**South Carolina General Assembly**

125th Session, 2023-2024

**S. 1239**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Talley

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Introduced in the Senate on April 4, 2024

Currently residing in the Senate Committee on **Medical Affairs**

Summary: Drug Pricing Nondiscrimination

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/4/2024 Senate Introduced and read first time ([Senate Journal‑page 3](h:\sj\20240404.docx))

4/4/2024 Senate Referred to Committee on **Medical Affairs** ([Senate Journal‑page 3](h:\sj\20240404.docx))

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=1239&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[04/04/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/1239_20240404.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 44‑117‑510 SO AS TO PROVIDE DEFINITIONS FOR PATIENT, THIRD PARTY, AND 340B DRUG PRICING; BY ADDING SECTION 44‑117‑520 SO AS TO PROVIDE THAT A THIRD PARTY SHALL INFORM A PATIENT THAT HE IS NOT REQUIRED TO USE A MAIL‑ORDER PHARMACY, SHALL OBTAIN A SIGNED WAIVER FROM A PATIENT BEFORE ALLOWING THE USE OF A MAIL‑ORDER PHARMACY, SHALL MAKE DRUG FORMULARY AND COVERAGE DECISIONS BASED ON THE THIRD PARTY’S NORMAL COURSE OF BUSINESS, SHALL ALLOW A PATIENT THE FREEDOM TO USE ANY PHARMACY OR ANY PROVIDER THE PATIENT CHOOSES, AND SHALL ELIMINATE DISCRIMINATORY CONTRACTING; BY ADDING SECTION 44‑117‑530 SO AS TO PROVIDE THAT ALL PHARMACY CLAIMS PROCESSED BY A PHARMACY THAT PARTICIPATES IN 340B DRUG PRICING ARE FINAL AT THE POINT OF ADJUDICATION; BY ADDING SECTION 44‑117‑540 SO AS TO PROVIDE THAT THE INSURANCE COMMISSIONER MAY PROMULGATE RULES TO IMPLEMENT THE PROVISIONS OF THIS CHAPTER.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 117, Title 44 of the S.C. Code is amended by adding:

Article 5

Drug Pricing Nondiscrimination

Section 44‑117‑510. As used in this article:

(1) “Patient” means an individual seeking medical diagnosis and treatment.

(2)(a) “Third party” means a payor or the payor’s intermediary, or a pharmacy benefits manager.

(b) “Third party” does not include the South Carolina Medicaid program, a risk‑based provider organization, or a self‑insured governmental plan or a pharmacy benefits manager for a self‑insured governmental plan.

(3) “340B drug pricing” means the program established under Section 602 of the Veterans Health Care Act of 1992, Pub. L. No. 102‑585.

Section 44‑117‑520. (A) A third party shall:

(1) inform a patient that he is not required to use a mail‑order pharmacy;

(2) obtain a signed waiver from a patient before allowing the use of a mail‑order pharmacy; (3) make drug formulary and coverage decisions based on the third party's normal course of business; (4) allow a patient the freedom to use any pharmacy or any provider the patient chooses, whether or not the pharmacy participates in 340B drug pricing; and

(5) eliminate discriminatory contracting as it relates to: (a) transferring the benefit of 340B drug‑pricing savings from one entity, including critical access hospitals, federally qualified health centers, other hospitals, or 340B drug‑pricing participants and their underserved patients, to another entity, including without limitation pharmacy benefits managers, private insurers, and managed care organizations;

(b) pricing that occurs when offering a lower reimbursement for a drug purchased under 340B drug pricing than for the same drug not purchased under 340B drug pricing;

(c) refusal to cover drugs purchased under 340B drug pricing;

(d) refusal to allow 340B drug‑pricing pharmacies to participate in networks; and

(e) charging more than fair market value or seeking profit sharing in exchange for services involving 340B drug pricing. (B) A third party shall not:

(1) coerce a patient into using a mail‑order pharmacy;

(2) require a patient to use a mail‑order pharmacy;

(3) discriminate, lower the reimbursement, or impose any separate terms upon a pharmacy in any other third‑party contract on the basis that a pharmacy participates in 340B drug pricing;

(4) require a pharmacy to reverse, resubmit, or clarify a 340B drug‑pricing claim after the initial adjudication unless these actions are in the normal course of pharmacy business and not related to 340B drug pricing;

(5) require a billing modifier to indicate that the drug or claim is a 340B drug‑pricing claim unless the drug or claim is being billed to the fee‑for‑service South Carolina Medicaid Program;

(6) modify a patient’s copayment on the basis of a pharmacy’s participation in 340B drug pricing;

(7) exclude a pharmacy from a network on the basis of the pharmacy's participation in 340B drug pricing;

(8) establish or set network adequacy requirements based on 340B drug pricing participation by a provider or a pharmacy; or

(9) prohibit an entity authorized to participate in 340B drug pricing or a pharmacy under contract with an entity authorized to participate in 340B drug pricing from participating in the third party's provider network on the basis of participation in 340B drug pricing.

(C) A third party that is a pharmacy benefits manager shall not base the drug formulary or drug coverage decisions upon the 340B drug‑pricing status of a drug, including price or availability, or whether a dispensing pharmacy participates in 340B drug pricing.

(D) A pharmaceutical manufacturer shall not:

(1) prohibit a pharmacy from contracting or participating with an entity authorized to participate in 340B drug pricing by denying access to drugs that are manufactured by the pharmaceutical manufacturer; or

(2) deny or prohibit 340B drug pricing for a community pharmacy that receives drugs purchased under a 340B drug pricing.

Section 44‑117‑530. All pharmacy claims processed by a pharmacy that participates in 340B drug pricing are final at the point of adjudication.

Section 44‑117‑540. The Chief Insurance Commissioner may promulgate rules to implement the provisions of this chapter.

SECTION 2. This act takes effect upon approval by the Governor.

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