



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2023-14

Reforming the Section 340B Drug Affordability Program to Ensure its Rebates Accompany the Patient

Reported to the Caucus by the NHCSL Healthcare Task Force
Rep. Alma Hernández (AZ), Chair

Sponsored by Rep. Louis Ruiz (KS)

Unanimously ratified by the Caucus on December 2, 2023

1 **WHEREAS**, in 1992 Congress enacted Section 340B under the Public Health Service Act¹
2 to give relief from high drug costs to safety net providers with the understanding that
3 those lower costs would benefit patients in need; and,

4 **WHEREAS**, 340B's covered-entity safety net providers include state funded hospitals and
5 medical providers in low-income neighborhoods;² and,

6 **WHEREAS**, covered entities are able to buy eligible outpatient drugs at a discounted rate
7 (upwards of 50 percent). Hospitals are able to choose how they spend the money they
8 save, but the intent is that funds be reinvested into the communities the health center

¹ "340B Drug Pricing Program- Background," 340b Detailed Overview, (2021). Available at <https://www.340bhealth.org/members/340b-program/overview/>.

² Sec. 340B of the Public Health Service Act (Pub. L. 102-585), as amended by the Patient Protection and Affordable Care Act (Pub. L. 111-148), Health Care and Education Reconciliation Act (Pub. L. 111-152) and Medicare and Medicaid Extenders Act of 2010 (Pub. L. 111-309). Available at [phs-act-section-340b.pdf \(hrsa.gov\)](https://www.hrsa.gov/pubs/acts/340b.pdf)

9 serves, providing needed services and medication for the underinsured, uninsured and
10 indigent patient populations they treat;³ and,

11 **WHEREAS**, in its first 13 years, the 340B program grew slowly (583 covered entities),
12 but today 45% of all acute care hospitals participate in 340B (there were 2,600 hospitals
13 participating in 340B in 2023⁴ and 12,700 total covered entities in 2020⁵) making 340B
14 the second largest federal prescription drug program totaling \$44.8 billion in discounted
15 program sales;⁶ and,

16 **WHEREAS**, covered entities are also able to make contracts with pharmacies which allow
17 pharmacies to distribute 340B prescriptions;⁷ and,

18 **WHEREAS**, despite its laudable intent, the 340B program in its operation is not properly
19 functioning as it should and around 62% of covered entity hospitals are not in medically
20 underserved areas,⁸ resulting in 340B benefits not targeting those they are meant for;⁹
21 and,

22 **WHEREAS**, according to the Community Oncology Alliance, a non-profit organization
23 dedicated to advocating for community oncology patients, the growth of the 340B
24 program has been a powerful driver to facilitate hospital consolidation, increasing the
25 cost of care as hospital outpatient departments are a more expensive site of service
26 without meaningfully translating into improved care for vulnerable patients;¹⁰ and,

27 **WHEREAS**, in its July 2023 report to Congress on Open Matters for Congressional
28 Consideration, the General Accountability Office renewed its 2015 recommendation that
29 to “protect beneficiaries from unwarranted financial burden... Congress should consider

³ Community Oncology Alliance, COA 340B Drug Pricing Program Position Statement. Available at <https://mycoa.communityoncology.org/education-publications/position-statements/coa-340b-drug-pricing-program-position-statement>

⁴ General Accountability Office (GAO), 340B Drug Discount Program: Information about Hospitals That Received an Eligibility Exception as a Result of COVID-19 (May 11, 2023). Available at <https://www.gao.gov/products/gao-23-106095>

⁵ General Accountability Office (GAO), Drug Pricing Program: HHS Uses Multiple Mechanisms to Help Ensure Compliance with 340B Requirements (Dec 14, 2020). Available at <https://www.gao.gov/products/gao-21-107>

⁶ Berkeley Research Group, LLC (2022), “340B Program at a Glance,” 340b Industry Roundtable. Available at https://media.thinkbrg.com/wp-content/uploads/2022/12/06082105/340B-Program-at-a-Glance-2022_clean.pdf.

⁷ Department of Health and Human Resources, Federal Register / Vol. 75, No. 43, Notice Regarding 340B Drug Pricing Program—Contract Pharmacy Services § (2010). Available at [2010-4755.pdf \(govinfo.gov\)](https://www.govinfo.gov/2010-4755.pdf)

⁸ Xcenda, (2021). “340B and Health Equity: A Missed Opportunity in Medically Underserved Areas,” AmerisourceBergen. Available at https://www.xcenda.com/-/media/assets/xcenda/english/content-assets/white-papers-issue-briefs-studies-pdf/xcenda_issue_brief_340b_muas_nov2021.pdf.

