

SENATE No. 704

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>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>4/27/2023</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>5/17/2023</i>

SENATE No. 704

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.

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.