

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

AMERICAN HOSPITAL ASS'N, *et al.*,

Plaintiffs-Appellants,

v.

ERIC D. HARGAN, *et al.*,

Defendants-Appellees.

No. 18-5004

RESPONSE TO MOTION TO EXPEDITE BRIEFING

Plaintiffs-appellants have filed a motion seeking to expedite briefing in this appeal from an order granting the government's motion to dismiss for lack of subject matter jurisdiction. The government does not object to expedition, but does object to the schedule proposed by plaintiffs—which does not contemplate extensions of time—under which plaintiffs' brief would be due on February 15, 2018, and the government's brief would be due on March 19, 2018. The government does not object to expedition as long as it is accorded at least 60 days from the filing of plaintiffs' opening brief in which to file its responsive brief.

Plaintiffs challenge a rulemaking that affects Medicare reimbursements and argue that the potential economic consequences of the rate-change merits expedited review. They have not sufficiently demonstrated, however, why those

potential consequences necessitate the proposed briefing schedule, especially since providers have twelve months after the date of service to timely file a claim for payment for 340B drugs. *See* 42 U.S.C. § 1395n(a); 42 C.F.R. § 424.44. This case presents a question of statutory interpretation that resulted in extensive briefing at the motion to dismiss stage accompanied by numerous affidavits and exhibits. The rulemaking underlying the litigation was lengthy and subject to significant comments from many entities, including plaintiffs.

The handling of the government's brief has been assigned to Mark B. Stern and Laura Myron of the Appellate Staff of the Civil Division of the Department of Justice. Mr. Stern and Ms. Myron were not involved in the district court litigation. The compressed briefing schedule proposed by plaintiffs does not afford adequate time to prepare the government's brief and coordinate with affected agencies and components. In addition to their new responsibility for the government's brief in this case, Mr. Stern and Ms. Myron are already responsible for several other appellate matters during the 60 days following the proposed filing date for plaintiffs' brief. Plaintiffs have identified no circumstances that would justify a schedule that allows the government a shorter period in which to file its brief.

CONCLUSION

For the foregoing reasons, the Court should deny plaintiff's motions for expedited briefing, or adjust the proposed schedule as noted above.

Respectfully submitted,

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/s/ Laura Myron

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JANUARY 2018

CERTIFICATE OF COMPLIANCE

I hereby certify that this response complies with volume limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 362 words, excluding the parts of the response exempted under Rule 32(f), according to the count of Microsoft Word. I further certify that this response also complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because this document has been prepared in Microsoft Word in 14-point Garamond, which is a proportionally spaced font.

s/ Laura Myron

LAURA MYRON

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2018, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Laura Myron

LAURA MYRON

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The first part of the history of the United States is the period from the discovery of the continent to the establishment of the first colonies.

The second part of the history of the United States is the period from the establishment of the first colonies to the Declaration of Independence.

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