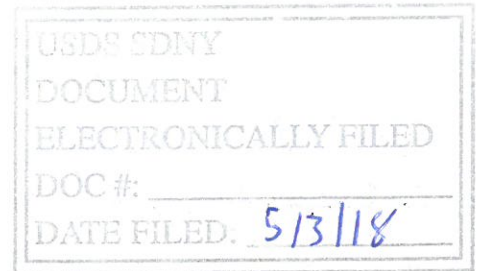


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



STATE OF NEW YORK and STATE OF
MINNESOTA,

Plaintiffs,

-v-

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and ALEX M. AZAR
II, in his official capacity as Secretary of the
U.S. Department of Health and Human
Services,

Defendants.


No. 18-cv-683 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

The Court is in receipt of the attached Stipulation and Proposed Order. Accordingly, IT IS HEREBY ORDERED THAT this case is dismissed with prejudice but without costs. IT IS FURTHER ORDERED THAT the Court retains jurisdiction to enforce the Stipulation. However, within ninety days of the date of this Order – that is, by August 1, 2018 – any party may send a letter requesting to restore this action to the docket with an explanation for the request. The Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

Dated: May 3, 2018
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK and
STATE OF MINNESOTA,

Plaintiffs,

v.

18 Civ. 683 (RJS)

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES; and ALEX M. AZAR II, in his official
capacity as Secretary of the U.S. Department of
Health and Human Services,

Defendants.

STIPULATION AND [PROPOSED] ORDER

Plaintiffs, the State of New York and the State of Minnesota (together, the “States”), and Defendants, the U.S. Department of Health and Human Services and Alex M. Azar II¹ in his official capacity as Secretary of the Department of Health and Human Services (together, “HHS”), by and through their respective counsel, hereby agree and stipulate as follows:

WHEREAS, the States filed a Complaint in the above-captioned action on January 26, 2018, in the U.S. District Court for the Southern District of New York;

WHEREAS, the Complaint relates to HHS’s reduced reimbursement to the States under the States’ Basic Health Programs (“BHPs”) operated pursuant to the Patient Protection and Affordable Care Act, including the States’ objections to the methodology used by HHS to calculate federal BHP payments for 2018; and

¹ The Complaint originally named as a defendant Eric D. Hargan, who was, at the time of filing, the Acting Secretary of HHS. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Secretary Azar is now the proper defendant and is automatically substituted as a party.

WHEREAS, HHS has determined that it will revise the 2018 BHP payment methodology (the "HHS Revised BHP Methodology") that may address the States' concerns regarding the federal BHP payments for 2018;

NOW, THEREFORE, SUBJECT TO THE APPROVAL OF THE COURT, IT IS AGREED AND STIPULATED:

1. All proceedings in this civil action shall be stayed. This includes, but is not limited to, a stay of the deadline for HHS to file and serve a responsive pleading, the deadline for the parties' proposed case management plan, and the initial conference. The Court will set any further deadlines, as needed, following the parties' submission of a joint status report, as set forth in paragraph 8 below.
2. On or before May 14, 2018, HHS shall issue second-quarter supplemental BHP payments to the States in the following amounts:
 - a. New York: \$151,875,000
 - b. Minnesota: \$17,250,000

Such supplemental payments do not constitute an admission of any liability whatsoever by HHS, and shall be subject to reconciliation under HHS's Revised BHP Methodology to ensure that the States' total BHP payments in 2018 are consistent with the Revised BHP Methodology.

3. On or before May 23, 2018, the States may submit written comments describing their views as to an appropriate BHP payment methodology and may request an opportunity to present those views orally to HHS. HHS will review any such written submissions and will arrange a listening session should the States request an opportunity for oral presentation of their comments.

