

November 2, 2023

CMS Finalizes Remedy for 340B Hospital Backpay

CMS Assuages Hospitals with 2026 Non-Drug Haircut (vs. 2025)

Relevant Companies



From 2018 through September 27 of 2022, CMS paid a lower rate (generally ASP less 22.5 percent) to certain hospitals for drugs acquired through the 340B discount program. In the final CMS rule issued this evening ([here](#)), CMS addresses their remedy for the 340B payments to impacted entities.

»» Our Take & Next Up

Consistent with proposal, CMS will make one-time lump sum payments to 340B covered entities by taking non-drug payments from publicly traded and other non-340B entities (2026+). This amount is calculated as the difference between what the hospitals were paid for 340B drugs during the relevant time period (CY 2018 through 3Q22) and what they would have been paid if 340B payment policy had not been applied. The lump sum payments will not affect beneficiary cost sharing. We note that publicly traded hospitals would be on the giving end of the \$8 B (over 16 years), to 340B entities whose pay was curtailed by ASP-22% from 2018-2022.

»» Key Points

CMS updated the start date for -0.5% adjustment from 2025 (proposed) to CY 2026 (final), for reduced payments to non-drug items and service payments to comply with budget neutrality requirements. The adjustment will begin in CY 2026 and be in place until a total offset of \$7.8 B is reached, approximately 16 years.

As a reminder, the American Hospital Association (AHA) vociferously urged HHS not to recoup funds with the -0.5% adjustment (See [here](#)). However, if HHS did pursue this recoupment, AHA stated they should either (1) drastically reduce the overall amount and (2) delay any recoupment to 2026 or later. CMS partially complied with their requests pushing the recoupment off until CY 2026.

CMS increased estimates that hospitals received approximately \$10.6 B less in 340B drug payments due to the policy compared to \$10.5 B (estimates in proposed). The agency estimates that hospitals have already received \$1.6 B in payments, but they still will need to pay hospitals the remaining \$9 B.

CMS finalizes estimates that total expenditures due to the changes are estimated to be -\$2.8 B for the federal government, taking into account the +\$9 B in additional payments to the 1,700 340B affected entities and the -\$6.2 B in reduced Medicare prospective payments for non-drug items and services beginning in CY 2026.

Similar to the proposed, CMS will make the additional payments at the end of CY 2023 or the beginning of CY 2024, after the rule has been finalized and the Medicare Administrative Contractor (MAC) instructions for each 340B entity have been issued. Payments will be made no later than 60 days after the receipt of MAC instructions.

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