

PUBLICATION

Continued Contention over CMS 340B Drug Payment Policy

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In a major development last fall, the Centers for Medicare and Medicaid Services (CMS) finalized its proposal to pay hospitals less for certain physician-administered drugs purchased through the 340B Drug Discount Program. Starting January 1, 2018, CMS would begin reimbursing separately payable, non-pass-through drugs and biologicals purchased through the 340B program at a rate of average sales price (ASP) minus 22.5 percent, rather than the current reimbursement rate of ASP plus six percent.

Hospitals have vowed to fight CMS' 340b drug payment policy through legal or legislative remedies. The American Hospital Association, Association of Medical Colleges, and America's Essential Hospitals filed a lawsuit against the Department of Health and Human Services (HHS) to prevent the cuts. However, on December 29, 2017, a federal court gave CMS an initial victory by ruling that the hospitals contesting CMS' authority would need to present claims for Medicare reimbursement and may need to exhaust administrative remedies regarding the adjudication of those claims before the courts would have jurisdiction on the issue. Therefore, although the door to legal challenges of CMS' 340B drug payment policy remains open, the policy is now in effect.

Reportedly, bipartisan interest remains in Congress for stopping the 340B reimbursement cuts, with some lawmakers in both the House and Senate pushing to do so as part of the recently-passed year-end spending legislation. However, a 340B legislative fix was not included in the year-end spending bill or the recently-passed Continuing Resolution (CR) to fund the government until February 8. Hospital advocates and some lawmakers continue to express interest in enacting legislation to avert the 340B rate cuts. One opportunity to include a legislative fix may arise as part of upcoming legislation on Medicare extenders, which may be taken up early this year. It remains uncertain whether lawmakers will be able to reach an agreement.