

No. 20-_____

In the Supreme Court of the United States

Unity HealthCare,

Applicant,

v.

Alex M. Azar, II, as Secretary of Department of Health and
Human Services,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

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Rule 29.6 Statement

Unity HealthCare, the Applicant in this matter, is an Iowa nonprofit corporation.

The parent corporation of Unity HealthCare is Trinity Regional Health System.

Trinity Regional Health System is a subsidiary of Iowa Health System, d/b/a UnityPoint Health.

There is no publicly held company owning 10% or more of any stock in Unity HealthCare.

**TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE UNITED STATES AND
CIRCUIT JUSTICE FOR THE EIGHTH CIRCUIT:**

Pursuant to 28 U.S.C. § 2101(c) and Rule 13.5 of the Rules of this Court, Applicant Unity HealthCare (“Hospital”) respectfully requests a 60-day extension of time, to and including Friday, August 9, 2019, for the filing of a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Eighth Circuit dated March 12, 2019 (Exhibit 1). The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

1. Absent an extension of time, the deadline for filing the petition for certiorari would be June 10, 2019.

2. This case presents the following question: whether federal courts must defer to an agency’s reasonable interpretation of that agency’s own regulations (commonly referred to as “*Auer* deference”¹), as the Court of Appeals did here with respect to a claim by Hospital, a rural, non-profit acute care hospital, for a “volume-decrease adjustment” provided for under the Medicare statute, 42 U.S.C. §1395ww(d)(5)(D)(ii), and regulations promulgated by the Secretary of Health & Human Services (“Secretary”), 42 C.F.R. § 412.92(e)(3).

3. The Secretary’s final administrative decision in this matter reduced the Hospital’s volume-decrease adjustment claim from \$741,308 to \$76,314. In upholding that decision, the appellate court stated that when an issue was not controlled by the plain language of a regulation, “we must uphold an agency’s interpretation of its own regulation unless that interpretation is plainly erroneous or inconsistent with the regulation.” *Unity HealthCare v. Azar*, 918 F.3d 571, 578 (8th Cir. 2019) (quoting *St Luke’s Methodist Hosp. v. Thompson*, 315 F.3d 984, 987 (8th Cir. 2003)). The court concluded that the “Secretary’s interpretation was not arbitrary or capricious

¹ *Auer v. Robbins*, 519 U.S. 452, 461 (1997). See also *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413-14 (1945).

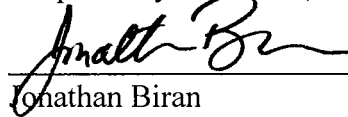
and was consistent with the regulation.” *Id.* at 579. The appellate court did not expressly refer to *Auer*. However, *St. Luke's Methodist Hospital*, to which the court referred, relied on *Seminole Rock* and *Auer* in requiring an agency’s regulatory interpretation to be upheld unless it was “plainly erroneous or inconsistent with the regulation.” 315 F.3d at 987 (*quoting Seminole Rock*, 325 U.S. at 414, and citing *Auer*, 519 U.S. at 461). Accordingly, the appellate court upheld the agency decision based on *Auer* deference.

4. Good cause exists for an extension of time to prepare a petition for a writ of certiorari in this case. The issue that will be presented in this case is virtually identical to that raised in another case pending before this Court, *James L. Kisor v. Robert Wilkie, Secretary of Veterans Affairs*, No. 18-15, on which this Court heard argument on March 27, 2019. The Court’s decision in *Kisor* may resolve this matter by specifying the deference to which an agency’s regulatory interpretation is entitled, potentially eliminating the reason for Applicant to file a petition for a writ of certiorari.

For the foregoing reasons, the application for a 60-day extension of time, to and including Friday, August 9, 2019, within which to file a petition for a writ of certiorari should be granted.

Dated: May 31, 2019

Respectfully submitted,



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