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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, STATE OF
NEW YORK, STATE OF COLORADO,
DISTRICT OF COLUMBIA, STATE OF
MAINE, STATE OF MARYLAND, STATE
OF OREGON, and the STATE OF
VERMONT,**

Plaintiffs,

V.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR, II, in his official capacity as Secretary of Health and Human Services; THE CENTERS FOR MEDICARE & MEDICAID SERVICES; SEEMA VERMA, in her official capacity as Administrator of Centers for Medicare and Medicaid Services,

Defendants.

Case No. 3:20-cv-00682-LB

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
EXTENSION OF TIME TO FILE REPLY
IN SUPPORT OF THE CROSS-MOTION
FOR SUMMARY JUDGMENT**

Date: June 11, 2020
Time: 9:30 AM
Courtroom: Courtroom B, 15th Floor
Judge: Magistrate Judge Laurel Beeler
Action Filed: January 30, 2020

1 Plaintiff States, the States of California, New York, Colorado, Maine, Maryland, Oregon,
2 Vermont, and the District of Columbia, oppose Defendants' Motion for Extension of Time to File
3 Reply in Support of Motion for Summary Judgment, ECF No. 47. The States have negotiated
4 this briefing schedule to ensure the Court has enough time to consider the issues fully, allowing
5 the Court sufficient time to consider a complete briefing on the merits, such that the States and
6 their respective state agencies can benefit from a final judgment, especially given the added
7 burdens and complications of the novel coronavirus (COVID-19) public health emergency
8 response and recovery efforts. For the same reasons, the States nevertheless agree to move the
9 scheduled hearing date a week later or to another convenient date for the Court, to afford the
10 Court sufficient time to consider *complete* briefing on this matter. The States do not however
11 agree that Defendants are entitled to any extension of time to file their Reply in support of its
12 Cross-Motion for Summary Judgment as they have not identified any unanticipated reason to
13 move the deadline of May 26, 2020.

14 Defendants have been informed of this Court's Order adopting the proposed schedule of the
15 parties assigning Defendants' response due on May 26, 2020 since March 25, 2020. *See* ECF No.
16 35. Plaintiffs complied with the Court-ordered briefing schedule and filed their Opposition to
17 Defendants' Cross-Motion for Summary Judgment and Reply in Support of its Motion for
18 Summary Judgment on May 04, 2020. *See* ECF No. 44. The States have already previously
19 consented, in good faith, to grant Defendants additional time in our original proposed and
20 stipulated briefing schedule in light of COVID-19 situation. Defendants have already had much
21 longer than the time allowed by this Court to cross move and reply. A one-week extension will
22 have given them a full month for a 20-page reply since Plaintiffs' filed opposition and reply of
23 May 04, 2020 on issues Defendants have already litigated both in *State of Washington v. Azar et*
24 *al.*, No. 2:20-cv-00047-SAB (E.D. Wash Apr. 09, 2020) and could reasonably anticipated in
25 *Planned Parenthood of Maryland v. Azar*, No. 1:20-cv-00361 (D. Md.)—both cases challenging
26 this same regulation. Defendants have not provided sufficient reason for requesting additional
27 time.

1 Finally, the fact that HHS has published the Interim Final Rule—on May 08, 2020—
2 delaying implementation of the Rule by 60-days does not warrant an extension of the briefing
3 schedule. 85 Fed. Reg. 27,550, 27,599. This delay in implementation is insufficient to alleviate
4 the burden to Plaintiffs. The legality of the Rule needs to be decided as soon as practicable to
5 give States and their respective agencies sufficient guarantee that they can focus their resources
6 towards addressing the unprecedented and ongoing public health emergency.

7 The States respectfully request that this Court deny Defendants' Motion for Extension of
8 Time to File a Reply in Support of Motion for Summary Judgment. As stated, the States defer to
9 the Court regarding resetting the hearing date to allow the Court sufficient time to review the
10 papers.

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13 Dated: May 21, 2020

Respectfully Submitted,

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/s/ Brenda Ayon Verduzco

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