Ryan White Clinics for 340B Access

March 1, 2019

VIA Email: LowerHealthCareCost@help.senate.gov

The Honorable Lamar Alexander, Chair
Senate Committee on Health, Education, Labor and Pensions
428 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Response to Request for Recommendations to Achieve Affordability In Health Care

Chairman Alexander,

Ryan White Clinics for 340B Access (RWC-340B) appreciates the opportunity to respond to your letter dated December 11, 2018 requesting stakeholder input on steps that the 116th Congress, the Trump Administration, and state governments should take to address America's rising health care costs.

RWC-340B is a national association of HIV/AIDS health care providers that receive funding under the Ryan White CARE Act and participate as "covered entities" in the federal 340B drug discount program. As providers of primary care and other services to persons living with HIV/AIDS, we share your interest in addressing the rising cost of health care and, because antiretroviral medications are a significant component in treating HIV/AIDS, we are particularly concerned about the high cost of prescription drugs.

It is important to note that the federal 340B drug discount program is one of the only checks on rising drug prices. Enacted in 1992 as a bipartisan response to rising drug prices, the 340B statute requires drug manufacturers to provide discounts on outpatient drugs sold to certain safety net providers. Significantly, these discounts allow RWCs and other safety net providers to augment the health care and related services they provide, without any cost to taxpayers.

RWC-340B applauds your efforts in seeking recommendations to address the issue of rising health care costs. Based on the experience of our member RWCs, RWC-340B offers two recommendations that will help to control the costs of prescription drugs (a key component of rising health care costs) by preserving and protecting the 340B drug discount program. **We respectfully ask the committee to: (1) reject legislation that would alter the 340B program in ways that would create new taxpayer burdens or harm efforts to stop the spread of HIV/AIDS; and (2) support legislation and other proposals to prevent discriminatory reimbursement for 340B covered entities.**

- **Reject Proposals That Will Result in Taxpayer Burden, Harm Efforts to Stop the Spread of HIV/AIDS**

RWCs are on the front lines of caring for low-income and vulnerable patients in their communities. Approximately 63% of individuals served by the Ryan White program live at or below 100% of the federal poverty level.[1] In addition, 73.3% of individuals in the Ryan White program are racial minorities.[2]

Experts recognize that persons living with HIV/AIDS often need not only medical care, but also a wide array of social support services. Many of the services that RWCs provide are not reimbursed by any payer, even though these services enable people living with HIV/AIDS to access and remain in care. The 340B program allows RWCs to stretch their resources to support the full continuum of care that their patients need, from diagnosis, to linkage to care, to medication adherence and viral suppression.

The work of RWCs allows the vast majority of their patients to achieve viral suppression, which prevents the HIV virus from spreading to others, resulting in lower overall health care costs. According to the Ryan White HIV/AIDS Program Services Report, RWCs achieved a record level viral suppression rate of 85.9% in 2017, which exceeds the average rate national viral suppression by over 26%.[3] When an HIV/AIDS patient achieves viral suppression, the disease cannot be transmitted to another individual, thereby avoiding the increased health care spending that would be needed to treat that individual.

These positive, demonstrable results are due in large part to the 340B program, which allows RWCs to close the gaps in the continuum of care that would otherwise hinder HIV/AIDS patients from achieving viral suppression. Given our success in this arena, we are pleased to support President Trump's recently announced goal, in the context of his National HIV/AIDS Strategy, to end the HIV epidemic within the next 10 years. We know that support of both the Ryan White and 340B programs are integral to meeting that goal.

Over the past few years, RWC-340B has seen unprecedented activity led by the pharmaceutical industry, aimed at disrupting the 340B program. RWC-340B opposed a series of legislative proposals in the 115th Congress that would have scaled back the 340B program and will continue to oppose similar proposals. A few of the proposals included a moratorium on enrollment of new covered entities, a narrowing of the definition of patients eligible to receive 340B drugs, and/or the imposition of additional, burdensome reporting requirements in the name of transparency. The 340B program works because of the flexibility it affords RWCs and other 340B covered entities in how they use their 340B savings to meet community needs. These proposals would harm the 340B program, which is currently operating to benefit patients without cost to taxpayers.

