

## Insights

### Judge Allows Reduced 340B Payments, Effective 1/1/2018

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CMS' November 1, 2017 Outpatient Prospective Payment System ("OPPS") Final Rule (the "Final Rule") implemented sweeping changes to the 340B Discount Drug Program, including a 28.5% payment reduction in certain 340B covered entities' Medicare Part B drug reimbursement.

In response, three hospital groups and three 340B covered entities sued the U.S. Department of Health and Human Services (HHS) in the U.S. District Court for the District of Columbia to prevent these cuts from starting on January 1, 2018. The lawsuit argued that the 340B provisions of CMS' Final Rule violate the law and, therefore, should be set aside under the Administrative Procedure Act as unlawful and in excess of the HHS Secretary's statutory authority.

On December 29, the court dismissed the lawsuit on procedural grounds.<sup>[1]</sup> The court determined that the hospitals have not yet presented a specific claim for reimbursement that has received the reduced payment rate. The decision allows the plaintiff associations and providers to renew the matter to reverse CMS' payment cut at some future date, as the court never addressed the plaintiffs' base issue: whether CMS has the legal authority to reduce payments to 340B hospitals. The plaintiffs' immediately communicated their intention to continue efforts to reverse the payment reductions.<sup>[2]</sup>

As a result of the ruling, 340B hospitals paid under the OPPS will have to comply with CMS' Final Rule. As such, for services provided on or after Jan. 1, 340B hospitals paid under the OPPS must use modifiers to identify certain 340B-acquired drugs furnished to Medicare beneficiaries. More information regarding the OPPS 340B changes can be found in our [earlier article](#). We are monitoring progress of the proceedings and will provide updated information as it becomes available.

If you are questions regarding the 340B discount drug program or the 2018 OPPS Final Rule, please contact Leah S. Mannweiler.

[1] [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2017cv2447-24](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2017cv2447-24)

[2] <http://www.modernhealthcare.com/article/20171229/NEWS/171229919>