



WHA Position

Hospitals faced unprecedented challenges during the COVID-19 pandemic. Unfortunately, even 340B discounts were put at jeopardy.

- A number of drug manufacturers began to deny 340B discounts dispensed at community pharmacies hospitals contract with.
- Changes in patient mixes created by COVID-19 threatened hospital eligibility for 340B discounts.

WHA Ask:

Please support HRSA's actions to enforce 340B discounts at community contract pharmacies and cosponsor S.773/H.R.3203 to prevent COVID changes in patient mixes from impacting 340B eligibility.

Highlights

- Congress created the 340B prescription drug discount program to help hospitals stretch scarce federal resources as far as possible.
- Drug manufacturers have been unlawfully denying discounts for 340B drugs dispensed through community pharmacies that contract with hospitals.
- Additionally, fluctuations in patient mixes during the COVID pandemic could threaten 340B eligibility.

Hospitals use Savings from 340B to Help Stretch Scarce Federal Resources

Since its inception in 1992, hospitals have used discounts for outpatient drugs obtained under Section 340B of the Public Health Service Act to help stretch scarce federal resources as far as possible, just as Congress intended when it created the program. Wisconsin hospitals and health systems have used the savings provided by 340B discounts for a wide range of services, including:

- Providing free or low-cost dental care or medical care.
- Expanding access to behavioral health services which often run large deficits.
- Operating remote dispensing sites to help patients in rural communities get access to prescription medication without driving long distances.
- Offsetting double-digit increases in prescription drug costs faced by hospitals.
- Offsetting other losses hospitals face from Medicaid and Medicare, which typically pay only 66% and 73% of cost, respectively.

Large Drug Companies Are Unlawfully Denying Required 340B Discounts

Over the summer of 2020, a number of large drug manufacturers announced they would no longer honor 340B discounts at community pharmacies that contract with hospitals. Specifically, these drug makers announced they would either cease discounts at these sites altogether, or would require hospitals to furnish extensive 340B data prior to offering discounts, despite having no statutory basis for such actions. WHA partnered with over 70 hospital and health system leaders, the Wisconsin Primary Health Care Association, Vivent Health, Federally Qualified Health Centers and others in requesting that the Health Resources and Services Administration (HRSA) under the U.S. Department of Health and Human Services begin enforcing the 340B statute.

Both the Trump and Biden Administrations Have Supported 340B Discounts

On December 30, 2020, former President Trump's HHS Office of General Counsel issued an advisory opinion concluding that drug manufacturers **are** required to offer 340B discounts to community contract pharmacies.ⁱ Additionally, under the Biden Administration, HRSA recently ordered drug companies to refund past overcharges and cease denying discounts or face fines. However, drug companies appear to be litigating this issue, leaving it unresolved.

COVID Changes in Patient-Mixes Threaten Hospital 340B Eligibility

The COVID-19 pandemic created numerous immense challenges for safety-net hospitals, including potential fluctuations in patient mixes. Because hospitals must meet a certain threshold of Medicaid inpatient days to maintain DSH eligibility, legislation (S. 773/H.R. 3203) has been introduced by Senators Thune (R-SD) and Baldwin (D-WI) and Reps. Doris Matsui (D-CA) and Chris Stewart (R-UT) to temporarily waive this requirement during the public health emergency. This would give hospitals one less thing to worry about as they attempt to return to normal.

ⁱ HHS, [Advisory Opinion 20-06 On Contract Pharmacies Under The 340B Program](#) (Dec. 30, 2020).

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