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## United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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September 28, 2023

### **VIA ELECTRONIC TRANSMISSION**

John M. Starcher, Jr.  
Chief Executive Officer  
Bon Secours Mercy Health  
1701 Mercy Health Place  
Cincinnati, OH 45237

Dear Mr. Starcher:

I write regarding your health system's use of funds generated from the 340B Drug Pricing Program (340B Program). In 1992, Congress created the 340B Program to give discounts on prescription drugs to a select group of hospitals and federal grantees, known as "covered entities," that serve a disproportionate share of uninsured and low-income patients.<sup>1</sup> The program, which is administered by the Health Resources and Services Administration (HRSA), is designed to "stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services."<sup>2</sup>

Drug manufacturers cannot participate in Medicaid unless they agree to sell outpatient medications to 340B Program covered entities at discounted prices, estimated to be between 20 to 50 percent of a drug's list price.<sup>3</sup> These discounted prices, which are often referred to as the 340B price or the 340B "ceiling price," are based on a statutory formula and represent the highest price a manufacturer may charge a covered entity.<sup>4</sup> The 340B Program generates revenue for the covered entity when insurance reimbursements exceed the 340B price.<sup>5</sup> The intent behind the program is

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<sup>1</sup> *340B Drug Pricing Program*, HEALTH RES. & SERVS. ADMIN., <https://www.hrsa.gov/opa> (last reviewed May 2023).

<sup>2</sup> *Id.*

<sup>3</sup> See Karen Mulligan, Ph.D., *The 340B Drug Pricing Program: Background, Ongoing Challenges, and Recent Developments*, USC LEONARD D. SCHAEFFER CENTER FOR HEALTH POLICY & ECON. (Oct. 2021), <https://healthpolicy.usc.edu/research/the-340b-drug-pricing-program-background-ongoing-challenges-and-recent-developments/>.

<sup>4</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-480, *Drug Discount Program: Federal Oversight of Compliance at 340B Contract Pharmacies Needs Improvement* (June 2018), <https://www.gao.gov/assets/gao-18-480.pdf>.

<sup>5</sup> See Mulligan, *supra* note 3.

for covered entities to pass on the revenue generated from the 340B Program to improve health care services for eligible patients.<sup>6</sup>

However, federal law imposes few requirements with respect to how covered entities may spend the revenue they generate from the 340B Program.<sup>7</sup> The 340B Program is regularly reviewed by the Government Accountability Office (GAO) and HHS’s Office of Inspector General (OIG), both of which have highlighted issues with the program.<sup>8</sup> GAO has identified the troubling recent pattern of 340B covered entities increasingly serving wealthier communities with higher rates of insurance, which is far afield from the program’s intent.<sup>9</sup> Additionally, GAO has found that covered entities often do not share 340B discounts directly with their patients.<sup>10</sup>

According to recent reports, the 340B Program is the source of the “vast majority” of the profits of Richmond Community Hospital, which is a disproportionate share hospital (DSH) owned by Bon Secours that serves the low-income East End neighborhood of Richmond, Virginia.<sup>11</sup> In 2021, Richmond Community Hospital generated more than \$90 million in profits, among the highest profit margins of all Virginia hospitals.<sup>12</sup> However, it is not clear to what extent the revenue generated from the 340B Program added to those net profits or whether Bon Secours used the revenue it generated from the 340B Program to improve health care services for the residents of the East End.

In recent years, Bon Secours reportedly has been stripping Richmond Community Hospital of vital services, including its intensive care unit (ICU), which was closed in 2017.<sup>13</sup> Bon Secours also decided not to replace a number of specialists who retired. As a result, Richmond Community Hospital lacked providers who could treat gastrointestinal problems, kidney issues, and severe cardiac issues.<sup>14</sup> One former employee described the hospital as little more than a “glorified

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<sup>6</sup> *Id.*

<sup>7</sup> See Mulligan, *supra* note 3.

