MID-ATLANTIC ASSOCIATION OF
COMMUNITY HEALTH CENTERS

TO: Senator Beidle, Chair
Members, Finance Committee

FROM: Nora E. Hoban
Chief Executive Officer

DATE: March 8, 2024

RE: **SUPPORT** – Senate Bill 986 – *State Board of Pharmacy – Prohibition on Discrimination Against 340B Drug Distribution*

The Mid-Atlantic Association of Community Health Centers (MACHC) is the federally designated Primary Care Association for Delaware and Maryland Community Health Centers. As the backbone of the primary care safety net, Federally Qualified Health Centers (FQHCs) are united by a shared mission to ensure access to high-quality health care for all individuals, regardless of ability to pay. FQHCs are non-profit organizations providing comprehensive primary care to the medically underserved and uninsured. Maryland's sixteen health centers serve more than 340,000 patients annually. Eighty-seven percent live at or below 200% of the Federal Poverty Level, and more than two-thirds of patients are from historically marginalized racial and ethnic groups. MACHC supports its members in the delivery of accessible, affordable, cost-effective, and quality primary health care to those most in need. To this end, MACHC **supports** Senate Bill 986.

Health equity starts with legislation that supports access to primary and preventative care for all Marylanders. Since 1992, the 340B Drug Pricing program has helped patients access affordable medications. Contract pharmacy arrangements are an essential part of the program. Participating 340B providers, who by definition treat a disproportionate share of low-income patients, contract with community pharmacies. These contractual arrangements allow patients to pick up prescription medication from their local community pharmacy without a return visit to the 340B center or hospital, which can be time-consuming, especially for patients in rural areas. The arrangement eases patient access, improving medication adherence and health outcomes.

Since 2020, twenty-nine pharmaceutical manufacturers began limiting the number of pharmacies that 340B covered providers can work with to receive discounts on 340B drugs, undermining the program and putting vulnerable communities at risk. In September 2020, Eli Lilly announced that covered entities without in-house pharmacies must choose a single contract pharmacy. AstraZeneca and Sanofi followed suit on October 1. Over the next three years, the list of manufacturers with restrictions grew to include Merck, Gilead, United Therapeutics, and others. The restrictions most often limit 340B providers to dispensing discounted drugs from just one contract pharmacy. The loss of access to 340B medications is not unique to Maryland. Eighteen states throughout the country have introduced similar legislation this year.

Earlier this year, a federal Senate working group, including Senator Cardin, released a Request for Information and draft bill language to update the 340B statute. Separately, the National Association of Community Health Centers is working with PhRMA through a partnership called ASAP 340B to examine legislative solutions. While federal stakeholders and legislators are working to strengthen the 340B program, the differences between covered entities' and PhRMA's position regarding the number of contract pharmacies remain. State action is imperative.

Manufacturer contract pharmacy restrictions threaten the primary care system, putting population health progress at significant risk. Without 340B savings, safety net providers will have to choose which essential wraparound services they provide — would a patient with Type 2 diabetes still have access to nutrition counseling or retinal eye screening, or would a patient with opioid use disorder be able to receive transportation to an appointment or dental services. When 340B savings cannot be reinvested in essential services, patients suffer.

In addition to protecting access to affordable medications, the 340B program supports healthcare entities covered by the program to invest in wraparound services that facilitate care delivery, including medication adherence programs, discounted labs, maternal and dental care, transportation, and more. Such services address barriers to care regardless of race, ethnicity, education, or poverty. Community health centers manage a variety of payors to stretch scarce federal resources to those who need the most care. As non-profit organizations, centers must balance different revenue streams while remaining financially stable, and financial considerations drive what services can be offered. The 340B program is an essential part of this balance. Manufacturer restrictions impact the financial viability of health centers, and providers are forced to cut access to critical services at a time when Maryland is being watched as a leader with the total cost of care model. In October, two health center locations in Cherry Hill and Brooklyn closed after suffering financial losses from pharmaceutical restrictions.

Maryland's pursuit of health equity cannot backslide further. Senate Bill 986 will prevent pharmaceutical manufacturers from imposing restrictions on the number of contract pharmacies where patients of covered entities can receive discounted 340B medications. In protecting the federal 340B statute in Maryland, this bill will protect medication access and health center services for all Marylanders. As such, **MACHC requests a favorable report on Senate Bill 986**.

FACT: *Drug companies are restricting 340B contract pharmacy use.*

- Manufacturers have greatly increased restrictive policies, as shown in letters to safety net providers, press statements, and legal filings.
- Contract pharmacy restrictions undermine the original intent of the 340B program by removing 340B discounts to safety net providers while drug companies still have access to the huge pool of Medicare Part D and Medicaid patients.

FACT: *Safety net providers use contract pharmacies to expand access to services.*

- Safety net providers use contract pharmacies to ensure patient access to prescription drugs and other necessary health care services. Examples of services supported with 340B funds are medication adherence programs, discounted lab programs, OB/GYN and dental services, and investments to address social determinants of health, including transportation and nutrition services.
- The vast majority of patients served by 340B safety net providers are low-income, uninsured or underinsured, from racial and ethnic minority groups, or otherwise medically vulnerable.
- The 340B program is a vital lifeline for the patients served by safety net providers.

FACT: *The 340B program can be legislated by states in relation to distribution.*

- Each state has a right to protect citizens' public health by regulating drug manufacturers doing business in their state.
- States have been regulating 340B drug distribution since the program's inception.
- Two states, Arkansas and Louisiana, passed laws in 2023 to regulate drug companies in this way; dozens of states are following suit in 2024.

FACT: *The Health Resources & Services Administration has tools to prevent abuse of the 340B program.*

- Congress carefully defined 340B eligibility based on providers' history and legal obligation to treat all patients regardless of ability to pay.
- The federal government has several tools, including audits, to ensure program integrity.
- The possibility of an audit comes with strong incentives to comply with all program requirements. Audit findings can cause covered entities to pay back manufacturers, be subject to a corrective action plan, or, even worse, be removed from the program entirely.

FACT: *The total costs of the 340B program are growing because of the growth in drug costs.*

- In 2022, 340B covered entities purchased more than fifty-three billion dollars of 340B drug sales. These are NOT 340B savings.
- The number of covered entities participating in the program has been steady.
- Program growth can be attributed mainly to a sharp increase in drug prices charged by manufacturers.

FACT: *Pending litigation has so far favored states.*

- The drug industry may sue the state, but state litigation costs pale compared to the state's losses if manufacturers' unilateral restrictions are left unchecked.
- State and federal taxpayers are being forced to pay for necessary patient services that would otherwise be funded by 340B savings.
- The results of pending litigation so far have favored states, not industry.

FACT: *State legislation is needed as federal solutions are examined.*

- While federal efforts are important to the long-term success and sustainability of the 340B program, timely state legislation to protect access to covered entities is essential.

For More Information:
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