The 340B program generates savings on drug costs that help to underwrite needed services, at no cost to taxpayers and at relatively low cost to pharmaceutical manufacturers. Any change to the

[1] Health Resources & Services Administration, HRSA's Ryan White HIV/AID Program Overview, 1 (Jan. 2018); available at https://hab.hrsa.gov/sites/default/files/hab/Publications/factsheets/program-factsheet-program-overview.pdf.
[2] *Id* at 3.
[3] Health Resources & Services Administration, Ryan White HIV/AIDS Program: Annual Client-Level Data Report, 6 (2017), available at https://hab.hrsa.gov/sites/default/files/hab/data/datareports/RWHAP-annual-client-level-data-report-2017.pdf.

340B program that reduces the number of patients who can receive 340B drugs, or reduces the reimbursement paid for 340B drugs, would have a direct and negative impact on the fight against HIV/AIDS, including the fight to prevent the spread of the disease. Moreover, such changes will shift the burden on providing much-needed HIV/AIDS services to the federal government or to the states, resulting in an increase in health care costs for taxpayers.

We recommend that Congress not advance proposals that would reduce the scope of the 340B program, a program that increases access to healthcare at no taxpayer expense. Scaling back the 340B program would diminish the ability of RWCs to fill gaps in care and effectively manage the HIV/AIDS crisis.

- **Support Legislation and Other Proposals to Prevent Discriminatory Reimbursement for 340B Providers**

Pharmacy Benefit Managers (PBMs), managed care plans, and other third party payers are increasingly usurping the benefit of the 340B program from the safety net providers in the program by reimbursing for 340B drugs well below the non-340B rates and by establishing discriminatory terms in their pharmacy participation agreements. Left unchecked, discriminatory reimbursement will greatly reduce, if not eliminate, the benefit of the 340B discount for covered entities, thereby undermining the purpose of the 340B program and harming the low income and medically vulnerable patients served by RWCs. RWCs use their 340B savings to supplement the services that they provide, resulting in high viral suppression rates.

Congress intended the benefits of the 340B program to accrue to 340B covered entities, not to payers that do not have a safety-net mission or not-for-profit status. HRSA has expressed concerns that providers would have no reason to participate in the 340B program if insurers take the benefit of 340B savings. HRSA explains that "if covered entities were not able to access resources freed up by the drug discounts when they... bill private health insurance, their programs would receive no assistance from the enactment of section 340B and there would be no incentive for them to become covered entities."[4]

RWC-340B encourages both the federal government and state governments to acknowledge and denounce discriminatory practices, and strongly support legislative initiatives to prohibit discriminatory reimbursement for 340B entities. Rep. Doris Matsui (D-CA) introduced legislation in the 115th Congress – H.R. 6071, the SERV Act – that included a provision to prohibit discriminatory reimbursement. In addition, legislatures in at least two states recently passed legislation that would prohibit discriminatory reimbursement. Both the South Dakota House and Senate passed legislation to prohibit a PBM from discriminating against a pharmacy owned by a 340B covered entity.[5] In addition, the West Virginia legislature passed legislation that would prohibit a PBM or third-party entity from reimbursing an entity participating in the 340B program at a lower rate than non-340B pharmacies.[6]

[4] Health Resources & Services Administration, Hemophilia Treatment Center Manual for Participating in the Drug Pricing Program Established by Section 340B of the Public Health Service Act (July 2005).
[5] H.B. 1137, 94th Sess. (S.D. 2019) (as passed, Feb. 11, 2019), S.J. 501, 94th Sess. (S.D. 2019) (as passed, Feb. 25, 2019).
[6] S.B. 489, 2019 Reg. Sess. (W. Va. 2019) (as passed, Feb. 26, 2019).

We encourage Congress and state legislatures to advance legislation to prohibit discriminatory reimbursement for 340B covered entities to avoid undue harm to 340B covered entities and their vulnerable patient populations.

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Thank you for the opportunity to submit a response to your request for recommendations to help address America's rising health care costs. RWC-340B hopes to work with members of the 116th Congress, Trump Administration officials, and state government leaders to preserve and protect the 340B program. For further information, contact Peggy Tighe at 202-872-6752 or Peggy.Tighe@PowersLaw.com.

Sincerely,

President, RWC-340B
Chief Executive Officer, Cempa Community Care, Chattanooga Tennessee

CC: The Honorable Patty Murray, Ranking Member
Senate Committee on Health, Education, Labor and Pensions