

U.S. Supreme Court Unanimously Rules In Favor Of Hospitals In 340B Decision

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On June 15, 2022, the U.S. Supreme Court [unanimously ruled to overturn](#) a 2020 decision out of the U.S. Court of Appeals for the District of Columbia Circuit sustaining the authority of the Department of Health and Human Services (HHS) to reduce payments to certain covered entities that participate in the 340B drug pricing program.

This decision could indicate that this Supreme Court may apply the textual meaning of statutes and regulations when ruling on future cases and controversies even outside of the 340B program.

The ruling states that the nearly 30 percent reduction in Medicare reimbursement for outpatient drug payments for hospitals participating in the 340B drug pricing program implemented in 2018 and 2019 were unlawful.

In his opinion, Justice Brett Kavanaugh specifically noted the reimbursement rate of the average sales price (ASP) plus 6 percent for non-340B hospitals remained the same. However, 340B hospitals received a reduced reimbursement rate of ASP minus 22.5 percent based on “an estimate from the Medicare Payment Advisory Commission that 340B hospitals obtained prescription drugs at an average discount of at least 22.5 percent below the average sales price charged by manufacturers.”

According to the ruling, HHS does not have the authority to reduce reimbursement rates for 340B hospitals without conducting a survey of the hospitals’ pharmaceutical acquisition costs. Because HHS did not conduct any surveys, the Court found that HHS’s 2018 and 2019 reimbursement rates for 340B acquired drugs at 340B hospitals were unlawful.

Justice Kavanaugh pointed out that “for ... 340B hospitals, this case has immense economic consequences, about \$1.6 billion annually.” As such, hospitals and other covered entities should calculate any lost reimbursement and continue to monitor the effects of this ruling, as they may be able to appeal and be entitled to additional reimbursement.

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