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Maine Hospital Association

MAINE'S LEADING
VOICE FOR HEALTHCARE

COMMENTS OF THE MAINE HOSPITAL ASSOCIATION

In Opposition To

LD 1395 – *An Act to Increase Transparency Regarding Certain Drug Pricing Programs*

April 27, 2023

Senator Bailey, Representative Perry and members of the Heath Care, Insurance and Financial Services Committee, my name is Jeffrey Austin and I am here on behalf of the Maine Hospital Association to testify in opposition to LD 1395.

The 340b drug discount program for healthcare providers is a complicated federal program. It is extensively regulated and provider audits are extensive. In Maine, providers such as FQHCs, Planned Parenthood and safety-net hospitals serving low-income and other at-risk populations qualify to participate in the program. Curiously, Planned Parenthood and FQHCs were not included in the transparency requirements of this bill.

Hospitals in Maine that qualify for the drug discount program – roughly 24 out of 36 hospitals – are incredibly reliant on the program: we estimate that it reduces drug expenses for hospitals by roughly $300-350 million per year.

Because of the scale of this program, lots of different groups have been trying to capture that savings for themselves that Congress unmistakably intended to benefit safety net hospitals.

HRSA is the federal oversight agency. Here is the very brief description of the purpose of the 340b program on the oversight entity's website:

The 340B Program enables covered entities to stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.

The 340b program is not a carrier discount program, a consumer discount program, or a discount program for PBMs or even government payers. It's for hospitals. It is the subject of legislation in Congress, it is under attack in multiple courts, and misinformation is being spread about the purpose of the program.

This committee saw legislation last session that was modeled on legislation that has been successfully enacted in approximately a dozen other states across the country that would protect

340b pharmacies, patients, and providers like hospitals. Arkansas led the way with this legislation and their law, as was explained last session, is in the courts. So far, Arkansas has prevailed against attempts to undermine those state protections.

This committee voted against that legislation. The Committee discussion largely focused on how the 340b program is a federal program, the state has no regulatory oversight or policy role in the 340b program. Furthermore, the Committee noted that there were multiple lawsuits going. The Committee declined to get involved and the bill was killed.

All of those things were true then and remain true today, and we presume you will again choose to kill this legislation to get involved in the 340b program.

Hospitals don't oppose transparency. In fact, they are one of the most transparent industries in Maine.

Here is just a sample of publicly available information about hospitals:

- **Hospital Cost Reports** – Hospitals are required by law to file with DHHS copies of their "cost reports" that run in the hundreds of pages detailing all of the costs incurred by the hospital. These cost reports are public.
- **Audited Financials.** Hospitals provide DHHS with copies of audited financial statements.
- **Tax Returns** – Hospitals in Maine are non-profit and their tax returns are public.
- **MHDO** – The Maine Health Data Organization collects, and publicly reports a lot of different hospital information such as:
    - Quality data – data on the performance of hospitals in terms of healthcare quality;
    - Financial data – data on the performance of hospital in terms of financial metrics;
    - Price data – we've discussed this in this committee Monday.
- **Certificate of Need** – If hospitals want to expand or merge, they are subject to an approval process that involves public reporting of the project.

There are many other reports on the hospital industry that present aggregated information such as sentinel event reports.

As MHDO's director Ms. Harrington testified Monday, it is getting to the point with 'price' information that the public may be confused on which "price" they are looking at and what it means to them. There is not too little information, there is almost too much.

While we don't oppose transparency, our request to this committee, and even more frequently to the HHS Committee, is that before we do any more reporting – public or otherwise – please give us a clear explanation as to what the 'actionable' need is for it. Who needs it and what action are they going to take using this information? If the request is simply made in the name of 'transparency' and to 'inform' groups, we must argue that that is not enough to ask our members to spend their limited time and their limited resources on filling out even more forms.

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Please understand, the oversight agency at the federal level, HRSA has extensive reporting and audit requirements.

Furthermore, the use of 340b savings has been litigated...to the Supreme Court...with Maine's NorthernLight Health as a named plaintiff.

Here is the observation of the unanimous Supreme Court of the United States:

> *If HHS believes that this Medicare reimbursement program overpays 340B hospitals...**HHS can ask Congress to change the law.***
>
> *Of course, if HHS went to Congress, the agency would presumably have to **confront the other side of the policy story here: 340B hospitals perform valuable services for low-income and rural communities but have to rely on limited federal funding for support.** As amici before this Court, many 340B hospitals contend that the Medicare reimbursement payments at issue here "help offset the considerable costs" that 340B providers "incur by providing health care to the uninsured, underinsured, and those who live far from hospitals and clinics." ... As the 340B hospitals see it, the "net effect" of HHS's 2018 and 2019 rules is "to redistribute funds from financially strapped, public and nonprofit safety-net hospitals serving vulnerable populations—including patients without any insurance at all—to facilities and individuals who are relatively better off." 967 F.3d at 840 (Pillard, J., dissenting). In other words, in the view of those hospitals, HHS's new rates eliminate the federal subsidy that has helped keep 340B hospitals afloat. **All of which is to say that the 340B story may be more complicated than HHS portrays it. In all events, this Court is not the forum to resolve that policy debate.***

Please don't leave Congress's 340B program that was designed to help safety net hospitals to Congress – please oppose LD 1395.

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