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September 25, 2020

VIA ELECTRONIC FILING

Mr. Mark J. Langer
Clerk of the Court
United States Court of Appeals for the D.C. Circuit
E. Barrett Prettyman U.S. Courthouse and
William B. Bryant Annex
333 Constitution Avenue, NW
Washington, D.C. 20001

Re: *American Hospital Association et al. v. Azar*, No. 20-5193 (argument
scheduled Oct. 15, 2020)

Dear Mr. Langer:

Under Federal Rule of Appellate Procedure 28(j), Appellants attach the Executive Order on An America-First Healthcare Plan (Sept. 24, 2020), which discusses HHS's challenged price-disclosure rule. The order states that, "[i]n the absence of congressional action," the Administration has acted "to make healthcare prices more transparent." The order indicates that the price-disclosure rule followed from "Executive Order 13877," which "direct[ed] certain agencies—for the first time ever—to make sure patients have access to meaningful price and quality information prior to the delivery of care." The order refers to the price-disclosure rule as follows: "Beginning January 1, 2021, hospitals will be required to publish their real price for every service, and publicly display in a consumer-friendly, easy-to-understand format the prices of at least 300 different common services that are able to be shopped for in advance." The order also requires HHS, within 180 days,

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to update the Medicare.gov Hospital Compare website to indicate, *inter alia*, “whether the hospital is in compliance with” the challenged rule.

The Executive Order pertains to Appellants’ challenge for several reasons:

- The order describes the rule as mandating disclosure of hospitals’ “real price[s].” Appellants argue that section 2718(e)’s reference to hospitals’ “standard charges” cannot reasonably refer to the varying prices for each item or service that hospitals agree to accept in “particular circumstances” for “identifiable group[s] of individuals.” AHA Br. 26-37.
- The order describes the rule as requiring two disclosures—hospitals’ “real price for every service,” and a “public[] display in a consumer-friendly, easy-to-understand format” of “the prices of at least 300 different common services.” Appellants argue that the rule exceeds HHS’s authority to mandate publication of “a list” of standard charges by requiring multiple lists. AHA Br. 37-40.
- The order characterizes Executive Order 13,877 as “directing” the rule’s requirements. Appellants argue that *Chevron* does not apply to HHS’s interpretation of “standard charges,” which reflects a presidential directive. AHA Br. 43-44.
- The order states the rule’s effective date as January 1, 2021, thus apparently rejecting Appellants’ request to delay the rule’s effective date given hospitals’ challenges in addressing the ongoing COVID-19 pandemic. AHA Br. 23-24.

Respectfully submitted,

/s/ Lisa S. Blatt

Lisa S. Blatt

Counsel for Appellants

cc: Counsel of Record via ECF