

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONWAY MEDICAL CENTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 21-cv-1250 (RJL)
)	
XAVIER BECERRA, in his official capacity as)	
Secretary of Health and Human Services,)	
)	
Defendant.)	
_____)	

PARRISH MEDICAL CENTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 21-cv-1922 (RJL)
)	
XAVIER BECERRA, in his official capacity as)	
Secretary of Health and Human Services,)	
)	
Defendant.)	
_____)	

CONSENT MOTION FOR CONSOLIDATION AND OTHER RELIEF

With plaintiffs’ consent, the Secretary of Health and Human Services respectfully moves this Court to consolidate the above-captioned cases and extend the Secretary’s time to answer the complaints. The parties have agreed upon the relief requested here.¹

Consolidation. Federal Rule of Civil Procedure 42(a) allows a district court to consolidate actions that “involve a common question of law or fact.” “The district court has broad discretion in determining whether to consolidate related cases.” *Biochem Pharma, Inc. v. Emory Univ.*, 148

¹ The Secretary regrets the delay in the filing of this motion. The parties did not reach an agreement until Thursday, October 7; undersigned counsel was out of the office that day and the following day to attend a family funeral.

F. Supp. 2d 11, 13 (D.D.C. 2001); *accord Namb v. Bd. of Governors of Fed. Reserve Sys.*, 770 F. Supp. 283, 286 (D.D.C. 2011) (“Rule 42(a) . . . vests a purely discretionary power in the district court”); *Stewart*, 225 F. Supp. 2d at 21. “In assessing whether consolidation is appropriate . . . , a district court should consider both equity and judicial economy.” *Devlin v. Transp. Comms. Int’l*, 175 F.3d 121, 130 (2d Cir. 1999). “Consolidation may increase judicial efficiency by . . . eliminating the need for more than one judge to familiarize themselves with the issues presented, and reducing excess costs to all parties and the government.” *Chang v. United States*, 217 F.R.D. 262, 265 (D.D.C. 2003). It “should be considered when savings of expense and gains of efficiency can be accomplished without sacrifice of justice.” *Devlin*, 175 F.3d at 130 (emphasis and internal quotation deleted). “Identity of the parties is not a prerequisite.” *Namb*, 770 F. Supp. 2d at 286. “To the contrary, cases may be consolidated . . . where . . . the plaintiffs are different but are asserting identical questions of law against the same defendant.” *Id.*

In these cases, two groups of plaintiff hospitals represented by the same counsel bring identical claims against the Secretary of Health and Human Services regarding the calculation of the disproportionate share hospital adjustments to their Medicare payment rates. *Compare* Compl. ¶¶ 117–81, *Conway*, ECF No. 1 *with* Compl. ¶¶ 92–156, *Parrish*, ECF No. 1. It would be most efficient to consolidate these cases so that these identical claims can be briefed and resolved together, on the same schedule, rather than having the same legal issues pending in parallel litigation.

Extension of time and service of administrative record. The Secretary respectfully requests a 60-day extension—until December 13, 2021—of his time to respond to the complaints in these cases. This extension would allow for the completion of the administrative record in *Parrish*, which is necessary for the preparation of the Secretary’s response to the complaint, and

(if the cases were consolidated) would allow for the Secretary to file a single response to the two complaints. The administrative record in *Conway* has been compiled and the Secretary intends to serve it tomorrow, October 13.

Dated: October 12, 2021

Respectfully submitted,

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Counsel for Defendant

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[PROPOSED] ORDER

Defendant’s consent motion to consolidate these cases is hereby **GRANTED**, and the cases are **CONSOLIDATED** for all purposes.

Defendant’s consent motion for an extension of time is also **GRANTED**, and Defendant is **ORDERED** to respond to the complaints in these consolidated cases no later than December 13, 2021.

SO ORDERED this ____ day of _____, 20__.

Richard J. Leon
United States District Judge