

September 21, 2011

VIA FEDEX & EMAIL

Angelo Giambrone
Senior Vice President, Industry and Network Relations
Prescription Solutions
5995 Plaza Drive
CA 112-0253
Cypress, CA 90630

Re: Discriminatory 340B Reimbursement Contracts

Dear Mr. Giambrone:

On behalf of the undersigned organizations whose members participate in the federal 340B drug discount program, we are writing to express our strong objection to the terms under which Prescription Solutions offers to include 340B providers in its pharmacy networks. Our members qualify for the 340B program by virtue of serving significant numbers of low income patients and other vulnerable populations. The 340B program was enacted by Congress to benefit eligible safety net providers, their patients and the taxpayers that support them in an effort to finance critically needed health care services delivered by these providers without appropriating additional federal funds. Several of our members recently forwarded to us a contract addendum that, if executed, would limit their reimbursement to average wholesale price (AWP) less 25 percent plus a \$2.00 dispensing fee. Not only is this rate well below the rate that Prescription Solutions offers to pay its non-340B participating pharmacies, it would essentially rob 340B providers of most of the 340B discount to which they are entitled under federal law. We therefore consider Prescription Solutions' contract addendum to be both discriminatory and inconsistent with the 340B program. For these reasons, we ask Prescription Solutions to discontinue immediately its use of the contract addendum.

As the legislative history of the 340B statute makes clear, the purpose of giving qualified safety net health care providers access to 340B discounts is to enable those providers to stretch their scarce resources so that they may "reach more patients" and furnish "more comprehensive services."¹ This purpose cannot be achieved if 340B providers have to pass on the savings they have received through the 340B program to third-party payers. The Health Resources and Services Administration (HRSA), the agency that administers the 340B program, shares the 340B Coalition's concerns about this threat to the 340B program. According to HRSA, the 340B program provides additional financial resources to covered entities without increasing the federal budget by lowering drug acquisition costs while maintaining revenue from health insurance reimbursements.² The difference between a 340B drug's lower acquisition cost and standard non-340B reimbursement

¹ H.R. Rep. 102-384, 102d Cong., pt.2, at 12 (2d Sess. 1992).

² Hemophilia Treatment Center Manual for Participating in the Drug Pricing Program Established by Section 340B of the Public Health Service Act, <http://www.hrsa.gov/hemophiliatreatment/340Bmanual.htm>.

represents the very benefit that Congress intended to give covered entities when it established the 340B program. HRSA explains that if “covered entities were not able to access resources freed up by the drug discounts when they . . . **bill private health insurance**, their programs would receive no assistance from the enactment of section 340B and there would be no incentive for them to become covered entities.”³

Reimbursement under the contract addendum would be insufficient to cover dispensing and other overhead costs and would consume nearly all of the pharmacy margins that 340B providers rely on to underwrite their safety net activities. 340B providers would receive reduced reimbursement on every prescription filled with 340B drugs, amounting to millions of dollars in lost revenue and eroding their capacity to continue offering pharmacy services to low income populations. Faced with the prospect of only getting paid AWP minus 25 percent and a small dispensing fee for their 340B drugs, providers would be incentivized to stop using 340B drugs to fill Prescription Solutions’ prescriptions. As such, the addendum is viewed by our members as a direct attack on the 340B program itself and gives the 340B provider community – which now exceeds 16,000 participating “covered entities” – no choice but to do what they can to protect against efforts by Prescription Solutions, and the health plans that Prescription Solutions represents, to thwart the program’s statutory purpose.

For the above reasons, we request that Prescription Solutions revisit the payment terms reflected in its 340B contract addendum and discontinue use of the discriminatory below-market rates targeting safety net providers. We urge your cooperation in this serious matter. If you have any questions, please contact Safety Net Hospitals for Pharmaceutical Access Assistant General Counsel Maureen Testoni at 202-552-5851 or maureen.testoni@snhpa.org or Associate Counsel Jeff Davis at 202-552-5867 or jeff.davis@snhpa.org.

Sincerely,

Hemophilia Alliance
National Association of Community Health Centers
National Association of Public Hospitals and Health Systems
Safety Net Hospitals for Pharmaceutical Access

cc: CDR Krista Pedley, Director, Office of Pharmacy Affairs
Mary Wakefield, Administrator, Health Resources and Services Administration

³ *Id* (emphasis added).