



KHA's Federal Advocate
June 6, 2024

Focus Turns to the 340B Program

Congress is back in session this week. While annual spending bills and the border crisis have dominated the headlines, the health care political world is focusing on the 340B Drug Discount Program.

On May 21, the D.C. Circuit Court of Appeals ruled the federal law does not prohibit manufacturers from limiting the number of contract pharmacies allowed to participate on behalf of covered entities in the 340B program. This decision upholds a similar ruling by the D.C. District Court and closely aligns with a ruling made last year in the 3rd Circuit Court of Appeals. A similar case is scheduled to be ruled on later this year in the 7th Circuit Court of Appeals. Many experts believe that this is the Health Resources and Services Administration's strongest of the three cases. If the 7th Circuit rules in HRSA's favor, this would pave the way for a Supreme Court case in 2025 on contract pharmacy limitations.

On Tuesday, the House Energy and Commerce Committee held a wide-ranging hearing on the program, with many of the known sore points, including contract pharmacy participation fanning the discussion. None of Kansas' four House members are on this committee. Two competing pieces of legislation are currently percolating in the House. The American Hospital Association supports the 340B PATIENTS Act (H.R.7635/S.3922), which codifies the ability of hospitals to use unlimited numbers of contract pharmacies. Acute care hospitals and groups representing them, including the Kansas Hospital Association, oppose the 340B ACCESS Act (H.R.8574), which would limit hospital participation in the program and create a many-tiered system for licensure to provide such discounts to their patients. You can read AHA's comprehensive letter to the committee outlining their position [here](#).

Related to this, the Senate 340B Working Group, which includes Senator Jerry Moran (R-KS), continues to work on the public draft text of the SUSTAIN 340B Act. The Act has not been introduced yet, but the [draft text](#) and [explanation](#) have been made available. KHA staff and members had the opportunity to provide detailed input to the Working Group, and we continue to value their open dialogue with us on these matters.

Additionally, a bipartisan group of House members recently introduced the Rural 340B Access Act, a bill allowing Rural Emergency Hospitals to participate in the 340B program. KHA, AHA, and the National Rural Health Association support this bill. We will reach out to our delegation to request that they cosponsor it. This bill will fall within the jurisdiction of the House Energy and Commerce Committee. The Rural Emergency Hospital Improvement Act, recently drafted and introduced by Senator Moran and supported by KHA, does not address this issue. If it did, the bill would be jurisdictionally split between House Ways and Means and House Energy and Commerce. Such dual referrals complicate bill passage considerably, so the decision was made to work on the two bills separately.