



UPDATE: Where's Our 340B Money?

August 15, 2022

There have been a few developments since our June memo (click [here](#)) “Where’s Our 340B Money” that we want to share with you. The good news is that it seems that any remedy will include not only the cuts for 2018 and 2019, but also the cuts for 2020, 2021 and 2022. The bad news is that our initial concern that it will be some time before 340B hospitals see the money remains true.

As you know, the Supreme Court did not specify how HHS is to remedy the 340B hospitals for the 2018-2019 cuts but remanded the case to the lower court. Click [here](#) for the Supreme Court decision and [here](#) for our summary.)

There are two important motions pending before the US District Court for the District of Columbia that will lead to determining how and when hospitals will be made whole.

- Hospitals filed a motion (Motion 1) to consolidate the 340B cuts for 2018 through 2022 and to order HHS to make 340B hospitals whole for all 5 years, by a date certain, without maintaining budget neutrality (or recouping money from non-340B hospitals). Click [here](#) and [here](#). The Federation of American Hospitals has filed an *amicus curiae* brief (click [here](#)) supporting the Hospitals’ position. HHS has until September 14 to file a response.
- Hospitals filed a separate motion asking the Court to expedite an order that would require HHS to immediately begin reimbursing 340B hospitals at ASP+6% for the remainder of 2022. Click [here](#). HHS is opposed and urges the Court to consider a remedy for 2018-2022 in its entirety. Click [here](#) to read HHS’ response which gives some insight into what it views its options are for developing a remedy to the cuts. Most notable is HHS’ continued assertion that the agency should fashion the remedy not the Court, and that budget neutrality is required. Whether the Court requests a hearing or rules based on the pleadings, a decision on this motion could come soon.

While HHS has not yet filed its response to Motion 1 consolidating 340B cuts for 2018-2022, in response to Motion 2 HHS agrees that the Supreme Court’s decision effectively includes 2022. It seems that HHS is unlikely to oppose including 2020-2022 in any remedy, although it will seek to fashion the remedy on its own terms. HHS reminds the Court that it has solicited public comments (due September 13) in the OPPTS rule on how to fashion a remedy.

For additional information, please contact our General Counsel Diane Turpin at diane.turpin@shcare.net or 202-578-5444. This information is offered for the general education and knowledge of our clients. It is not offered as legal advice.