4. On or before May 23, 2018, HHS will provide the States with a draft administrative order setting forth a non-binding, draft version of the Revised BHP Methodology for the States' review and comment.
5. On or before June 13, 2018, the States may submit additional written comments describing their views regarding the non-binding, draft version of the Revised BHP Methodology and may request an opportunity to present those views orally to HHS. HHS will review any such additional written submissions and will arrange a listening session should the States request an opportunity for oral presentation of their comments.
6. On or before July 2, 2018, HHS will provide the States with the final administrative order, pursuant to 5 U.S.C. §§ 551(13) and 555(b) and (e), setting forth the final HHS Revised BHP Payment Methodology (the "Final Order"). HHS will use the final HHS Revised BHP Methodology set out in the Final Order to compute the quarterly BHP payments to the States that remain to be made for benefit year 2018. As part of that process, HHS will use the final HHS Revised BHP Methodology to reconcile all other BHP payments made to the States for benefit year 2018, including the second-quarter supplemental payments described in Paragraph 2 above. HHS will promptly publish notice of the Final Order setting forth the HHS Revised BHP Methodology in the *Federal Register*.²
7. On or before July 23, 2018, HHS will remit any additional payments to the States that are necessary to complete the total BHP payments for the first, second and, if

² The States shall not challenge the Final Order setting forth the final HHS Revised BHP Payment Methodology on the ground that they did not receive formal notice and opportunity for comment under 5 U.S.C. § 553(b)-(c).

necessary, third quarters of 2018 under the final HHS Revised BHP Methodology. In general, HHS shall determine any additional payments by calculating the total BHP payments for the first, second, and third quarters of 2018 under the final HHS Revised BHP Methodology, less the amounts of the payments already made for those quarters (including the supplemental payment described in Paragraph 2 above). If a State has already received a total quarterly payment that exceeds the quarterly payment that HHS calculates under the final HHS Revised BHP Methodology, then HHS will offset the overpayment against the next quarterly payment.

8. On or before August 1, 2018, the parties shall file a joint status report informing the Court whether further litigation proceedings are necessary and, if so, proposing appropriate dates and deadlines for those further proceedings. If the parties disagree as to appropriate next steps in this case, they shall submit their separate views in a consolidated document.
9. Should any party fail to satisfy any of the commitments set forth in this Stipulation, the sole remedy available to the other parties shall be to recommence the litigation of this civil action without delay. Before any party invokes this remedy, that party will meet and confer with the other parties to determine whether amicable, out-of-court resolution of any concerns or disputes may be possible.
10. Apart from the procedural matter identified in footnote 2, *supra*, execution by the parties of this Stipulation is without prejudice to any claim, defense, argument of law or fact, contention, or position any party may seek to assert in this action or otherwise, including any claim that the Final Order is in violation of the Administrative Procedure Act, and shall not constitute a waiver of any claim or


may in the future be asserted with respect to any of the matters at issue in this litigation,
including any matters addressed in this Stipulation.

COUNSEL FOR PLAINTIFFS:

Dated: New York, New York
May 2, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By:


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Facsimile: (212) 416-8034

Dated: _____, Minnesota
May 2, 2018

LORI SWANSON
Attorney General of the State of Minnesota

By:

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BRANDON L. BOESE, Assistant Attorney General
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Facsimile: (651) 282-5832

COUNSEL FOR DEFENDANTS:

Dated: New York, New York
May __, 2018

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By:

ANDREW E. KRAUSE
Assistant United States Attorney

defense that has been asserted or may in the future be asserted with respect to any of the matters at issue in this litigation, including any matters addressed in this Stipulation.

COUNSEL FOR PLAINTIFFS:

Dated: New York, New York
May 2, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

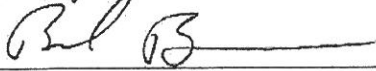
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Dated: St. Paul, Minnesota
May 2, 2018

LORI SWANSON
Attorney General of the State of Minnesota

By:



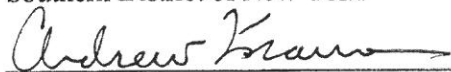
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COUNSEL FOR DEFENDANTS:

Dated: New York, New York
May 2, 2018

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SO ORDERED this _____ day of _____, 2018.

HON. RICHARD J. SULLIVAN
United States District Judge