⁹ For a case study on how one covered entity failed to properly allocate funds see: Katie Thomas and Jessica Silver-Greenberg, How a Hospital Chain Used a Poor Neighborhood to Turn Huge Profits (The New York Times, Sept. 24, 2022). Available at <https://www.nytimes.com/2022/09/24/health/bon-secoure-mercy-health-profit-poor-neighborhood.html>

¹⁰ Community Oncology Alliance, COA 340B Drug Pricing Program Position Statement. Available at <https://mycoa.communityoncology.org/education-publications/position-statements/coa-340b-drug-pricing-program-position-statement>

30 eliminating the incentive to prescribe more drugs or more expensive drugs than
31 necessary to treat Medicare Part B beneficiaries at 340B hospitals;”¹¹ and,

32 **WHEREAS**, in its original full report, the GAO noted that “there were notable numbers of
33 340B hospitals that provided low amounts of [uncompensated and charity care with] 12
34 percent of 340B DSH hospitals... among the hospitals that reported providing the lowest
35 amounts of charity care across all hospitals in GAO’s analysis;”¹² and,

36 **WHEREAS**, limited oversight has allowed covered entities to use 340B for their gain.
37 Between 2012 and 2019 Health Resources and Services Administration found that 546
38 covered entities distributed drugs to individuals who are not eligible patients, and 561
39 failed to maintain eligibility-related requirements such as oversight of their contract
40 pharmacies;¹³ and,

41 **WHEREAS**, on October 2023, the Health Resources and Services Administration (HRSA)
42 which oversees 340B, was forced to issue Federal Register notice to “inform and remind
43 stakeholders of the registration requirements for off-site, outpatient hospital facilities to
44 participate in the 340B Drug Pricing Program” due to the current “added risk and
45 complexity to HRSA’s ability to effectively oversee compliance in the 340B Program”
46 which was exacerbated by pandemic flexibilities;¹⁴ and,

47 **WHEREAS**, several policy actions have been proposed to reform 340B into a program
48 that supports safety net providers in providing for low income individuals such as, but
49 not limited to:

- 50 1. Ensuring 340B prescriptions are offered to patients that need them the most at a
51 discount,
- 52 2. Updating the definition of 340B patient in order to properly serve those who need
53 the assistance of the program,
- 54 3. Updating contract pharmacy arrangements so contracted pharmacies are located
55 in medically underserved areas or that serve a specific population,
- 56 4. Preventing middlemen and for-profit entities from profiting from the program,
- 57 5. Strengthening the requirements for covered entity to ensure they are serving
58 medically underserved communities and are increasing access to affordable care,
- 59 6. Creating a neutral claims data clearinghouse to keep 340B claims transparent and
60 accountable,
- 61 7. Requiring covered entities to report relevant information about their 340B
62 participation such as costs of acquiring 340B drugs,

¹¹ General Accountability Office (GAO), Open Matters for Congressional Consideration, p 33 (July 25, 2023). Available at <https://www.gao.gov/assets/gao-23-106837.pdf> (citing GAO, Medicare Part B Drugs: Action Needed to Reduce Financial Incentives to Prescribe 340B Drugs at Participating Hospitals (Jun 05, 2015). Available at <https://www.gao.gov/products/gao-15-442>).

¹² GAO, Medicare Part B Drugs: Action Needed to Reduce Financial Incentives to Prescribe 340B Drugs at Participating Hospitals (Jun 05, 2015). Available at <https://www.gao.gov/products/gao-15-442>

¹³ General Accountability Office (GAO), Drug Pricing Program: HHS Uses Multiple Mechanisms to Help Ensure Compliance with 340B Requirements (Dec 14, 2020). Available at <https://www.gao.gov/products/gao-21-107>

¹⁴ Available at <https://www.govinfo.gov/content/pkg/FR-2023-10-27/pdf/2023-23702.pdf>

63 8. Establishing set expectations regarding use of incremental revenue to serve
64 vulnerable populations of patients, and compliance should be monitored through
65 the statutory oversight authority of HRSA.

66 **THEREFORE, BE IT RESOLVED** that the National Hispanic Caucus of State Legislators
67 supports the 340B program but calls for reforming its execution to better serve medically
68 underserved communities: discounts should follow the patient, not be “awarded” to a
69 hospital; and,

70 **BE IT FINALLY RESOLVED** that the National Hispanic Caucus of State Legislators urges
71 Congress to robustly fund HRSA’s audit capabilities to ensure the nonprofit nature of
72 340B hospitals and to allow auditors to truly assess that those hospitals are providing
73 340B care to low-income individuals only, prevent middleman profits and ensuring that
74 contracted pharmacies are located in medically underserved areas or serve a specific
75 covered population; and,

76 **BE IT FINALLY RESOLVED** that the National Hispanic Caucus of State Legislators urges
77 states to ensure that their contracts with private hospitals require the provision of health
78 care services to low-income individuals, even those not eligible for Medicaid or Medicare,
79 implementing robust compliance and transparency mechanisms.

80 THE HEALTHCARE TASK FORCE RECOMMENDED THIS RESOLUTION TO THE
81 EXECUTIVE COMMITTEE FOR APPROVAL. THE EXECUTIVE COMMITTEE APPROVED
82 THIS RESOLUTION AT ITS MEETING OF NOVEMBER 17, 2023.

83 THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS AMENDED AND
84 UNANIMOUSLY RATIFIED THIS RESOLUTION ON DECEMBER 2, 2023, AT ITS ANNUAL
85 MEETING IN PHILADELPHIA, PENNSYLVANIA.