

Hospitals Rebuff HHS's Request to Survey Drug Acquisition Costs

Apr 22, 2026, 5:30 AM EDT

Ganny Belloni

Reporter- Bloomberg Government

Summary by Bloomberg AI

- Hospitals across the US are declining to consent to an HHS survey of their prescription drug acquisition costs given the agency's lack of authority to punish them for noncompliance, lawyers say.
- The survey follows earlier efforts by the agency to cut drug reimbursement to 340B hospitals, which was blocked by the US Supreme Court, and lawyers say the results of this year's survey will likely be used as a pretense to lower reimbursement in the future.
- Lawyers expect the agency to face litigation if the results of the survey end up adversely affecting hospitals financially, with hospitals likely to challenge any negative inference or ramification on a non-reporting hospital due to CMS's lack of clear statutory authority to compel hospitals to respond.

Hospitals across the US are declining to consent to an HHS survey of their prescription drug acquisition costs given the agency's lack of authority to punish them for noncompliance, lawyers say.

The Centers for Medicare & Medicaid Services finalized a [rule](#) in November requiring low-income serving hospitals that receive reduced-priced drugs under the federal government's 340B drug discount program to [verify](#) the amount they paid to acquire their prescriptions. The results of the analysis, following the submission deadline of March 31, will be used to establish drug payment rates for 2027.

The survey follows earlier efforts by the agency in 2018 and 2019 to cut drug reimbursement to 340B hospitals over concerns the government's payments to these facilities were too high, allowing them to rake in [billions](#) of dollars in profit. The US Supreme Court in [American Hospital Assn. v. Becerra](#) would later block the move,

highlighting that the CMS did not adequately survey hospitals' drug acquisition costs as required by law.

Lawyers for hospitals say the results of this year's survey will likely be used as a pretense to lower reimbursement in the future.

"I think fundamentally, there is a belief that the 340B program has grown beyond the original intent of the program, and thus they are looking for ways to rein it in and reduce 340B payments," said Jeff Wurzburg, a Norton Rose Fulbright partner and former general counsel for the US Department of Health and Human Services.

With this context in mind, attorney Andrew Ruskin of K&L Gates said many health systems have made the tough decision to ignore the survey, as federal law likely doesn't give the CMS the ability to impose penalties on facilities that don't comply.

Should the agency go ahead with adjusting rates based on the data collected, the CMS would face legal challenges over the accuracy and representativeness of its sampling methods, Ruskin said.

"CMS truly got an anemic response," said Ruskin. "If CMS does move forward and the response is as low as some of us think it is, then it's going to be a battle of statisticians in court."

"My guess is that until there's a court decision, it's not likely that either side is going to back down."

Unenforceable Penalties

The drug acquisition cost survey would apply to hospitals receiving Medicare payments for outpatient services such as lab tests and doctor visits between July 1, 2024, and June 30, 2025.

The CMS said in a [guidance](#) document released in March that the Social Security Act provides the agency the ability to "conduct periodic surveys to determine the hospital acquisition cost for each specified covered outpatient drug for use in setting payment rates."

An earlier [CMS FAQ](#) released in December 2025 said “such hospitals are to respond to the survey,” but the agency did not provide any specific consequences for not filling it out.

Leading hospital trade groups, such as the American Hospital Association, National Rural Health Association, and Association of American Medical Colleges, note that the statutory language remains [silent](#) on the agency’s power to force hospitals into compliance.

“Absent any statutory consequences for not completing the survey, it is wrong to tell hospitals and health systems that they ‘are to’ complete it,” the groups told the CMS in a January letter.

Hospitals have chosen instead to devote their time and energy toward their patients rather than expend resources on a survey that’s likely unenforceable, said a health-care industry attorney, who asked not to be identified in order to speak freely.

Risk and Legal Action

The move to ignore the survey is not without risk, Wurzburg said. Hospitals will have to weigh the possibility that the CMS could make adverse assumptions about their costs to acquire drugs based on the data available.

“The agency openly floated the idea of using proxy data or lower assumed costs for those non-responding entities. So that could translate directly into lower repayment costs,” he said.

Hospitals that do choose to comply also have a degree of risk. They would have to sign an attestation agreeing that the data furnished to the CMS is accurate. Doing so will put health systems at risk of monetary penalties if the CMS flags any perceived inaccuracies in the data, Ruskin said.

Although it remains unclear how the agency will respond, lawyers expect the agency to face litigation if the results of the survey end up adversely affecting hospitals financially.

Hospitals will likely take the CMS to court over violations of federal rules of administrative procedure, which require executive branch agencies to go through

notice-and-comment rulemaking before making substantive changes to hospital reimbursement.

“I would certainly expect to see any negative inference or ramification on a non-reporting hospital to be challenged because CMS doesn’t have clear statutory authority to compel the hospitals to respond or to penalize them for declining to respond,” Wurzburg said.

“In terms of those hospitals that failed to report, CMS is going to ostensibly take the position that that was a self-inflicted injury. But even those hospitals that responded, I would anticipate may have an argument that the policy as implemented is arbitrary and capricious,” he said.

To contact the reporter on this story: [Ganny Belloni](mailto:GannyBelloni@bloombergindustry.com) at gbelloni@bloombergindustry.com