Hospitals Push Back Against HHS Slashing of Reimbursement Rates

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(Photo via Pixabay)

WASHINGTON — The Department of Health and Human Services slashed 30% in Medicaid reimbursement rates to eligible hospitals under the 340B drug discount program.

The program, which has existed for 29 years, requires manufacturers of pharmaceutical companies under the Medicaid program to discount the price of prescription drugs and reimburse the savings to facilities and hospitals which primarily serve vulnerable communities, such as low-income and rural populations.

"Rural hospitals that are impacted by the on-going 340B payment cuts, many of which were already facing significant financial challenges, are deprived of an

important source of support for the services that they provide to their communities," said Emily Cook, a partner at McDermott Will & Emery LLP who previously worked for the Federal Office of Rural Health Policy, in a phone interview with The Well News.

Now, the American Hospital Association, the Association of Medical Colleges, and other supporters have filed a petition with the Supreme Court, based on, among other reasons, the fact that HHS did not collect adequate hospital acquisition cost survey data prior to slashing the reimbursement rate and that the payment cuts exceed HHS authority to set Medicare payment rates.

In 2018, the Centers for Medicare and Medicaid Services began reducing the payment rate for drugs purchased through the 340B program based on a report from 2005 that calculated the acquisition costs for 340B drugs.

CMS claimed it had the authority to make the payment reductions for 340B drugs reimbursed under Hospital Outpatient Prospective Payment System, known as OPPS, and indicated that the reductions would decrease government spending and out-of-pocket costs for Medicare beneficiaries.

However, the U.S. District Court for the District of Columbia found that CMS had exceeded its statutory authority in December 2018.

According to Cook, whether or not CMS had authority to make these reductions under federal law depended on two provisions, one of which directs HHS to conduct a survey to provide proof that the reimbursement for such drugs is equal to the average acquisition cost for the drug.

"There is a provision in statute that does indicate that if HHS conducts a survey of acquisition costs, they are able to adjust payment rates for drugs paid under OPPS to acquisition costs. The argument that is being made by hospitals is that HHS has not conducted such a survey, and it was reasonably clear they had not conducted such a survey prior to implementing the payment cuts," said Cook.

Cook said that HHS did conduct a survey after the fact, as HHS issued a survey last year in the middle of the pandemic to gather information on acquisition costs

to further support their ongoing pay cuts.

In July 2020, the DC Court of Appeals for the District of Columbia Circuit reversed the decision and found that CMS had authority to reduce Medicare payment rates for 340B drugs.

CMS later released a 2021 proposed rule for Medicare OPPS in August of the same year and has proposed applying the same cuts for 2022 that applied in prior years.

On Sept. 24, a letter was filed by five hospital associations, including the Children's Hospital and Catholic Health Association, to the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Energy and Commerce, and the House Ways and Means Committee, expressing the value of 340B in improving health outcomes for underserved patients in the country.

In the letter, the hospital associations urge Congress to ensure the legislation under consideration does not harm the program and providers and patients who rely on it.

"It will be interesting to see where the court comes out on this, and whether they view the implementation of these payment cuts as consistent with the statute, and whether ultimately adjusting the payment rate in this manner based on the data that is available to HHS is consistent with what Congress intended," said Cook.

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