

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN HOSPITAL ASSOCIATION, *et al.*,

*Plaintiffs,*

–v–

THE DEPARTMENT HEALTH AND HUMAN  
SERVICES, *et al.*,

*Defendants.*

**Case No. 1:18-cv-2112**

**PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Plaintiffs the American Hospital Association, America’s Essential Hospitals, the Association of American Medical Colleges, 340B Health, Genesis Healthcare System, Kearny County Hospital, and Rutland Regional Medical Center, through their undersigned counsel, move for summary judgment seeking a declaration that the most recent delay by defendants Department of Health and Human Services and the Secretary of Health and Human Services, 83 Fed. Reg. 20,009 (May 7, 2018), in implementing a critical regulation that it issued in final form on January 5, 2017, with a 60-day effective date, published at 82 Fed. Reg. 1210, 1229-30 (the “Final 340B Rule”), is arbitrary and capricious, an abuse of discretion, and contrary to law, in violation of 5 U.S.C. § 706(2)(A), and is agency action unreasonably delayed in violation of 5 U.S.C. § 706(1).

In support of this motion, plaintiffs are submitting a Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Summary Judgment (“Memorandum”), a Statement of Facts, and a Proposed Order. For the reasons set forth in the accompanying Memorandum, Plaintiffs respectfully request that this Court grant summary judgment on their claims; declare that Defendants’ most recent delay in implementing the Final 340B Rule is

arbitrary and capricious, an abuse of discretion, and contrary to law, in violation of 5 U.S.C. § 706(2)(A) and is agency action unreasonably delayed, in violation of 5 U.S.C. § 706(1); order the Secretary to make the Final 340B Rule effective within 30 days after judgment; and order Defendants to pay fees and costs pursuant to 28 U.S.C. § 2412.

Respectfully submitted,

*/s/ William B. Schultz*

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