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Important Issues for 340B Providers in the OPPTS Final Rule

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Delay in Increased OPPTS Payment Reductions to Offset the 340B Lump Sum Remedy

The OPPTS Final Rule for 2026 did not include raising the reduction to the OPPTS conversion factor from 0.5 percent to 2 percent. The initial 0.5 percent reduction was established to repay CMS for the \$7.8 billion lump sum remedy for the unlawful reduction in 340B drug payments made by CMS from January 1, 2018, through September 27, 2022. CMS had proposed that the 0.5 percent payment reduction be increased to 2 percent, but the OPPTS Final Rule stated that the reduction to the conversion factor will remain at 0.5 percent. However, CMS specifically noted that a larger reduction (such as 2 percent) would likely begin in CY 2027.

The OPPTS Drug Acquisition Cost Survey

On April 15, 2025, President Trump issued an executive order titled "Lowering Drug Prices By Once Again Putting Americans First" that required HHS to conduct a survey to "determine the hospital acquisition cost for covered outpatient drugs at hospital outpatient departments" pursuant to Section 1833(t)(14)(D)(ii) of the Social Security Act. The OPPTS Drug Acquisition Cost Survey included in the OPPTS Final Rule is the direct result of the executive order.

The data to be collected under the OPPTS Drug Acquisition Cost Survey is net acquisition cost, inclusive of all rebates and discounts, for specified covered outpatient drugs (SCODs) as defined under Section 1833(t)(14)(B) of the Social Security Act and those drugs historically treated as SCODs that were purchased between July 1, 2024, and June 30, 2025. CMS has chosen to specifically exclude radiopharmaceuticals from this survey. A copy of the Draft Survey Template has been [published by CMS](#).

While explicit penalties for non-participation have not yet been provided, CMS indicated that it would consider lack of response as meaningful data for purposes of determining payments going forward and that it might use the lowest acquisition cost reported among otherwise similar responding hospitals as a proxy for the average acquisition costs for hospitals that do not respond to the survey. CMS provided that it would address non-responses and application of imputed values in the CY 2027 OPPTS rulemaking process.

Since its appearance in the executive order, hospitals have criticized the survey as an overly burdensome administrative requirement that will hinder the ability of hospitals to continue providing care to low-income, underserved, high-risk populations, which is the goal of the 340B program. Despite these criticisms, the survey found its way into the Final Rule.

Foreshadowing for Reduced 340B Payments

As [we have previously discussed](#), the results of the OPPTS Drug Acquisition Cost Survey will likely be used to make a second attempt to drastically cut 340B payment rates. The decision in [American Hospital Association v. Becerra, 596, U.S. 724 \(2022\)](#) found that the Trump Administration's nearly 30 percent cut in 340B drug payments was "unlawful" because HHS did not conduct the drug acquisition cost survey as required by the 340B statute. Mandating that HHS conduct this survey strongly indicates that HHS again intends to reduce 340B drug payments. Hospitals strongly oppose the idea that they might be investing significant resources into responding to the OPPTS Drug Acquisition Cost Survey – a survey that will likely be used against them to reduce Medicare payments for 340B hospitals, potentially costing those hospitals billions of dollars.

Impact

The OPPS Final Rule's announcement of the survey and its implications for future rate reductions, in addition to CMS' express intent to cut overall OPPS rates by 2 percent starting in 2027, may result in significant financial burdens for 340B hospitals and have a profound impact on the health and future of the 340B program. The 340B program is in the midst of significant transformation, and all interested stakeholders should closely monitor future developments.

What's Your Next Move?

To prepare for responding to the OPPS Drug Acquisitions Cost Survey, hospitals should make plans to attend one of the CMS webinars being offered to respond to questions, which are being held on December 9, 2025 and December 11, 2025. Registration can be found [here](#). Hospitals that are subject to the payment reduction due to 340B payments should continue to monitor CMS publications to determine whether any increase in the reduction will occur for CY 2027.

For more information or assistance with navigating the OPPS Drug Acquisitions Cost Survey or the 340B program, please contact [Greg Fliszar](#), [Alissa D. Fleming](#), [Katherine Denney](#), or any member of the Baker Donelson [Health Law](#) Team.