340B - Discriminatory Contracting

Frequently Asked Questions

1. **What is a Community Health Center?**

Community Health Centers are the nation’s largest primary care network, located in every state and territory, serving more than 28 million patients in roughly 11,000 communities nationwide (including 800,000+ patients via 380+ locations in Ohio). Four (4) key components define health centers and help them reach America’s most underserved communities:

   a. **Located in areas of high need**
   b. **Open to all**, regardless of their insurance status or ability to pay
   c. **Comprehensive primary and preventive care services** including dental, vision, mental health and substance use disorder treatment and affordable pharmacy services
   d. **Patient-majority governing boards**

2. **What is the 340B Drug Pricing Program?**

The 340B Drug Pricing Program is a federal program that requires pharmaceutical manufacturers to provide discounts on outpatient drugs purchased by health centers and other safety net providers. When creating the program in 1992, Congress stated that it intended eligible providers to use the savings to “to stretch scarce Federal resources as far as possible, reaching eligible patients and providing more comprehensive services.”

3. **How does 340B expand access for health centers’ medically underserved patients?**

Health centers exemplify the type of safety net program that the 340B program was intended to support. *Both law and regulation*¹ require health centers to reinvest all 340B savings into activities that further their mission of expanding access to care for the medically underserved.

*Savings generated under 340B help health centers provide their low-income patients with access to affordable pharmaceuticals, and also support many other programs and services that they otherwise could not financially sustain.*

For example, health centers use 340B savings to support:

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¹ These requirements are contained in both Section 330(5)(D) of the Public Health Service Act, and 45 Code of Federal Register 75.307
1. Expanding access to critical services, such as dental and substance use disorder services;
2. Adding evening and weekend hours so that patients who work during the day do not have to miss work to see the doctor;
3. Providing access to chronic care management programs that assist patients in managing chronic diseases such as diabetes, asthma, and high blood pressure.

Savings from the 340B program are integral to health centers’ ability to sustain ongoing operations. Due to their slim operating margins, many health centers report that without the savings from the 340B program, they would be limited in their ability to support many of their core services for their patients.

4. **What is discriminatory contracting in the 340B program?**

Discriminatory contracting refers to a range of practices that effectively transfer the benefit of 340B savings from health centers and their underserved patients to private for-profit entities including but not limited to Pharmacy Benefit Managers (PBMs), private insurers, Managed Care Organizations (MCOs), etc. While there are many ways to engage in discriminatory contracting, common examples include:

- Offering lower reimbursement for a drug purchased under 340B than for the same drug if purchased outside 340B.
- Refusing to cover drugs purchased under 340B, either directly or by refusing to allow 340B pharmacies to participate in their networks.
- Charging more than fair market value or seeking “profit-sharing” in exchange for services involving 340B drugs.

5. **Is discriminatory contracting permissible under the 340B statute?**

Currently, the 340B statute does not give the government authority to oversee private payer and vendor contracts, and thus does not prohibit private entities and insurers from offering discriminatory contracts to health centers. As a result, and due to patient service pressures outside their control, health centers are often forced to accept these contracts, reducing their ability to retain savings on these drugs. Without these savings, health centers must reconsider the programs and services the savings support.

6. **What can be done at the state level to prevent 340B discriminatory contracting from harming health center patients?**

Health centers and other stakeholders will continue to educate and work with all interested parties to protect the health centers and their patients from losing the savings that Congress intended for them under the program.

State governors, legislators, and policymakers can help health centers and their patients avoid discriminatory contracts and retain crucial 340B savings by passing state legislation. Such legislation would prohibit private entities that Congress never intended to benefit from the 340B program, from utilizing contract terms that effectively transfer part of all of the benefit of 340B savings from health centers and their underserved patients to themselves.