

APPEAL,CLOSED,TYPE-C

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:18-cv-02084-RC**  
***Internal Use Only***

AMERICAN HOSPITAL ASSOCIATION et al  
Assigned to: Judge Rudolph Contreras  
Case: 1:17-cv-02447-RC  
Case in other court: USCA, 19-05048  
Cause: 42:405 Review of HHS Decision (SSID)

Date Filed: 09/05/2018  
Date Terminated: 07/12/2019  
Jury Demand: None  
Nature of Suit: 151 Contract: Recovery  
Medicare  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**AMERICAN HOSPITAL  
ASSOCIATION**

represented by **Margaret M. Dotzel**  
ZUCKERMAN SPAEDER, LLP  
1800 M Street, NW  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Ezra B. Marcus**  
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**William Barnett Schultz**  
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**ATTORNEY TO BE NOTICED**

**Plaintiff**

**ASSOCIATION OF AMERICAN  
MEDICAL COLLEGES**

represented by **Margaret M. Dotzel**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Ezra B. Marcus**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**William Barnett Schultz**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**AMERICA'S ESSENTIAL  
HOSPITALS**

represented by **Margaret M. Dotzel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Ezra B. Marcus**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**William Barnett Schultz**  
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*ATTORNEY TO BE NOTICED*

**Plaintiff**

**NORTHERN LIGHT HEALTH**

represented by **Margaret M. Dotzel**  
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**Ezra B. Marcus**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**William Barnett Schultz**  
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*ATTORNEY TO BE NOTICED*

**Plaintiff**

**HENRY FORD HEALTH SYSTEM**

represented by **Margaret M. Dotzel**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Ezra B. Marcus**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**William Barnett Schultz**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**FLETCHER HOSPITAL, INC.**  
*doing business as*  
**PARK RIDGE HEALTH**

represented by **Margaret M. Dotzel**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Ezra B. Marcus**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**William Barnett Schultz**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**ALEX M. AZAR II**  
*in his official capacity as the Secretary of*  
*Health and Human Services*

represented by **Justin Michael Sandberg**  
U.S. DEPARTMENT OF JUSTICE  
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Email: [justin.sandberg@usdoj.gov](mailto:justin.sandberg@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**UNITED STATES DEPARTMENT  
OF HEALTH AND HUMAN  
SERVICES**

represented by **Justin Michael Sandberg**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Amicus**

**FEDERATION OF AMERICAN  
HOSPITALS**

represented by **Kelly A. Carroll**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Page	Docket Text
09/05/2018	<u>1</u>		COMPLAINT against ALEX M. AZAR II, DEPARTMENT OF HEALTH

		AND HUMAN SERVICES ( Filing fee \$ 400 receipt number 0090-5672969) filed by FLETCHER HOSPITAL, INC., EASTERN MAINE HEALTHCARE SYSTEMS, AMERICAN HOSPITAL ASSOCIATION, AMERICA'S ESSENTIAL HOSPITALS, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, HENRY FORD HEALTH SYSTEM. (Attachments: # <u>1</u> Summons Alex M. Azar II, # <u>2</u> Summons U.S. Department of Health and Human Services, # <u>3</u> Civil Cover Sheet)(Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>2</u>	MOTION for Preliminary Injunction <i>and Permanent Injunction</i> by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, EASTERN MAINE HEALTHCARE SYSTEMS, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit Index, # <u>3</u> Exhibit A, # <u>4</u> Exhibit B-1, # <u>5</u> Exhibit B-2, # <u>6</u> Exhibit C, # <u>7</u> Exhibit D, # <u>8</u> Exhibit E, # <u>9</u> Exhibit F, # <u>10</u> Exhibit G, # <u>11</u> Exhibit H, # <u>12</u> Exhibit I, # <u>13</u> Exhibit J, # <u>14</u> Exhibit K, # <u>15</u> Exhibit L, # <u>16</u> Exhibit M, # <u>17</u> Exhibit N, # <u>18</u> Exhibit O, # <u>19</u> Exhibit P, # <u>20</u> Exhibit Q, # <u>21</u> Exhibit R, # <u>22</u> Exhibit S, # <u>23</u> Exhibit T, # <u>24</u> Exhibit U, # <u>25</u> Exhibit V, # <u>26</u> Exhibit W, # <u>27</u> Exhibit X, # <u>28</u> Text of Proposed Order)(Schultz, William). Added MOTION for Permanent Injunction on 9/12/2018 (znmw). (Entered: 09/05/2018)
09/05/2018	<u>3</u>	NOTICE OF RELATED CASE by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, EASTERN MAINE HEALTHCARE SYSTEMS, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM. Case related to Case No. 17-cv-2447. (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>4</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by AMERICAN HOSPITAL ASSOCIATION (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>5</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ASSOCIATION OF AMERICAN MEDICAL COLLEGES (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>6</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by AMERICA'S ESSENTIAL HOSPITALS (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>7</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by EASTERN MAINE HEALTHCARE SYSTEMS (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>8</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by HENRY FORD HEALTH SYSTEM (Schultz, William) (Entered: 09/05/2018)
09/05/2018	<u>9</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by FLETCHER HOSPITAL, INC. (Schultz, William) (Entered: 09/05/2018)
09/05/2018		Case Assigned to Judge Rudolph Contreras. (zmd) (Entered: 09/06/2018)

