

Report on Medicare Compliance Volume 31, Number 22. June 20, 2022

Supreme Court: 340B Drug Payment Cuts Are 'Unlawful;' Hospitals Face JG Modifier Decision

By Nina Youngstrom

In a June 15 decision, the Supreme Court called CMS's massive cuts to 340B drug payments "unlawful," but it may be months or years before dollars are flowing back into hospitals' bank accounts, an attorney said.^[1] Although the high court sided with hospitals, the decision sends the case back to the lower courts "for further proceedings," and it will be up to CMS to make things right. Some answers may be only weeks away in the 2023 outpatient prospective payment system (OPPS) proposed rule.

"The ball is in CMS's court and the devil will be in the details," said attorney Andy Ruskin, with K&L Gates in Washington, D.C. Now hospitals have to figure out whether to immediately stop reporting the JG modifier for drugs and biologicals acquired with the 340B drug discount, which triggers the payment cut, he noted. "That is a soul-searching decision hospitals have to make." There's nothing between the lines of the Supreme Court decision about it or anything yet from CMS.

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