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# How Correctional Facilities Could Lower Drug Prices

Manufacturer discounts for designated hospitals can help reduce spending

State and local correctional facilities, including prisons and jails, are required to provide health care to incarcerated adults.<sup>1</sup> Drug spending has an outsized impact on correctional health care budgets: Of the states that report drug spending, the majority spend more than 15 percent of their health care budget on drugs, with some spending as much as 32 percent.<sup>2</sup>

Drug pricing regulations under the Medicaid program inhibit correctional facilities from directly negotiating reduced drug prices with manufacturers. Correctional facilities are generally drug purchasers rather than insurers, buying drugs directly from a wholesaler. The Medicaid Drug Rebate Program has a “best price” provision requiring that the program receive the lowest price given to certain drug purchasers, including state correctional facilities.<sup>3</sup> Manufacturers argue that they are unable to offer substantial discounts to correctional facilities lest they trigger the best price provision, which would require them to offer the discount to all Medicaid programs as well as certain other providers eligible to receive the Medicaid discount.<sup>4</sup>

Some correctional programs have been able to access discounted prices by transporting incarcerated adults to academic hospitals that are eligible for the Medicaid discount under the 340B Drug Discount Program, which provides discounts to hospitals and clinics that meet federal standards for serving low-income or uninsured patients.<sup>5</sup> The 340B program generally requires that patients be physically seen in the eligible hospital in order to qualify for drug savings; bringing incarcerated adults to the hospital creates substantial logistical and financial hurdles for correctional programs. Drug manufacturers are required to provide 340B discounts when an incarcerated adult is seen at a 340B hospital and meets other program criteria; however, manufacturers can also voluntarily provide discounts to these hospitals outside of the 340B program without triggering best price and without requiring incarcerated adults to be transported to the hospital.<sup>6</sup>

## **Voluntary drug discounts exempted from Medicaid best price**

The Medicaid best price provision has a variety of “carve outs,” or exemptions, that allow manufacturers to offer certain providers discounts—such as price concessions offered to pharmacy benefit managers and manufacturer-sponsored drug discount card programs—without establishing a lower Medicaid price. One of these carve outs exempts all discounts given to 340B hospitals, regardless of whether the lower price is required under the 340B program or is voluntary.<sup>7</sup> This is an important distinction. While patients must meet certain requirements to be entitled to the mandatory 340B discount, they do not need to meet these requirements to receive a voluntary manufacturer discount.

If manufacturers provided a voluntary discount to a designated 340B academic hospital for incarcerated adults, correctional facilities would no longer have to transport incarcerated adults to the 340B hospital to receive the savings. Instead, correctional facilities could use telemedicine or have physicians from the 340B hospital visit the correctional facility for diagnosis; prescriptions would be mailed or sent by courier from the 340B hospital’s pharmacy, and the correctional facility would reimburse the pharmacy as an insurer. Because voluntary discounts to 340B hospitals are exempt from best price regardless of whether the patient meets 340B eligibility criteria, manufacturers would not face any best price liability under this arrangement. This approach would not expand the 340B program.

This system relies on manufacturers to provide voluntary discounts, which they may be unwilling to do. However, a state could require a manufacturer to provide discounts as a condition for having its drugs placed on the state’s Medicaid Preferred Drug List (PDL).<sup>8</sup> States already use PDLs to give certain drugs preference in exchange for additional Medicaid discounts, and a state could require that manufacturers extend the same discounts to a designated 340B academic medical center for treatment of incarcerated adults. Because the correctional population is likely to be much smaller than the Medicaid population, this should only marginally increase the discounts a manufacturer must offer.

## **Considerations for state policymakers**

Establishing a voluntary discount program for incarcerated adults would require significant administrative collaboration by correctional facilities, designated 340B hospitals, drug manufacturers, and potentially the state Medicaid program; the related administrative costs may reduce the savings achieved. Because of this potential administrative complexity, states may want to limit these arrangements to only high-cost drugs with significant potential for savings. However, many states are already dealing with the financial and administrative burden of transporting incarcerated adults to 340B hospitals to access discounts for certain high-cost conditions; this model could build on those arrangements, reducing costs and allowing for expansion to cover more conditions.

Manufacturers may be unwilling to offer voluntary discounts under this model and might challenge any legislative or regulatory requirements to offer them as a condition for placement on the Medicaid PDL. A collective of states working together with manufacturers to identify legal and logistical barriers may help encourage manufacturer willingness to enter these arrangements.

## Endnotes

- 1 The Pew Charitable Trusts, "Prison Health Care: Costs and Quality" (2017), [http://www.pewtrusts.org/-/media/assets/2017/10/sfh\\_prison\\_health\\_care\\_costs\\_and\\_quality\\_final.pdf](http://www.pewtrusts.org/-/media/assets/2017/10/sfh_prison_health_care_costs_and_quality_final.pdf).
- 2 The Pew Charitable Trusts, "Pharmaceuticals in State Prisons" (2017), <http://www.pewtrusts.org/-/media/assets/2017/12/pharmaceuticals-in-state-prisons.pdf>.
- 3 42 U.S.C. § 1396r-8(c)(1)(C).
- 4 Ted Alcorn, "Hepatitis C Drugs Save Lives, but Sick Prisoners Aren't Getting Them," *The New York Times*, March 15, 2018, <https://www.nytimes.com/2018/03/15/us/hepatitis-c-drugs-prisons.html>. According to the article, "Like other drugmakers, Gilead promises its best price to state Medicaid programs, the Department of Veterans Affairs, and certain hospitals. If the company lowered the price for prisons, Mr. Alton said, it would have to further reduce it for these other entities. Giving prison health systems access to the same discounted price would require an act of Congress."
- 5 The Pew Charitable Trusts, "Pharmaceuticals in State Prisons."
- 6 Centers for Medicare & Medicaid Services, "Covered Outpatient Drug Final Rule With Comment (CMS-2345-FC): Frequently Asked Questions" (July 6, 2016), <https://www.medicare.gov/federal-policy-guidance/downloads/faq070616.pdf>.
- 7 42 C.F.R. § 447.505(c)(2). For a discussion of this policy, see 81 Fed. Reg. 5170, 5256-7.
- 8 42 U.S.C. § 1396o-1(c)(1).

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*This fact sheet was updated on Nov. 7, 2018, to clarify that the policy proposal would not expand the 340B drug discount program.*

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**For further information, please visit:**

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**Contact:** Erin Davis, communications officer

**Email:** [edavis@pewtrusts.org](mailto:edavis@pewtrusts.org)

**Project website:** [pewtrusts.org/en/projects/drug-spending-research-initiative](https://pewtrusts.org/en/projects/drug-spending-research-initiative)

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