U.S. Supreme Court Holds HHS Unlawfully Reduced Reimbursement Rates For 340B Hospitals

On June 15, 2022, in a 9-0 opinion in the case of, American Hospital Association v. Xavier Becerra, Secretary of Human Health Services, the U.S. Supreme Court unanimously held that in 2018 and 2019, the Department of Health and Human Services (HHS) unlawfully varied the rate of reimbursement for outpatient prescription drugs provided by 340B hospitals. The 340B program allows hospitals and providers serving low-income patients and vulnerable communities access to outpatient drugs at discounted prices. 340B hospitals save on average 25-50% in pharmaceutical purchases but are later reimbursed at the prevailing rates by insurers. This allows 340B hospitals to use the savings to provide free services for uninsured patients and cover other costs.

In 2018 and 2019, HHS reduced the reimbursement rate of specified covered outpatient drugs for 340B hospitals from 106% of the average sales price, to 77.5% of the average sales price. HHS reasoned that under applicable law, it had the statutory authority to calculate and adjust drug prices. Essentially, HHS sought to eliminate any unfair advantage 340B hospitals might experience from having significantly discounted drugs and high rates of reimbursement. The Supreme Court agreed that HHS had the statutory authority to establish the rate of reimbursement. However, the Court found that the law required HHS to establish the rate of reimbursement in one of two ways: either collect survey data of the specific hospitals' acquisition cost for outpatient drugs or, if cost data from the hospitals are unavailable, collect cost data from the drug manufacturer. The Court held that because HHS did not survey the 340B hospitals' acquisition costs, HHS was not afforded the discretion to reduce reimbursement to 77.5% of the average sales price.

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