<sup>8</sup> See GAO-18-480, *supra* note 4; see also *Examining HRSA’s Oversight of the 340B Drug Pricing Program, Hearing Before the H. Energy & Com. Comm., Subcomm. on Oversight & Investigations*, 115th Cong. 1 (2017) (Testimony of Erin Bliss, Assistant Inspector General for Evaluation and Inspections, Dep’t of Health & Hum. Servs., Off. of Inspector Gen.).

<sup>9</sup> Rena M. Conti & Peter B. Bach, *The 340B Drug Discount Program: Hospitals Generate Profits by Expanding to Reach More Affluent Communities*, 33 HEALTH AFFAIRS 1786, 1789–90 (Oct. 2014), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2014.0540>.

<sup>10</sup> GAO-18-480, *supra* note 4.

<sup>11</sup> Katie Thomas & Jessica Silver-Greenberg, *Profits over Patients: How a Hospital Chain Used a Poor Neighborhood to Turn Huge Profits*, N.Y. Times (Sept. 27, 2022), <https://www.nytimes.com/2022/09/24/health/bon-secours-mercy-health-profit-poor-neighborhood.html>.

<sup>12</sup> VA. HEALTH INFO., *Virginia Hospitals, Bon Secours Richmond Community Hospital, Financial Information*, <https://www.vhi.org/Bon%20Secours%20Richmond%20Community%20Hospital.html?tab=&?=h9880/> (updated Mar. 29, 2023).

<sup>13</sup> Thomas & Silver-Greenberg, *supra* note 11; see also Jeremy M. Lazarus, *Richmond Community ICU Nurses Told to Apply for Other Jobs*, RICHMOND FREE PRESS (Jan. 13, 2017, 4:57 PM), <https://richmondfreepress.com/news/2017/jan/13/richmond-community-icu-nurses-told-apply-other-job/> (noting that the closure came as Richmond Community Hospital had “become a highly profitable arm of Bon Secours operations” with a profit margin of \$39.9 million in 2016).

<sup>14</sup> Luca Powell, *Bon Secours Transferred Millions out of Richmond Community Hospital, Records Show*, RICHMOND TIMES-DISPATCH (Dec. 2, 2022), [https://richmond.com/lifestyles/health-med-fit/bon-secours-transferred-millions-out-of-richmond-community-hospital-records-show/article\\_a65073c2-c655-5e74-a0ae-53b2717bd0e3.html](https://richmond.com/lifestyles/health-med-fit/bon-secours-transferred-millions-out-of-richmond-community-hospital-records-show/article_a65073c2-c655-5e74-a0ae-53b2717bd0e3.html).

emergency room,” lacking key specialists or a maternity ward.<sup>15</sup> In the same year that Bon Secours eliminated these services, Richmond Community Hospital generated profits in excess of \$40 million.<sup>16</sup> In December 2021, Bon Secours announced an approximately \$108 million expansion project at a non-340B facility in the higher-income suburbs of Richmond.<sup>17</sup>

Additionally, the 340B Program can create an incentive for eligible hospitals to acquire independent physician practices and reopen them as affiliated outpatient clinics, known as “child sites,” outside the 340B service area.<sup>18</sup> This arrangement allows the parent 340B DSH to obtain drugs at the discounted 340B price for use at the affiliated clinic. Bon Secours reportedly has opened nine such clinics legally affiliated with Richmond Community Hospital but located miles from the East End in wealthier parts of Richmond.<sup>19</sup> By structuring the clinics in this manner, Bon Secours is able to purchase drugs for use at these clinics at the discounted 340B price.<sup>20</sup>

The U.S. Senate Health, Education, Labor, and Pensions Committee has jurisdiction over the 340B Program, as well as matters related to public health. Therefore, it is my responsibility to conduct oversight over the 340B Program and ensure that it is functioning as Congress intended. Accordingly, we ask that you please respond to the following questions, on a question-by-question basis, no later than **October 12, 2023**. We request that all documents be unredacted, produced in electronic form, and Bates stamped. Unless otherwise stated, the below questions seek information or documentation from September 2018 to the date of this letter.

