



UNITED STATES SUPREME COURT DECISION BRIEF

Texas Conservative Coalition
Research Institute

American Hospital Assn. v. Becerra

(Decided on June 16, 2022)

FACTS AND BACKGROUND

Under the Medicare statute, the Department of Health and Human Services (HHS) uses a formula to set reimbursement rates for outpatient prescription drugs.ⁱ The formula allows two options. Under the first option, HHS must conduct a survey of hospitals' acquisition costs for each covered drug and reimburse based on the "average acquisition cost" for each drug. Under option 1, HHS may "vary" reimbursement rates "by hospital group." If no survey is conducted, option 2 allows reimbursement rates set at "the average price" charged by the drug manufacturers. Importantly, option 2 does not allow HHS to reimburse different rates based on hospital group.

In 2018, HHS reduced reimbursement rates for a certain type of hospital group (340B hospitals). Because 340B hospitals obtain the covered drugs more cheaply than other hospitals, HHS decided it should not reimburse those hospitals at a higher amount than the hospitals paid in the first place.

340B hospitals and hospital associations sued HHS, arguing that HHS violated the Medicare statute by reducing rates without the statutory authority for doing so.

LOWER COURT RULING

Not only did HHS argue that its actions were lawful, it also argued that the Medicare statute precluded judicial review of its reimbursement rates in the first place.ⁱⁱ The district court disagreed, ruling that judicial review was not precluded by statute, and that HHS did, indeed, exceed its statutory authority to lower reimbursement rates for 340B hospitals. On appeal, the D.C. Circuit agreed on the judicial review question, but reversed the lower court's ruling on statutory authority to reduce reimbursement rates.

QUESTION PRESENTED FOR THE U.S. SUPREME COURT

1. Does the Medicare statute preclude judicial review of HHS's reimbursement rates?
2. Was HHS within the scope of its statutory authority when it lowered reimbursement rates for 340B hospitals?

HOLDING BY THE U.S. SUPREME COURT

The U.S. Supreme Court was unanimous in holding the following:

1. Judicial review of HHS's reimbursement rates is not precluded by statute. Nothing in the text of the statute precludes judicial review and there is a presumption in favor of judicial review of administrative action that is difficult to overcome.
2. SCOTUS reversed the D.C. Circuit on the question of statutory authority, agreeing with the District Court that HHS did not have the authority to lower rates in the manner it did. HHS did not conduct a survey based on the average acquisition cost for each drug, meaning that option 2 was the only option available under the statutory formula for setting reimbursement rates. Under option 2, different rates are not allowed for different hospital groups, so 340B hospitals could not be treated differently, as HHS attempted.

MEANING FOR TEXAS

There are more than 2,500 hospitals participating in the 340B program in the United States, nearly 150 of which are located in Texas.ⁱⁱⁱ The practical result of *American Hospital Assn. v. Becerra* is that HHS will not be permitted to single out 340B hospitals for lower outpatient drug reimbursement rates. Legally, the decision reaffirms that judicial review is available and appropriate for affected parties unless specifically precluded by statute.

ⁱ 42 U. S. C. §1395l(t)(14)(A)(iii).

ⁱⁱ HHS asserted that 42 U.S.C. § 1395l(t)(12) precludes judicial review.

ⁱⁱⁱ <https://www.340bhealth.org/files/TX.pdf>