

New Medicare Proposals that Reduce Payment to Hospitals for 340B Drugs in 2018

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On July 13, 2017, CMS released several proposed rules impacting health care, including the 2018 Outpatient Prospective Payment System (OPPS) proposed rule [available here <https://s3.amazonaws.com/public-inspection.federalregister.gov/2017-14883.pdf>] which, among other proposals, could have a significant impact on 340B covered entities. The proposed rule states that CMS will change how Medicare pays hospitals that participate in the 340B program for the drugs they acquire under the program in order to address increasing drug prices. CMS stated that its current reimbursement rates, "...allow[s] these providers to generate significant profits when they administer Part B drugs." Specifically, CMS proposes to reduce its reimbursement to hospitals for certain 340B covered drugs from the average sales price (ASP) plus 6 percent (which is the current reimbursement for prescription drugs paid by Medicare) to ASP minus 22.5 percent. Drugs that are on pass-through status and vaccines would be excluded from the proposed reduction. CMS addressed its proposal in a fact sheet it released on the same day [available here: <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-07-13.html>]

CMS explained, "Such changes would allow the Medicare program and Medicare beneficiaries to share in some of the savings realized by hospitals participating in the 340B program." CMS emphasized that because Medicare beneficiaries pay a portion of the cost of the drug (20%) based on the amount Medicare paid for the drug, regardless of the actual cost to the hospital for acquiring the drug, CMS' proposed reduction in Medicare reimbursement would also help beneficiaries of the Medicare program save money. The estimated total impact of the reduction to 340B covered entities' reimbursement is approximately \$900 million dollars.

According to CMS, this significant reduction in 340B drug reimbursement is consistent

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with what the Medicare Payment Advisory Commission (MedPAC) estimated to be the average minimum discount hospitals receive for 340B acquired drugs. CMS noted that the 22.5% figure was a conservative number, since more recent MedPAC estimates show the average discount being closer to ASP minus 33.6%, and because the U.S. Government Accountability Office (GAO) estimates the discount to range from 20 to 50 percent compared to what the hospitals would have otherwise paid.

In further support of its proposed reduction to 340B drug reimbursement, CMS questioned the benefit of the 340B program overall by citing research showing that Medicare beneficiaries at disproportionate share hospitals (DSH) generally spent *more* on prescription drugs than patients at hospitals that did not participate in the 340B program. CMS cited a 2012 GAO study of Medicare beneficiary Part B drug spending at DSH hospitals which found the average beneficiary spending there was \$144, compared to \$60 at non-340B hospitals. CMS reported that the discrepancies could not be explained by unique characteristics of the hospitals in the study or by the health status of the patients. CMS believes the studies indicate the 340B DSH hospitals were either prescribing more drugs or more expensive drugs compared to non-340B hospitals in the study. CMS hopes to learn more about the discrepancy through the use of a new claims modifier that it proposes be established to better track drugs that are billed under OPPS and purchased under the 340B program.

In addition to the OPPS proposed rule, early drafts of the Trump administration's proposed executive order rolling back the 340B program have led to much speculation that there will be future limitations on 340B contract pharmacy arrangements, among other changes to the program. There is a Congressional Hearing scheduled for July 18, 2017 regarding 340B Program Oversight where representatives from HRSA and HHS-OIG will be testifying. Hospitals, contract pharmacies and others affected by the 340B program should continue to closely monitor these changes which could have a significant impact on 340B operations across the country.