

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

HOSPITAL FOR SPECIAL SURGERY  
535 East 70th St.  
New York, NY 10021

and

BANNER UNIVERSITY MEDICAL CENTER  
PHOENIX  
1111 E. McDowell Rd.  
Phoenix, AZ 85006

Case No. 21-cv-2020

and

BANNER UNIVERSITY MEDICAL CENTER  
SOUTH CAMPUS  
2800 E. Ajo Way  
Tucson, AZ 85713

and

BANNER UNIVERSITY MEDICAL CENTER  
TUCSON  
1625 N. Campbell Ave.  
Tucson, AZ 85719

and

BARNES-JEWISH HOSPITAL  
One Barnes-Jewish Hospital Plz.  
Saint Louis, MO 63110

and

BRIDGEPORT HOSPITAL  
267 Grant St.  
Bridgeport, CT 06610

and

MEMORIAL HERMANN TEXAS MEDICAL  
CENTER  
6411 Fannin St.  
Houston, TX 77030

and

METHODIST HEALTHCARE - MEMPHIS  
HOSPITALS  
1211 Union Ave.  
Memphis, TN 38104

and

MICHIGAN MEDICINE  
1500 E. Medical Center Dr.  
Ann Arbor, MI 48109

and

MILTON S. HERSHEY MEDICAL CENTER  
500 University Dr.  
Hershey, PA 17033

and

ST. JOSEPH'S REGIONAL MEDICAL CENTER  
703 Main St.  
Paterson, NJ 07503

and

TRUMAN MEDICAL CENTER HOSPITAL HILL  
2301 Holmes St.  
Kansas City, MO 64108

and

UNIVERSITY OF MISSOURI HEALTH CARE  
One Hospital Dr.  
Columbia, MO 65212

and

YALE NEW HAVEN HOSPITAL  
20 York St.  
New Haven, CT 06510

Plaintiffs,

vs.

XAVIER BECERRA  
Secretary of the United States Department of  
Health and Human Services  
200 Independence Ave., S.W.  
Washington, DC 20201

Defendant.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND SUMS DUE  
UNDER THE MEDICARE ACT**

**INTRODUCTION**

1. This is a civil action brought to obtain judicial review of agency decisions regarding Medicare reimbursements rendered by Xavier Becerra (the “Secretary” or “Defendant”) in his official capacity as the Secretary of the United States Department of Health and Human Services. Plaintiffs are hospitals that participate in the Medicare program and qualify for direct graduate medical education (“DGME”) payments for training medical residents. Plaintiffs seek an order setting aside the Secretary’s regulation at 42 C.F.R. § 413.79(c)(2)(iii), which unlawfully reduces Plaintiffs’ DGME payments by decreasing the number of residents that Plaintiffs may claim during a fiscal year.

2. Plaintiffs operate approved medical training programs for physician interns, residents, and fellows (collectively, “residents”). Plaintiffs receive Medicare DGME payments, which are calculated, in part, based on the number of full-time equivalent (“FTE”) residents that train at each hospital. If a resident’s training time exceeds the number of years designated as the “initial residency period” (“IRP”), the resident’s time is weighted at 0.5, which means that the

hospital may only count one-half of the resident's time that exceeds the IRP. Also, the number of FTEs that a hospital may claim for payment in any given year is generally capped at the number of *unweighted* FTEs that it trained in its 1996 fiscal year.

3. The regulation at 42 C.F.R. § 413.79(c)(2)(iii) is contrary to the Medicare statute because it calculates a hospital's DGME payments using a weighted FTE cap rather than an unweighted FTE cap. 42 U.S.C. § 1395ww(h)(4)(F). The effect of the unlawful regulation is to impose on Plaintiffs a weighting factor on residents that are within their IRP or, viewed differently, results in a reduction of greater than 0.5 for many residents who are beyond the IRP, which prevents Plaintiffs from claiming DGME reimbursement up to their full FTE caps authorized by statute. Thus, the calculations of the current-year, prior-year, and penultimate-year weighted DGME FTEs (all three of which are elements of a hospital's DGME calculation in a given year) and the FTE caps are contrary to the statutory provision at 42 U.S.C. § 1395ww(h), and, as a result, Plaintiffs' DGME payments are unlawfully understated.

4. The Secretary's application of this regulation violates the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* (the "APA"); is contrary to the Medicare statute; is arbitrary, capricious, and an abuse of discretion; and is otherwise contrary to law. Accordingly, Plaintiffs asks this Court to reverse the Secretary's decisions and to order the Secretary to recalculate Plaintiffs' DGME payments as required by statute.

#### **JURISDICTION AND VENUE**

5. This action arises under Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* (the "Medicare statute"), which establishes the Medicare program, and the APA.

6. This Court has jurisdiction under 42 U.S.C. § 1395oo(f)(1), which grants Medicare providers the right to obtain expedited judicial review ("EJR") of any action involving

“a question of law or regulations relevant to the matters in controversy” when the Secretary’s Provider Reimbursement Review Board (the “Board”) “determines . . . that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received.” The Board granted EJR to Plaintiffs in decisions dated May 28, 2021, and June 22, 2021. Accordingly, this action is timely filed within the sixty-day limitations period established at 42 U.S.C. § 1395oo(f)(1).

7. Venue in this Court is proper under 42 U.S.C. § 1395oo(f)(1).

### **PARTIES**

8. Plaintiff Hospital for Special Surgery is an academic medical center located in New York, New York. Hospital for Special Surgery participates in the Medicare program and has been assigned Medicare Provider Number 33-0270. Hospital for Special Surgery operates graduate medical education programs and receives Medicare DGME payments. Hospital for Special Surgery contests the Medicare reimbursement decision for its fiscal years ending December 31, 2016 and December 31, 2018.

9. Plaintiff Banner University Medical Center Phoenix (“BUMCP”) is an academic medical center located in Phoenix, Arizona. BUMCP participates in the Medicare program and has been assigned Medicare Provider Number 03-0002. BUMCP operates graduate medical education programs and receives Medicare DGME payments. BUMCP contests the Medicare reimbursement decision for its fiscal year ending December 31, 2016.

10. Plaintiff Banner University Medical Center South Campus (“BUMCSC”) is an academic medical center located in Tucson, Arizona. BUMCSC participates in the Medicare program and has been assigned Medicare Provider Number 03-0111. BUMCSC operates

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