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The Great 340B Healthcare Grift

A federal judge shows how this hospital 'discount' fleeces drug makers and patients.

By The Editorial Board Follow

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DANIEL ACKER/BLOOMBERG NEWS

Politicians love to hate Big Pharma even as government policies raise drug prices. A textbook example is the federal 340B drug program, which hospitals exploit to raid drug makers. Since the press missed it, we'll tell you about the spectacular opinion by a federal judge detailing how this well-intended program has become a scam on taxpayers.

Last week federal Judge Daniel Traynor blocked a North Dakota law that sought to exploit 340B to transfer hundreds of millions of dollars from drug makers to hospitals and pharmacies. But his special contribution is his

opinion explaining how a program "meant to help American poor is being abused to provide a windfall to hospital conglomerates and participating pharmacies."

We've previously reported how 340B has become a cash cow for hospitals. Congress created the program in 1992 to assist hospitals serving large numbers of low-income patients. To participate in Medicare and Medicaid, drug firms are required to "offer" their products at steep discounts to such hospitals.

Discounts typically range from 20% to 50% of a drug's sticker price. "In some cases, the discount is so steep hospitals pay 'a penny per unit,'" Judge Traynor writes. Hospitals and pharmacies with which they contract dispense the drugs to patients who pay the non-discounted prices (or their insurers do). This is a sweet arbitrage for hospitals and pharmacies.

"AstraZeneca's Farxiga, for example, sells for 'hundreds of dollars' commercially but 'less than a dollar' with the 340B discount," the judge notes. Drug makers in turn raise sticker prices to make up for the discounts they are required to give hospitals. "Ultimately, it is the patients who suffer as a result," the judge writes.

340B spending has ballooned as more hospitals have become eligible owing to the ObamaCare Medicaid expansion. Now some of the wealthiest hospitals in the U.S. qualify, and there is no requirement that they use the discounts to directly help patients. Studies have found that hospitals largely use the money for financial investments and acquisitions.

Hospitals are also contracting with more pharmacies, which are paid a kickback to dispense medicines. Between 2010 and 2019, the number of contract pharmacies nationwide increased 18-fold, the judge says. Meanwhile, 340B drug purchases surged to $81 billion in 2024 from $6.9 billion in 2012.

Drug makers in recent years have attempted to limit the number of contract pharmacies to which they provide discounts to prevent abuse. This has spurred litigation. The Third Circuit and the D.C. Circuit courts of appeal have held that drug makers aren't required under federal law to provide discounts to an unlimited number of pharmacies.

Enter North Dakota, which passed a law last year barring drug makers from limiting the number of pharmacies in the state that qualify for discounts. Arkansas has passed a similar law, and other states are considering it. Judge Traynor explains crisply: "Here is what is really going on: a coordinated collusion" between hospitals and pharmacies "to exploit Congress's inattention to a federal program."

"This scheme works because no one considers manufacturers as victims. Big pharma garners little sympathy," he writes, but that doesn't "mean manufacturers should be fleeced by enterprising states and hospital conglomerates that wield power in legislative lobbies." North Dakota's law "benefits hospital conglomerates, and Joe Paycheck sees no difference in the price of his meds."

The judge ruled that North Dakota's law is pre-empted by federal law since "manufacturers are forced to decide between violation of a state law or participation in a federal program with additional costs, which amount to the millions." AbbVie estimated North Dakota's law would cost it $35 million this year alone.

Multiply that cost across the pharmaceutical industry and the U.S., and you're looking at an income transfer of tens of billions of dollars a year from drug companies and patients to hospitals and their pharmacy partners. Senate Republicans last year issued a report detailing how wealthy hospitals like the Cleveland Clinic have exploited the program.

An Empire Center for Public Policy report this spring found that 340B revenue for New York's well-endowed hospital systems has ballooned—846% for Mount Sinai between 2019 and 2024. This has driven "up drug costs for employer-sponsored health plans, including taxpayer-funded plans offered by state and local governments," the report says.

If Republicans in Congress want to reduce healthcare costs, they'll use their next budget reconciliation bill to curb this 340B abuse—say, by requiring hospitals and pharmacies to pass along the discount money to patients. This is government grift at its worst.

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