

November 8, 2022

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
M E M O R A N D U M**

SUBJECT: Update on 340B Drug Pricing Program

On Nov. 3, the Centers for Medicare & Medicaid Services (CMS) released its calendar year (CY) 2023 outpatient prospective payment system (OPPS) [final rule](#). In this rule, CMS finalized a CY 2023 reimbursement rate of average sales price (ASP) plus 6% for 340B-acquired drugs and biologicals, defaulting to the typical payment rate for separately payable drugs and biologicals under the OPPS.

CMS also removed the increase to the OPPS conversion factor that was made in CY 2018 when it first decreased 340B reimbursement. Instead, CMS will apply a budget neutrality factor of 0.9691 to the final CY 2023 OPPS conversion factor to account for restored 340B reimbursement. CMS cited [Social Security Act sections 1833\(t\)\(9\)\(B\) and \(t\)\(14\)\(H\)](#) in defense of this budget neutrality adjustment. These sections state that adjustments to payments under the OPPS may not cause the estimated amount of expenditures for that year to differ from the estimated amount of expenditures that would have been made otherwise.

CMS increased 340B reimbursement in response to the June 15, 2022 Supreme Court decision in [American Hospital Association v. Becerra](#). The Court found that the U.S. Department of Health and Human Services may not vary payment rates for drugs and biologicals among groups of hospitals without conducting a survey of those hospitals' acquisition costs. The decision was specific to payment rates for CYs 2018 and 2019, but CMS stated the decision has clear implications for CYs 2020 through 2023 as well.

Prior Year Claims

CMS is still evaluating how to remedy 340B payments for CYs 2018 through 2022. CMS stated it will address a remedy in separate rulemaking prior to the CY 2024 OPPS proposed rule. However, on [Sept. 28, 2022](#), the U.S. District Court for the District of Columbia vacated the 340B reimbursement rate of ASP minus 22.5% for the remainder of CY 2022.

In response to the district court's ruling, CMS sent all Medicare Administrative Contractors (MACs) updated files for 340B reimbursement. Of note, 340B claims with dates of service from Sept. 28, 2022 through the end of the year should be paid at ASP plus 6%.

Additionally, both [National Government Services](#) (NGS) and [Wisconsin Physicians Service](#) (WPS), the two MACs associated with Illinois hospitals, have released guidance specific to payments for 340B claims with dates of service from Jan. 1, 2022 through Sept. 27, 2022. The guidance varies

by MAC, and 340B hospitals should contact their MAC to initiate the MAC's specific process for reprocessing CY 2022 claims for payment adjustment. Please note that the district court's decision was specific to CY 2022 340B claims, and did not speak to dates of service prior to Jan. 1, 2022.