

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

THE AMERICAN HOSPITAL ASSOCIATION,
et al.,

Plaintiffs,

–v–

ALEX M. AZAR II, in his official capacity as the
Secretary of Health and Human Services, *et al.*,

Defendants.

Civil Action No. 18-2084 (RC)

OPPOSITION TO MOTION TO STAY

The government has moved for an order staying proceedings in this case in light of the lapse in appropriations to the U.S. Department of Justice. ECF No. 26. According to the current Justice Department protocol for government shutdowns, “the Department has a high percentage of activities and employees that are excepted from the Antideficiency Act restrictions and can continue during a lapse in appropriations.” U.S. Dep’t of Justice, FY 2019 Contingency Plan at 1 (Sept. 11, 2018) (Ex. A). In ongoing civil litigation, Justice Department litigators are obligated to request stays, but “[i]f a court denies such a request and orders a case to continue, the Government will comply with the court’s order, which [constitutes] express legal authorization for the activity to continue.” *Id.* at 3. In addition, the Department of Health and Human Services (HHS), whose attorneys appear on the briefs in this action, is not affected by the current government shutdown.

It is important that the court expeditiously rule on a remedy for 2018 claims, which are still being processed, before HHS starts to pay 2019 claims. HHS has represented that an injunction in this action “would significantly disrupt operation of the Medicare system, to the

detriment of its participants and Defendants.” Defendants’ Motion to Dismiss, ECF No. 14, at 3-4. The longer the delay, the greater that disruption will be. Therefore, plaintiffs respectfully ask the court to deny the government’s motion for a stay, as have other courts. *See, e.g.*, Order, *Maryland v. United States*, Case 1:18-cv-2849-ELH, Dkt. 49 (D. Md. Jan. 3, 2019) (Ex. B) (denying government motion to stay based on shutdown).

Dated: January 7, 2019

Respectfully submitted,

/s/ William B. Schultz

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CERTIFICATE OF SERVICE

I hereby certify that, on January 7, 2019, 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