340B Discriminatory Reimbursement: An Overview

What is 340B?

In 1992, Congress created the 340B program to improve access to care for vulnerable populations by helping safety-net providers stretch scarce federal resources. Pharmaceutical manufacturers are required to provide front-end discounts on outpatient drugs to 340B providers, who are then required to use those savings to expand services and reach more vulnerable individuals. The following organizations (called "covered entities") are eligible to participate in the 340B program:

- Federally Qualified Health Centers (FQHCs) and FQHC Look-Alikes
- Native Hawaiian and Tribal/Urban Indian Health Centers
- Ryan White HIV/AIDS Program Grantees
- Children's Hospitals, Critical Access Hospitals, Disproportionate Share Hospitals, Rural Hospitals, Sole Community Hospitals, and Free-Standing Cancer Hospitals
- Specialized Black Lung, Hemophilia, Tuberculosis, STD, and Title X Family Planning Clinics

What is Discriminatory Reimbursement?

Discriminatory reimbursement is a growing practice by Pharmacy Benefit Managers (PBMs) and other health payors that negatively impacts 340B entities by offering them lower reimbursement for medications simply because of their participation in the 340B program. This allows these payers to keep savings meant for 340B entities for themselves. Examples of this practice include:

- Directly offering 340B covered entities or their in-house/contracted pharmacies lower reimbursement rates than what they offer non-340B entities
- Subjecting covered entities to unique requirements like claims ID, restrictions on patient choice of pharmacy, burdensome audits, additional fees, "clawback" provisions, etc.
- Establishing 340B-specific barriers to participating in the payer's pharmacy network or excluding covered entities from the network entirely

Why is Discriminatory Reimbursement a Problem?

Discriminatory reimbursement runs counter to the established intent and purpose of the 340B program. The practice forces 340B providers to pass along their savings to private insurers and PBMs (including many for-profit ones) who were never intended to benefit from the program. Ultimately, discriminatory reimbursement directly hurts our most vulnerable communities by making it harder for safety-net providers to extend services to more people or offer more comprehensive care.

What Can States Do About It?

States have tremendous power to regulate insurers and PBMs. Policymakers are increasingly recognizing the need to reign in this harmful practice. In just the past three years, 15 states[1] have enacted laws prohibiting PBMs and other payers from discriminating against 340B providers and their pharmacies.

[1] WV, MN, MT, OR, SD, UT, GA, OH, ND, IN, AL, AR, TN, VT, and NC.