

WHA Comments on SUSTAIN 340B Discussion Draft Legislation

Proposal would fix contract pharmacy and PBM issues but congress should be cautious about over-regulation

On April 1, WHA [submitted comments](#) in support of the Supporting Underserved and Strengthening Transparency, Accountability, and Integrity Now and for the Future (SUSTAIN) 340B Act, draft legislation introduced by a bipartisan group of six U.S. Senators including Wisconsin Sen. Tammy Baldwin.

As covered in a [previous edition of *The Valued Voice*](#), this legislation would both codify in federal law the requirement that drug companies honor discounts at contract pharmacies (along with civil monetary penalties to enforce violations) and prohibit pharmacy benefit managers (PBMs) and health insurers from utilizing discriminatory reimbursement policies against 340B covered entities (CEs) such as hospitals.

WHA expressed its strong support for these two provisions and also thanked lawmakers for officially recognizing, through the Sense of Congress, words that capture the spirit of the congressional report language from when the statute was originally passed in 1992 that identified the purpose of the 340B prescription drug discount program is *to stretch scarce federal resources to provide more comprehensive care to more patients*.

In addition to these comments of support, WHA cautioned lawmakers against adopting burdensome regulations on 340B CEs that would not benefit the program. In particular, WHA cautioned against:

- Subjecting contract pharmacies to audits as it could discourage pharmacy participation and CEs are ultimately responsible for compliance anyway.
- Placing geographic restrictions on contract pharmacies given that this could restrict the ability of hospitals to gain access to expensive specialty drugs if specialty pharmacies fall outside geographical boundaries.
- Adopting a new definition of a 340B patient does not allow for innovations in care delivery (such as telehealth).
- Requiring 340B child sites to furnish duplicative information instead of the 340B CE that is ultimately responsible for compliance.
- Calculating 340B savings based on the wholesale acquisition cost (WAC) given that hospitals often acquire other RX drugs at a lower price via a group purchase order; using WAC would greatly overstate savings.
- Making CEs financially responsible for duplicate discounts that arise on account of state Medicaid programs utilizing Managed Care Organizations.
- Instituting a new floor for hospital financial assistance policies at 200% of the federal poverty level rather than allowing hospitals to adapt their policies to local community needs per the current IRS rules.
- Creating a new user fee on CEs to implement the legislation.

In the comment letter, WHA President and CEO Eric Borgerding also questioned why the draft legislation focuses so many new requirements on hospitals without requiring equal scrutiny of drug companies.

"When drug companies are the other half of the 340B program, it is curious that there are no requirements for them to report on how prices are set, by how much they are increasing their prices and under what rationale, or why they may be implementing policies to restrict access to 340B discounts," said Borgerding.

He also questioned why the proposal included new audit requirements for providers and not drug companies. "Program integrity requirements should cut both ways. For instance, drug companies sometimes overcharge, deny discounts, or place drugs in limited distribution. Yet, drug companies can audit hospitals, but not vice versa," Borgerding added.

Lawmakers are expected to review comments that have been submitted and introduce the SUSTAIN 340B act in a modified form

later this summer or in early fall. WHA will continue to keep advocating for Congress to take action on this important issue.

Contact WHA Vice President of Federal and State Relations [Jon Hoelter](#) with questions.

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