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340B Program: Expanding Federal Overreach and Undermining Free-market Healthcare

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State legislatures across the country are increasingly enacting laws codifying the federal 340B drug-discount program. Two recent examples — Kentucky's Senate Bill 14 (SB14) and Mississippi's House Bill 728 (HB728) — illustrate how states are solidifying the federal government's grip on the healthcare sector under the guise of "affordability" and "fairness." These votes have been documented in *The New American's* state Legislative Scorecards. By codifying mandates tied to the 340B program, such bills entrench unconstitutional federal programs, undermine free-market principles, erode federalism, and violate constitutional protections for private enterprise.

The 340B Drug Pricing Program, enacted under the Veterans Health Care Act of 1992, was originally intended to provide discounted outpatient drugs to healthcare providers serving low-income and uninsured patients, such as safety-net hospitals and community health centers. Administered by the Health Resources and Services Administration (HRSA), the program mandates that pharmaceutical manufacturers offer significant discounts — often 25 to 50 percent off average wholesale prices — to "covered entities" as a condition of participating in Medicaid and Medicare Part B. None of this, however, is permissible under the U.S. Constitution.

Little Oversight

Price controls on medications, while promoted as tools to enhance affordability, often produce unintended consequences that restrict access and stifle innovation. For instance, during the 1970s, strict federal price regulations on pharmaceuticals led to widespread supply shortages and curtailed research and development. As profit margins shrank, companies reduced investment in new drug discoveries, limiting future treatment options. This historical precedent illustrates the dangers of government interference in private industry — a pattern the 340B program threatens to repeat. On May 12, 2025, President Trump issued an executive order intending to lower drug prices and stop foreign free-riding on American pharmaceuticals.

Since its inception, the 340B program has ballooned far beyond its original scope. The program now includes well over 33,000 contract pharmacies and covered entities purchasing over $66.3 billion in covered outpatient drugs.A recent analysis revealed that the vast majority of hospitals and clinics participating in the 340B drug pricing program operate with virtually no federal oversight. While more than 60,000 entities now use the program — originally intended to serve the poor — as a revenue source, the government audits only a small fraction each year. Yet most of those limited audits uncover

serious violations, such as duplicate discounts and illegal drug diversion. Hospitals are marking up discounted drugs by as much as 1,000 percent, contributing to rising healthcare costs for patients, taxpayers, and employers. Despite the billions flowing into tax-exempt systems, oversight remains minimal, raising serious concerns about accountability and integrity.

Constitutional, Economic, and Moral Consequences

Critically, the 340B program lacks a constitutional foundation under Article I, Section 8 of the U.S. Constitution, which enumerates the limited powers of the federal government. By compelling private manufacturers to offer government-mandated discounts, the program infringes on property rights and contract freedoms, violating the principles of limited government and free enterprise. Yet instead of resisting this unconstitutional overreach, states such as Kentucky, Mississippi, and many others are further codifying it into state law, eroding state sovereignty.

Economically, the 340B program distorts the marketplace by suppressing drug prices for select entities, driving up costs elsewhere. A recent study by the National Alliance of Healthcare Purchaser Coalitions found that the large 340B hospitals charge roughly seven percent more for commercial services and nearly 20 percent more for outpatient procedures compared to non-340B hospitals — costing employers an estimated $36 billion annually in excess hospital spending. Such artificial price manipulation undermines the market forces necessary for innovation, efficiency, and patient access.

Morally, forcing private businesses to subsidize government-favored institutions under the banner of "affordability" is indefensible. No level of government has the authority to dictate pricing or force companies to prioritize one customer over another. These programs pave the way for economic tyranny, weakening individual liberty and promoting collectivist policies.

