

117TH CONGRESS  
1ST SESSION

# S. 773

To enable certain hospitals that were participating in or applied for the drug discount program under section 340B of the Public Health Service Act prior to the COVID–19 public health emergency to temporarily maintain eligibility for such program, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 16, 2021

Mr. THUNE (for himself, Ms. STABENOW, Mr. PORTMAN, Ms. BALDWIN, Mrs. CAPITO, and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To enable certain hospitals that were participating in or applied for the drug discount program under section 340B of the Public Health Service Act prior to the COVID–19 public health emergency to temporarily maintain eligibility for such program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. ELIGIBILITY EXCEPTION FOR THE DRUG DIS-**  
2 **COUNT PROGRAM DUE TO THE COVID-19**  
3 **PUBLIC HEALTH EMERGENCY.**

4 (a) **IN GENERAL.**—Notwithstanding any other provi-  
5 sion of law, a hospital described in subsection (b) that,  
6 for an applicable calendar quarter, otherwise meets the re-  
7 quirements for being a covered entity under subparagraph  
8 (L), (M), or (O) of subsection (a)(4) of section 340B of  
9 the Public Health Service Act (42 U.S.C. 256b) and is  
10 in compliance with all other requirements of the program  
11 under such section, but that, for such calendar quarter,  
12 does not meet the applicable requirement for the dis-  
13 proportionate share adjustment percentage described in  
14 subsection (c), shall be deemed a covered entity under  
15 such respective subparagraph for such applicable calendar  
16 quarter.

17 (b) **HOSPITALS.**—A hospital described in this sub-  
18 section is—

19 (1) an entity that, on the day before the first  
20 day of the COVID-19 public health emergency, was  
21 a covered entity described in subparagraph (L), (M),  
22 or (O) of subsection (a)(4) of section 340B of the  
23 Public Health Service Act participating in the drug  
24 discount program under such section; or

25 (2) an entity that—

1 (A) prior to the COVID–19 public health  
2 emergency, submitted an application for partici-  
3 pation in such program as a covered entity de-  
4 scribed in subparagraph (L), (M), or (O) of sec-  
5 tion 340B(a)(4) of the Public Health Service  
6 Act;

7 (B) prior to or during such emergency,  
8 was approved for such participation; and

9 (C) during such emergency, began partici-  
10 pating in such program.

11 (c) APPLICABLE REQUIREMENT FOR DISPROPOR-  
12 TIONATE SHARE ADJUSTMENT PERCENTAGE.—The appli-  
13 cable requirement for the disproportionate share adjust-  
14 ment percentage described in this subsection is—

15 (1) in the case of a hospital described in sub-  
16 section (a) that otherwise meets the requirements  
17 under subparagraph (L) or (M) of section  
18 340B(a)(4) of the Public Health Service Act, the re-  
19 quirement under subparagraph (L)(ii) of such sec-  
20 tion; and

21 (2) in the case of a hospital described in sub-  
22 section (a) that otherwise meets the requirements  
23 under subparagraph (O) of such section 340B(a)(4),  
24 the requirement with respect to the disproportionate

1 share adjustment percentage described in such sub-  
2 paragraph (O).

3 (d) DEFINITIONS.—In this section:

4 (1) APPLICABLE CALENDAR QUARTER.—The  
5 term “applicable calendar quarter” means a cal-  
6 endar quarter for which eligibility for the drug dis-  
7 count program under section 340B of the Public  
8 Health Service Act (42 U.S.C. 256b) is based on a  
9 cost reporting period for which the COVID–19 pub-  
10 lic health emergency is in effect for all or part of  
11 such cost reporting period.

12 (2) COVERED ENTITY.—The term “covered en-  
13 tity” has the meaning given such term in section  
14 340B(a)(4) of the Public Health Service Act (42  
15 U.S.C. 256b(a)(4)).

16 (3) COVID–19 PUBLIC HEALTH EMERGENCY.—  
17 The term “COVID–19 public health emergency”  
18 means the public health emergency declared by the  
19 Secretary of Health and Human Services under sec-  
20 tion 319 of the Public Health Service Act (42  
21 U.S.C. 247d) on January 31, 2020, with respect to  
22 COVID–19.

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