09/06/2018	<u>10</u>		SUMMONS (2) Issued Electronically as to ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Summons 2nd) (zmd) (Entered: 09/06/2018)
09/06/2018	<u>11</u>		NOTICE of Appearance by Ezra Marcus on behalf of All Plaintiffs (Marcus, Ezra) (Entered: 09/06/2018)
09/10/2018	<u>12</u>		NOTICE of Appearance by Justin Michael Sandberg on behalf of All Defendants (Sandberg, Justin) (Entered: 09/10/2018)
09/13/2018	<u>13</u>		RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to Federal Defendants; ALEX M. AZAR II & DEPARTMENT OF HEALTH AND HUMAN SERVICES. Date of Service 9/12/2018. (Schultz, William) Modified on 9/24/2018 to correct party served (jf). (Entered: 09/13/2018)
09/14/2018	<u>14</u>		MOTION to Dismiss by ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 09/14/2018)
09/14/2018	<u>15</u>		RESPONSE re <u>2</u> MOTION for Preliminary Injunction <i>and Permanent Injunction</i> MOTION for Permanent Injunction filed by ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(Sandberg, Justin) (Entered: 09/14/2018)
09/26/2018	<u>16</u>		RESPONSE re <u>14</u> MOTION to Dismiss <i>and Reply in Support of 2 Motion for Preliminary and Permanent Injunction</i> filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, EASTERN MAINE HEALTHCARE SYSTEMS, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM. (Attachments: # <u>1</u> Supplemented Exhibit L, # <u>2</u> Supplemented Exhibit N, # <u>3</u> Supplemented Exhibit P, # <u>4</u> Supplemented Exhibit R, # <u>5</u> Exhibit Y)(Marcus, Ezra) (Entered: 09/26/2018)
09/26/2018	18		REPLY to opposition to motion re <u>2</u> MOTION for Preliminary Injunction <i>and Permanent Injunction</i> MOTION for Permanent Injunction filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, EASTERN MAINE HEALTHCARE SYSTEMS, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM. (See Docket Entry <u>16</u> to view document) (tth) (Entered: 10/01/2018)
09/28/2018	<u>17</u>		Unopposed MOTION for Extension of Time to File Response/Reply as to <u>14</u> MOTION to Dismiss by ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 09/28/2018)
09/28/2018			MINUTE ORDER granting <u>17</u> Defendants' Unopposed Motion for Extension of Time: It is hereby ORDERED that Defendants may file a reply brief in support of their motion to dismiss on or before October 10, 2018. SO ORDERED. Signed by Judge Rudolph Contreras on September 28, 2018. (lcrc3) (Entered: 09/28/2018)
10/09/2018	<u>19</u>		NOTICE of <i>Administrative Decision</i> by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, EASTERN MAINE HEALTHCARE

