



Safety Net Hospitals for Pharmaceutical Access

TO: SNHPA Members

FR: Bill von Oehsen, President and General Counsel, SNHPA
Ted Slafsky, Executive Director, SNHPA

RE: Recommended Charity Care Policy for 340B Hospital Outpatient Pharmacies

DATE: April 17, 2007

With substantially increased scrutiny over charity care and billing and collecting practices of hospitals and the need to protect the integrity of the 340B Drug Discount Program, Safety Net Hospitals for Pharmaceutical Access (SNHPA) is strongly recommending that member hospitals formally affirm their commitment to provide and expand access to pharmaceutical care for vulnerable patients consistent with the goals of the 340B Program. The 340B hospital community shares a common mission of meeting the health care needs of underserved populations. SNHPA believes that member hospitals should have in place a charity care policy that specifically addresses their use of the 340B program in the outpatient pharmacy arena. Below you will find a link to our recommended charity care policy which was approved by SNHPA's Board of Directors and which reflects the guidance and comments of a broad cross-section of SNHPA's membership. Please note that SNHPA recommends adoption of this draft charity care policy by hospitals that have an outpatient pharmacy, and this recommendation is not directed towards other 340B hospitals.

By way of background, your hospital is eligible to participate in the 340B program and is saving on the cost of its outpatient drugs because it is a safety net institution that serves a disproportionate share of low-income patients in your service area. Congress created the 340B program in 1992 to enable hospitals and other covered entities "to stretch scarce federal resources as far as possible" in serving their patients, especially the uninsured, underinsured and other vulnerable populations.¹ While the Health Resources and Services Administration (HRSA), which administers the 340B program, has recognized that there is some permissible variation in exactly how hospitals utilize their 340B savings², the underlying intent of the 340B Drug Discount Program remains that hospitals allocate their resources in serving low-income patients.

Implementation of SNHPA's suggested policy is purely voluntary for your hospital and is not required by federal law. However, to demonstrate your continued commitment to the intent of the 340B program, we strongly urge each outpatient pharmacy that is operated by your hospital

¹ See H.R. Rep. No. 102-384, Pt.2 at 12 (1992).

² See HRSA, Notice Regarding Section 602 of the Veterans Health Care Act of 1992, Contract Pharmacy Services, 61 Fed. Reg. 43549, 43551 (Aug. 23, 1996) (noting that "340B does not limit the pricing behavior of covered entities").

and dispensing 340B drugs to formally adopt or affirm the standards articulated in the policy.

The policy is designed to give your hospital sufficient flexibility in its implementation. You may institute it as a stand-alone policy for your hospital's outpatient pharmacy, which is optimal from SNHPA's perspective. Alternatively, you may amend your hospital's broader charity care policy by specifically adding language indicating that the policy applies to savings from the 340B program. To the extent that the draft policy is already consistent with your hospital's existing policies and you do not wish to revise them, you may document internally that the standards reflected in the recommended SNHPA statement are already incorporated in existing hospital policies, and have applicability to the utilization and dispensing of drugs purchased under the 340B program. We do not regard it as critically important for the precise words of our recommended policy to be adopted verbatim by every 340B hospital. What is most important is having a formal, written expression of your institution's commitment to providing outpatient pharmaceuticals to low-income individuals related to the 340B program, such that the institution's participation in 340B demonstrably and directly benefits the hospital's indigent patients.

SNHPA is confident that its members' commitment to providing pharmaceutical and other medical care to low-income individuals has remained consistent and strong throughout the tenure of the 340B program. In light of the scrutiny facing hospitals today and the need to protect the integrity of the 340B program, we reiterate the importance of 340B hospitals having a charity care policy in place that reflects their use of the 340B program to benefit their indigent patient population.

The recommended charity care policy can be found at http://www.snhpa.org/members/charity_care.cfm

Please do not hesitate to contact SNHPA's President and General Counsel, Bill von Oehsen at (202) 872-6765 or william.vonoehsen@snhpa.org if you have questions.



Safety Net Hospitals for Pharmaceutical Access

SNHPA Recommended Charity Care Policy for 340B Outpatient Pharmacies

The covered entity agrees to have a charity care policy whereby uninsured patients who (1) are “patients” of the hospital as that term is defined and applied within the federal 340B drug discount program, (2) are ineligible for drug coverage or pharmacy benefits under a publicly funded medical assistance program, (3) fall in the lowest income bracket* and (4) meet institution-defined eligibility requirements, would receive dispensed drugs purchased through the 340B program for free or at a nominal cost.** The institution agrees to provide, upon request by an appropriate agency or authority of the federal government, a copy of its charity care policy that applies to all patients receiving 340B drugs from the outpatient pharmacy and meeting the above-referenced criteria.

Notes for Implementation:

* The recommended policy of dispensing covered outpatient drugs to certain patients free or at nominal cost would apply to “the lowest income bracket” according to “eligibility requirements” to be defined by the institution. We have purposely left specific definition of “the lowest income bracket” and determination of other eligibility requirements to the hospital itself, as we recognize that the size and character of the population appropriately to be afforded free or nominal cost drugs may vary according to the particular circumstances and patient-mix of a given hospital. At the same time, we do intend that whatever a hospital designates as “the lowest income bracket” should include a sufficiently substantial portion of the hospital’s indigent patients to give the policy real meaning and practical effect on some significant number of individuals.

** It also should be noted that the term “nominal cost” is not used in this recommended policy as a term of art denoting any particular percentage of actual cost. Rather, we intend the word “nominal” to be interpreted according to its more common usage, that is, to refer to a cost that is small, but the particular level of which would be determined at the discretion of the hospital.