



March 23, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Unintended Impact of MRT II Pharmacy Carve-Out Proposal on 340B Ryan White Clinics and Other Safety Net Providers in New York

On behalf of Ryan White Clinics for 340B Access (RWC-340B), a national association of HIV/AIDS organizations receiving support under the Ryan White CARE Act, we are writing to voice RWC-340B's strong opposition to one of the budgetary recommendations by New York State's Medicaid Redesign Team II (MRT II). Specifically, RWC-340B asks for the removal of the MRT II proposal that would shift the New York Medicaid managed care pharmacy benefit to fee-for-service (FFS) coverage and reimbursement. Implementation of this proposal would undermine the ability of Ryan White clinics and other safety net providers in the State to meet the needs of their patients.

MRT II Proposal Would Have the Unintended Consequence of Harming New York State's Safety Net

Our New York members appreciate recent policy changes to address the rising costs of prescription drugs and to improve transparency in the contracting practices by pharmacy benefit managers (PBMs). They applaud implementation of the Medicaid Drug Cap and elimination of "spread pricing" by PBMs within the New York Medicaid managed care program. That said, we are troubled by the MRT II provision that would "carve out" the pharmacy benefit from the State's Medicaid managed care program and shift it to the State for FFS administration. While the proposal purports to reduce costs, it seriously threatens to harm New York State safety net providers including Federally qualified health centers (FQHCs), Ryan White clinics, sexually transmitted disease (STD) clinics, disproportionate share hospitals and other safety net providers that use the federal 340B drug pricing program (340B program) to purchase Medicaid managed care prescription drugs at significantly reduced prices. For Ryan White clinics, the proposal would result in a giant step backward in their fight to end the HIV/AIDS epidemic at a time when our country is relying on them to help fight against COVID-19.

MRT II Proposal Would Cause a Devastating Reimbursement Cut to New York Safety Net Providers Because of Its Interaction with Federal Medicaid Law

Implementation of the MRT II proposal would require the New York Medicaid program to carve out the pharmacy benefit from the State's Medicaid managed care program and shift payment of drugs covered under that benefit to FFS reimbursement. Under federal regulations issued by the Centers for Medicare and Medicaid Services (CMS), FFS drugs have to be billed at actual acquisition cost (AAC). The CMS regulations make clear that, for drugs purchased through the 340B program, reimbursement is limited to the 340B AAC. New York Medicaid PBMs are currently reimbursing 340B drugs at rates above AAC, so

implementation of the carve-out proposal would almost certainly result in a reimbursement cut for 340B drugs dispensed or administered to Medicaid managed care enrollees. Covered entities in other states – including California, Kentucky, Michigan and Georgia – are fighting similar carve-out proposals.

The 340B program protects New York safety net providers from drug price increases and gives them access to pharmaceuticals at discounted prices that are 25-50 percent below retail prices. Under the 340B program, these “covered entities” are permitted to bill payers at the standard price and use the “discounts” to reach the uninsured or expand and improve their services. In many cases, the savings generated as a result of this program is the only thing keeping safety net organizations operating. New York safety net providers are currently using this federal program for both commercial and Medicaid managed care plans, with Medicaid managed care plans making up the bulk of payer mixes for safety patient populations operating in medically underserved areas.

We suspect when the MRT II members issued their pharmacy carve-out proposal, they were unaware of how CMS’s regulation would automatically apply draconian reimbursement cuts to 340B drugs currently covered by Medicaid managed care PBMs. Shifting the Medicaid managed care pharmacy benefit to FFS administration would essentially strip the 340B benefit from New York safety net providers. New York covered entities, including Ryan White clinics, rely on the savings generated from their Medicaid managed care patients to sustain their operations. For some 340B hospitals and clinics, as much as 70% of their patient population is covered by a Medicaid managed care insurance plan, with commercial insurance comprising the rest. The MRT II proposal would therefore cause FQHCs, Ryan White providers and STD clinics to lose their 340B revenue stream except from their commercial payers which cover a very small percentage of their patients. In short, adoption of the proposal would adversely impact the financial stability of New York covered entities and drive some of them out of business entirely.

MRT II Proposal Threatens the Progress Made by Ryan White Clinics in Fighting the HIV/AIDS Epidemic

FFS administration of the Medicaid managed care pharmacy benefit would be especially catastrophic to Ryan White clinics in the State and would set back their progress in controlling the HIV/AIDS epidemic among New York residents. These clinics have built comprehensive models of health care and social services to address the diverse needs of their patients. Such services include substance use services, mental health care, housing, transportation, nutrition, prescription adherence, harm reduction services, STD testing and treatment, food pantry services, care coordination and other wrap-around services patients may need. This comprehensive care model is made possible solely by the clinics’ participation in the 340B program. The clinics’ non-pharmacy lines of business either break even or, more likely, lose money. The only way that Ryan White clinics in the State have been able to support and achieve over 90% viral suppression rate is by utilizing the savings made available through the 340B program. Those savings allow clinics to purchase preventive drugs like PrEP, perform STD testing and cure hundreds of patients with Hepatitis C. And by suppressing viral loads by 90% or more, Ryan White clinics are using their 340B savings to ensure their patients are not spreading the HIV virus to others. This successful yet fragile system of care would be jeopardized if the MRT II proposal is adopted.

MRT II Proposal Threatens Public Health When New York Residents Are the Most Vulnerable

If the proposal advances, covered entities will be forced to make incredibly tough decisions about which services they retain and which services they simply can no longer afford to offer. If safety net providers eliminate services, close locations, or otherwise downsize as a result of the pharmacy reimbursement cuts described above, patients will be forced to go to hospital emergency rooms for their care. Such a reduction in savings for New York State’s safety net is completely untenable in these times of national crisis related to COVID-19. When 340B providers are on the front lines caring for patients who have

been exposed to the coronavirus, now is not the time to “experiment” with changes to Medicaid reimbursement to the safety net.

We strongly believe that the current global pandemic should illustrate how important the 340B program is for our communities. If the 340B benefit attributable to billing discounted drugs to Medicaid managed care plans is eliminated, safety net providers cannot continue to meet the current needs of their patients, let alone expand services in this time of crisis. As such, we ask now, more than ever, that the State protect and preserve its safety net providers and reject the pharmacy carve-out recommendations advanced by MRT II. It is not an overstatement to say that the 340B benefit will be instrumental in fighting COVID-19. RWC-340B asks that you help 340B providers sustain their operations in the current pandemic while preserving the comprehensive systems of care that Ryan White clinics have developed to fight against the spread of HIV/AIDS.

We appreciate your attention to this critical matter and stand ready to work with you to ensure that State proposals do not inadvertently harm safety net providers and the communities they serve.

Sincerely,

Shannon Stephenson, President



Mark Malahosky, Treasurer



Michael Lee, Secretary



cc: Robert Mujica
Charles King

RWC-340B member clinics provide primary care to persons living with HIV/AIDS. The 340B Program allows us to do so much more. The 340B Program allows participants to stretch their resources to support the full HIV/AIDS Care Continuum, from diagnosis, to linkage to care, to medication adherence and viral suppression.