UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHARP CHULA VISTA MEDICAL CENTER, 751 Medical Center Court Chula Vista, CA 91911, GROSSMONT HOSPITAL CORPORATION, dba Sharp Grossmont Hospital, 5555 Grossmont Center Drive La Mesa, CA 91942, and SHARP MEMORIAL HOSPITAL, 7901 Frost Street San Diego, CA 92123, Plaintiffs, v. XAVIER BECERRA, Secretary, United States Department of Health and Human Services, 200 Independence Avenue, S.W. Washington, D.C. 20201, Defendant.	Civil Action No. __________

COMPLAINT FOR DECLARATORY RELIEF
AND SUMS DUE UNDER THE MEDICARE ACT

The above-captioned three Plaintiff hospitals ("the Hospitals"), by and through their undersigned attorneys, bring this action against defendant Xavier Becerra, in his official capacity as the Secretary ("the Secretary") of the Department of Health and Human Services ("HHS"), and state as follows:

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INTRODUCTION

1. The Hospitals bring this action to recover additional Medicare program payments owed by the federal government as reimbursement for inpatient hospital services they provided to aged, disabled, and other Medicare beneficiaries relating to Federal Fiscal Years ("FYs") 2004 and 2005. Specifically, the Hospitals seek to recover supplemental payments that Congress mandated to help pay hospitals for extraordinarily costly Medicare "outlier" patient cases.

2. Medicare reimbursement for most inpatient hospital services is provided through the Inpatient Prospective Payment System ("IPPS"). The IPPS reimburses hospitals, in part, through a prospectively determined rate based on the category of diagnosis for each patient at the time of discharge, regardless of the cost of treatment. But to protect hospitals that incur extraordinarily high costs in certain cases when compared to the norm for patients with similar diagnoses, known as "outlier" cases, Congress determined that extra payments should be made. To fund these payments for outlier cases, Congress requires the Secretary annually to select a target percentage for aggregate outlier payments of between 5 and 6 percent of total standard IPPS payments and to reduce the standard IPPS payment rate by that target percentage. At all times relevant to this action, the Secretary set this target at 5.1%. The Secretary also is required to set a cost "threshold" for each FY to identify the costs of inpatient stays above which hospitals are entitled to receive outlier payments. The Secretary must set the threshold so that projected aggregate outlier payments for each FY equal the target percentage of 5.1% of projected standard IPPS payments.

3. The Secretary improperly set thresholds that were too high for FYs 2004 and 2005. Thus, for FYs 2004 and 2005, IPPS hospitals, including the Hospitals, were underpaid on their outlier claims and substantial portions of the funds resulting from reductions to the standard IPPS rates were never paid out to IPPS hospitals as outlier payments. As a result, the Secretary failed

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to provide the Hospitals the outlier reimbursement Congress intended, and provided for, under the Medicare Act.

4. In two separate cases claiming, as here, that the Secretary invalidly set the FYs 2004 and 2005 outlier thresholds, the U.S. Court of Appeals for the District of Columbia Circuit has twice reviewed and twice remanded these thresholds to the Secretary for additional explanation. *See Banner Health v. Price*, 867 F.3d 1323 (D.C. Cir. 2017) ("*Banner Health*"); *District Hospital Partners, L.P., v. Burwell*, 786 F.3d 46 (D.C. Cir. 2015) ("*District Hospital Partners*"). The Secretary twice issued explanations on remand. The first explanation, issued in response to the remand order in *District Hospital Partners*, was rejected by the D.C. Circuit in *Banner Health*. The Secretary's second explanation, issued in June 2019 in response to *Banner Health*, fares no better.

5. For the reasons set forth in *District Hospital Partners* and *Banner Health*, and as set forth below, the Secretary's outlier thresholds for FYs 2004 and 2005 are arbitrary, capricious, and otherwise unlawful, and must now finally be vacated. The Secretary should be ordered to (a) reset the thresholds using appropriate methods and data, (b) recalculate the Hospitals' outlier payments for FYs 2004 and 2005 using the reset thresholds, and (c) pay the amounts due to the Hospitals, with interest determined in accordance with 42 U.S.C. §1395oo(f)(2) and/or 42 U.S.C. §1395g(d).

JURISDICTION AND VENUE

6. This is a civil action arising under Title XVIII of the Social Security Act, as amended, 42 U.S.C. §§1395 *et seq.* (the "Medicare Act"), 5 U.S.C. §§551 *et seq.* (the "Administrative Procedure Act" or "APA"), and 28 U.S.C. §2201 (the "Declaratory Judgment

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Act") to obtain judicial review of final decisions of the Secretary denying the Hospitals' request for additional Medicare reimbursement relating to FYs 2004 and 2005.

7. This Court has jurisdiction under 42 U.S.C. §1395oo(f)(1) (appeal of final Medicare program agency decision), 28 U.S.C. §1331 (federal question), and 28 U.S.C. §1361 (mandamus).

8. Venue lies in this judicial district under 42 U.S.C. §1395oo(f) and 28 U.S.C. §1391.

PARTIES

9. At all times relevant to this action, the Hospitals were qualified as Medicare-participating providers of hospital services under the federal Medicare program pursuant to the Medicare Act.

a. Plaintiff Sharp Chula Vista Medical Center, Medicare provider number 05-0222, is located in Chula Vista, California, and is appealing its Medicare outlier payments with respect to discharges during its fiscal year ending September 30, 2005.

b. Plaintiff Sharp Grossmont Hospital, Medicare provider number 05-0026, is located in La Mesa, California, and is appealing its Medicare outlier payments with respect to discharges during its fiscal year ending September 30, 2005.

c. Plaintiff Sharp Memorial Hospital, Medicare provider number 05-0100, is located in San Diego, California, and is appealing its Medicare outlier payments with respect to discharges during its two fiscal years ending September 30, 2004, and September 30, 2005.

Each of the Hospitals' fiscal years for Medicare payment purposes have the same start and end dates as the Federal fiscal year (October 1 through September 30). Thus, the reference to the Federal Fiscal Years and the Hospitals' fiscal years are interchangeable for purposes of this action.

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10. Defendant Xavier Becerra is the Secretary of the Department of Health and Human Services, the federal department which contains the Centers for Medicare & Medicaid Services ("CMS"). The Secretary, the federal official responsible for administration of the Medicare program, has delegated the responsibility to administer that program to CMS.

GENERAL BACKGROUND OF THE MEDICARE PROGRAM

11. The Medicare Act establishes a system of health insurance for the aged, disabled, and individuals with end-stage renal disease. The Medicare program consists of Part A, which covers inpatient hospital services and certain other institutional services; Part B, which covers physician services and certain outpatient services; Part C, which covers managed health care plans; and Part D, which provides prescription drug coverage. Only Part A is at issue in this action.

12. Part A services are furnished to Medicare beneficiaries by "providers" of services that have entered into written provider agreements with the Secretary, pursuant to 42 U.S.C. §1395cc, to furnish hospital services to Medicare beneficiaries. Each of the Hospitals has entered into provider agreements with the Secretary.

13. The Medicare Act requires that "[n]o rule, requirement, or other statement of policy . . . that establishes or changes a substantive legal standard governing the scope of benefits [or] the payment for services . . . [under Medicare] shall take effect unless it is promulgated by the Secretary by regulation . . . ." 42 U.S.C. §1395hh(a)(2).

14. Prior to October 1, 1983, most hospitals were reimbursed for inpatient services provided to Medicare beneficiaries based on the "reasonable cost" of such services. Effective October l, 1983, and in effect during FYs 2004 and 2005, Congress enacted IPPS to reimburse hospitals for providing inpatient services to Medicare beneficiaries at a predetermined rate based on the diagnosis-related group ("DRG") to which a patient is assigned. *See* generally 42 U.S.C. §1395ww(d).

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