

340B Update: District Court Rejects 2022 Payment Methodology for 340B Hospitals Following Supreme Court Win

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We follow up on our [previous blog post](#) concerning the U.S. Supreme Court's unanimous [ruling](#) in favor of 340B hospitals. The Supreme Court previously held that “absent a survey of hospitals’ acquisition costs, HHS may not vary the reimbursement rates for 340B hospitals” and therefore, that HHS exceeded its statutory authority by varying the 2018 and 2019 rates for 340B hospitals without first conducting such survey.

On [remand](#), the American Hospital Association (and certain nonprofit hospitals) motioned to vacate the 340B reimbursement rate in the 2022 Outpatient Prospective Payment System (OPPS) on a prospective basis for the remainder of the 2022 year. The Court held in favor of the American Hospital Association, finding that the deficiency in the 2022 OPPS payment rule is serious due to a “patent violation” of the Medicare Act’s text requiring a survey of hospitals’ acquisition costs in order to vary reimbursement rates for a particular group of hospitals, and that HHS did not meet its burden of proof that overturning the 2022 340B reimbursement rate would cause substantial disruption.

The Court was not convinced by HHS’ arguments, stating in no uncertain terms that “HHS should not be allowed to continue its unlawful 340B reimbursements for the remainder of the year just because it promises to fix the problem later.” The Court goes on to note that any disruption to the budget resulting from immediate payment to 340B hospitals at the proper rate for the remainder of 2022 would be minimal in comparison to the overall time period at issue; that HHS has already begun preparing for budget issues as a result of the Supreme Court decision; and that proposed rulemaking for the 2023 OPPS payment rule has already been announced consistent with the Supreme Court decision.

The American Hospital Association also motioned to remedy, on a retrospective basis, all underpayments to 340B hospitals under the reimbursements rates established in OPPS Rules from 2018 to 2022. The Court indicated that this issue would be addressed separately, in part due to concerns voiced by non-340B hospitals regarding potential recoupments by HHS to fund the retrospective payments claimed by 340B hospitals.

We will continue to monitor regulatory and judicial developments affecting 340B hospitals.

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