



Federal court invalidates CMS site-neutral payment cuts for hospital off-campus provider-based locations

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On September 17, 2019, the United States District Court for the District of Columbia ruled that the Center for Medicare and Medicaid Services (CMS) exceeded its authority and failed to follow the statutory process for setting Medicare payment rates when it implemented its site-neutral payment policy last year in the CY 2019 Medicare Outpatient Prospective Payment System [Final Rule](#). The CMS policy reduced payments in excepted off-campus provider-based locations for certain commonly-billed services to the amount CMS pays in physician offices. (Read our overview of the policy's parameters in [this publication](#) and [this publication](#).)

CMS introduced the policy in the Final Rule and proposed to continue it in the CY 2020 Outpatient Prospective Payment System (OPPS) [Proposed Rule](#). However, in granting summary judgment to a group of hospitals, in [American Hospital Association v. Azar](#), the district court ruled that CMS had overstepped its statutory authority when it cut OPPS reimbursement in excepted off-campus provider-based departments. It also found that CMS' stated goal of reducing expenditures under the Medicare program was in direct opposition to the budget-neutral requirements of the statutes governing changes to payments under the OPPS.



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The district court's ruling will stop CMS from reducing payment rates to hospitals by a projected \$380 million in CY 2019 alone and \$760 million in CY 2020. How CMS will repay hospitals for the past improper payment reductions is still being resolved in the case. The district court's ruling is also likely to affect the CY 2020 OPPS Final Rule to be released later this year. CMS may have to retreat from its proposal to continue the payment reductions.