



CMS imposes massive cuts on 340B program; Hospital associations' legal challenge dismissed

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On November 1, 2017, CMS issued a [final rule](#) that became effective January 1, 2018, under which hospitals serving a disproportionate share of low-income patients (DSH hospitals) will receive nearly 27 percent less in reimbursement for 340B-purchased drugs. Specifically, reimbursement on non-pass-through drugs will drop from average cost plus 6 percent to average cost minus 22.5 percent.

Excluded from the 2018 payment reduction are Sole Community Hospitals, children's hospitals, Critical Access Hospitals, PPS-Exempt Cancer Hospitals, any drugs on pass-through payment status and, notably, drugs administered in non-grandfathered provider-based departments. CMS did state, however, that it would consider adjusting payment for non-grandfathered provider-based departments for CY 2019. CMS has imposed a new modifier system to identify and track drug purchasing associated with the 340B program.

Some estimates of the cuts from the final rule predict savings of \$1.6 billion in 2018. However, because the cuts must be imposed in a budget neutral manner, CMS will increase OPPS reimbursement for all hospitals, including those hospitals not affected by the reduction, by 3.2 percent, representing a windfall to many non-340B hospitals.

Several national hospital associations, including the American Hospital Association and the Association of American Medical Colleges, filed a lawsuit challenging the reduction in drug reimbursement, claiming that CMS exceeded its authority by adjusting payment for drugs under the 340B program. On December 29, 2017, however, a federal judge dismissed the lawsuit on

procedural grounds, finding that the associations had not appropriately alleged actual harm under the rule. The associations have indicated that they will refile the lawsuit following imposition of the cuts.

The drug reimbursement cuts, budget-neutrality OPPS increases and exception of non-grandfathered provider-based departments from the cuts have complicated analysis and management for hospitals relative to the opening of new provider-based clinics and location-level oversight of 340B program participation.

Authors

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