

Modern Healthcare

You may not reproduce, display on a website, distribute, sell or republish this article or data, or the information contained therein, without prior written consent. This printout and/or PDF is for personal usage only and not for any promotional usage. © Crain Communications Inc.

October 19, 2020 04:37 PM | UPDATED 14 HOURS AGO

Hospitals will need Supreme Court's help to stop site-neutral, 340B cuts

RACHEL COHRS

Modern Healthcare Illustration / Getty Images

If hospitals don't get Supreme Court review of the payment policies, they will remain in place.

If hospitals want to overturn the Trump administration's site-neutral payment policy, as well as looming cuts to the 340B program, they'll need an assist from the Supreme Court.

The U.S. Court of Appeals for the D.C. Circuit Friday denied hospitals' requests for the full court to rehear challenges to the rules, after three-judge panels [upheld them](#).

"We are evaluating all of our remaining options to repeal these unlawful cuts, including petitioning the Supreme Court to hear the cases," said American Hospital Association General Counsel Melinda Hatton.

The AHA has 60 days from Friday's decision to decide to appeal the case to the Supreme Court.

However, the Supreme Court takes up very few cases each term, and attorneys familiar with the 340B and site-neutral payment cases were skeptical that the court would intervene in reimbursement cases where there has been no split in how circuit courts have ruled.

Hall Render attorney Todd Nova said the D.C. Circuit's refusal to rehear the cases make it more likely that 340B cuts will be finalized in the 2021 Outpatient Prospective Payment System final rule.

But one reason the justices could decide to hear the cases would be to evaluate the deference agencies should be given to interpret laws, said Thomas Barker, a partner at Foley Hoag.

Cuts in the [proposed rule were deeper](#) than prior 340B cuts and based on different data, so K&L Gates Partner Richard Church said hospitals could potentially initiate a separate lawsuit based on HHS' new rationale.

If hospitals hit a dead end legally, they could find a more sympathetic audience for their concerns if former Vice President Joe Biden wins the election. Republicans are generally much [more critical of the 340B drug discount program than Democrats](#).

Though hospitals are still fighting the cuts, most facilities have already adjusted to the revised rates.

"They have already spent a long time living without the reimbursement, so this sort of feels a little anticlimactic. They have adjusted to this reality already," Church said.

Inline Play

Source URL: <https://www.modernhealthcare.com/legal/hospitals-will-need-supreme-courts-help-stop-site-neutral-340b-cuts>