

## HHS Releases Proposed Plan to Pay Back 340B PPS Hospitals

On July 7, the U.S. Department of Health and Human Services (HHS) released its proposed remedy for paying back 340B hospitals paid under the prospective payment system (PPS).

This followed [last year's unanimous Supreme Court decision](#) ruling that HHS had acted unlawfully in proposing cuts to Medicare reimbursement for 340B drugs purchased by 340B hospitals. Such cuts in Wisconsin amounted to about a \$40 million annual loss spread across nearly 20 Wisconsin hospitals.

In what appears to be a major win for the impacted hospitals, the Centers for Medicare & Medicaid Services (CMS) is proposing to pay back impacted hospitals in a single lump sum.

While this is good news for the impacted 340B hospitals, CMS is also continuing to insist that it must offset these reimbursements to meet requirements of budget neutrality. In other words, because CMS had applied the 340B cuts in a budget-neutral manner, non-340B PPS hospitals had received higher payments in non-drug services from 2018 to 2022. To rectify this, CMS is proposing to fully offset these higher payments over a period of 16 years in the future.

WHA had joined the American Hospital Association and other hospital groups in urging CMS to hold non-340B hospitals harmless when CMS asked for comments on how it should remedy these cuts. In WHA's [comment letter](#), WHA President and CEO Eric Borgerding wrote, "Hospitals were not responsible for CMS's decision to make the prior unlawful payment cuts, and they should not be penalized for CMS's decision." WHA also noted that CMS had no legal basis for recouping payments that had already gone out based on prior years' payment rules.

In the remedy proposed by CMS, the department agreed that it would not ask for these funds to be repaid in the form of a claw back. However, it proposes to continue its application of budget neutrality on a prospective basis, by reducing the outpatient prospective payment system (OPPS) conversion factor by minus 0.5% in future payment rules (beginning in CY 2025) for 16 years until the full amount of 340B repayments is offset.

**The deadline to offer comments on this proposed remedy by HHS is Sept. 5, 2023.** Contact WHA Vice President of Federal and State relations [Jon Hoelter](#) with questions.

### Other Articles in this Issue

- [Wisconsin Hospitals State PAC and Conduit Fundraising Exceeds \\$200,000 Milestone](#)
- [HHS Releases Proposed Plan to Pay Back 340B PPS Hospitals](#)
- [Innovative and Complimentary Webinar Series for WHA Members](#)
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