

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF AIR MEDICAL
SERVICES,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*,

Defendants.

No. 1:21-cv-03031-RJL

JOINT MOTION TO ESTABLISH BRIEFING SCHEDULE

The parties to this litigation, through their undersigned counsel, respectfully request that the Court enter an order adopting their proposed schedule to govern proceedings with respect to the Plaintiff's motion for summary judgment and the Defendants' anticipated cross-motion for summary judgment. The parties jointly recite as follows:

1. The Plaintiff, the Association of Air Medical Services (AAMS), represents providers of air ambulance services. AAMS filed its complaint in this action on November 16, 2021, ECF No. 1, and its motion for summary judgment on December 10, 2021, ECF No. 5.

2. AAMS challenges the legality of parts of two interim final rules (IFRs) issued by the Defendant agencies in this litigation—the Departments of Treasury, Labor, and Health and Human Services, and the Office of Personnel Management. *See Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55,980 (Oct. 7, 2021); *Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36,872 (July 13, 2021). The agencies issued these rules to implement the No Surprises Act, Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758-2890 (Dec. 27, 2020).

3. In particular, AAMS disputes the legality of certain aspects of the agencies' regulations that address payments by group health plans or health insurance issuers to nonparticipating providers of air ambulance services. Those regulations address the methodology which the plan or issuer will use to determine the plan's or issuer's Qualified Payment Amount (QPA) for the services, as well as the use by the independent dispute resolution (IDR) entity of the QPA when adjudicating any dispute about the appropriate Out-Of-Network rate which the plan or issuer must ultimately pay to the air ambulance provider.

4. AAMS seeks a decision in this case as soon as practicable, but no later than April 2022, when AAMS projects that IDR entities will begin to adjudicate payment disputes. AAMS seeks a decision as soon as practicable because AAMS maintains that the regulations deflate the QPA, and payment of deflated QPAs to nonparticipating air ambulance providers for claims for services performed beginning January 1, 2022 will cause immediate and irreparable injury to the providers that are AAMS' members. The Defendants dispute these allegations.

5. The Defendants do not concede that AAMS or its members suffer any injury but are willing to accommodate AAMS' desire for an expedited briefing schedule.

6. The parties accordingly have agreed to the following schedule to accommodate AAMS' desire for expedition and the Defendant's preparation of the administrative record:

a. The Defendants shall file their opposition to AAMS' summary judgment motion, together with their cross-motion for summary judgment, on or before January 18, 2022. The Defendants will also file the certified list of the administrative record with the Court, and serve AAMS with a copy of the administrative record, on or before January 18, 2022. The Defendants shall be relieved of their obligation to answer the complaint.

b. AAMS shall file its reply in support of its summary judgment motion, together with its opposition to the Defendants' cross-motion, on or before February 1, 2022.

c. The Defendants shall file their reply in support of their cross-summary judgment motion on or before February 11, 2022.

7. AAMS respectfully requests that the Court schedule a hearing on AAMS' summary judgment motion and the Defendants' cross-summary judgment motion in February 2022 and issue a decision as soon as practicable thereafter. The Defendants defer to the Court's preferences with regard to the need for, and the scheduling of, a hearing.

8. AAMS agrees to withdraw, and hereby withdraws, each request that it has submitted under the Freedom of Information Act to the Defendant agencies or subcomponents of the Defendant agencies with regard to the two rulemakings at issue in this litigation.

Dated: December 14, 2021

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of the Joint Motion to Establish Briefing Schedule, and finding good cause for the same, it is hereby ORDERED that

1. The Defendants shall file their opposition to the Plaintiff's summary judgment motion, together with their cross-motion for summary judgment, on or before January 18, 2022. The Defendants shall also file the certified list of the administrative record with the Court, and serve the Plaintiff with a copy of the administrative record, on or before January 18, 2022. The Defendants shall be relieved of their obligation to answer the complaint.

2. The Plaintiff shall file its reply in support of its summary judgment motion, together with its opposition to the Defendants' cross-motion, on or before February 1, 2022.

3. The Defendants shall file their reply in support of their cross-summary judgment motion on or before February 11, 2022.

4. If the Court so elects, the Court shall hold a hearing on the Plaintiff's summary judgment motion and Defendants' cross-motion for summary judgment at [TIME] on [MONTH] [DAY], 2022.

IT IS SO ORDERED.

Dated: _____

RICHARD J. LEON
United States District Judge