COUNCIL for CITIZENS AGAINST GOVERNMENT WASTE

Thomas A. Schatz, *President*
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ccagw.org

April 22, 2021

The Honorable Mathew Pitsch
Chairman
Arkansas Senate Insurance and Commerce Committee
500 Woodlane Street, Suite 320
Little Rock, AR 72201-1090

Dear Chairman Pitsch,

On behalf of the 15,607 members and supporters of the Council for Citizens Against Government Waste (CCAGW) in Arkansas, I am writing to express our concerns and opposition to HB 1881, "The 340B Drug Pricing Nondiscrimination Act." It is our understanding that you will soon consider this legislation in committee. I ask that you vote against this price control and forced sale legislation.

The federal 340B drug discount program is a price control and has been of concern to CCAGW for several years. Intended as a safety-net program for the indigent and uninsured, 340B, which is run by the Health Resources and Services Administration (HRSA), has undergone tremendous growth, especially since additional healthcare entities were made eligible for the program under the Patient Protection and Affordable Care Act (Obamacare). It has grown from $9 billion in 2014 to $29.9 billion in 2019 and represents more than 8 percent of all drug sales. The program is being abused by many non-profit hospitals and for-profit pharmacies because there is no requirement in the federal law for them to pass along the savings to the patient. Instead, they can pocket the difference between the 340B discounted price and what insurance pays. These entities look for opportunities to make a hefty profit off this safety-net program.

The 340B program was created as part of the 1992 Veterans Health Care Act due to how Congress implemented the Medicaid Drug Rebate program in 1990. 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. Although Congress was alerted in hearings that using an all-inclusive AMP would be a problem, they did not factor in the significant discounts that pharmaceutical companies had been voluntarily giving the Department of Veterans Affairs (VA) and non-profit entities that served the indigent and uninsured. As a result, the generous discounts that had been provided to the VA and non-profit 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, have distorted the pharmaceutical marketplace in the U.S.

CCAGW questions whether the state of Arkansas 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 could cause drug prices to go up for employers and their employees.

In January 2018, the House of Representatives examined the 340B program and released a report that highlighted the weaknesses in the program. In the summary it said, "Congress did not clearly identify the intent of the program and did not identify clear parameters, leaving the statute silent on many important program requirements. … HRSA lacks sufficient regulatory authority to adequately oversee the program and clarify program requirements." Some of the problems include no clear definition of a 340B patient and nowhere in the law does it authorize the use of contract pharmacies. The use of contract pharmacies came about because of guidance written by HRSA. As a result of the ambiguity, the use of contract pharmacies is now under litigation.

Because there is no clear definition, hospitals and for-profit pharmacies continue to take advantage of this program. The program is fueling hospital purchases of oncology physician offices as a way to generate revenue. A July 2018 Government Accountability Office report noted that certain hospitals and entities are increasing their contracts with pharmacies to dispense 340B drugs and "doing so can make it harder to ensure compliance with 340B rules. For example, contract pharmacies may also fill prescriptions for the general public, increasing the risk of dispensing 340B drugs to ineligible patients."

Rather than usurp Congress's responsibilities and potentially violate federal law, CCAGW urges 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 to oppose this price control legislation.

Sincerely,

Tom Schatz

cc: Members of the Senate Insurance and Commerce Committee