

Congress of the United States

House of Representatives

September 24, 2021

VIA ELECTRONIC DELIVERY

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Brooks-LaSure,

We write to ask that the Centers for Medicare & Medicaid (CMS) not finalize the proposal in the calendar year (CY) 2022 Medicare outpatient prospective payment system (OPPS) rule to continue the previous Administration's damaging Medicare payment policy for safety-net hospitals participating in the 340B drug pricing program. We urge you to reinstate the policy that existed prior to the CY 2018 OPPS of paying 340B hospitals the same rate as non-340B hospitals. The current policy, which the agency proposes to continue, is causing significant harm to these providers and the millions of patients, including those in low-income urban and rural areas, who rely on 340B hospitals for their care.

In CY 2018, despite overwhelming bipartisan opposition, the Trump Administration implemented drastically lower payment rates for many hospitals participating in the 340B drug pricing program, slashing their Medicare Part B reimbursement for high-cost drugs by almost 30%¹. Since the cuts began, 340B hospitals, subject to the cuts, have collectively lost hundreds of millions of dollars², harming their ability to fund critical services for patients. These payment reductions have not saved money for the Medicare program or seniors and have instead redirected vital funds to hospitals that do not meet 340B's strict requirements for providing care to patients with low incomes³.

340B hospitals are a critical source of care for patients of color who are often underserved and subject to inequities that impair their access to quality health care and outcomes. 340B hospitals

¹ Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs, Final Rule for CY 2018, 82 Fed. Reg. 52356, 52509 (Nov. 13, 2017).

² *The American Hospital Association v. Azar*, 348 F. Supp. 3d 62, 69 (D.D.C. 2018), *Plaintiffs' Motion for a Firm Date By Which Defendants Must Propose a Remedy for Violations of the Medicare Act*, (filed May 10, 2019) (stating that 340B hospitals as a group have been losing \$25 million per week since Jan. 1, 2018 because HHS continues to apply the rate of ASP minus 22.5%).

³ 82 Fed. Reg. 52509-52510 (reduced drug payments to 340B hospitals redistributed to increase payment rates for non-drug services for all hospitals due to budget neutrality rules).

also serve a high proportion of Medicare beneficiaries, many of whom⁴ are Black, disabled, and/or living with low incomes. Lastly, these hospitals also serve a high proportion of patients of color who are living with chronic conditions such as asthma, diabetes, heart disease, and chronic obstructive pulmonary disease, among others⁵

We applaud the Biden Administration's commitment to addressing health inequities with forward-thinking policies designed to reduce and eliminate health care disparities and, to that end, encourage their continued support of this critical program. Given the important role that the 340B program plays in our communities, we strongly urge CMS to reverse these damaging cuts and restore the same payment rate for 340B hospitals for outpatient drugs as non-340B hospitals.

Thank you for your attention to this matter. We welcome the opportunity to discuss this issue further.

Sincerely,



Robin Kelly
Member of Congress



Lisa Blunt Rochester
Member of Congress

/s/

Sanford D. Bishop, Jr.
Member of Congress

/s/

Karen Bass
Member of Congress

/s/

Nikema Williams
Member of Congress

/s/

Donald M. Payne, Jr.
Member of Congress

⁴ L&M Policy Research. A Comparison of Characteristics of Patients Treated by 340B Hospitals (2019), https://www.340bhealth.org/files/340B_Patient_Characteristics_Report_FINAL_04-10-19.pdf; KNG Health Consulting, Comparison of Medicare Beneficiaries Treated in 340B Hospitals, Non-340B Hospitals, and Independent Physician Offices (2021), https://www.340bhealth.org/files/KNG_Health_340B_DSH_Hospitals_Final_Report.pdf?_zs=clhWb1&_zl=7HEh7

⁵ L&M Policy Research. A Comparison of Characteristics of Patients Treated by 340B Hospitals (2019), https://www.340bhealth.org/files/340B_Patient_Characteristics_Report_FINAL_04-10-19.pdf; KNG Health Consulting, Comparison of Medicare Beneficiaries Treated in 340B Hospitals, Non-340B Hospitals, and Independent Physician Offices (2021), https://www.340bhealth.org/files/KNG_Health_340B_DSH_Hospitals_Final_Report.pdf?_zs=clhWb1&_zl=7HEh7

/s/

Danny K. Davis
Member of Congress

/s/

Jahana Hayes
Member of Congress

/s/

Barbara Lee
Member of Congress

/s/

Maxine Waters
Member of Congress

/s/

Eleanor Holmes Norton
Member of Congress

/s/

Val B. Demings
Member of Congress

/s/

Terri A. Sewell
Member of Congress

/s/

Alma S. Adams
Member of Congress

/s/

G.K. Butterfield
Member of Congress

/s/

Eddie Bernice Johnson
Member of Congress

/s/

Bennie G. Thompson
Member of Congress

/s/

Bonnie Watson Coleman
Member of Congress

/s/

Al Lawson
Member of Congress

/s/

Frederica S. Wilson
Member of Congress

/s/

Lucy McBath
Member of Congress

/s/

Barbara Lee
Member of Congress

/s/

Colin Allred
Member of Congress

/s/

Joyce Beatty
Member of Congress

/s/

Marilyn Strickland
Member of Congress

/s/

A. Donald McEachin
Member of Congress

/s/

Henry C. "Hank" Johnson
Member of Congress

/s/

Marc Veasey
Member of Congress

/s/

Yvette D. Clarke
Member of Congress