Thomas A. Schatz, *President*
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January 24, 2023

Mississippi Senate
400 High Street
Jackson, MS 39201

Dear Senator,

On behalf of the 10,753 members and supporters of the Council for Citizens Against Government Waste (CCAGW) in Mississippi, I urge you to vote against SB 2484, which will make changes to the federal 340B drug discount program. No state should be taking action to expand, modify, or amend this program.

Congress created the 340B program in 1992 to fix a problem it created only two years earlier when it implemented government set price controls, or rebates, in the Medicaid drug benefit program. As a condition to participating in Medicaid, pharmaceutical companies must partake in the 340B program by giving discounts between 20-50 percent to certain federally funded facilities and disproportionate share hospitals that receive government subsidies to treat large numbers of Medicaid patients. But the statute does not define "patient" or require covered entities to pass on drug savings to patients.

SB 2484 includes price controls that will fail to reduce the cost of pharmaceuticals and instead perpetuate the adverse impacts of the 340B program, which has been of concern to taxpayer advocates like CCAGW. In 2019, 340B drug purchases reached $29.9 billion, an increase of 23 percent over 2018 and more than 232 percent since 2014. In 2021, the total was $43.9 billion, a 16 percent increase over 2020.

A January 2018 House Energy and Commerce Committee report on 340B identified insufficient oversight, unreliable data, and inadequate reporting requirements. The program's failures were the result of several factors, including the lack of clear statutory intent and definition of an eligible patient, as well as lax requirements to report savings and how that money is used. A November 2021 Xcenda study found that since 2004, newly registered 340B disproportionate share hospitals tend to be in higher-income communities compare to hospitals that previously joined the 340B program. The study noted, "Today, there are nearly 30,000 unique 340B contract pharmacy locations compare to just 1,300 in 2010; that was the year when HRSA updated its guidance to allow hospitals and other covered entities to have an unlimited number of contract pharmacies, instead of limiting the program to covered entities with no on-site pharmacy."

In a wide-ranging analysis of Richmond Community Hospital in Virginia, owned by Bon Secours, which was supposed to reinvest profits from 340B drug sales into its facilities and improve patient care, a September 24, 2022, *The New York Times* article reported that the money was being used instead to invest in facilities in the city's wealthier neighborhoods. Dr. Lucas

English, who worked in the hospital's emergency department until 2018, said, "Bon Secours was basically laundering money through this poor hospital to its wealthy outposts … It was all about profits." Dr. Peter B. Bach, who has written about the increased number of clinics opened in wealthier areas using 340B profits, said the hospitals are "nakedly capitalizing on programs that are intended to help poor people."

SB 2484 exacerbates these problems with 340B by further exploiting and expanding the 340B drug discount program in the state of Mississippi. When the Medicaid drug benefit was being written, the rebate value was based on the average manufacturer price (AMP) or the difference between the AMP and the lowest price charged to any entity in the U.S. Members of Congress were alerted in hearings that using an all-inclusive AMP would be a problem, but they did not factor in the significant discounts that pharmaceutical companies had been voluntarily giving the Department of Veterans Affairs (VA) and nonprofit entities that served the indigent and uninsured. As a result, the generous discounts that had been provided to the VA and nonprofit entities disappeared.

The 1992 law created two new price control programs, the VA Federal Ceiling Price program and the 340B Drug Discount Program and excluded their prices from the Medicaid rebate calculus. These price control programs, along with those found in the Medicare Part D coverage gap, are two of several federal programs that have distorted the pharmaceutical marketplace in the U.S.

CCAGW questions whether the state of Mississippi has the authority to direct the shipment of drugs or determine how 340B discounts can be utilized in this federal program and whether the state is interfering in the private contracts between employers and pharmacy benefit managers (PBM). Employers work with PBMs to design and manage their employees' drug plans that provide an important benefit and keep costs low and quality high, which may include utilizing mail order pharmacies or certain pharmacies that are in their network. Arbitrarily changing these agreements will likely cause drug prices to go up for employers and their employees.

Rather than usurp Congress's responsibilities and potentially violate federal law, as well as exacerbate the waste and abuse that has been running rampant in 340B and fail to serve low-income people, I urge you to contact your congressional delegation and ask them to reform the program, which would include providing a clear definition of a patient. CCAGW's preference is the patient is indigent, is not eligible for Medicaid, and does not have insurance. Again, we respectfully ask that you vote against SB 2484.

Sincerely,

Tom Schatz