		SYSTEMS, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM (Attachments: # <u>1</u> EAJR Ruling)(Marcus, Ezra) (Entered: 10/09/2018)
10/10/2018	<u>20</u>	REPLY to opposition to motion re <u>14</u> MOTION to Dismiss filed by ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Sandberg, Justin) (Entered: 10/10/2018)
10/19/2018	<u>21</u>	NOTICE of Party Name Change by EASTERN MAINE HEALTHCARE SYSTEMS (Marcus, Ezra) (Entered: 10/19/2018)
11/06/2018	<u>22</u>	NOTICE of Change of Address by Justin Michael Sandberg (Sandberg, Justin) (Entered: 11/06/2018)
12/03/2018	<u>23</u>	NOTICE of Administrative Decisions by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> Supplemented Exhibit I, # <u>2</u> Supplemented Exhibit J)(Marcus, Ezra) (Entered: 12/03/2018)
12/27/2018	<u>24</u>	ORDER denying <u>14</u> Defendants' Motion to Dismiss; granting <u>2</u> Plaintiffs' Motion for a Permanent Injunction; and denying as moot <u>2</u> Plaintiffs' Motion for a Preliminary Injunction. See document for details. Signed by Judge Rudolph Contreras on December 27, 2018. (lcrc3) (Entered: 12/27/2018)
12/27/2018	<u>25</u>	MEMORANDUM OPINION denying <u>14</u> Defendants' Motion to Dismiss; granting <u>2</u> Plaintiffs' Motion for a Permanent Injunction; and denying as moot <u>2</u> Plaintiffs' Motion for a Preliminary Injunction. See document for details. Signed by Judge Rudolph Contreras on December 27, 2018. (lcrc3) (Entered: 12/27/2018)
01/06/2019	<u>26</u>	MOTION to Stay <i>Due to Lapse in Appropriations</i> by ALEX M. AZAR II, DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 01/06/2019)
01/07/2019	<u>27</u>	RESPONSE re <u>26</u> MOTION to Stay <i>Due to Lapse in Appropriations</i> filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Marcus, Ezra) (Entered: 01/07/2019)
01/09/2019	<u>28</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> USCA Order)(Marcus, Ezra) (Entered: 01/09/2019)
01/23/2019	<u>29</u>	Unopposed MOTION for Extension of Time to File <i>Brief on Remedy</i> by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 01/23/2019)
01/24/2019		MINUTE ORDER granting <u>29</u> Defendants' Unopposed Motion for Extension of Time. It is hereby ORDERED that the parties shall file their supplemental briefs



		regarding the appropriate remedy on or before January 31, 2019. SO ORDERED. Signed by Judge Rudolph Contreras on January 24, 2019. (lcrc3) (Entered: 01/24/2019)
01/31/2019	<u>30</u>	NOTICE of Appearance by Margaret M. Dotzel on behalf of All Plaintiffs (Dotzel, Margaret) (Entered: 01/31/2019)
01/31/2019	<u>31</u>	MEMORANDUM by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Declaration)(Sandberg, Justin) (Entered: 01/31/2019)
01/31/2019	<u>32</u>	MEMORANDUM by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Attachments: # <u>1</u> Exhibit A)(Marcus, Ezra) (Entered: 01/31/2019)
01/31/2019		MINUTE ORDER denying as moot <u>26</u> Defendants' Motion to Stay, given the restoration of appropriations to the Department of Justice. SO ORDERED. Signed by Judge Rudolph Contreras on January 31, 2019. (lcrc3) (Entered: 01/31/2019)
02/07/2019	<u>33</u>	Unopposed MOTION for Leave to File <i>Amicus Curiae Brief</i> by FEDERATION OF AMERICAN HOSPITALS (Attachments: # <u>1</u> Exhibit A – Amicus Brief, # <u>2</u> Text of Proposed Order)(Carroll, Kelly) (Entered: 02/07/2019)
02/07/2019	<u>34</u>	Unopposed MOTION for Leave to File <i>Supplemental Complaint</i> by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Text of Proposed Order)(Marcus, Ezra) (Entered: 02/07/2019)
02/08/2019		MINUTE ORDER granting <u>33</u> Unopposed Motion for Leave to File Amicus Curiae Brief. It is hereby ORDERED that the Amicus Curiae brief attached to the motion (ECF No. 33–1) is DEEMED FILED. SO ORDERED. Signed by Judge Rudolph Contreras on February 8, 2019. (lcrc3) (Entered: 02/08/2019)
02/08/2019		MINUTE ORDER granting <u>34</u> Plaintiffs' Unopposed Motion for Leave to File Supplemental Complaint. It is hereby ORDERED that Exhibit C to Plaintiffs' motion (ECF No. 34–3) is deemed filed and served as the operative pleading in this case. SO ORDERED. Signed by Judge Rudolph Contreras on February 8, 2019. (lcrc3) (Entered: 02/08/2019)
02/08/2019	<u>38</u>	AMICUS BRIEF by FEDERATION OF AMERICAN HOSPITALS. (znmw) (Entered: 02/20/2019)
02/08/2019	<u>39</u>	SUPPLEMENTAL COMPLAINT against ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES filed by FLETCHER HOSPITAL, INC., AMERICA'S ESSENTIAL HOSPITALS, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, AMERICAN HOSPITAL ASSOCIATION, NORTHERN LIGHT HEALTH, HENRY FORD HEALTH SYSTEM.(znmw) (Entered: 02/20/2019)
02/11/2019	<u>35</u>	