1. Does Bon Secours pass on all savings generated from the 340B Program to patients at Richmond Community Hospital in the form of savings on health care expenses? If not, why not? Please explain in detail.
2. Please provide a complete accounting of the funds Bon Secours generated from the 340B Program from Richmond Community Hospital. This information should be provided in Excel format. In addition, please include the following information:
  - a. The total dollar amount generated from the 340B Program categorized by:
    - i. Site of service.
    - ii. Therapeutic class of drugs.
    - iii. HCPC or CPT code (as applicable).

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<sup>15</sup> Thomas & Silver-Greenberg, *supra* note 11.

<sup>16</sup> See IRS Form 990, Bon Secours Richmond Community Hospital (2017) (reporting a profit in the amount of \$42,671,373), available at [https://projects.propublica.org/nonprofits/display\\_990/540647482/09\\_2018\\_prefixes\\_52-55%2F540647482\\_201708\\_990\\_2018092515728662](https://projects.propublica.org/nonprofits/display_990/540647482/09_2018_prefixes_52-55%2F540647482_201708_990_2018092515728662).

<sup>17</sup> *Bon Secours Celebrates 55-bed Expansion at St. Francis Medical Center*, BON SECOURS HEALTH SYS., INC. (Dec. 14, 2021), <https://www.bonsecours.com/about-us/news/richmond/2021/bon-secours-celebrates-55-bed-expansion-at-st-francis-medical-center>.

<sup>18</sup> Conti & Bach, *supra* note 9.

<sup>19</sup> Thomas & Silver-Greenberg, *supra* note 11.

<sup>20</sup> *Id.*

- iv. Name and address of dispensing pharmacy. If the dispensing pharmacy was an onsite pharmacy, please note whether the pharmacy is wholly or partially owned by Bon Secours.
    - b. The specific dollar amount directly passed on to patients at Richmond Community Hospital, excluding offsite outpatient facilities registered as child sites, each year, categorized as:
      - i. Direct-to-patient savings on prescription medications, as defined as a discount on the total medical billings that patients otherwise would have been billed. Total medical billings should already include applicable federal programs, charity care, discounts, and adjustments from private and public health insurance programs.
      - ii. Direct-to-patient savings on medical billings other than prescription medications, as defined as a discount on the total medical billings that patients otherwise would have been billed. Total medical billings should already include applicable federal programs, charity care, discounts, and adjustments from private and public health insurance programs.
      - iii. Indirect patient savings. Please provide significant justification as to the form of the indirect patient savings, and how the patient was able to benefit from these savings.
    - c. The specific dollar amount spent on capital improvement, executive compensation, or other expenditures associated with:
      - i. Richmond Community Hospital, excluding offsite outpatient facilities. Please explain in detail how those funds were spent.
      - ii. Offsite outpatient facilities registered as a child site of Richmond Community Hospital, including primary care centers, community health centers, imaging centers, specialty care centers, and any other facilities. Please explain in detail how those funds were spent.
      - iii. Offsite outpatient facilities, medical centers, and other facilities offering health or medical services in the Richmond area as part of the Bon Secours system. Please explain in detail how those funds were spent.
3. Please provide copies of all documentation governing the relationship between Richmond Community Hospital and its offsite outpatient facilities registered as child sites, including how 340B revenue is generated and distributed throughout the Bon Secours system.
4. Please explain in detail how Bon Secours spends the revenue it generates from the 340B Program. In addition, please provide the following:

- a. Copies of all internal guidance documents and other policies and procedures explaining how Bon Secours spends 340B revenue. To the extent Bon Secours has any unwritten relevant policies or procedures, please explain them in detail.
  - b. A list of all Bon Secours officials who have authority over how the health system spends the revenue it generates from the 340B Program.
  - c. All records, including written and electronic communications, involving Bon Secours' senior leadership related to the expenditure of revenue generated from the 340B Program.
5. Please provide all written and electronic communications in which Bon Secours communicated with its provider staff in regard to the 340B Program. These communications should include all instances in which Bon Secours communicated (whether directly or indirectly) about provider incentives as it related to the 340B Program.

Thank you for your prompt attention to this matter.

*Bill Cassidy, M.D.*

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Bill Cassidy, M.D.  
Ranking Member  
Senate Committee on Health,  
Education, Labor and Pensions