



**September 20, 2023**

The Honorable Bernie Sanders  
Chair  
Committee on Health, Education,  
Labor and Pensions  
United States Senate  
Washington, DC 20510

The Honorable Bill Cassidy, M.D.  
Ranking Member  
Committee on Health, Education,  
Labor and Pensions  
United States Senate  
Washington, DC 20510

The Honorable Patty Murray  
Chair  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Susan Collins  
Ranking Member  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Senators Sanders, Cassidy, Murray, and Collins:

On behalf of the below-listed hospitals, health systems and associations and our thousands of members across the country, we write to urge your timely continuation of a provision that is critical to at-risk hospitals and the well-being of patients who depend on them.

We respectfully request extension of a provision passed as part of Section 121 of the Consolidated Appropriations Act of 2022 (“the Act”) that provides temporary relief to 340B hospitals at risk of losing access to the program due to impacts associated with the Public Health Emergency on the disproportionate share (DSH) percentage threshold.

Although the PHE is officially over, its lingering effects continue to seriously impact hospital eligibility for the 340B program, particularly among smaller, rural institutions, at a time when many hospitals are already experiencing profound financial challenges. A loss of 340B eligibility could jeopardize hospitals’ ability to provide critically needed services within their communities and in some cases contribute to closures. **More than 400 hospitals — including many small, rural hospitals — across 47 states are at-risk of losing eligibility in 2024** because of pandemic-era effects continuing to lower their DSH percentages. These facilities reported an uncapped DSH percentage within 2 percent of their applicable eligibility threshold in their most recent publicly available Medicare cost reports (2021 or 2022).

**To remedy this issue, we ask your support for a two-year extension of the 340B eligibility protections that were authorized in the Act.** Safety-net hospitals were protected from losing 340B status due to changes in their DSH threshold through cost reporting periods in 2022. Unless relief is extended, protections will expire when at-risk hospitals file their next Medicare cost reports, a process that will begin as early as November for some hospitals. That means these hospitals are in jeopardy of completely losing access to the program or experiencing a major loss of 340B savings used to provide critically needed care in their communities. As before, only those hospitals who were participating in the 340B program before the beginning of the PHE would be eligible for this relief.

PHE-related factors that continue to affect 340B DSH threshold eligibility include:

**The Medicaid redetermination process:** Millions of Medicaid enrollees – many of whom remain eligible for the program – are nonetheless losing coverage due to procedural issues with the redetermination process.<sup>1</sup> These problems are so severe that Centers for Medicaid and Medicare Services ordered some state Medicaid agencies to temporarily halt eligibility redeterminations. The redetermination process, a direct consequence of the PHE, is artificially reducing the number of Medicaid patient days that can be attributed to hospital Medicare DSH adjustment percentages, negatively impacting eligibility for the 340B program while simultaneously squeezing hospitals financially through increased unreimbursed care.

**The disability claims crisis facing the Social Security Administration:** More than 1 million Americans, many of them poor or elderly, are waiting months or years to learn whether they will receive disability benefits because of massive application processing delays that began during the PHE and remain unresolved due to persistent staffing problems within Social Security Administration and state disability agencies.<sup>2</sup> Because of these historic delays, many otherwise qualifying Medicaid and Medicare Supplemental Security Income patient stays cannot be applied toward the formula used to calculate 340B eligibility.<sup>3</sup>

**Delayed care:** Because patients delayed care due to the pandemic, many 340B hospitals continue to see more patients with higher acuity. This has resulted in longer lengths of stay than before the PHE, and a significant number of these patients do not fall into the “low-income” category. At the same time, many hospitals are seeing a decrease in the number of Medicaid patients they are treating due to Medicaid redetermination, the disability claims crisis and other factors. The result: a precipitous drop in the ratio of services provided to Medicaid patients that is negatively affecting DSH adjustment percentages and 340B eligibility.

**Skilled nursing shortages:** Another major factor contributing to increased length of stay is the inability of many hospitals across the country to discharge patients in a timely manner because of continued workforce shortages among skilled nursing facilities and other post-acute providers that began during the pandemic and are persisting. Nursing homes lost more than 210,000 jobs during the pandemic, putting overall employment within the industry at its lowest levels since 1994, according to a January 2023 report.<sup>4</sup> As a result of these staffing shortages, more than half of nursing homes across the country are limiting new admissions.<sup>5</sup> These delays negatively affect patient outcomes and slow recoveries by forcing patients to stay in the hospital longer than medically necessary. Meanwhile, the inability to transfer patients out of acute care is also resulting longer lengths of stay among hospital patients who are neither low-income Medicare nor Medicaid beneficiaries, distorting hospital DSH percentages and negatively affecting 340B eligibility.

