

**Tab 2-4**



## Public Hospital Pharmacy Coalition

[www.phpcrx.org](http://www.phpcrx.org)

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(A Coalition of the National Association of Public Hospitals and Health Systems)

July 13, 2006

Mr. Jimmy R. Mitchell, R.Ph., MPH, MS  
Director  
Office of Pharmacy Affairs  
Health Resources and Services Administration  
Parklawn Building  
5600 Fishers Lane  
Mail Stop 10C-03  
Rockville, MD 20857

**VIA PDF AND U.S. MAIL**

Re: Indigent Care Policy for Private Non-Profits

Dear Jimmy:

The Public Hospital Pharmacy Coalition (PHPC) represents a majority of the public and private non-profit hospitals participating in the 340B drug discount program. Last September, PHPC recommended to the Health Resources and Services Administration (HRSA) and the Office of Pharmacy Affairs (OPA) a number of clarifications to the 340B definition of patient that, in PHPC's view, would help prevent both intentional and unintentional incidents of diversion. Included in our recommendations was a request that the government ensure that private non-profit hospitals that apply for the 340B program demonstrate that they are providing significant levels of indigent care. PHPC indicated that it would be following up with a proposal to help address this issue. We are writing today to submit the proposal.

As you know, a private non-profit hospital can only qualify for the 340B program if it has a Medicare disproportionate share hospital (DSH) adjustment percentage of 11.75 or greater and "has a contract with state or local government to provide health care services to low income individuals who are not entitled to benefits under [Medicare] or eligible for assistance under [Medicaid]."<sup>1</sup> While we are confident that a significant majority of private non-profit hospitals participating in the 340B program are providing substantial levels of indigent care, PHPC believes that the government should establish more specific federal standards to ensure program integrity. PHPC therefore urges HRSA to specify language that must be included in all state or local contracts on which non-profit hospitals rely for their participation in the 340B program.

PHPC has attached to this letter proposed language that, if incorporated into 340B-qualifying contracts, would address any questions about indigent care obligations

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<sup>1</sup> 42 U.S.C. § 256b(a)(4)(L)(i).



**NATIONAL ASSOCIATION OF PUBLIC HOSPITALS & HEALTH SYSTEMS**

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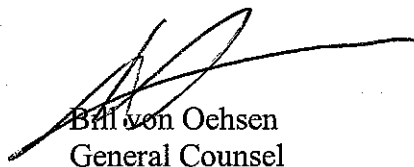
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by private non-profits in the 340B program. PHPC's proposed language mandates that the contracting hospital have an indigent care policy in place whereby (1) hospital patients who are low income and uninsured would be entitled to discounts on their care (based on, for example, a sliding fee schedule) and (2) uninsured patients in the lowest income bracket would pay little or nothing for hospital services. Because 340B private non-profit hospitals would be contractually obligated to implement this proposed policy, HRSA could feel confident that the hospitals are meeting their indigent care obligations. Likewise, because PHPC's proposed language explicitly requires the hospital to utilize the 340B program in accordance with the policy, low income uninsured patients could never be denied access to pharmacy services based on an inability to pay. HRSA should therefore require that, with respect to every state and local contract that private non-profit hospitals rely on to qualify for the 340B program, the attached indigent care policy must be included in the contract.


PHPC supports current efforts by HRSA and OPA to tighten up the 340B definition of patient in order to prevent diversion of discounted drugs. PHPC has provided OPA with specific recommendations on how the existing guidelines can be strengthened. However, it is important to recognize that tightening up the definition of patient will not prevent the possibility of a private non-profit hospital enrolling in the 340B program based on inadequate indigent care contracts. No matter how stringent HRSA and OPA make the patient definition guidelines, such steps will not solve this problem because the real issue relates to the payer mix of a hospital's outpatient population, not how a patient is defined. Hence, PHPC would much rather see HRSA and OPA devise guidelines to ensure that hospitals provide significant levels of indigent care as a condition of participation in 340B, and further, that the guidelines be constructed in a way that jeopardizes a hospital's 340B status if it does not provide adequate levels of indigent care. We believe that inclusion of the attached indigent care policy in 340B-qualifying contracts with private non-profit hospitals will achieve both of these objectives. PHPC therefore urges HRSA and OPA to include the attached proposal in the patient definition guidelines that are currently under development and scheduled to be published later this year.

PHPC hopes that you agree with its firm belief that adoption of the above proposal will significantly improve the integrity of the 340B program. Please do not hesitate to contact us if you have any questions or comments regarding the proposal and/or the attached indigent care policy.

Sincerely,



Bill von Oehsen  
General Counsel



Ted Slafsky  
Executive Director

Enclosure

**PROPOSED CHARITY CARE POLICY  
FOR PRIVATE NON-PROFIT 340B HOSPITALS**

The hospital agrees to have a charity care policy whereby non-Medicare, non-Medicaid indigent patients who meet hospital-defined eligibility requirements would receive their care for free or at nominal cost. For patients who fall outside the charity care eligibility requirements but meet broader standards of being indigent, the hospital agrees to offer discounts on such care based on, for example, a sliding scale. Use of the 340B drug discount program shall be implemented in accordance with this policy. The hospital also agrees to provide, upon request by the federal government, a copy of its charity care policy and documentation that the policy applies to the hospital's 340B pharmacy program.