

Report on Medicare Compliance Volume 31, Number 36. October 03, 2022 Hospitals Win Another 340B Decision, but Dollars May Not Come Fast

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In another win for hospitals on the 340B drug front, on Sept. 28 a federal court threw out CMS's 2022 payment rate in the wake of the Supreme Court's June 15 decision that massive cuts to 340B drug payments are "unlawful."^[1]

"HHS should not be allowed to continue its unlawful 340B reimbursements for the remainder of the year just because it promises to fix the problem later," the U.S. District Court for the District of Columbia ruled.^[2]

The 2022 payment rate was lower than average sales price (ASP) plus 6%, which is what CMS paid for 340B drugs before it slashed reimbursement to ASP minus 22.5% in the 2018 and 2019 Outpatient Prospective Payment System (OPPS) rules, setting in motion a four-year court battle. But the new decision only puts part of the 340B debate to rest. The court still must rule on how CMS will make hospitals whole for 340B payment cuts from 2018 through the date of the decision. Meanwhile, CMS in the 2023 proposed OPPS rule said it will pay ASP plus 6% moving forward consistent with the Supreme Court decision.

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