UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHRISTINA ALEXANDER, *et al.* *Plaintiffs*, v. XAVIER BECERRA, Secretary of Health and Human Services, *Defendant*.	No. 3:11-cv-01703-MPS

ORDER CLARIFYING JUDGMENT

On October 17, 2022, the parties filed a joint status report noting that certain provisions of the Judgment in this case were ambiguous. ECF No. 490 at 1-2. In response to this status report and a telephonic status conference with the parties, I ordered the parties to propose language clarifying the ambiguous provisions of the Judgment in accordance with my intent at the time the Judgment was entered. ECF No. 495. The parties provided proposed language clarifying the Judgment. ECF No. 496. Class counsel then notified the class members about the proposed language clarifying the Judgment, and I allowed a period for comment by class members. ECF No. 499. For the reasons below, I clarify my Judgment by incorporating the language proposed by the parties.

"[A] motion for clarification is not intended to alter or change a court's order, but merely to resolve alleged ambiguities in that order." *Metcalf v. Yale U.*, 15-CV-1696 (VAB), 2019 WL 1767411, at *2 (D. Conn. Jan. 4, 2019) (citation omitted); *see also Deutsche Bank Nat'l Tr. Co. v. WMC Mortgage, LLC*, Nos. 12-cv-933, 12-cv-969, 12-cv-1699, & 12-cv-1347 (CSH), 2015 WL 11237310, at *6 (D. Conn. July 6, 2015) ("A clarification motion asks the Court: 'What did you mean to say?' A reconsideration motion says to the Court: 'We know what you said. It is wrong. Change it.'"). "There is no Federal Rule of Civil Procedure specifically governing

motions for clarification." *U.S. v. Timmons Corp.*, 1:03-CV-951 (CFH), 2017 WL 11237145, at *7 (N.D.N.Y. Sept. 20, 2017) (citation and internal quotation marks omitted). Some courts in this Circuit have, however, considered motions to clarify a Judgment under Federal Rule of Civil Procedure 60(a). *See, e.g., Amara v. CIGNA Corp.*, 3:01-CV-2361 (JBA), 2017 WL 10902877, at *6 (D. Conn. July 14, 2017) (clarifying Judgment language under Rule 60(a) to ensure that it matches what "[t]he Court intended . . . across the entire class").

> Rule 60(a) allows a court to clarify a Judgment in order to correct a "failure to memorialize part of its decision," to reflect the "necessary implications" of the original order, to "ensure that the court's purpose is fully implemented," or to "permit enforcement." "Rule 60(a) allows for clarification and explanation, consistent with the intent of the original Judgment, even in the absence of ambiguity, if necessary for enforcement . . . this broad rule does not allow a court to make corrections that, under the guise of mere clarification, reflect a new and subsequent intent because it perceives its original Judgment to be incorrect. Rather, the interpretation must reflect the contemporaneous intent of the district court as evidenced by the record.

L.I. Head Start Child Dev. Services, Inc. v. Econ. Opportunity Commn. of Nassau County, Inc., 956 F. Supp. 2d 402, 410 (E.D.N.Y. 2013) (citing *Garamendi v. Henin,* 683 F.3d 1069 (9th Cir. 2012) (internal quotation marks and further citations omitted).

Courts "enjoy broad discretion to correct clerical errors in previously issued orders" and this "discretion is not limited to the correction of clerical or typographical errors but encompasses the correction of errors needed to comport the order with the original understandings and intent of the court and the parties." *Agro Dutch Industries Ltd. v. U.S.*, 589 F.3d 1187, 1192 (Fed. Cir. 2009) (relying in part on Rule 60(a) in approving trial court's correction of the effective date of an injunction because, although the date in the original injunction had been chosen deliberately, the intent of the injunction would have been better served by the corrected date); *see also Garamendi*, 683 F.3d at 1079 ("Rule 60(a) allows for clarification and explanation, consistent with the intent of the original Judgment, even in the

absence of ambiguity, if necessary for enforcement").

In this case, I intended in the Judgment to provide a "meaningful opportunity" to class members "whose due process rights were violated, or will have been violated, prior to the availability of the procedural protections" ordered in the Judgment to "appeal the denial of their Part A coverage." ECF No. 441 ¶ 5. Class members with Part B coverage had much of their past hospital stays paid for by this coverage. *See* ECF No. 439 at 53 ("If a beneficiary has purchased Part B coverage, in most cases, the beneficiary's out-of-pocket costs for an observation stay covered under Part B are less than a comparable inpatient stay covered under Part A."). As the parties' joint status report notes, "the concern for this portion of the class is their lack of [skilled nursing facility] coverage" under Part A because their hospital stays were already largely covered by Part B. ECF No. 490 at 3.

In ordering that members of this portion of the class receive a meaningful opportunity to appeal the denial of Part A coverage, I did not intend for the Secretary to unwind previously approved Part B hospital stay claims so that they could be reprocessed as Part A claims. Especially given the need to provide a prompt remedy for class members who already endured undercompensated stays at skilled nursing facilities, the funding for hospital stay claims, including associated payments for hospital services, deductibles, and coinsurance amounts, is not a major concern for these class members. Instead, I intended that class members with Part B coverage whose rights were violated prior to the availability of the procedural protections I ordered in the Judgment receive the opportunity to appeal the denial of their Part A coverage for stays at skilled nursing facilities. For this portion of the class, then, Part B hospital stay claims do not need to be unwound and reprocessed as Part A claims.

To ensure that the purpose of the Judgment is effectively implemented and to permit enforcement of the Judgment through timely administrative measures or rulemaking by the Secretary, I thus clarify the ambiguity in paragraph five of the Judgment to align it with my original intent by adopting the following clarification to the Judgment:

> This clarification applies to class members with "retrospective" claims — that is, class members whose claims accrued prior to the availability of the procedural protections set forth in the Judgment (*see* Judgment ¶ 5) — who were enrolled in Part B coverage at the time of their hospitalization. If a class member enrolled in Part B coverage at the time of his or her hospitalization prevails in appealing a retrospective claim, the Secretary is not required to adjust the payment for the underlying hospital services, including any applicable deductible and coinsurance amounts, and the Secretary may make Part A payment for covered SNF services without any such adjustments to the payment for the underlying hospital services.

IT IS SO ORDERED.

/s/
Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut
December 9, 2022