



April 15, 2024

Sen. Matt D. Klein  
Committee Chair  
Minnesota State Senate  
Commerce and Consumer Protection Committee

**RE: Legislation to Protect Minnesota's 340B Providers from Harmful Drug Company Actions**

Dear Sen. Klein:

340B Health is a national, not-for-profit association that represents more than 1,500 public and private nonprofit hospitals that participate in the 340B program, including 68 member hospitals located in Minnesota. We write in support of Minnesota legislation, S.F. 5159, which would prohibit drug companies from refusing to deliver or distribute 340B discounted drugs to community and specialty pharmacies under contract with Minnesota 340B providers. Limiting delivery of 340B drugs has resulted in catastrophic losses for the health care safety net, forcing 340B hospitals to cut programs and services that benefit their patients.

**I. Safety-net hospitals rely on 340B to serve rural communities and patients with low-incomes**

Congress created 340B to enable safety-net providers to “stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.”<sup>1</sup> 340B accomplishes this goal by relying on manufacturer discounts – not taxpayer dollars – to support care for underserved populations. To qualify for 340B discounts, hospitals must either demonstrate that they serve significant numbers of patients that have low incomes or be designated as critical access hospitals by Medicare. In Minnesota, 340B hospitals are responsible for 88% of all Medicaid care.<sup>2</sup> Compared to non-340B hospitals, patients of Minnesota's 340B hospitals are:

- 101% more likely to be dually eligible for Medicaid and Medicare, and
- 66% more likely to be originally eligible for Medicare because of a disability, a population that is more costly to treat.

In addition, 340B hospital Medicare patients are 225% more likely to identify as Black/African American.<sup>3</sup>

Hospitals use their 340B savings to support a wide range of activities and projects that expand access to services and improve patient care. For example, 340B hospitals are more likely to offer specialized services that are critical for communities, but often operate at a loss, such as

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<sup>1</sup> H.R. Rep. 102-384(II), at 12 (1992).

<sup>2</sup> Dobson DaVanzo, The Role of 340B Hospitals in Serving Medicaid and Low-Income Medicare Patients: Minnesota (2021), <https://340bhealth.org/files/MN-340B-Low-Income15021.pdf>.

<sup>3</sup> *Id.*

behavioral health care, trauma care, and obstetrics. 340B supports programs and services targeted to meet the health and social needs of underserved populations as well as the broader community, many of which would not otherwise be financially sustainable.<sup>4</sup>

## **II. S.F. 5159 would protect 340B providers and their patients from harmful actions by drug manufacturers**

S.F. 5159 seeks to ensure 340B safety-net providers in Minnesota, which are not-for-profit or public entities, continue to have access to the full 340B benefit. Under 340B, hospitals may contract with community and specialty pharmacies to allow the hospitals' patients to receive 340B drugs at those locations. These arrangements improve access to drugs and help support 340B safety-net providers. S.F. 5159 would protect Minnesota 340B providers with these arrangements by prohibiting a pharmaceutical manufacturer from denying delivery of 340B-priced drugs to Minnesota-based community pharmacies.

Legislatures in four states – Arkansas, Louisiana, Mississippi, and West Virginia – have already enacted similar laws, and additional states are considering 340B contract pharmacy protection laws. Though drug companies and their trade association, PhRMA, have sued to stop the state laws from being implemented, many drug companies have dropped their restrictions pending the outcome of these lawsuits.<sup>5</sup> On March 12, 2024, the U.S. Court of Appeals for the Eighth Circuit upheld the Arkansas state law, concluding that the Arkansas law is not preempted by federal law “under any theory.”<sup>6</sup> 340B Health, joined by state and national hospital associations, filed amicus briefs defending the Arkansas and Louisiana laws from drug company legal challenges.

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340B plays a critical role in preserving the U.S. health care safety net. Drug companies are taking valuable resources away from safety-net providers, undermining care for rural and other underserved populations and communities. We appreciate the opportunity to share information on how the 340B program supports Minnesota's safety-net providers and the immediate positive impact S.F. 5159 could have on Minnesota's 340B hospitals. Please feel free to contact me via email at [maureen.testoni@340bhealth.org](mailto:maureen.testoni@340bhealth.org) or at 202-552-5860 if you have any questions.

Sincerely,



Maureen Testoni  
President & Chief Executive Officer  
340B Health

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<sup>4</sup> 340B Health. 340B Health Annual Survey 2022: Vital 340B-Supported Patient Services Threatened as Manufacturer Restrictions Cut Into Savings. July 2023. [https://www.340bhealth.org/files/340B\\_Health\\_Survey\\_Report\\_2022\\_FINAL.pdf](https://www.340bhealth.org/files/340B_Health_Survey_Report_2022_FINAL.pdf).

<sup>5</sup> See notices from drug companies Astellas, Eisai, GlaxoSmithKline, Merck, Novo Nordisk, Organon, Sandoz, and Teva to 340B providers located at [340bhealth.org/resources](https://340bhealth.org/resources) (Last visited March 18, 2024).

<sup>6</sup> *Pharm. Rsch. & Mfrs. of Am. v. McClain*, No. 22-3675, 2024 U.S. App. LEXIS 5840 (8th Cir. Mar. 12, 2024).