Even a temporary loss of 340B savings can seriously jeopardize safety-net hospitals, particularly smaller, rural institutions that are already facing serious financial challenges. **Therefore, we**

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<sup>1</sup> <https://www.kff.org/medicaid/issue-brief/medicaid-enrollment-and-unwinding-tracker>

<sup>2</sup> [www.ssa.gov/open/data/Combined-Disability-Processing-Time.html](http://www.ssa.gov/open/data/Combined-Disability-Processing-Time.html)

<sup>3</sup> In order to qualify for the 340B program, hospitals must meet several rigorous criteria. One of the primary 340B eligibility criteria is the Medicare disproportionate share hospital (DSH) adjustment percentage, which is based on a hospital’s volume of inpatient Medicaid and Medicare Supplemental Security Income (SSI) patients as reported by the hospital on its most recently filed Medicare cost report.

<sup>4</sup> <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/LTC-Jobs-Report-Jan2023.pdf>

<sup>5</sup> <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/SNF%20Survey%20Mid-Year%202023.pdf>



**ask your support for a two-year extension of the 340B eligibility protections that were authorized in the Act.**

Thank you for your consideration of this request. If you or your staff members have questions or would like additional information, please feel free to contact me or Alexa McKinley, Regulatory Affairs Manager, at [amckinley@ruralhealth.us](mailto:amckinley@ruralhealth.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Morgan", is written over a light gray dotted grid background.

Alan Morgan  
Chief Executive Officer  
National Rural Health Association

Joined by:

**Arkansas Hospital Association**  
*Representing hospitals across the state of Arkansas for 90 years*

**Georgia Hospital Association**  
*Representing 145 hospitals in Georgia*

**Michigan Health & Hospital Association**  
*The leading voice in Michigan in health care representing all community hospitals and health systems in Michigan*

**Minnesota Hospital Association**  
*Representing Minnesota's hospitals and health systems since 1917*

**Mississippi Hospital Association**  
*Representing more than 100 hospitals, health care systems, networks, care-providers and a pool of over 50,000 employees in Mississippi*

**South Carolina Hospital Association**  
*Representing more than 100 member hospitals and health systems across the state of South Carolina*

**Vermont Association of Hospitals and Health Systems**  
*Representing Vermont's network of entirely non-profit hospitals*

**AdventHealth Gordon**  
*Serving Calhoun County, Georgia*

**AdventHealth Hendersonville**  
*Serving western North Carolina*

**Ballad Health**



*Serving 29 counties in the Appalachian Highlands of northeast Tennessee, southwest Virginia, northwest North Carolina and southeastern Kentucky*

**Baptist Health**

*Serving Kentucky and Indiana at nine hospitals and more than 400 points of care*

**Bassett Healthcare Network**

*Serving an eight-county region in Central New York*

**Bayhealth**

*Serving central and southern Delaware*

**Beaufort Memorial Hospital**

*Serving Beaufort County, South Carolina*

**Cookeville Regional Medical Center**

*Serving Putnam County, Tennessee, and the surrounding region*

**Granville Health System**

*Serving northcentral North Carolina*

**Madison Health**

*Serving Madison County, Ohio*

**Mile Bluff Medical Center**

*Serving an eight-county region in southcentral Wisconsin*

**Newberry County Memorial Hospital**

*Serving Newberry County in South Carolina*

**Oneida Health**

*Serving the greater Oneida, New York, area and surrounding communities*

**ProMedica Health System**

*Serving communities in 28 states across the U.S.*

**Rochester Regional Health**

*Serving Western New York, the Finger Lakes Region and St. Lawrence County in New York*

**Roper St. Francis Healthcare**

*Serving Charleston, Berkeley and Dorchester counties in South Carolina*

**Self Regional HealthCare**

*Serving Greenwood, Abbeville, Laurens, Saluda, McCormick, Edgefield and Newberry counties in South Carolina*

**Southwestern Vermont Medical Center**

*Serving Bennington and Windham counties in Vermont, eastern Rensselaer and Washington counties in New York and northern Berkshire County in Massachusetts*

**Spartanburg Regional Health System**



*Serving Spartanburg, Cherokee, Greenville and Union counties in South Carolina; Polk and Rutherford counties in North Carolina*

**Sweetwater Hospital Association**

Serves parts of Meigs, McMinn, Roane, Loudon and all of Monroe County, Tennessee

**Tidelands Health**

*Serving Horry, Georgetown and Williamsburg counties in South Carolina*

**University of Rochester Medical Center**

*Serving the Finger Lakes and Southern Tier regions of New York*