

A. Plaintiffs' Position

Both the American Hospital Association/Association of American Medical Colleges plaintiffs and the University of Kansas Hospital Authority plaintiffs ("Plaintiffs") note that the parties have not yet had any substantive discussions regarding the appropriate remedy following vacatur, as contemplated by the Court's September 17th Order. Defendant apparently believes that its Motion to Modify Order obviates the need for the parties to discuss the form and timing of compensation to hospitals for past underpayments. Plaintiffs respectfully request that the Court deny the pending Motion to Modify Order and order the parties to (i) meet and confer on additional remedies and (ii) submit a joint status report on the need for additional briefing by October 7, 2019.

B. Defendant's Position

As the Court is aware, Defendant moved to modify the Court's September 17, 2019 Order on September 23, 2019. *See* ECF No. 33. The American Hospital Association and Association of American Medical Colleges Plaintiffs filed their response on September 30, 2019, *see* ECF No. 34, and the University of Kansas Hospital Authority Plaintiffs filed their response on October 1, 2019, *see* ECF No. 35. Defendant also intends to file a reply to Plaintiffs' oppositions.

Defendant believes that no additional briefing on remedies is necessary. The Court already correctly decided that it will deny Plaintiffs' request for an "order requiring CMS to issue payments improperly withheld due to the Final Rule." Mem. Op. at 26. Consistent with the Court's decision, and with the "substantial deference that Courts owe to the Secretary [of Health and Human Services] in the administration of such a 'complex statutory and regulatory regime,'" *Shands Jacksonville Med. Ctr., Inc. v. Azar*, 2018 WL 6831167, at *13 (D.D.C. Dec.

28, 2018) (quoting *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 404 (1993)), the Court appropriately determined that the agency should have the opportunity to craft a remedy in the first instance. However, to the degree the Court is inclined to allow further briefing on Plaintiffs' request for an order requiring payment at a specific rate, or on any other remedies question, Defendant respectfully asks for an opportunity to respond to any further briefing that Plaintiffs submit.

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Respectfully submitted,

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