 256b(a)(1) of Title 42 of the United States Code:

68 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
69 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
70 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
71 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
72 pharmacy dispenses 340B drugs.

73 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
74 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
75 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
76 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the  
77 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
78 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

79 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
80 with respect to any of the following that differ from such terms or conditions applied to other  
81 similarly situated entities or pharmacies that are not 340B-covered entities or contract  
82 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
83 pharmacy or that the entity or pharmacy dispenses 340B drugs:

84 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

85 (B) Professional dispensing fees.

86 (C) Restrictions or requirements regarding participation in standard or preferred  
87 pharmacy networks.

88 (D) Requirements relating to the frequency or scope of audits or to inventory  
89 management systems using generally accepted accounting principles.

90 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
91 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
92 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

93 (c) Patient’s Choice. With respect to a patient eligible to receive drugs that are subject to  
94 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
95 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
96 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or  
97 otherwise interferes with the patient’s choice to receive such drugs from the 340B-covered entity  
98 or its contract pharmacy.

99 SECTION 3. Chapter 176A of the General laws, as appearing in the 2020 Official  
100 Edition, is hereby amended by inserting after Section 39, the following Section:

101 Section 40

102 (a) DEFINITIONS. For purposes of this section:

103 (1) “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
104 Title 42 of the United States Code.

105 (2) “Contract pharmacy” means a pharmacy operating under contract with a 340B-  
106 covered entity to provide dispensing services to the 340B-covered entity as described in 75 Fed.  
107 Reg. 10,272 (Mar. 5, 2010).

108 (3) “Drug coverage” means:

109 (i) An insurance company organized under this Chapter providing reimbursement for  
110 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
111 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

112 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
113 amounts paid by an individual on his or her own behalf or on behalf of another individual.

114 (b) TERMS OF AGREEMENTS. No drug coverage that reimburses a-340B-covered  
115 entity or its contract pharmacy for drugs that are subject to an agreement under section  
116 256b(a)(1) of Title 42 of the United States Code:

117 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
118 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
119 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
120 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
121 pharmacy dispenses 340B drugs.

122 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
123 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
124 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
125 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the  
126 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
127 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

128 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
129 with respect to any of the following that differ from such terms or conditions applied to other  
130 similarly situated entities or pharmacies that are not 340B-covered entities or contract  
131 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
132 pharmacy or that the entity or pharmacy dispenses 340B drugs:

133 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

134 (B) Professional dispensing fees.



135 (C) Restrictions or requirements regarding participation in standard or preferred  
136 pharmacy networks.

137 (D) Requirements relating to the frequency or scope of audits or to inventory  
138 management systems using generally accepted accounting principles.

139 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
140 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
141 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

142 (c) Patient’s Choice. With respect to a patient eligible to receive drugs that are subject to  
143 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
144 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
145 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or  
146 otherwise interferes with the patient’s choice to receive such drugs from the 340B-covered entity  
147 or its contract pharmacy.

148 SECTION 4. Section 1 of Chapter 176B of the General laws, as appearing in the 2020  
149 Official Edition, is hereby amended by inserting after the definition of “Commissioner”, the  
150 following new definitions:

151 “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
152 Title 42 of the United States Code.

153 “Contract pharmacy” means a pharmacy operating under contract with a 340B-covered  
154 entity to provide dispensing services to the 340B-covered entity as described in 75 Fed. Reg.  
155 10,272 (Mar. 5, 2010).

156 “Drug coverage” means:

157 (i) An insurance company organized under this Chapter providing reimbursement for  
158 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
159 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

160 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
161 amounts paid by an individual on his or her own behalf or on behalf of another individual.

162 SECTION 5. Chapter 176B of the General laws, as appearing in the 2020 Official  
163 Edition, is hereby further amended by inserting after Section 26 the following new section:-

164 Section 27.

165 (a) TERMS OF AGREEMENTS. No drug coverage that reimburses a-340B-covered  
166 entity or its contract pharmacy for drugs that are subject to an agreement under section  
167 256b(a)(1) of Title 42 of the United States Code:

168 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
169 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
170 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
171 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
172 pharmacy dispenses 340B drugs.

173 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
174 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
175 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
176 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the

177 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
178 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

179 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
180 with respect to any of the following that differ from such terms or conditions applied to other  
181 similarly situated entities or pharmacies that are not 340B-covered entities or contract  
182 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
183 pharmacy or that the entity or pharmacy dispenses 340B drugs:

184 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

185 (B) Professional dispensing fees.

186 (C) Restrictions or requirements regarding participation in standard or preferred  
187 pharmacy networks.

188 (D) Requirements relating to the frequency or scope of audits or to inventory  
189 management systems using generally accepted accounting principles.

190 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
191 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
192 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

193 (b) Patient's Choice. With respect to a patient eligible to receive drugs that are subject to  
194 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
195 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
196 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or

197 otherwise interferes with the patient’s choice to receive such drugs from the 340B-covered entity  
198 or its contract pharmacy.

199 SECTION 6. Section 1 of Chapter 176G of the General laws, as appearing in the 2020  
200 Official Edition, is hereby amended by inserting after the definition of “Company”, the following  
201 new definitions:

202 “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
203 Title 42 of the United States Code.

204 “Contract pharmacy” means a pharmacy operating under contract with a 340B-covered  
205 entity to provide dispensing services to the 340B-covered entity as described in 75 Fed. Reg.  
206 10,272 (Mar. 5, 2010).

