

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

**ALAMEDA COUNTY MEDICAL
CENTER,**
et al.

Plaintiffs,

v.

**THE HONORABLE MICHAEL O.
LEAVITT, in his official capacity as
Secretary, United States Department of
Health and Human Services,**
et al.

Defendants.

Civil Action No.

PRELIMINARY INJUNCTION

Upon consideration of Plaintiffs' Motion for Preliminary Injunction, the Court finds that:

1. Plaintiffs are likely to succeed on the merits of their claims that Defendants violated the Administrative Procedure Act and acted contrary to law, unreasonably, and/or arbitrarily and capriciously in issuing the rule, *Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal-State Financial Partnership*, 72 Fed. Reg. 29748 (May 29, 2007) ("Rule"), because the Rule violates Sections 1902 and 1903 of the Social Security Act, as amended, Section 705 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 ("BIPA"), and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, Pub. L. No. 110-28, § 7002(a), 121 Stat. 112 (2007), which imposed a one-year

moratorium (“Moratorium”) on issuance of the Rule or any other action in furtherance of the Rule effective May 25, 2007;

2. Unless enjoined, Defendants’ actions are likely to cause Plaintiffs to suffer irreparable harm for which no adequate remedy at law exists. Plaintiff Alameda County Medical Center and the member hospitals of Plaintiffs the National Association of Public Hospitals and Health Systems, the American Hospital Association, and the Association of American Medical Colleges (“Association Plaintiffs”), will not be able to recover from the Defendants if the Rule is implemented. Plaintiff Alameda County Medical Center and many of the member hospitals of the Association Plaintiffs will be forced to reduce or eliminate essential services, staff, and capital improvement efforts;

3. The harm that will result to Plaintiffs and Association Plaintiffs’ member providers as a result of Defendants’ actions outweighs any harm that may result to Defendants as a result of preliminary injunction; and

4. Issuance of a preliminary injunction will serve the public interest, as it is in the public interest for federal departments and agencies to operate in compliance with the law and Medicaid beneficiaries may find access to medical care reduced or eliminated should the injunction not be issued.

Thereby, it is hereby

ORDERED that Plaintiffs’ Motion is GRANTED for the reasons stated above; and it is further

ORDERED that Defendants Michael O. Leavitt, Secretary of the United States Department of Health and Human Services, the United States Department of Health and Human Services (“HHS”), Kerry Weems, Acting Administrator of the Centers for Medicare and

Medicaid Services, Centers for Medicare and Medicaid Services (“CMS”), as well as HHS and CMS officers, agents, servants, employees, and attorneys be and hereby are ordered to withdraw the Rule and are hereby enjoined, until further order of this Court, from undertaking any and all action to implement the Rule.

DATED: _____, 2008

By: _____
United States District Court Judge