



PHARMACY CARVE-OUT PROPOSAL WILL HARM 340B RYAN WHITE CLINICS AND OTHER SAFETY NET PROVIDERS IN NEW YORK

May 8, 2020

CONTEXT

The Medicaid Redesign Team II (MRT II) recommendations that were hastily approved as a part of this year's State Budget included provisions that would shift the New York Medicaid managed care pharmacy benefit to fee-for-service (FFS) coverage and reimbursement, known as the "carve out" provisions. The entire proposal, including the carve out provisions, was approved by the New York Assembly and Senate, signed by the Governor on April 1, 2020. The proposal can be found in Part FFF (starting on page 344) in the Education, Labor, and Family Assistance (ELFA) Article VII, and can be reviewed by clicking [HERE](#).

POSITION

While we support the broader proposals adopted through the MRT II that sought to lower the costs of prescription drugs and increase transparency in contracting practices by pharmacy benefit managers (PBMs), RWC-340B strongly opposes the "carve out" provisions. These provisions will seriously undermine the ability of Ryan White clinics and other safety net providers in the State to meet the needs of our patients, as detailed in this document. The only viable solution is to remove these provisions.

CARVE OUT EXPLAINED

Requiring the New York Medicaid program to carve out the pharmacy benefit from the State's Medicaid managed care program would shift payment of drugs covered under that benefit to fee-for-service (FFS) reimbursement. For drugs purchased through the federal 340B drug pricing program, reimbursement is limited to the 340B Actual Acquisition Cost (AAC). New York Medicaid PBMs are currently reimbursing 340B drugs at rates above AAC. As such, implementation of the carve-out proposal would almost certainly result in a significant reimbursement cut for 340B drugs dispensed or administered to Medicaid managed care enrollees through safety net providers.

IMPACT

The carve out provisions harm all safety net providers in the 340B drug discount program. These providers include Federally qualified health centers (FQHCs), Ryan White clinics, sexually transmitted disease (STD) clinics, disproportionate share hospitals and other safety net providers that use the 340B program to purchase Medicaid managed care prescription drugs at significantly reduced prices. As such, the provisions would essentially strip the 340B benefit from New York safety net providers.

IMPLEMENTATION TIMEFRAME

The provisions require that the State Department of Health shall "beginning in the fiscal year starting April 1, 2021, review and adjust reimbursement for such drugs such that no sooner than April 1, 2023, reimbursement shall be determined based on a method that the commissioner determines that utilizes the actual acquisition costs and professional dispensing fee." While the carve out will not go into effect for at least a year, our most effective window to remove these provisions is during the next several months.

ALLIES

RWC-340B established a New York chapter to fight to reverse these provisions. We will work closely with other organizations and coalitions who are also fighting to do the same. Similar proposals have been advanced in other states, including California, Kentucky, Michigan and Georgia. Covered entities were able to reverse a similar proposal in Michigan in 2019.

CARVE OUT PROVISIONS UNDERMINE FEDERAL PROGRAM THAT IS ALREADY REDUCING DRUG COSTS

- 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 services.
- New York covered entities, including Ryan White clinics, rely on the savings generated from Medicaid managed care patients to sustain operations. In many cases, the savings generated is the only thing keeping these safety net organizations operating.
- For some 340B hospitals and clinics, as much as 70% of the patient population is covered by a Medicaid managed care insurance plan, with commercial insurance comprising the rest.

PROVISIONS WOULD RESULT IN SERIOUS CUTS TO NEW YORK’S SAFETY NET

- We suspect when the MRT II members issued their pharmacy carve-out provisions, they were unaware of how CMS’s regulation would automatically apply draconian reimbursement cuts to 340B drugs currently covered by Medicaid managed care Pharmacy Benefit Managers (PBMs).
- The MRT II provisions mean that the safety net would lose the 340B revenue stream from all but the commercial payers, which cover a very small percentage of patients, adversely impacting the financial stability of New York covered entities and driving some out of business entirely.
- As such, while the provisions purported to reduce costs, they seriously threaten to harm the New York safety net, a completely untenable decision during the COVID-19 crisis.

PROVISIONS THREATEN PUBLIC HEALTH WHEN NEW YORK RESIDENTS ARE THE MOST VULNERABLE

- 340B providers are on the front lines caring for patients who have been exposed to COVID-19. Many safety net providers cannot continue to meet the current needs of our patients, let alone expand services in this time of crisis.
- It is not an overstatement to say that the 340B benefit will be instrumental in fighting COVID-19 or that the 340B program is helping to sustain the safety net now more than ever.
- If safety net providers are forced to eliminate services, close locations, or otherwise downsize as a result of these pharmacy reimbursement cuts, patients will be forced to go to the hospital emergency rooms for care.
- Now is not the time to “experiment” with changes to Medicaid reimbursement to the safety net.

PROVISIONS THREATEN THE PROGRESS MADE BY RWCs IN FIGHTING THE HIV/AIDS EPIDEMIC

- For Ryan White clinics, the provisions would also result in a giant step backward in our fight to end the HIV/AIDS epidemic when our country is relying on us to help fight against COVID-19.
- Our clinics have built comprehensive models of health care and social services to address the diverse needs of our patients.
 - Services include substance use and mental health services, housing, transportation, nutrition, prescription adherence, harm reduction services, STD testing & treatment, food pantries, care coordination and other wrap-around services patients may need.
 - This comprehensive care model is possible because of the clinics’ participation in 340B. In most other instances, no insurers or payors cover these types of services.
 - Most Ryan White clinics in the State have been able to support and achieve a viral suppression rate of over 90% by utilizing the savings made available through the 340B program. Suppressing viral loads means that patients are not spreading HIV to others.

Please help us fight to reverse these provisions to help sustain our operations during this crisis while preserving the comprehensive systems of care that we rely upon to fight against the spread of HIV/AIDS.

Ryan White Clinics for 340B Access (RWC-340B) is a national association of HIV/AIDS organizations receiving support under the Ryan White CARE Act: see [RWC340B](#) or contact Peggy Tighe at Peggy.Tighe@Powers.Law.com. For information about state efforts, contact Jim Moore jmoore@odonnellsolutions.com (O’Donnell and Associates) or Jessica Schafroth jschafroth@malkinross.com (Malkin and Ross).