

CMS moves forward with controversial reductions in Medicare reimbursement for 340B drugs

November 2, 2017

On November 1, 2017, the Centers for Medicare & Medicaid Services (CMS) posted a display copy of its final rule regarding the Medicare outpatient prospective payment system (OPPS) for Calendar Year (CY) 2018. (The final rule will be published in the *Federal Register* on November 13, 2017.) Among other things, the CY 2018 OPPS rule announced that CMS intends to dramatically reduce Medicare Part B reimbursement amounts for separately payable outpatient drugs (excluding vaccines and drugs on pass-through payment status) acquired under the 340B drug pricing program, as authorized under Section 340B of the Public Health Service Act (42 USC § 256b) (the 340B Program). Up till now, CMS has reimbursed most 340B drugs at the average sales price (ASP) *plus* six percent, pursuant to the existing Medicare Part B drug payment methodology. Under the new rule, CMS, beginning on January 1, 2018, will pay ASP *minus* 22.5 percent for Part B drugs purchased through the 340B Program. (To implement the changed payment policy, hospitals will be required to use modifiers to identify whether a drug billed under the OPPS was purchased under the 340B Program.)

According to CMS, the new payment methodology will save an estimated \$1.6 billion in lower payment for OPPS drugs, which savings will be used to increase the conversion factor for all OPPS non-drug items and services by 3.2 percent. It is anticipated that this change will largely benefit private for-profit hospitals and community mental health centers to the detriment of non-profit, public, and teaching hospitals. Certain hospitals — such as children's hospitals and PPS-exempt cancer hospitals — are exempted from the reimbursement reduction in 2018.

This change to Medicare drug payment policy is both significant and controversial. Within hours of the final rule's release, three major hospital associations — the American Hospital Association, the Association of American Medical Colleges, and America's Essential Hospitals — announced that they intend to sue CMS to stop implementation of this provision.

The Dentons Health Care Practice Group will continue to monitor and keep you informed of developments relating to the reimbursement of Medicare 340B drugs and provide our clients and friends with updates at appropriate intervals. In the interim, please reach out to any one of us with questions.

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