		MOTION for Permanent Injunction by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> Text of Proposed Order)(Schultz, William) (Entered: 02/11/2019)
02/14/2019	<u>36</u>	RESPONSE <i>Regarding Appropriate Remedy</i> filed by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Sandberg, Justin) (Entered: 02/14/2019)
02/14/2019	<u>37</u>	SUPPLEMENTAL MEMORANDUM to re <u>24</u> Order on Motion for Preliminary Injunction,, Order on Motion for Permanent Injunction,, Order on Motion to Dismiss, filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Dotzel, Margaret) (Entered: 02/14/2019)
02/21/2019	<u>40</u>	MOTION for Leave to File <i>Amicus Curiae Brief of the Federation of American Hospitals in Response to Defendants Opposition Brief on Remedy</i> by FEDERATION OF AMERICAN HOSPITALS (Attachments: # <u>1</u> Exhibit A – FAH Response Brief, # <u>2</u> Text of Proposed Order)(Carroll, Kelly) (Entered: 02/21/2019)
02/22/2019	<u>41</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT by UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX M. AZAR II. Fee Status: No Fee Paid. Parties have been notified. (Sandberg, Justin) (Entered: 02/22/2019)
02/22/2019	<u>42</u>	Partial MOTION to Dismiss , Partial MOTION to Dismiss for Lack of Jurisdiction by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 02/22/2019)
02/22/2019	<u>43</u>	Memorandum in opposition to re <u>35</u> MOTION for Permanent Injunction filed by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Sandberg, Justin) (Entered: 02/22/2019)
02/25/2019	<u>44</u>	Transmission of the Notice of Appeal, Order Appealed (Memorandum Opinion), and Docket Sheet to US Court of Appeals. The Court of Appeals docketing fee was not paid because the appeal was filed by the government re <u>41</u> Notice of Appeal to DC Circuit Court. (tth) (Entered: 02/25/2019)
02/26/2019	<u>45</u>	REPLY to opposition to motion re <u>35</u> MOTION for Permanent Injunction filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Marcus, Ezra) (Entered: 02/26/2019)
02/26/2019	<u>46</u>	Memorandum in opposition to re <u>42</u> Partial MOTION to Dismiss Partial MOTION to Dismiss for Lack of Jurisdiction filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT



		HEALTH. (Marcus, Ezra) (Entered: 02/26/2019)
02/28/2019		USCA Case Number 19–5048 for <u>41</u> Notice of Appeal to DC Circuit Court filed by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (zrdj) (Entered: 02/28/2019)
03/15/2019	<u>47</u>	NOTICE Of Motion to Stay Appeal by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> Exhibit Motion to Hold Appeal in Abeyance)(Schultz, William) (Entered: 03/15/2019)
03/27/2019	<u>48</u>	ORDER of USCA as to <u>41</u> Notice of Appeal to DC Circuit Court filed by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES ; USCA Case Number 19–5048. (zrdj) (Entered: 04/01/2019)
05/06/2019	<u>49</u>	ORDER granting in part and denying in part <u>35</u> motion for permanent injunction; granting <u>40</u> motion for leave to file; denying <u>42</u> motion to dismiss: See document for details. Signed by Judge Rudolph Contreras on 5/6/19. (lcrc1) (Entered: 05/06/2019)
05/06/2019	<u>50</u>	MEMORANDUM OPINION granting in part and denying in part <u>35</u> motion for permanent injunction; granting <u>40</u> motion for leave to file; denying <u>42</u> motion to dismiss: See document for details. Signed by Judge Rudolph Contreras on 5/6/19. (lcrc1) (Entered: 05/06/2019)
05/10/2019	<u>51</u>	MOTION for a Firm Date by which Defendants Must Propose a Remedy , MOTION to Expedite <i>Response Deadline</i> by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Text of Proposed Order)(Marcus, Ezra) (Entered: 05/10/2019)
05/22/2019		Set/Reset Deadlines: Status Report due by 8/5/2019 (tj) (Entered: 05/22/2019)
05/23/2019	<u>52</u>	Unopposed MOTION for Extension of Time to File Response/Reply to <i>Motion to Submit Proposed Remedy</i> by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 05/23/2019)
05/24/2019		MINUTE ORDER granting <u>52</u> Defendants' Unopposed Motion for Extension of Time. It is hereby ORDERED that Defendants shall respond to <u>51</u> Plaintiffs' Motion for a Firm Date By Which Defendants Must Propose a Remedy for Violations of the Medicare Act on or before May 31, 2019. SO ORDERED. Signed by Judge Rudolph Contreras on May 24, 2019. (lcrc3) (Entered: 05/24/2019)
05/24/2019		Set/Reset Deadlines: Defendants response to <u>51</u> Plaintiffs' Motion for a Firm Date By Which Defendants Must Propose a Remedy for Violations of the Medicare Act due by 5/31/2019 (hs) (Entered: 05/24/2019)
05/31/2019	<u>53</u>	RESPONSE re <u>51</u> MOTION for a Firm Date by which Defendants Must Propose a Remedy MOTION to Expedite <i>Response Deadline</i> filed by ALEX