States Are Complicit

Kentucky's SB14, mentioned above, prohibits pharmaceutical manufacturers from denying 340B-covered entities — such as qualified healthcare providers and contract pharmacies — access to federally discounted pricing. If a manufacturer offers 340B prices in any other state, SB14 requires the same in Kentucky, effectively imposing a cross-state uniformity mandate. By coercing manufacturers to comply with federal price controls, the bill strips private entities of their freedom to contract. It violates the First Amendment's protection of free association and Article I, Section 10's prohibition on states impairing contractual obligations. SB14 surrenders Kentucky's sovereignty by reinforcing the federal government's unconstitutional regulatory agenda.

Mississippi's House Bill 728, titled the "Defending Affordable Prescription Drug Costs Act," goes even further. It prohibits insurance companies, pharmacy benefit managers (PBMs), drug manufacturers, and distributors from "discriminating" against 340B participants in reimbursement, contract terms, or drug access. In essence, it mandates favorable treatment for federally approved entities, institutionalizing state-enforced economic favoritism. Surprisingly, these bills are coming from Republican-controlled states.

These bills override market-based negotiation by compelling businesses to comply with federal mandates. They violate the principle of freedom of contract and amplify unconstitutional federal control, infringing the enumerated-powers doctrine. By codifying these coercive mandates, Mississippi, Kentucky, and other states are advancing centralized economic planning at the expense of voluntary exchange.

Between 2019 and 2021, 16 states passed legislation prohibiting PBM discrimination against 340B covered entities, with more states enacting similar laws since then. In the 2024 state legislative sessions, lawmakers in 20 states approved 33 bills addressing PBM regulation. The majority of these laws target issues such as spread pricing, protections for 340B pharmacies, and patient steering toward affiliated pharmacies. The bills show a growing pattern of state complicity with federal overreach, rather than a defense of constitutional principles.

Abuse, Immigration, and Erosion of Sovereignty

Another troubling aspect of the 340B program is how it is used to subsidize healthcare for illegal migrants. Participating entities purchase drugs at steep, federally mandated discounts, then bill state and federal programs or third-party insurers at higher rates. This effectively allows illegal migrants to benefit from taxpayer-subsidized healthcare, further incentivizing unlawful immigration and placing additional financial strain on public resources — at the expense of American citizens. Additionally, 340B funds are reportedly used to fund transgender surgeries for minors. In response, the conservative nonprofit Building America's Future launched an ad campaign urging Republicans to reject efforts to expand the program. The ad, which aired in Kansas, Mississippi, and Missouri, praised Virginia Governor Glenn Youngkin for vetoing SB119, legislation that would have expanded 340B in his state. Youngkin cited serious concerns about the program's abuse and its role in subsidizing healthcare for illegal migrants, calling it a "340B money laundering scheme."

On July 10, 2025, the U.S. Department of Health and Human Services (HHS) issued a press release announcing it will no longer allow illegal aliens to access its taxpayer-funded programs, reversing a Clinton-era interpretation that had undermined federal law for more than two decades. The new policy restores compliance with the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), ensuring that federal benefit programs such as Head Start are reserved for American citizens. While the HHS policy change does not explicitly include the 340B program, it is a step in the right direction.

Restoring Constitutional Government

The proper role of state government, rooted in the 10th Amendment of the U.S. Constitution, is to resist and nullify unconstitutional federal mandates, protect individual rights, and defend economic freedom — not act as an enforcement arm of the federal regulatory state. Kentucky's SB14, Mississippi's HB728, and similar measures in other states fail this fundamental test. The few legislators who courageously opposed these bills deserve recognition for championing true federalism and limited government.

The New American and The John Birch Society, steadfast advocates of constitutional government and free enterprise, urge Americans to hold their state legislators accountable. Citizens must oppose legislation that expands unconstitutional programs and undermines market freedom. True healthcare reform begins with dismantling federal overreach, restoring competitive markets, and reaffirming constitutional limits on government power.

To learn more about how your state and federal legislators vote on issues of constitutional importance, visit The New American's *Freedom Index and state Legislative Scorecards*.