



Weekly Checkup

340Blues

JACKSON HAMMOND | JULY 14, 2023

Last Friday, the Centers for Medicare and Medicaid Services (CMS) [announced](#) that it would be repaying \$9 billion to hospitals participating in the 340B Program as compensation for reduced payments from 2018-2022, paid for by annual cuts to Medicare Part B payments over the next 16 years. **Let's dive into why CMS owes 340B hospitals this money, why it needs to be paid for via payment cuts, and what it means for providers.**

As [previous American Action Forum insights](#) have discussed, the 340B Program requires pharmaceutical manufacturers to give discounts on drugs to certain “safety-net” hospitals in order to participate in Medicaid and other federal insurance programs. In turn, hospitals are allowed to sell those drugs above acquisition cost and use the funds to “stretch scarce federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.” Normally, the entity [paying the inflated costs](#) is either the patient or the insurer - including Medicare under the Outpatient Prospective Payment System (OPPS), the payment system used for Part B outpatient care. Prior to 2018, OPPS would generally pay hospitals the average sales price (ASP) plus 6 percent for a drug, regardless of whether the drug received a 340B discount. The [2018 OPPS final rule](#) changed that rate to ASP minus 22.5 percent, reasoning that Medicare dollars also fell under “scarce federal resources” that needed to be stretched, and in 2019 that change was included in the Physician Fee Schedule (PFS). The 22.5 percent number originated from a Medicare Payment Advisory Commission (MedPAC) [analysis](#) that estimated the average *minimum* discount that 340B hospitals received for drugs was 22.5 percent. **Due to budget-neutrality rules in Medicare, the estimated savings from this policy change were redistributed to all providers paid under OPPS by increasing payment rates for non-drug items and services furnished by those providers, and between 2018-2022, that amounted to a total of \$7.8 billion in increased payments.**

Naturally, 340B hospitals didn't like seeing their profits slashed and immediately sued.

Their case ended up before the Supreme Court, which ruled in June of 2022 that because CMS had not conducted a survey of hospitals' acquisition costs, it could not vary the payment rates by hospital group. **The courts determined that CMS needed to pay 340B hospitals the difference between what they were paid versus what they should have been paid had the rate change never gone into effect, which amounts to \$9 billion.** To ensure budget neutrality for the \$7.8 billion spent on non-drug items and services, CMS has proposed to reduce future non-drug item and service payments by adjusting the OPPS conversion factor by minus 0.5 percent, beginning in 2025 and continuing for the next 16 years, exempting providers who enrolled in OPPS after January 1, 2018.

CMS now has another conundrum: Providers that haven't participated in the 340B Program - and thus didn't see the same level of benefit as those that have - are about to see their payments cut for the next 16 years. In theory, this isn't a cut because providers received an additional \$7.8 billion they otherwise wouldn't have, but take a look at the last 20 years of "doc fixes" and it's obvious that providers are never in the mood to see their payments go down. This all could have been avoided if the 340B Program didn't allow participating hospitals to take advantage of public benefits programs such as Medicare in the first place. **If Congress wants to be true to its own stated intent of the 340B Program, it should help "stretch scarce federal resources" by preventing Medicare's resources from unnecessarily padding hospitals' bottom lines.**