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March 7, 2024

TO: Senator Pamela Beidle, Chair
Senate Finance Committee

FROM: Health Education and Advocacy Unit

RE: SB 986 – State Board of Pharmacy – Prohibition on Discrimination Against 340B Drug Distribution (**Support**)

The Health Education and Advocacy Unit writes in support of Senate Bill 986, which prohibits a manufacturer, wholesale drug distributor, or third-party logistics provider, or an agent or affiliate thereof, from limiting or restricting the acquisition or delivery of a 340B drug and makes a violation an unfair, abusive or deceptive trade practice within the meaning of the Consumer Protection Act.

The 340B Drug Pricing Program provides discounts to covered healthcare entities that serve uninsured and low-income patients, and helps these providers keep costs low even as prescription drug prices rise. As a condition of having their drugs covered by Medicaid and Medicare Part B, Congress required drug manufacturers to enter into Pharmaceutical Pricing Agreements (PPA) with the HHS Secretary to limit the amount public hospitals, community health centers, and others serving indigent patients have to pay drug manufacturers for medications. These PPAs require the companies to offer each covered medication to providers “at or below the applicable ceiling price.”

In 2020, various drug manufacturers began unilaterally imposing limitations, restrictions, and exclusions on covered entities that use contract pharmacies, potentially depriving Marylanders, including some of our most vulnerable residents, who rely on them with essential healthcare resources they need.

The bill thus is aimed to stop 340B manufacturers from imposing limitations and exclusions on covered entities that use contract pharmacies to administer their 340B drugs to patients. This bill is necessary, among other reasons because “[c]ontract pharmacies are vital to covered entities and the success of the 340B Program because contract pharmacies are the vehicle by which many covered entities dispense affordable prescription drugs for outpatient treatment and recovery, particularly for patients who continue to face significant barriers to care. The 340B Program was primarily concerned with patients’ access to prescription drugs for recovery outside the traditional hospital settings—namely, at home.”¹

We note there are several pending cases challenging violations issued by the Health Resources and Services Administration (“HRSA”) against 340B manufacturers who have limited access to contract policies. HHS and HRSA have taken the position that 340B manufacturers must offer and provide 340B discounts to contract pharmacies. The Maryland Office of the Attorney General (MOAG) has joined multi-state amicus briefs in cases involving the drug manufacturers’ challenges to HHS’s administration of the 340B Drug Pricing Program and the use of contract pharmacies by 340B covered entities in support of the HHS and HRSA positions. The outcome of several cases are pending on appeal. Despite these challenges, our office supports SB986 and its efforts to keep prescription drugs affordable to patients who would not otherwise have access to them.

We ask the Committee for a favorable report on Senate Bill 986.

End Note

This bill letter is a statement of the Office of Attorney General’s policy position on the referenced pending legislation. For a legal or constitutional analysis of the bill, Members of the House and Senate should consult with the Counsel to the General Assembly, Sandy Brantley. She can be reached at 410-946-5600 or sbrantley@oag.state.md.us.

¹ Corrected Brief of Amici Curiae States, including Maryland, *Novartis Pharmaceuticals Corp. v. Johnson*, 2022 WL 1644996 (D.C. Cir. May 23, 2022).