

Supreme Court Decides Unanimously in Favor of 340B Hospitals

On June 15, the [U.S. Supreme Court decided unanimously](#) in favor of American Hospital Association and other interested groups that the U.S. Department of Health and Human Services (HHS) acted unlawfully in issuing cuts to 340B hospitals.

The case dated back to cuts made in the 2018 Outpatient Prospective Payment System rule which cut payments to 340B hospitals by about 30%. This amounted to approximately \$40 million in cuts annually to around 20 340B hospitals in Wisconsin. The case had [bounced back between a number of decisions](#) before finally making its way to the Supreme Court.

The Supreme Court ruled that HHS acted unlawfully in issuing the cuts because the federal statute does not give HHS authority to create different payment rates for different types of hospitals unless it first surveys hospitals to determine their average acquisition costs. While HHS attempted to survey hospitals in 2020 in the midst of this litigation, it did not complete any surveys prior to the cuts originating in 2018. HHS even conceded during court arguments that such surveys are "very burdensome" and do not "produce results that are all that accurate."

In the decision, the court explained that as an alternative to conducting a survey of hospitals' acquisition costs, it could ask Congress to change the law, but that it very well may run into challenges there.

"Of course if HHS went to Congress, the agency would presumably have to confront the other side of the policy story here: 340B hospitals perform valuable services for low-income and rural communities but have to rely on limited federal funding for support. As amici before this Court, many 340B hospitals contend that the Medicare reimbursement payments at issue here 'help offset the considerable costs' that 340B providers 'incur by providing health care to the uninsured, underinsured, and those who live far from hospitals and clinics'"

Ultimately, the court did not lay out a remedy to repay 340B hospitals, instead electing to remand the case for further proceedings consistent with the opinion. While HHS has contended that a remedy would require offsets elsewhere to retain budget neutrality, the court noted hospitals responded that various potential remedies could make 340B hospitals whole without running afoul of budget-neutrality requirements. At this point, it remains unclear what a potential remedy will look like or in what timeframe it will occur.

HHS, likewise, has not indicated whether it intends to survey hospitals to obtain the acquisition cost data necessary to justify future 340B reimbursement adjustments.

WHA will continue to closely follow this issue as it continues to develop. Contact WHA Vice President of Federal and State Relations [Jon Hoelter](#) with questions.