

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

AMERICAN HOSPITAL ASSOCIATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 14-CV-851-JEB
)	
ERIC D. HARGAN, in his official capacity as)	
ACTING SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Defendant.)	
)	

PLAINTIFFS’ PARTIAL OPPOSITION TO DEFENDANT’S EXTENSION MOTION

Plaintiffs partially oppose the Secretary’s motion for two additional weeks to file his summary-judgment motion in this case. If it grants an extension at all, the Court should grant only a one-week extension to November 2, 2017.

1. The Secretary’s extension motion seeks essentially the same briefing schedule that he initially proposed (and then retreated from) in advance of the Court’s September 28, 2017 status conference. Before the conference, the Secretary’s counsel proposed that the Secretary’s motion for summary judgment be filed on November 13. Plaintiffs’ counsel counter-proposed that the motion be filed October 27, and the Secretary’s counsel agreed to that date.

2. On October 18, the Secretary’s counsel contacted Plaintiff’s counsel by email, seeking a two-week extension to November 9 for the Secretary’s motion.

3. The Secretary’s counsel represented in that email that the extension was necessary because “the new leadership at HHS is considering measures related to the backlog” and “[t]he new leadership needs additional time to complete its deliberations in that regard.”

4. In the spirit of cooperation—and encouraged that the Secretary is planning concrete measures to eliminate the backlog—Plaintiffs agreed to a one-week extension.

5. The Secretary in his motion debuted a new justification for a two-week extension: He plans to submit a declaration “that will explain the effect that pending False Claims Act investigations and other program integrity considerations have on the backlog.” Mot. ¶ 3. (The Secretary also apparently plans to seek leave to file the declaration *ex parte* (*id.*), which would make it difficult for Plaintiffs to challenge the Secretary’s representations. But Plaintiffs will address that with the Court at the appropriate time.) The Secretary represents that he has faced “unanticipated challenges related to the verification of False Claims Act investigations and program integrity considerations.” *Id.*

6. The Secretary has adverted to “program-integrity” concerns before in this litigation (*see* Dkt. No. 41-1 at 17); one would assume that the Secretary had methods in place to verify those concerns at the time, and certainly by now. But regardless, the Secretary’s unspecified difficulties in gathering information uniquely within his and the government’s control is not good cause for more than the one-week extension to which Plaintiffs have agreed.

7. Plaintiffs agree, however, that if the Court grants the Secretary a two-week extension, it should not at this time extend the remainder of the discovery and briefing schedule. Should an extension for those periods become necessary, they should be requested and granted separately.

For the foregoing reasons, the Secretary's motion should be granted only to the extent that the deadline for his summary-judgment motion is extended to and including November 2, 2017.

Respectfully submitted,

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Dated: October 23, 2017.

CERTIFICATE OF SERVICE

I certify that on October 23, 2017, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all counsel, who are registered users.

/s/ Catherine E. Stetson