			M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Sandberg, Justin) (Entered: 05/31/2019)
06/03/2019	<u>54</u>		MOTION for Entry of Final Judgment , MOTION for Reconsideration of <i>May 6, 2019 Order</i> , MOTION to Expedite <i>Briefing</i> by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Sandberg, Justin) (Entered: 06/03/2019)
06/04/2019			MINUTE ORDER: Upon consideration of <u>54</u> Defendants' Motion for Reconsideration, Entry of Final Judgment, and Expedited Briefing, it is hereby ORDERED that the motion for expedited consideration is GRANTED. It is FURTHER ORDERED that Plaintiffs shall file their response brief to Defendants' motion by no later than June 11, 2019. SO ORDERED. Signed by Judge Rudolph Contreras on June 4, 2019. (lcrc3) (Entered: 06/04/2019)
06/04/2019	<u>55</u>		REPLY to opposition to motion re <u>51</u> MOTION for a Firm Date by which Defendants Must Propose a Remedy MOTION to Expedite <i>Response Deadline</i> filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Marcus, Ezra) (Entered: 06/04/2019)
06/07/2019	<u>56</u>		RESPONSE re <u>54</u> MOTION for Entry of Final Judgment MOTION for Reconsideration of <i>May 6, 2019 Order</i> MOTION to Expedite <i>Briefing</i> filed by AMERICA'S ESSENTIAL HOSPITALS, AMERICAN HOSPITAL ASSOCIATION, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, FLETCHER HOSPITAL, INC., HENRY FORD HEALTH SYSTEM, NORTHERN LIGHT HEALTH. (Marcus, Ezra) (Entered: 06/07/2019)
06/10/2019	<u>57</u>		REPLY to opposition to motion re <u>54</u> MOTION for Entry of Final Judgment MOTION for Reconsideration of <i>May 6, 2019 Order</i> MOTION to Expedite <i>Briefing</i> filed by ALEX M. AZAR II, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Sandberg, Justin) (Entered: 06/10/2019)
07/09/2019			MINUTE ORDER: It is hereby ORDERED that the parties shall appear for a status conference on July 10, 2019, at 10:30 AM in Courtroom 14 before Judge Rudolph Contreras. SO ORDERED. Signed by Judge Rudolph Contreras on July 9, 2019. (lcrc3) (Entered: 07/09/2019)
07/09/2019			Set/Reset Hearings: Status Conference set for 7/10/2019 at 10:30 AM in Courtroom 14 before Judge Rudolph Contreras. (tj) (Entered: 07/09/2019)
07/10/2019			Minute Entry for proceedings held before Judge Rudolph Contreras: Status Conference held on 7/10/2019. Parties inform the court of the status of this action. (Court Reporter: Patricia Kaneshiro Miller.) (tj) (Entered: 07/10/2019)
07/10/2019	<u>58</u>	14	ORDER granting <u>54</u> Defendants' Motion for Entry of Final Judgment and denying as moot <u>51</u> Plaintiffs' Motion for a Firm Date. See document for details. Signed by Judge Rudolph Contreras on July 10, 2019. (lcrc3) Modified on 7/10/2019 (lcrc3, ). Modified on 7/10/2019 (lcrc3). (Entered: 07/10/2019)
07/10/2019	<u>59</u>	15	MEMORANDUM OPINION granting <u>54</u> Defendants' Motion for Entry of Final Judgment and denying as moot <u>51</u> Plaintiffs' Motion for a Firm Date. See

			document for details. Signed by Judge Rudolph Contreras on July 10, 2019. (lcrc3) (Entered: 07/10/2019)
07/11/2019	<u>60</u>	12	NOTICE OF APPEAL TO DC CIRCUIT COURT by UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX M. AZAR II. Fee Status: No Fee Paid. Parties have been notified. (Sandberg, Justin) (Entered: 07/11/2019)

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

THE AMERICAN HOSPITAL	)	
ASSOCIATION, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
v.	)	No. 1:18-cv-02084-RC
	)	
ALEX M. AZAR II, in his official capacity	)	
as Secretary of Health and	)	
Human Services, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendants Alex M. Azar II, Secretary of the United States Department of Health and Human Services, and the U.S. Department of Health and Human Services hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the order entering final judgment [ECF No. 58] and related opinion [ECF No. 59], and all prior rulings that merged with the final judgment.

Date: July 11, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JEAN LIN  
Special Counsel, Federal Programs Branch

s/ Justin M. Sandberg  
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*Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN HOSPITAL  
ASSOCIATION, *et al.*,

Plaintiffs,

V.

ALEX M. AZAR II, United States  
Secretary of Health and  
Human Services, *et al.*,

Defendants.

Civil Action No.: 18-2084 (RC)

Re Document Nos.: 51, 54

## ORDER

**GRANTING DEFENDANTS' MOTION FOR ENTRY OF FINAL JUDGMENT; DENYING AS MOOT  
PLAINTIFFS' MOTION FOR A FIRM DATE**

For the reasons stated in the Court’s Memorandum Opinion separately and contemporaneously issued, Defendants’ motion for entry of final judgment (ECF No. 54) is **GRANTED** and Plaintiffs’ motion for a firm date (ECF No. 51) is **DENIED** as moot.