207 “Drug coverage” means:

208 (i) An insurance company organized under this Chapter providing reimbursement for  
209 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
210 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

211 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
212 amounts paid by an individual on his or her own behalf or on behalf of another individual.

213 SECTION 7. Chapter 176G of the General laws, as appearing in the 2020 Official  
214 Edition, is hereby further amended by inserting after Section 34 the following new section:-

215 Section 35.

216 (a) TERMS OF AGREEMENTS. No drug coverage that reimburses a-340B-covered  
217 entity or its contract pharmacy for drugs that are subject to an agreement under section  
218 256b(a)(1) of Title 42 of the United States Code:

219 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
220 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
221 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
222 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
223 pharmacy dispenses 340B drugs.

224 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
225 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
226 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
227 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the  
228 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
229 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

230 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
231 with respect to any of the following that differ from such terms or conditions applied to other  
232 similarly situated entities or pharmacies that are not 340B-covered entities or contract  
233 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
234 pharmacy or that the entity or pharmacy dispenses 340B drugs:

235 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

236 (B) Professional dispensing fees.

237 (C) Restrictions or requirements regarding participation in standard or preferred  
238 pharmacy networks.

239 (D) Requirements relating to the frequency or scope of audits or to inventory  
240 management systems using generally accepted accounting principles.

241 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
242 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
243 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

244 (b) Patient’s Choice. With respect to a patient eligible to receive drugs that are subject to  
245 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
246 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
247 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or  
248 otherwise interferes with the patient’s choice to receive such drugs from the 340B-covered entity  
249 or its contract pharmacy.

250 SECTION 8. Section 1 of Chapter 176I of the General laws, as appearing in the 2020  
251 Official Edition, is hereby amended by inserting after the definition of “Commissioner”, the  
252 following new definitions:

253 “340B-covered entity” has the same meaning as that set forth in section 256b(a)(4) of  
254 Title 42 of the United States Code.

255 “Contract pharmacy” means a pharmacy operating under contract with a 340B-covered  
256 entity to provide dispensing services to the 340B-covered entity as described in 75 Fed. Reg.  
257 10,272 (Mar. 5, 2010).

258 “Drug coverage” means:

259 (i) An insurance company organized under this Chapter providing reimbursement for  
260 covered outpatient drugs, excepting any Medicaid insurance plan of the Commonwealth as  
261 defined in G. L. c. 118E or other applicable laws governing Medicaid in the Commonwealth;

262 (ii) Notwithstanding the foregoing, the term “drug coverage” does not include any  
263 amounts paid by an individual on his or her own behalf or on behalf of another individual.

264 SECTION 9. Chapter 176I of the General laws, as appearing in the 2020 Official Edition,  
265 is hereby further amended by inserting after Section 14 the following new section:-

266 Section 15.

267 (a) TERMS OF AGREEMENTS. No drug coverage that reimburses a-340B-covered  
268 entity or its contract pharmacy for drugs that are subject to an agreement under section  
269 256b(a)(1) of Title 42 of the United States Code:

270 (i) Shall reimburse a covered entity or contract pharmacy for a quantity of a 340B drug in  
271 an amount less than such plan, issuer, or manager would pay to any other similarly situated entity  
272 or pharmacy that is not a covered entity or a contract pharmacy for such quantity of such drug on  
273 the basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
274 pharmacy dispenses 340B drugs.

275 (ii) Shall discriminate against a 340B-covered entity (as defined in subsection (a)(1)) or a  
276 contract pharmacy (as defined in subsection (a)(2)) by imposing requirements, exclusions,  
277 reimbursement terms, or other conditions on such entity or pharmacy that differ from those  
278 applied to entities or pharmacies that are not 340B-covered entities or contract pharmacies on the

279 basis that the entity or pharmacy is a covered entity or contract pharmacy or that the entity or  
280 pharmacy dispenses 340B drugs, including by taking any action prohibited under subsection (b).

281 (ii) Shall impose any terms or conditions on 340B-covered entities or contract pharmacies  
282 with respect to any of the following that differ from such terms or conditions applied to other  
283 similarly situated entities or pharmacies that are not 340B-covered entities or contract  
284 pharmacies on the basis that the entity or pharmacy is a 340B-covered entity or contract  
285 pharmacy or that the entity or pharmacy dispenses 340B drugs:

286 (A) Fees, chargebacks, clawbacks, adjustments, or other assessments.

287 (B) Professional dispensing fees.

288 (C) Restrictions or requirements regarding participation in standard or preferred  
289 pharmacy networks.

290 (D) Requirements relating to the frequency or scope of audits or to inventory  
291 management systems using generally accepted accounting principles.

292 (iii) Shall require a claim for a drug to include a modifier to indicate that the drug is a  
293 340B drug, or any other method of identifying the claim as 340B, unless the claim is for  
294 payment, directly or indirectly, by Medicaid as defined in Section 8 of Chapter 118E.

295 (b) Patient's Choice. With respect to a patient eligible to receive drugs that are subject to  
296 an agreement under section 256b of Title 42 of the United States Code from a 340B-covered  
297 entity or its contract pharmacy, no entity that makes payment for such drugs shall discriminate  
298 against the 340B-covered entity or its contract pharmacy in a manner that prevents, steers, or



299 otherwise interferes with the patient's choice to receive such drugs from the 340B-covered entity  
300 or its contract pharmacy.