

WHA Urges CMS to Not Punish Hospitals for its Own Mistake in Underpaying 340B Hospitals

On Sept. 8, WHA commented on the Department of Health and Human Services (HHS's) proposed remedy to repay hospitals for its [illegal actions to decrease payments to 340B hospitals beginning in its CY 2018 outpatient payment rule](#).

In addition to the American Hospital Association (AHA) and other hospital groups that sued HHS for its actions to decrease the payments counter to federal law, WHA supported the proposal by HHS to promptly repay hospitals for these actions. Specifically, HHS is proposing to repay hospitals with a one-time lump sum payment for the shortfall 340B hospitals received from 2018-2022. Additionally, WHA requested the Centers for Medicare & Medicaid Services (CMS) give hospitals the opportunity to appeal the amounts listed in the proposed remedy for hospitals that have come to a different calculation on their shortfalls, and additionally, provide more transparency about how these amounts were calculated.

However, as WHA has previously said in past comment letters, it strongly urged HHS not to punish hospitals for CMS's own actions by trying to claw back these funds through a budget neutrality policy. As the AHA laid out in its own comment letter, the statutes HHS relies on in its justification for its proposed budget neutrality policy neither require them, nor do they give them the actual authority they seek to claw back these funds. WHA urged CMS to abandon this policy, or at the very least pursue a much more modest recoupment while delaying the impact of when this would take effect, given the tough financial times many hospitals have experienced in recent years.

In addition to these two items, WHA also urged CMS to hold Medicare Advantage Organizations (MAOs) accountable when enacting this policy. While CMS reminded MAOs in December of 2022 that they need to revert to paying 340B hospitals the full amount of what they are owed, some MAOs have reportedly not followed these instructions. It will be even more important for CMS to enforce this policy given the fact that MAOs would potentially receive a windfall if CMS goes through on its recoupment policy but does not recoup funds from MAOs.

You can read WHA's full comment letter [here](#).

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