

Model Legislation: How Correctional Facilities Could Lower Drug Prices

This model legislation for the policy described in “How Correctional Facilities Could Lower Drug Prices” serves as a guide for how states “require a manufacturer to provide discounts [to correctional facilities] as a condition for having its drugs placed on the state’s Medicaid Preferred Drug List (PDL).” In many cases, this could also be implemented through changes in regulations, though it is dependent on each state’s regulatory framework.

- 1) The Department of Health shall establish a PDL for the Medicaid program, including both fee-for-service and managed care programs. The department may establish PDLs for any other program administered by the department.
- 2) For every covered outpatient drug sold by a manufacturer or labeler with a correctional discount agreement, the pharmaceutical manufacturer or labeler shall provide eligible correctional facilities access, through a designated correctional discount provider as described in this section, to drugs at the lower of the 340B ceiling price or any greater discount negotiated by the department.
- 3) The PDL may only contain drugs provided by a manufacturer or labeler that has a correctional discount agreement with the department, but the department shall establish a process by which low-cost generic and other drugs without correctional discount agreements may be considered for inclusion on the PDL.
- 4) The department shall designate one or more correctional discount providers within the state. This shall be a health care provider that:
 - a) Is actively registered as a 340B covered entity and in compliance with 340B program requirements,
 - b) Is able to provide appropriate health care to the population of eligible correctional facilities,
 - c) Is able to distribute drugs purchased under a correctional discount agreement to the population of eligible correctional facilities,
 - d) Is able to appropriately track drugs and discounts made available under a correctional discount agreement, and
 - e) Meets any other conditions established by the department.
- 5) The department shall establish a standard correctional discount agreement that includes the following provisions:

TECHNICAL APPENDIX

- a) A manufacturer or labeler will sell any and all covered outpatient drugs attributable to the manufacturer or labeler to designated correctional discount providers for the treatment of eligible correctional facilities' populations.
 - b) Such drugs will be sold to designated correctional discount providers at the lower of the 340B ceiling price or any greater discount negotiated by the department.
 - c) After a manufacturer or labeler enters into a correctional discount agreement, that agreement shall remain in force until either the department or the manufacturer or labeler terminates it. All new or subsequently acquired drugs attributable to the manufacturer or labeler will be subject to the correctional discount agreement unless the agreement is terminated.
 - d) Other provisions shall be added as necessary to implement the supplemental rebate program.
- 6) The department shall establish a process to identify eligible correctional facilities.
 - 7) The department shall establish a process to reimburse correctional discount providers at the discounted acquisition cost of drugs provided to eligible correctional facilities' populations. This reimbursement may include payment of a dispensing or other fee to the discount provider. This process shall ensure that reimbursement to these providers does not result in the inclusion in Average Manufacturer Price or Best Price of any discounts provided under a correctional discount agreement.
 - 8) In this section, Average Manufacturer Price, Best Price, and Covered Outpatient Drug have the meanings defined by 42 U.S.C. Section 1396r-8 and its subsequent amendments. And 340B covered entities and 340B ceiling price refer to covered entities and ceiling prices described in 42 U.S.C. Section 256b and its subsequent amendments.
 - 9) Eligible correctional facilities, correctional discount providers, and the department agree that all discounts provided under a correctional discount agreement shall remain confidential.
 - 10) The department shall have the authority to issue regulations implementing this section's provisions.