

Congress of the United States
Washington, DC 20515

May 8th, 2020

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204, U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, U.S. Capitol
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-220, U.S. Capitol
Washington, DC 20510

Dear Speaker Pelosi, Majority Leader McConnell, Minority Leader Schumer, and Minority Leader McCarthy:

Our nation’s safety-net hospitals have always served on the front lines of health care for the medically underserved and uninsured. During the COVID-19 pandemic, these essential providers are stepping up to provide more care and services to their communities. As the outbreak continues and more COVID-19 patients are in need of hospital care, we are concerned that the impact of COVID-19 could temporarily affect hospitals' ability to meet 340B eligibility requirements in ways that could potentially cut off their access to the 340B drug discount program (“340B Program”). To support our safety net hospitals through this crisis, we write to ask that any future supplemental relief bill include policies to temporarily protect these hospitals from losing 340B eligibility due to the COVID-19 pandemic.

To qualify for the 340B Program, hospitals that participate as Medicare disproportionate share (“DSH”) hospitals, free-standing children’s and cancer hospitals, sole community hospitals (SHCs), and rural referral centers (RRCs) must maintain a minimum DSH adjustment percentage on their most recently filed Medicare cost report. In addressing the surge of COVID-19 patients, hospitals are increasing bed capacity and shifting care from inpatient beds to outpatient settings to reserve space for the critically ill. While such operational changes are essential to build capacity for crisis response at this time, ensuing shifts in payer mix could potentially reduce a hospital’s DSH adjustment percentage and jeopardize their eligibility for the 340B Program.

340B eligibility requirements also restrict certain hospitals from using a group purchasing organization (GPO) to purchase covered outpatient drugs. Facing drug shortages and distribution challenges due to COVID-19, some providers are struggling to maintain adequate drug supply

while adhering to the GPO prohibition. HRSA has recently recognized this problem and issued guidance providing some flexibility to 340B hospitals to temporarily purchase drugs through a GPO in certain cases without seeking HRSA approval. However, HRSA indicated it is unable to temporarily waive the GPO prohibition¹.

Therefore, we ask that Congress consider providing hospitals with temporary flexibility related to 340B program eligibility rules in any future supplemental relief bill. We look forward to working collaboratively with you on this important issue to ensure that our safety-net providers relying on the 340B program can continue to provide vital care to low-income and vulnerable communities during and after the public health emergency.

Sincerely,



Chris Stewart
Member of Congress



Doris Matsui
Member of Congress

/s/

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¹ HRSA, OPA, COVID-19 Resources, <https://www.hrsa.gov/opa/COVID-19-resources>

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