



Supreme Court Gives Hospitals a Win on 340B

June 15, 2022

The Supreme Court found in favor of the American Hospital Association in its lawsuit against the Department of Health and Human Services (HHS) over the 2018 and 2019 payment cuts. Click [here](#) to read the 17-page unanimous opinion authored by Justice Kavanaugh.

As the Court put it plainly on page 2:

The question is whether the statute affords HHS discretion to vary the reimbursement rates for that one group of hospitals when, as here, HHS has not conducted the required survey of hospitals' acquisition costs. The answer is no. We therefore reverse the judgment of the U. S. Court of Appeals for the D. C. Circuit.

The Court held:

1. The statute does not preclude judicial review.
2. Absent a survey of hospitals' acquisition costs, HHS may not vary the reimbursement rates only for 340B hospitals; HHS's 2018 and 2019 reimbursement rates for 340B hospitals were therefore unlawful. The text and structure of the statute make this a straightforward case. Because HHS did not conduct a survey of hospitals' acquisition costs, HHS acted unlawfully by reducing the reimbursement rates for 340B hospitals.

The Court reversed and remanded the decision.

As you will recall, the U.S. District Court for the D.C. Circuit ruled that HHS did not have the authority to reduce reimbursement by nearly 30% for Part B drugs purchased through the 340B program in 2018 and 2019. The decision was based in part on the District Court's finding that HHS had not collected the necessary data to justify the reduction. In its ruling, the lower court remanded the two rules to HHS giving it the "first crack at crafting appropriate remedial measures." HHS then appealed the lower court's decision to the U.S. Court of Appeals which found in favor of HHS.

Now we wait for the remedy, or how "to unscramble the egg" as the U.S. District Court judge phrased it in his 2019 memorandum on remedies when he remanded the 2018 and 2019 rules to HHS. Click [here](#) to review the memorandum.

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