## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

	)
THE AMERICAN HOSPITAL ASSOCIATION,	)
ASSOCIATION OF AMERICAN MEDICAL	)
COLLEGES, MERCY HEALTH MUSKEGON,	)
CLALLAM COUNTY PUBLIC HOSPITAL	)
NO. 2, d/b/a OLYMPIC MEDICAL CENTER,	)
and YORK HOSPITAL,	)
	)
Plaintiffs,	)
	)
V.	) Civil Action No. 1:18-cv-2841
	)
ALEX M. AZAR II,	)
in his official capacity as SECRETARY OF	
HEALTH AND HUMAN SERVICES,	) ORAL ARGUMENT REQUESTED
	)
Defendant.	)
	_)

## PLAINTIFFS' MOTION TO ENFORCE JUDGMENT

Plaintiffs the American Hospital Association, Association of American Medical Colleges, Mercy Health Muskegon, Clallam County Public Hospital No. 2 d/b/a Olympic Medical Center, and York Hospital respectfully move for enforcement of this Court's vacatur order. Dkt. 32.

On November 1, CMS made publicly available the Medicare Hospital Outpatient
Prospective Payment System and Ambulatory Surgical Center Payment System for Calendar
Year 2020. See CY 2020 Medicare Hospital Outpatient Prospective Payment System and
Ambulatory Surgical Center Payment System Final Rule (CMS-1717-FC) (the 2020 OPPS Rule).

The 2020 OPPS Rule purports to continue a "two-year phase-in" of the site neutral payment policy finalized in the 2019 OPPS Rule, 83 Fed. Reg 58,818 at 59,014 (Nov. 21, 2018)—a payment policy this Court vacated in September. *See* Dkt. 32. To be clear, CMS has not just issued another rule that is unlawful for the same reasons as the 2019 OPPS Rule. The

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agency has reinstated the second year of the two-year phase-in that was promulgated—in the

agency's own words, "finalized"—in the now-vacated 2019 OPPS Rule. That violates this

Court's vacatur order.

WHEREFORE, for the foregoing reasons, as well as those set forth in the attached

Memorandum in Support, which is incorporated herein by reference, the above-captioned

Plaintiffs respectfully request an order finding the CY 2020 rate reductions unlawful, and

vacating the relevant portion of the 2020 Final Rule.

Pursuant to Local Rule 7(m), counsel for the above-captioned Plaintiffs reached out to

Defendants' counsel, who indicated that they oppose the relief requested in this motion.

Respectfully submitted,

/s/ Catherine E. Stetson

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No. 2, d/b/a Olympic Medical Center, and York

Hospital

Dated: November 11, 2019

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