

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE AMERICAN HOSPITAL
ASSOCIATION,
et al.,

Plaintiffs,

–v–

XAVIER BECERRA, in his official capacity as
the Secretary of Health and Human Services, *et*
al.,

Defendants.

Civil Action No. 18-2084 (RC)

**UNOPPOSED MOTION FOR PERMISSION TO FILE
SECOND SUPPLEMENTAL COMPLAINT¹**

The Supreme Court has now affirmed this Court’s conclusion that Defendants violated the law when they drastically cut Medicare drug reimbursement rates for 340B hospitals in the 2018 and 2019 OPPS Rules. *Am. Hosp. Ass’n v. Becerra*, 142 S. Ct. 1896 (2022). In particular, the Court ruled that “absent a survey of hospitals’ acquisition costs, HHS may not vary the reimbursement rates for 340B hospitals” relative to other hospitals, and “HHS’s 2018 and 2019 reimbursement rates for 340B hospitals were therefore contrary to the statute and unlawful.” *Id.* at *8.

Plaintiffs respectfully move for permission under Federal Rule of Civil Procedure 15(d) to file the attached Second Supplemental Complaint, which adds claims challenging the OPPS Rules that Defendants promulgated for 2020, 2021, and 2022. In each of those three years, as in 2018 and 2019, Defendants reimbursed drugs acquired under the 340B program at a rate of ASP minus

¹ The parties have conferred and Defendants have indicated that they do not oppose this motion.

22.5%, even though they continued to reimburse the same drugs at a much higher rate of ASP plus 6% when *not* acquired through the 340B program. Defendants did *not* rely on the required survey of acquisition costs.

Permitting Plaintiffs to file the Second Supplemental Complaint is warranted under Rule 15(d). Motions to file supplemental pleadings “are to be freely granted when doing so will promote the economic and speedy disposition of the entire controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any other parties to the action.” *Powell v. IRS*, 263 F. Supp. 3d 5, 7 (D.D.C. 2017) (quoting *Hall v. CIA*, 437 F.3d 94, 101 (D.C. Cir. 2006)). The 2020, 2021, and 2022 OPPS Rules have the exact same legal defect that the Supreme Court identified in the 2018 and 2019 OPPS Rules in this case. Permitting Plaintiffs to add claims challenging the 2020, 2021, and 2022 OPPS Rules is thus the most efficient way to resolve the entire controversy between the parties. Likewise, adding those years to this case will not cause undue delay, inconvenience, or prejudice. Accordingly, this Court should grant permission under Rule 15(d) to file the attached Second Supplemental Complaint.

CONCLUSION

Plaintiffs respectfully move the Court for permission to file the attached Second Supplemental Complaint, which adds claims challenging the 2020, 2021, and 2022 OPPS Rules.

Dated: August 3, 2022

Respectfully submitted,

/s/ William B. Schultz

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CERTIFICATE OF SERVICE

I hereby certify that, on August 3, 2022, I caused the foregoing to be electronically served on counsel of record via the Court's CM/ECF system.

/s/ Ezra B. Marcus

Ezra B. Marcus