

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

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ALAMEDA COUNTY MEDICAL		)	
CENTER, et al.		)	
		)	
	Plaintiffs,	)	
		)	
	v.	)	Civ. No. 1:08CV0422 (JR)
		)	
THE HONORABLE MICHAEL O. LEAVITT,		)	
in his official capacity as		)	
Secretary of Health and		)	
Human Services, et al.		)	
	Defendants.	)	
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**DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT  
AND IN OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Defendants, Michael O. Leavitt, in his official capacity as Secretary of Health and Human Services, the United States Department of Health and Human Services, Kerry Weems, in his official capacity as Acting Administrator of the Centers for Medicare & Medicaid Services, and the Centers for Medicare & Medicaid Services (collectively, “the Secretary” or “HHS”), by and through undersigned counsel, respectfully submit this Cross-motion for Summary Judgment and in Opposition to Plaintiffs’ Motion for Summary Judgment. As set forth in the accompanying Memorandum In Support of Defendants’ Cross-Motion for Summary Judgment, the Secretary is entitled to summary judgment as a matter of law on Plaintiffs’ Administrative Procedure Act (“APA”) claims because the challenged regulations are consistent with the Medicaid Act, do not involve agency action that is arbitrary, capricious, or an abuse of discretion, and the promulgation of the challenged regulations did not violate the one-year statutory moratorium signed into law on May 25, 2007.

In support of this motion, the Secretary relies on the accompanying Memorandum in Support of Defendants' Cross-Motion for Summary Judgment, the Administrative Record, and Defendants' Statement of Undisputed Material Facts.

Accordingly, for the above-stated reasons, and those explained more fully in the accompanying Memorandum, the Secretary respectfully requests that the Court deny Plaintiffs' Motion for Summary Judgment, grant this motion, and enter judgment in favor of the Secretary on Plaintiffs' APA claims.

Respectfully submitted,

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U.S Department of Health  
and Human Services

Dated: April 11, 2008

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I certify that on this 11th day of April 2008, I caused the foregoing Defendants' Cross-Motion for Summary Judgment and attachments hereto to be filed with the Clerk of the Court via the CM/ECF system, causing them to be served electronically. The documents are available for viewing and downloading from the ECF system.

/s/ Tamra T. Moore\_\_\_\_\_