**SO ORDERED.**

Dated: July 10, 2019

RUDOLPH CONTRERAS  
United States District Judge



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN HOSPITAL	:	
ASSOCIATION, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Civil Action No.: 18-2084 (RC)
	:	
v.	:	Re Document Nos.: 51, 54
	:	
ALEX M. AZAR II, United States	:	
Secretary of Health and	:	
Human Services, <i>et al.</i> ,	:	
	:	
Defendants.	:	

**MEMORANDUM OPINION**

**GRANTING DEFENDANTS’ MOTION FOR ENTRY OF FINAL JUDGMENT; DENYING AS MOOT  
PLAINTIFFS’ MOTION FOR A FIRM DATE**

**I. BACKGROUND<sup>1</sup>**

On May 6, 2019, this Court held that the Department of Health and Human Services (“HHS”) exceeded its statutory authority when it reduced the 2019 Medicare reimbursement rate for pharmaceutical drugs covered by the “340B Program” by nearly 30%. *See Am. Hosp. Ass’n v. Azar* (“*AHA II*”), No. CV 18-2084 (RC), 2019 WL 1992868 (D.D.C. May 6, 2019). This holding followed the Court’s December 2018 conclusion that HHS exceeded its statutory authority in reducing the 2018 Medicare reimbursement rate. *See Am. Hosp. Ass’n v. Azar* (“*AHA I*”), 348 F. Supp. 3d 62, 79–83 (D.D.C. 2018). In *AHA II*, this Court also specified the remedy for the agency’s unlawful rate adjustments: remand of both the 2018 and 2019 rules to

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<sup>1</sup> Because the December 2018 Opinion and May 2019 Opinion contain extensive discussion of the relevant background, procedural history, and the relevant statutes and regulation, *see AHA II*, 2019 WL 1992868 at \*1–4; *AHA I*, 348 F. Supp. 3d at 66–72, and because the instant order addresses the remedy and not the merits in this dispute, the Court will not recapitulate the facts previously reported in detail.

the agency, without vacatur. *AHA II*, 2019 WL 1992868 at \*7–10. In specifying the remedy, the Court stated that it would “retain jurisdiction over this matter” so that it could “reconsider the remedy if the agency fails to fulfill its responsibilities in a prompt manner.” *Id.* at \*7.

Both parties soon filed further motions. Plaintiffs moved for a firm date by which Defendants must propose a remedy to the Court. Pls.’ Mot. for Firm Date, ECF No. 51 (“Pls.’ Mot.”). Defendants moved for reconsideration of the May 6, 2019 Order and requested entry of final judgment pursuant to Federal Rule of Civil Procedure Rule 58(a), contending that the Court’s retention of jurisdiction was “clear error.” Defs.’ Mot. for Recons., Entry of Final J., and Expedited Briefing, ECF No. 54 (“Defs.’ Mot.”). In this motion, Defendants also argue that entry of final judgment is necessary for expeditious review on the merits in the D.C. Circuit. *Id.* at 1. These motions are ripe for the Court’s consideration. For the reasons stated below, the Court will grant Defendant’s motion for entry of final judgment and dismiss as moot Plaintiff’s motion for a firm date.

## II. ANALYSIS

Defendants ask this Court to revisit the remedy specified in the May 6, 2019 Order, ECF No. 49, specifically requesting that the Court, first, reconsider its retention of jurisdiction following remand to HHS and, second, enter final judgment. Defs.’ Mot. 1. Defendants argue that the Court has both the authority and the imperative to reconsider the May 6 Order. The Court agrees.

A court has authority to reconsider an interlocutory order like the May 6 Order “at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” *Lewis v. District of Columbia*, 736 F. Supp. 2d 98, 101 (D.D.C. 2010) (quoting Fed. R. Civ. P. 54(b)); *see also Bayshore Cmty. Hosp. v. Azar*, 325 F. Supp. 3d 18, 22 (D.D.C. 2018)

(quoting *Ofisi v. BNP Paribas, S.A.*, 285 F. Supp. 3d 240, 243 (D.D.C. 2018)). “Relief under Rule 54(b) is available ‘as justice requires,’ a standard that reflects the flexibility afforded courts under the rule.” *Bayshore Cmty. Hosp.*, 325 F. Supp. 3d at 22 (quoting *Cobell v. Jewell*, 802 F.3d 12, 25 (D.C. Cir. 2015) (internal quotation mark omitted)). For a court to grant a motion for reconsideration of an interlocutory order, the movant must generally demonstrate: “(1) an intervening change in the law; (2) the discovery of new evidence not previously available; or (3) a clear error in the first order.” *Zeigler v. Potter*, 555 F. Supp. 2d 126, 129 (D.D.C. 2008), *aff’d*, No. 09-5349, 2010 WL 1632965 (D.C. Cir. Apr. 1, 2010) (quoting *Keystone Tobacco Co. v. U.S. Tobacco Co.*, 217 F.R.D. 235, 237 (D.D.C. 2003)).

