IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN HOSPITAL ASSOCIATION, *et al.*, Plaintiffs, v. ALEX M. AZAR, in his official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, Defendant.	)	Civil Action No. 14-CV-851-JEB

[PROPOSED] REMEDIAL ORDER

Defendant has moved for summary judgment, and Plaintiffs have cross-moved for summary judgment. The Court having considered the parties' submissions, it is **ORDERED**:

1. The Secretary's motion is denied.

2. Plaintiffs' motion is granted.

3. The Court finds that the Secretary has not proved that it is "impossible" for him to comply with the measures set out in this order. *American Hosp. Ass'n v. Price*, 867 F.3d 160, 168-169 (D.C. Cir. 2017). The Court further affirmatively finds that compliance with the measures set out in this order is possible.

4. HHS must allow the current RAC contracts to expire at the end of the current contract year and any new RAC contract must include a term that a RAC that has an overturn rate at the ALJ level greater than 40% in a given quarter will receive a 25% reduction in the applicable contingency fee for all claims for which a contingency fee is earned during that quarter.

5. Within 60 days of this order, HHS must require that any new reviews of hospital claims that would be performed by RACs are instead performed by quality improvement organizations.

6. Within 90 days of this order and every 90 days thereafter, HHS must either settle outstanding inpatient rehabilitation facility claims or file a notice with the Court (under seal, if necessary) detailing (1) the steps HHS has taken towards settlement, (2) the most-recent demands and offers from each side, and (3) HHS's reasons for not accepting the hospitals' most-recent settlement demand.

7. HHS must, at each settlement conference convened as part of its expanded Settlement Conference Facilitation program, make a good-faith settlement offer that is based on the claimant's historical success rate at the ALJ level or the historical success rate at the ALJ level for claims of a similar kind. For each settlement conference that does not result in a settlement agreement, HHS must file with the Court every 90 days (under seal, if necessary) a notice (1) detailing the settlement offer made to the provider or supplier, including the evidence supporting the settlement offer, (2) the provider's or supplier's last, best, and final counteroffer, if any, and (3) HHS's reasons for not accepting the provider's or supplier's final counteroffer.

8. Within 90 days of this order, HHS must undertake a demonstration project that reduces to the London Interbank Offered Rate the interest on balances retained by providers while their appeals remain in the backlog.

9. For six months after this order, HHS must allow providers and suppliers to rebill denied claims in return for dismissing any pending appeal related to that claim.

10. HHS must toll the time for hospitals to file appeals arising out of the Section 340B component of the hospital outpatient prospective payment program regulation published at

82 Fed. Reg. 52,356 (Nov. 13, 2017) to and including 90 days after a final, non-appealable decision in *American Hospital Association v. Azar*, No. 18-5004 (D.C. Cir.).

11. HHS must maintain its current efforts to combat the backlog, including all of the measures outlined in its motion for summary judgment. Dkt. No. 66-1. HHS may reduce or alter its existing programs to fight the backlog upon application to the Court and for good cause shown.

12. HHS must submit reports every 90 days regarding the status of the backlog and including the information required by the other portions of this order.

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James E. Boasberg
United States District Judge

Dated: