

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, )  
DR. ADAM CORLEY, TYLER REGIONAL )  
HOSPITAL, LLC, TEXAS RADIOLOGICAL )  
SOCIETY, and HOUSTON RADIOLOGY )  
ASSOCIATED, )

*Plaintiffs,*

v. )

UNITED STATES DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, OF- )  
FICE OF PERSONNEL MANAGEMENT, )  
DEPARTMENT OF LABOR, DEPART- )  
MENT OF THE TREASURY, CENTER FOR )  
MEDICARE & MEDICAID SERVICES, XA- )  
VIER BECERRA *in his official capacity as* )  
*the Secretary of Health and Human Services;* )  
KIRAN AHUJA *in her official capacity as the* )  
*Director of the Office of Personnel Manage-* )  
*ment,* JANET YELLEN *in her official capac-* )  
*ity as the Secretary of the Treasury,* MARTIN )  
J. WALSH *in his official capacity as the Sec-* )  
*retary of Labor,* and CHIQUITA BROOKS- )  
LASURE *in her official capacity as Adminis-* )  
*trator of the Center for Medicare & Medicaid* )  
*Services,* )

Civil Action No. 6:23-cv-00059-JCB

*Defendants.*

**JOINT MOTION TO SET AN EXPEDITED  
SUMMARY JUDGMENT BRIEFING SCHEDULE**

The parties in the above-captioned case respectfully submit this joint motion to set an expedited summary judgment briefing schedule for this case.

This case concerns agency actions implementing the independent dispute resolution (“IDR”) process established by the No Surprises Act (“NSA”) to resolve disputes between

healthcare providers and insurers over reimbursement for out-of-network medical services. Specifically, the complaint challenges (1) defendants' December 23, 2022 action increasing the non-refundable administrative fee parties must pay to access the IDR process from \$50 to \$350; and (2) a provision of an interim final rule issued by defendants in September 2021 that specifies that parties may "batch" claims together in a single IDR proceeding only if the underlying items or services are billed under the same service code.

Plaintiffs respectfully submit that expedited summary judgment proceedings are warranted because plaintiffs believe that the challenged actions make it cost-prohibitive for providers that have large numbers of small-value claims to access the IDR process for the vast majority of their claims. The administrative fee increase took effect on January 1, 2023.

Defendants disagree that expedited briefing is warranted but have agreed to the proposed schedule in an effort to compromise with plaintiffs.

Accordingly, the parties have met and conferred and agreed on the following schedule for expedited summary judgment briefing:

- Plaintiffs' motion for summary judgment – Feb. 13, 2023
- Defendants' opposition/cross-motion for summary judgment – Mar. 15, 2023
- Plaintiffs' opposition/reply in support of summary judgment – Mar. 27, 2023
- Defendants' reply in support of summary judgment – Apr. 7, 2023

Given the anticipated interest from *amici curiae* on both sides, the Court may also wish to consider setting a deadline by which *amicus* briefs may be filed, such as seven days after the summary judgment motion of the party supported.

For the briefing format, the parties propose that plaintiffs be permitted to file a summary judgment motion of up to 30 pages and an opposition/reply brief of up to 20 pages. The parties

propose that defendants be permitted to file a single consolidated opposition/cross-motion for summary judgment of up to 30 pages and a reply brief of up to 20 pages. All parties reserve the right to request additional pages for their briefs, after reviewing the other parties' submissions.

Plaintiffs note that they are available for a hearing April 19–20 or 24–25. Defendants defer to the Court's preferences on whether to hold a hearing but note they are available on those dates.

Finally, plaintiffs agree to waive defendants' response to the complaint and defendants reserve the right to raise threshold objections to the complaint in their dispositive briefing.

### **CONCLUSION**

For these reasons, the parties respectfully request that the Court enter the proposed schedule and format for expedited summary judgment briefing. A proposed order is attached.

February 10, 2023

Respectfully submitted,

/s/ Eric D. McArthur

Eric D. McArthur (*pro hac vice*) (Lead Attorney)

emcarthur@sidley.com

Brenna E. Jenny (*pro hac vice*)

bjenny@sidley.com

J. Manuel Valle (*pro hac vice*)

manuel.valle@sidley.com

Madeleine Joseph<sup>†</sup> (*pro hac vice*)

mjoseph@sidley.com

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

Tel: (202) 736-8018

Fax: (202) 736-8711

Jaime L.M. Jones (*pro hac vice*)

jaime.jones@sidley.com

Matthew Guillod (*pro hac vice*)

mguillod@sidley.com

SIDLEY AUSTIN LLP

One South Dearborn

Chicago, Illinois 60603  
Tel: (312) 853-7000  
Fax: (312) 853-7036

Penny P. Reid  
Texas Bar No. 15402570  
preid@sidley.com  
Kelsey M. Taylor  
Texas Bar No. 24098507  
ktaylor@sidley.com  
SIDLEY AUSTIN LLP  
2021 McKinney Ave., Suite 2000  
Dallas, Texas 75201  
Tel: (214) 981-3413  
Fax: (214) 981-3400

*Counsel for Plaintiffs*

<sup>†</sup>Admitted only in Massachusetts; pending approval of application for admission to the D.C. Bar, practicing law in the District of Columbia under the supervision of principals of the firm who are members in good standing of the D.C. Bar.

/s/ Anna Deffebach  
Anna Deffebach  
Trial Attorney  
D.C. Bar No. 241346  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, DC 20005  
Phone: (202) 305-8356  
Fax: (202) 616-8470  
E-mail: anna.l.deffebach@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF CONFERENCE**

Undersigned counsel certifies that counsel for all parties have agreed upon this motion.

/s/ Eric D. McArthur  
Eric D. McArthur

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). This document was also served on all counsel via email service, on February 10, 2023.

/s/ Eric D. McArthur  
Eric D. McArthur

# EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

TEXAS MEDICAL ASSOCIATION, et al.	)	
	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	Case No.: 6:23-cv-00059-JCB
UNITED STATES DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES, et al.,	)	
	)	
<i>Defendants.</i>	)	
	)	
	)	
	)	

**[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION TO SET  
AN EXPEDITED SUMMARY JUDGMENT BRIEFING SCHEDULE**

Before the Court is the parties' joint motion to set an expedited summary judgment briefing schedule for this case. Having fully considered the motion, the Court is of the opinion that the motion should be **GRANTED**. It is therefore

**ORDERED** that the briefing schedule for summary judgment in this matter is as follows:

- Plaintiffs' motion for summary judgment – Feb. 13, 2023
- Defendants' opposition/cross-motion for summary judgment – Mar. 15, 2023
- Plaintiffs' opposition/reply in support of summary judgment – Mar. 27, 2023
- Defendants' reply in support of summary judgment – Apr. 7, 2023

Plaintiffs may file a summary judgment motion of up to 30 pages and an opposition/reply brief of up to 20 pages. Defendants may file a single consolidated opposition/cross-motion for summary judgment of up to 30 pages and a reply brief of up to 20 pages.

Defendants' obligation to answer the complaint is waived, and defendants may raise threshold objections to the complaint in their dispositive briefing.