Here, Defendants argue that the Court’s retention of jurisdiction upon remand to HHS constitutes clear error. They contend that the proper remedy is remand to the agency—and remand alone. *See* Defs.’ Mot. at 2. Defendants aver that this is an open and shut issue: because this Court reviewed the agency’s action and found that the agency made an error of law, “the court’s inquiry is at an end: the case must be remanded to the agency for further action consistent with the correct legal standards.” *Id.* (quoting *Palisades Gen. Hosp. Inc. v. Leavitt*, 426 F.3d 400, 403 (D.C. Cir. 2005)). Plaintiffs counter with a different view of what remand requires, asserting that this Court nonetheless has *discretion* in certain circumstances to retain jurisdiction. Pls.’ Opp’n Defs.’ Mot. 3, ECF No. 56. Thus, even Plaintiffs acknowledge that, although the Court may retain jurisdiction over this case, it is not *required* to do so. The Court thus reconsiders the issue and determines that it should not exercise its discretion in that fashion.

As a general matter, Plaintiffs are correct that the Court has discretion to retain jurisdiction, and it aligns with other courts in this Circuit in “recogniz[ing] that it has the discretion to retain jurisdiction over a case pending completion of a remand and to order the

filing of progress reports.” *Baystate Med. Ctr. v. Leavitt*, 587 F. Supp. 2d 37, 41 (D.D.C. 2008) (citing *Cobell*, 240 F.3d at 1109). But “this discretion is typically reserved for cases alleging unreasonable delay of agency action or failure to comply with a statutory deadline, or for cases involving a history of agency noncompliance.” *Id.* (citing *Cobell*, 240 F.3d at 1109). In the instant case, there is no evidence of unreasonable agency delay or noncompliance on par with the decades-long recalcitrance evidenced in cases such as *Cobell*. And in such instances, “[t]he norm is to vacate agency action that is held to be arbitrary and capricious and remand for further proceedings consistent with the judicial decision, without retaining oversight over the remand proceedings.” *Baystate Med. Ctr.*, 587 F. Supp. 2d at 41. Here, of course, the Court concluded that vacatur was inappropriate, *see AHA II*, 2019 WL 1992868 at \*7, so its retention of jurisdiction cuts against this norm.

Moreover, pragmatic considerations call for reconsideration of the Court’s original stance. Both parties wish to resolve the dispute expeditiously. And this Court is sympathetic to Defendants’ argument that retention of oversight over remand to the agency “calls into question the finality of the remand order” and thereby risks delaying the ability to appeal to the D.C. Circuit. Defs.’ Mot. 3. Although Plaintiffs would prefer that this Court retain jurisdiction and resolve the merits and the remedy at once, Defendants correctly note in a separate filing that the Administrative Procedure Act does not permit this Court to review a *proposed* rule before it is final. Defs.’ Opp’n Pls.’ Mot. 4–5, ECF No. 53 (discussing 5 U.S.C. § 704 and associated case law). Accordingly, retention of jurisdiction risks delaying prompt resolution of this suit, pending a final agency rule. To afford the parties the opportunity for expedited review by the D.C. Circuit, this Court will grant Defendants’ motion for entry of final judgment. This resolution moots Plaintiffs’ motion for a firm date.

### **III. CONCLUSION**

For the foregoing reasons, Defendants' motion for reconsideration and motion for entry of final judgment is **GRANTED** and Plaintiffs' motion for entry of a firm date is **DENIED** as moot. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: July 10, 2019

RUDOLPH CONTRERAS  
United States District Judge