

Report on Medicare Compliance Volume 32, Number 25. July 17, 2023 CMS Proposes Lump-Sum Payment as 340B Remedy; Jury's Out on MA Side

By Nina Youngstrom

To end the long-running saga over 340B drug payment cuts, CMS would pay hospitals \$10.5 billion but also reduce outpatient base payments 0.5% annually starting in 2025, according to a proposed regulation published in the *Federal Register* July 11.^[1] The proposal is CMS's solution for returning money to hospitals in the wake of the Supreme Court decision calling the 2018 Medicare payments cuts to 340B drugs "unlawful."^[2] It looks like hospitals are on their own, however, when it comes to Medicare Advantage (MA) plans, attorneys said. They followed suit when CMS cut 340B payments from average sales price (ASP) plus 6% to ASP minus 22.5% in the 2018 outpatient prospective payment system (OPPS) rule, but the proposed rule is silent on MA plans and CMS doesn't usually get in between providers and their MA contract terms.

CMS said that failing to budget neutralize the lump-sum payment would result in a "windfall" to hospitals, especially non-340B hospitals that didn't experience a drop in drug payments from 2018 to 2022. "This proposal to avoid a windfall to providers would also be consistent with the agency's longstanding inherent and common-law (and common-sense) recoupment authority, through which 'the Secretary generally has the duty and power to protect against overpayments to providers,'" according to the proposed rule.

Some experts expressed appreciation for the lump-sum payment but CMS calling it a windfall and tacking on a future payment cut doesn't sit well with everybody. "Blaming it on hospitals as if they had somehow gamed the system to obtain a 'windfall' shows a lack of contrition," said attorney Andrew Ruskin, with K&L Gates in Washington, D.C. "It's like they're trying to punish providers for their loss at the Supreme Court."

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)