

No. 19-5048 & No. 19-5198

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

THE AMERICAN HOSPITAL ASSOCIATION, *et al.*,
Plaintiffs-Appellees,

v.

XAVIER BECERRA, in his official capacity, *et al.*,
Defendants-Appellants.

On Appeal from a Final Judgment of the
U.S. District Court for the District of Columbia,
(Honorable Rudolph Contreras)

UNOPPOSED MOTION FOR REMAND

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Plaintiffs respectfully ask that this Court promptly issue an order remanding the case to district court for further proceedings in light of the Supreme Court's recent decision. *Am. Hosp. Ass'n v. Becerra*, No. 20-1114 (S. Ct. June 15, 2022). The Supreme Court issued a certified judgment on July 18, 2022, and this Court subsequently recalled the mandate from the district court.

The Supreme Court held that the Department of Health and Human Services (HHS) unlawfully reduced Medicare reimbursement rates for drugs acquired under the "340B" program as part of the Outpatient Prospective Payment System (OPPS) rules for 2018 and 2019. While this case has been on appeal (and outside the district court's jurisdiction), HHS has issued OPPS rules for 2020, 2021, and 2022 with the exact same reduced reimbursement rates for 340B drugs that the Supreme Court has now held unlawful.¹ The reduced rate under the 2022 OPPS rule remains in effect today, despite being plainly unlawful under the Supreme Court's recent ruling.

Plaintiffs ask this Court to remand the case to district court promptly so that Plaintiffs can, among other things, immediately (1) move the district court to grant their unopposed motion to file a supplemental complaint adding challenges to the 2020, 2021, and 2022 rules to this case, and (2) request that the district court, on an

¹ See 2020 OPPS Rule, 84 Fed. Reg. 61,142, 61,317, 61,324 (Nov. 12, 2019); 2021 OPPS Rule, 85 Fed. Reg. 85,866, 86,038-39, 86,053-54 (Dec. 29, 2020); 2022 OPPS Rule, 86 Fed. Reg. 63,458, 63,640-41, 63,648 (Nov. 16, 2021).

expedited basis, order HHS to stop unlawfully underpaying for 340B drugs pursuant to the 2022 OPPS rule that is currently in effect. Every day that the reduced 340B rate under the 2022 OPPS rule remains in effect, HHS is drastically underpaying claims for reimbursement for 340B drugs, in direct violation of its statutory obligations as determined by the Supreme Court. Plaintiffs understand that the parties may disagree regarding what if any action the district court should take with respect to the 2022 OPPS rule. But regardless, speedily presenting that issue to the district court is crucial given that the 2022 OPPS rule is currently in effect and results in unlawful underpayments for 340B drugs every day.

For the foregoing reasons, Plaintiffs respectfully request that the Court promptly issue an order remanding this case to district court for further proceedings in light of the Supreme Court's recent decision. The government does not oppose this motion.

Dated: July 25, 2022

Respectfully Submitted,

/s/ William B. Schultz

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CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitation of FRAP 27(d)(2) and 32(c) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 413 words. This document also complies with the typeface and type-style requirements of FRAP 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font size and Times New Roman type style.

/s/ William B. Schultz

William B. Schultz

Attorney for the Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that, on July 25, 2022, I caused the foregoing to be electronically served on counsel of record via the Court's CM/ECF system.

/s/ William B. Schultz
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Attorney for the Plaintiffs-Appellees