



healthcare financial management association

September 5, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
Attention: CMS-1771-P
200 Independence Avenue, SW
Washington, DC 20201

RIN 0938-AV18

Re: Medicare Program; Hospital Outpatient Prospective Payment System: Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years 2018–2022

Dear Administrator Brooks-LaSure:

The Healthcare Financial Management Association (HFMA) would like to thank CMS for the opportunity to comment on *Medicare Program; Hospital Outpatient Prospective Payment System: Remedy for the 340B-Acquired Drug Payment Policy for Calendar Years 2018–2022*. HFMA is a professional organization of more than 100,000 individuals involved in various aspects of healthcare financial management. HFMA is committed to helping its members improve the management of and compliance with the numerous rules and regulations that govern the industry.

Introduction

HFMA and our members would like to begin with stating our support of the following aspects of the proposed remedy:

- The implementation of a single lump-sum reimbursement to hospitals, covering underpayments for outpatient drugs procured under the 340B Drug Pricing Program during the period spanning calendar years (CYs) 2018 to 2022.
- The agency's commitment to providing hospitals with compensation equivalent to the beneficiary cost-sharing that hospitals would have originally received.
- The well-designed methodology outlined for the determination of owed amounts to 340B hospitals, which significantly reduces administrative complexities.

HFMA believes that these provisions not only align with our mission but also contribute to streamlining operations and alleviating undue administrative burdens.

Nonetheless, HFMA urges HHS to review certain aspects of its proposed remedy that currently exhibit deficiencies, thereby imposing additional strain on 340B entities and the communities they support:

- HHS's suggested "Budget Neutral Adjustment" remedy, aimed at countering the Supreme Court's mandated resolution.
- The failure to address inadequate Medicare Advantage (MA) plan reimbursement for 340B-acquired drugs by 340B entities from 2018 to 2022.

HHS reconsideration of these matters would greatly contribute to a more equitable and effective resolution. 340B disproportionate share hospitals (DSH) assume an outsized responsibility caring to many communities who confront an inequitable burden of illness and encounter formidable obstacles to accessing healthcare. Consequently, any policy aimed at safeguarding 340B hospitals inherently safeguards the interests of "disadvantaged, vulnerable, or marginalized communities."

The "Budget Neutral Adjustment" Remedy

HHS proposes to "reduce all payments for non-drug items and services to all OPPS providers by 0.5 percent each year until the total offset is reached (approximately 16 years)." Proposed Rule at 44,087. In its view, a "budget neutrality adjustment is statutorily required and, even if not statutorily required, warranted as a matter of sound public policy." Id. at 44,081; see id. at 44,082.

HFMA supports the American Hospital's (AHA's) stance in that it is worth noting that neither legal nor policy frameworks currently endorse the suggested "budget neutrality adjustment." Consequently, HHS should refrain from the budget neutrality approach. If the agency were to move forward with a similar approach," it should consider doing so under a significant reduction from the proposed \$7.8 billion adjustment by:

- A. Align solely with the magnitude of the proposed \$1.8 billion cost-sharing adjustments: or
- B. Excluding the years spanning CY 2020-2022, during which hospitals and health systems faced unprecedented challenges as a result of COVID-19, rendering them to continued financial distress.

The above two options should be considered only if HHS incorrectly concludes it has legal authority to make a recoupment at all, which they have not established in their proposed remedy.

HHS' Failure To Rectify Insufficient MA Plan Reimbursement for 340B Drugs

Currently, as per CMS's proposed remedy, hospitals find themselves in a challenging position when it comes to MA plan 340B reimbursement for the period of 2018- September 2022. Hospitals not only have to take matters into their own hands when pursuing the 340B underpayments from MA plans but also face the daunting possibility of having to pay an additional estimated \$7 billion through a proposed "budget neutrality" offsets on top of the initial unlawful billions that was originally underpaid by FFS and MA combined.

The situation is of utmost importance, and the financial implications are substantial, placing a significant burden on hospitals.

Therefore, it becomes paramount for HHS to address this shortcoming in the final rule.

HHS should assert its MA plan oversight authority and require MA payers to promptly reimburse hospitals and providers for the MAP portion of the 340B underpayment covering the period from 2018 to September 2022, in a single comprehensive disbursement. Furthermore, the agency should ensure the exclusion of any "budget-neutrality" adjustment from being transmitted via the outpatient prospective payment reduction, thus preventing its incorporation into private negotiated MA plan contracts spanning from 2025 through 2041.

Sincerely,



Richard L. Gundling, FHFMA, CMA
Senior Vice President, Professional Practice
Healthcare Financial Management Association

About HFMA

HFMA is the nation's leading membership organization for more than 100,000 healthcare financial management professionals. Our members are widely diverse, employed by hospitals, integrated delivery systems, managed care organizations, ambulatory and long-term care facilities, physician practices, accounting and consulting firms and insurance companies. Members' positions include chief executive officer, chief financial officer, controller, patient accounts manager, accountant and consultant.

HFMA is a nonpartisan professional practice organization. As part of its education, information and professional development services, HFMA develops and promotes ethical, high-quality healthcare finance practices. HFMA works with a broad cross-section of stakeholders to improve the healthcare industry by identifying and bridging gaps in knowledge, best practices and standards.