

THOUGHT LEADERSHIP

LEGAL UPDATES

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340B Drug Pricing Program
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340B Medicare Reimbursement Cuts Ruled Unlawful by Supreme Court

Today, the U.S. Supreme Court ruled in favor of the American Hospital Association and against the Department of Health and Human Services (HHS), holding that the 2018 and 2019 Medicare reimbursement cuts for 340B hospitals were unlawful. The Supreme Court reasoned that the Medicare statutes require HHS to conduct a survey of hospitals' acquisition costs for each covered outpatient drug in order to set reimbursement rates and, because HHS did not conduct the requisite survey, HHS unlawfully reduced the reimbursement rates for 340B hospitals. The opinion reversed the decision of the U.S. Court of Appeals for the D.C. Circuit and the case is now remanded for further proceedings consistent with the opinion.

This is great news for 340B hospitals; however, the ruling is fairly narrow in that it only states that HHS did not complete the requisite hospital cost survey and analysis before setting the reimbursement rate for specific hospital types (340B hospitals vs. non-340B hospitals). This could allow HHS to implement future reimbursement reductions so long as they conduct the necessary survey.

The Court also referenced, but did not opine on, the larger 340B policy issue that the purpose of the 340B Program is to stretch scarce resources as far as possible to better serve the nation's most vulnerable patient populations and that HHS' reduction in reimbursement to 340B covered entities significantly defeats the intended effect of the 340B Program. This ruling comes amidst ongoing litigation concerning efforts by manufacturers to significantly limit 340B contract pharmacy savings.

The Court also did not address whether HHS would be required to retrospectively reconcile the reimbursement reductions, nor has HHS indicated whether they will remediate the cuts proactively. The lower courts may take up any remediation steps HHS must take, but the ruling may provide

an opportunity for affected 340B hospitals to pursue recoupment of the reimbursement differential.

What this means to you

340B covered entities should begin calculating the reimbursement they should have received had the Medicare reimbursement reductions never been implemented and consider submitting reimbursement appeals to the Centers for Medicare & Medicaid Services. Our attorneys at Husch Blackwell are experienced in these analyses and handling reimbursement appeals.

Contact us

For questions related to the 340B Drug Pricing Program, contact Daniel Avants, Tiffany Hetland, Amanda Bogle or your Husch Blackwell attorney.