



11 Beacon Street, Suite 710
Boston, MA 02108
Phone: 617-723-6100
Fax: 617-723-6111
www.cobth.org

October 5, 2020

Submitted electronically via www.regulations.gov

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1859

RE: CMS-1736-P, Medicare Program: Changes to Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Addition of New Categories for Hospital Outpatient Department Prior Authorization Process; etc.

Dear Administrator Verma:

The Conference of Boston Teaching Hospitals, on behalf of our 12 member hospitals, appreciates the opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS) hospital outpatient prospective payment system (OPPS) proposed rule for calendar year (CY) 2021.

We are particularly concerned about the administration's proposal to deepen the already inappropriately steep cuts to the 340B Drug Pricing Program. The 340B program is intended to help participating hospitals and other health care providers stretch limited federal resources to reduce the price of drugs for low-income patients and expand services available to the vulnerable populations they serve. COBTH hospitals use their 340B savings to provide free care, offer free vaccinations, and make other investments in the health of their communities.

Hospitals that participate in the 340B program are pillars of their communities. In fact, a recent American Hospital Association (AHA) study found that 340B hospitals provided more than \$64.3 billion in community benefits in 2017.¹ Congress created the 340B program to assist hospital efforts to provide essential services to vulnerable communities. Continuing or deepening the cuts to the 340B program is contrary to Congressional intent and would inflict unnecessary harm on vulnerable communities by drastically reducing funding for critical services. Additionally, this proposal comes amid the ongoing response to the COVID-19 pandemic. COBTH and other 340B hospitals are on the frontlines of the response, ensuring vulnerable populations have access to the testing, treatment, and information and resources they need to state safe and reduce the spread of the virus.

¹ <https://www.aha.org/system/files/media/file/2020/09/340b-community-benefits-analysis-report.pdf>



11 Beacon Street, Suite 710
Boston, MA 02108
Phone: 617-723-6100
Fax: 617-723-6111
www.cobth.org

Additionally, we have serious concerns about the survey that CMS is using as the basis for these proposed cuts. This voluntary survey had a low response rate and was distributed to hospitals at the beginning of the COVID-19 public health emergency. CMS also used the survey to determine the typical acquisition cost for a 340B drug, which is not relevant to what 340B hospitals are intended to be paid under the program. Rather, hospitals purchase drugs at a discounted rate and use the difference in funds to make services available to vulnerable patients. We ask that CMS release the data and methodology used to calculate these payment reductions so that they can be reviewed by relevant stakeholders.

Further, we support the ongoing legal challenge to CMS's authority to implement these cuts. After the District Court found the cuts to be unlawful, the U.S. Court of Appeals for the District of Columbia inappropriately reversed the decision in an argument that conflicted with precedent and subverted the statutory intent of the program. AHA recently filed a petition to have *AHA et. al. v. Azar* heard en banc by the U.S. Court of Appeals for the District of Columbia, and COBTH supports this effort.

Finally, we want to note that reducing Medicare reimbursement to 340B hospitals does not advance the administration's goal of reducing prescription drug prices. According to the Health Resources and Services Administration (HRSA), the 340B program comprises a mere 4.3% of the total U.S. drug market, and the program is not driving up the cost of prescription drugs. Rather, reducing Medicare reimbursement for 340B drugs serves only to reduce access to services that support vulnerable populations.

Thank you for your consideration of our comments. COBTH's member hospitals are also members of the Association of American Medical Colleges (AAMC) and strongly support the in-depth comments submitted by AAMC on behalf of the nation's academic medical centers and teaching hospitals. Please do not hesitate to be in touch with any questions or if we can provide additional information on these or other matters.

Sincerely,

A handwritten signature in blue ink that reads "Patricia McMullin". The signature is written in a cursive, flowing style.

Patricia McMullin
Executive Director
Conference of Boston Teaching Hospitals