

PROTECT THE SAFETY NET BY PROTECTING 340B

Essential hospitals share a mission to care for people who face financial and social hardships, including low-income working families and the uninsured. These hospitals also serve the entire community with complex, lifesaving services, including level I trauma and neonatal intensive care. Essential hospitals reach outside their walls to meet people where they live and work with extensive outpatient networks and social supports.

But this mission comes at a high cost for essential hospitals, which provide substantially more uncompensated and unreimbursed care than the average hospital. They provide state-of-the-art, patient-centered care while operating on margins 60 percent less than other U.S. hospitals—an average of 3.2 percent compared with 7.7 percent for all hospitals nationwide.¹

340B: CRITICAL TO THE SAFETY NET

The 340B Drug Pricing Program is a key component of the patchwork federal support essential hospitals rely on to meet their safety net mission. Congress established the 340B program to enable essential hospitals and other covered entities “to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.” With their 340B savings, essential hospitals have the financial flexibility to tailor services and programs to their community’s unique challenges at nearly no cost to taxpayers:

- A West Virginia essential hospital relies on 340B savings to support a mobile mammography unit. The 340B program makes this vital screening available to patients who might otherwise lack access to it.
- 340B savings at an essential hospital in Illinois support an important housing initiative that provides subsidized housing and care managers for emergency department users who experience chronic homelessness.

- An essential hospital in Pennsylvania uses 340B savings to place pharmacists in outpatient pharmacies to help manage the care of patients with hepatitis C. Clinical pharmacists provide important education and monitoring services that improve patient access to vital medications and enhance safety and health outcomes.
- A Florida essential hospital uses 340B savings to subsidize the cost of expensive prescriptions. The program reduced a patient’s monthly cost of medication to treat a malignant brain tumor from \$3,000 to \$21.

Recent events threaten to weaken 340B, including damaging drug company actions and a delay in repayment of Medicare Part B cuts the U.S. Supreme Court deemed unlawful. Congress must act now to defend the program.

CORRECTING UNLAWFUL CUTS TO PART B PAYMENTS

The Centers for Medicare & Medicaid Services (CMS) cut Medicare Part B drug payments to 340B hospitals by 27 percent in 2018 and maintained this damaging policy through most of 2022. The Supreme Court unanimously ruled these cuts unlawful and sent the case back to the federal district court to determine a remedy for previous years of cuts. The district court directed the Department of Health and Human Services (HHS) to pay 340B hospitals the full Medicare Part B drug payment rate for the remainder of 2022 but deferred to HHS on how to remedy prior years’ underpayments, unnecessarily delaying relief to hospitals for these unlawful cuts. CMS has indicated it will go through yet another round of rulemaking on the remedy, which means hospitals will have to wait until at least fall 2023 to see their payments restored.

We urge lawmakers to direct HHS and CMS to swiftly develop and implement a remedy that promptly repays 340B hospitals the difference between what they previously were paid and the legal amount, with interest and without harming other hospitals.

RESTORING ACCESS TO COMMUNITY-BASED PHARMACIES

In recent years, drug companies have unilaterally acted to restrict access to 340B drugs dispensed at pharmacies that contract with hospitals to extend the reach of 340B discounts. The drug companies have imposed onerous reporting requirements as a condition for 340B discounts or have ended contract pharmacy discounts entirely, undermining the 340B benefit for financially strained essential hospitals while padding manufacturers' bottom line. These actions violate drug manufacturers' statutory obligation to provide 340B discounts to covered entities and jeopardize the health of disadvantaged patients who depend on their local pharmacies for access to lifesaving drugs for acute and chronic conditions.

Litigation by drug companies to defend their unconscionable actions likely will lead to a protracted legal battle at the expense of patient care. Any delay in resolving their illegal actions harms hospitals and the communities they serve. **We urge Congress to intervene to protect the integrity of the 340B program by halting drug companies' unlawful actions that have resulted in overcharges to 340B covered entities.**

OUR MESSAGE TO CONGRESS: PROTECT 340B

The 340B program continues to work as Congress intended. America's Essential Hospitals urges Congress and the administration to protect the 340B program and ensure all stakeholders comply with the law.

Endnotes

1. Clark D, Ramiah K, Taylor J, et al. *Essential Data: Our Hospitals, Our Patients—Results of America's Essential Hospitals 2020 Annual Member Characteristics Survey*. America's Essential Hospitals. September 2022. <https://www.essentialdata.info>. Accessed February 2, 2023.