

## HHS Issues Final Remedy to Repay 340B Hospitals for Unlawful Cuts

On Nov. 2, the U.S. Department of Health and Human Services (HHS) issued its final rule outlining its remedy required by a unanimous U.S. Supreme Court decision which determined HHS acted unlawfully in cutting payments to 340B Prospective Payment System (PPS) hospitals.

The final rule largely follows HHS's proposed repayment plan issued in July [as covered in a past edition of \*The Valued Voice\*](#). It sets forth repayment terms as follows:

- HHS will repay impacted 340B PPS hospitals in one lump sum payment from their Medicare Administrative Contractor in the first quarter of 2024.
  - The payment calculations are included in an addendum to the final rule [on the CMS website](#).
  - Any hospital that believes their lump-sum payment has been calculated incorrectly may e-mail [outpatientpps340B@cms.gov](mailto:outpatientpps340B@cms.gov) by 11:59 p.m. on Nov 30, 2023. Submissions must include (1) a description of the nature of the error; (2) a designated contact person for the purposes of addressing the error; and (3) relevant supporting documentation such as claim numbers, total units, payment amount received, date of payment.
- Despite protests from WHA, AHA and other provider groups, HHS finalized its proposal to recoup funds from hospitals that received increased rates for non-drug services from 2018-2022 as a result of the Centers for Medicare & Medicaid Services (CMS) applying a budget neutrality provision for the initial 340B cuts. CMS will recoup these funds by adjusting the OPSS conversion factor by minus 0.5%. However, CMS will begin recouping these funds one year later (starting in calendar year 2026) than it originally proposed and over the course of 16 years to spread out the impact of recouping these funds.
- WHA had joined AHA and other provider groups in urging CMS to address concerns related to Medicare Advantage Organizations not appropriately reimbursing hospitals for 340B underpayments over the same time period. However, HHS said it was outside the scope of this final rule for them to address this and that it does not have authority to interfere in payment rates MAOs set in contracts between providers and facilities.

Contact WHA's VP Federal and State Relations [Jon Hoelter](#) with questions.

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