Congress Must Rescind CMS Rule That Cuts Payments to Safety Net Providers

340B Program Provides Big Impact at No Cost to Taxpayers

Congress must rescind the policy in the CY 2018 Medicare outpatient final rule to cut Medicare Part B drug payments to safety net hospitals participating in the Health Resources and Services Administration's (HRSA) 340B Drug Pricing Program before it goes into effect on January 1, 2018. This policy is counter to the intent of the 340B program and will result in cuts to services and programs that help support vulnerable patients. Because the regulation is budget neutral, there is no cost to the federal government to legislatively rescind this rule.

Representatives David McKinley (R-W.Va.) and Mike Thompson (D-Calif.) have introduced bipartisan legislation (H.R. 4392) to rescind this policy in the House. We encourage the Senate to consider similar legislation.

Final Rule Policy

Despite concerns from over half the members of both houses of Congress, the Centers for Medicare and Medicaid Services (CMS) included a policy in its CY 2018 Medicare Outpatient Prospective Payment System (OPPS) final rule to dramatically reduce the outpatient drug reimbursement rate for hospitals participating in the 340B Drug Pricing Program. CMS estimates this policy would reduce critical payments to safety net hospitals, many of which are teaching hospitals, by $1.6 billion each year, beginning in 2018.

Currently, Medicare pays for separately payable, non pass-through outpatient drugs (i.e., drugs not included in a bundle or vaccines) at the average sales price (ASP) **plus 6%.** Under this rule, CMS will now pay for drugs purchased under the 340B program at ASP **minus 22.5%** beginning on January 1. This is a significant reduction targeted at the subset of hospitals that are the nation's safety net, undermining the purpose and benefits of the 340B program and crippling the ability of these crucial hospitals to serve vulnerable and low-income patients.

The Final Rule Contravenes the Intent of the 340B Program

The 340B program was established under the Public Health Statute, not Medicare. The OPPS final rule contravenes statutory intent by inappropriately leveraging Medicare to undermine the 340B program. This policy is unrelated to the 340B program. Plain and simple, it is a Medicare cut targeted at safety net hospitals.

This Policy Does Not Address Rising Prescription Drug Costs

CMS argues that this proposal will lower the cost of prescription drugs. While it is critical that policymakers take steps to make prescription drugs more accessible and affordable, reducing Medicare payment rates for prescription drugs in the 340B program is not a solution to this important issue. According to HRSA, 340B sales are less than three percent of the total U.S. drug market.

Skyrocketing drug costs are being driven by a number of different factors, but the 340B program is not one of them. Reducing how Medicare reimburses hospitals that participate in the 340B program for these drugs will only impede these hospitals' abilities to maintain programs that provide services to vulnerable populations – including Medicare beneficiaries – while doing nothing to bring down the cost of prescription drugs in our country.