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November 14, 2019

Mr. Mark J. Langer  
Clerk, United States Court of Appeal  
for the District of Columbia Circuit  
United States Courthouse  
Room 5423  
Third & Constitution Avenue, N.W.  
Washington, D.C. 20001

Re: *American Hospital Association, et al. v. Azar*, Nos. 19-5048, 18-5198  
Oral argument heard on November 8 before Judges Srinivasan, Millett,  
and Pillard

Dear Mr. Langer:

The Government's November 12, 2019 letter provides additional argument and confirms that HHS did not argue until its reply brief that its interpretation of the payment authority under the OPPS statute is reasonable. The Appellees have explained why HHS's almost 30% reduction in the payments for 340B drugs was a clear violation of the authority to reimburse hospitals for separately payable drugs under the OPPS statute.

In responding to one of Appellees' statutory arguments, HHS has claimed that paying the statutory default rate under subclause (II) of section 1395l(t)(14)(A)(iii) to 340B hospitals amounts to an overpayment that Medicare should be able to recover and redistribute to all Medicare hospitals. In our brief in this Court, we explained that the intent of the 340B Program was to generate additional resources for 340B hospitals, at no cost to the federal government, to use to serve their vulnerable communities. Br. 7-9, 51. Thus, the Government is wrong to claim that the Medicare program is entitled to the benefit of the statutory discounts and to characterize the standard Medicare payment rate as an overpayment. Allowing qualifying hospitals to retain the 340B savings on drugs is exactly what Congress intended.

Respectfully submitted,

*/s/ William B. Schultz*

William B. Schultz  
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