

**Lower the Costs of Prescription Drugs through Use of the Public Health Service Act and
Protect Against Unfair Prescription Drug Practices**

Policy Description: This model legislation will help states and private and public health plans reduce health care costs by (1) exploring how to take full advantage of reduced prescription drug pricing under Section 340B of the federal Public Health Service Act and (2) instituting greater regulation and oversight over pharmacy benefits managers (PBMS) who negotiate prescription drug costs on behalf of public and private health plans.

340B – This legislation creates a task force of stakeholders to study and report how best to take full advantage of 340B drug pricing, which is a provision of the Federal Public Health Act that authorizes discounted prices (below Medicaid prices) for certain populations and safety net health care providers. Covered entities include disproportionate share hospitals, federal qualified health centers and other community health centers, public housing primary care clinics, and clinics for homeless people. Texas has created a program that utilizes 340B pricing for the state’s prison population, saving millions of dollars on prescription drug costs each year.

Pharmacy Benefit Managers – Pharmacy Benefit Managers (PBMs) act as middlemen between drug manufacturers and public and private health plans, negotiating prices for prescription drugs. Yet, PBMs are highly corruptible. To get a drug on a health plan's benefit list or formulary, drug companies make payments to PBMs that are proportionate to how often the drug is prescribed. PBMs boost their profits by pocketing some or all of these payments instead of passing them along as savings to their customers. This legislation requires greater transparency of PBM practices, requires PBMs to act as fiduciaries for their clients, and requires annual audits of all PBMs to ensure that the full value of negotiated discounts, rebates, or other financial considerations are passed through. The legislation authorizes state attorneys general to pursue violations of this act as violations of a state’s unfair trade practices or consumer protection laws and to seek damages.

Benefits: With states facing continued budget deficits, prescription drug spending is an important source of cost savings. In 2007, the U.S. spent \$287 billion on pharmaceutical drugs, representing 14% of all health care expenditures and a significant driver of health care costs. The public blames drug manufacturers, in part, for high health care costs and believes the industry makes too much profit. Tackling prescription drug costs is an effective way to achieve key political goals by addressing the public’s concerns and distrust with the industry.

340B – Under 340B, drug prices are 19% below the average Medicaid best price net or rebates, 39% below the average reimbursement from insurers, and 51% less than average wholesale price (AWP). Texas saves \$10 million per year through a program that was created to utilize 340B pricing for its prison population. Hospitals that are eligible for, and are utilizing, 340B pricing save state Medicaid programs an average of \$300,000 per year. And, 340B pricing can make specialty drugs more accessible for patients, and more affordable for states and providers. Examples include medications for Multiple Sclerosis, Cancer, Antivirals, and Rheumatoid Arthritis. Furthermore, the federal health reform bills currently being debated include provisions to expand the 340B program.

Pharmacy Benefits Managers – Three PBM companies administer 80% of all private prescription coverage and each pocket annual revenues exceeding \$15 billion. The three largest PBM companies manage the drug benefits for 95% of Americans with prescription drug coverage. From 1997 to 1999, Medco Managed Care, then a subsidiary of Merck, was paid \$3.5 billion in rebates it negotiated from manufacturers, the majority of which were not passed through to health plans and consumers.

Illinois has estimated it could save \$10 million annually by directly negotiating prescription drug prices for the state employee health plan instead of using a PBM. The University of Michigan saved \$8.6 million in 2003 by downsizing from 5 to 1 PBMs and better regulating the single remaining manager.

Further, the federal health reform bills in the House and Senate include provisions to expand 340B eligibility, making more providers and consumers eligible for discounted pricing, and to require greater transparency of PBM practices. Federal action on these measures will create opportunities for states to act quickly to maximize participation in 340B pricing and to enact stronger PBM transparency and oversight legislation.

Current Practices: Although 340B pricing is widely used, many states do not maximize its potential applications. Vermont recently had a 340B study group recommend an expansion of the state's network of federally qualified health centers and to coordinate drug procurement among them. The coordinated purchasing and expansion of FQHC's has made more people eligible for 340B pricing. Several states have strong PBM transparency laws. The strongest are in Texas, Maine, Maryland, and the District of Columbia.