

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

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ALAMEDA COUNTY MEDICAL)
CENTER, et al.)
)
	Plaintiffs,)
)
	v.)
)
THE HONORABLE MICHAEL O. LEAVITT,)
in his official capacity as)
Secretary of Health and)
Human Services, et al.)
	Defendants.)
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Civ. No. 1:08CV0422 (JR)

**STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF DEFENDANTS’ CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rules 7.1(h) and 56.1, 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”), submit the following statement of undisputed material facts in support of Defendants’ Cross-Motion for Summary Judgment:

1. After reviewing and processing over 1,000 proposed Medicaid state plan amendments related to state payments to providers, the Secretary developed and published proposed regulations that established the actual cost of Medicaid services as the upper payment limit for government providers and clarified that “entities involved in the financing of the non-Federal share of Medicaid payments must be a unit of government.” 72 Fed. Reg. 2236 (Jan. 18, 2007).

2. In response to the proposed rule, the Secretary received over 1,000 comments from physicians, state Medicaid programs, state and local government agencies, and other interested parties. 72 Fed. Reg. 29748, 29750 (May 29, 2007).

3. The Secretary reviewed and responded to the comments he received in response to the proposed rule and developed the final rule. 72 Fed. Reg. at 29748-29836.

4. The Secretary has found that many states make payments to government providers that are in excess of the actual cost of providing health care services to Medicaid recipients. 72 Fed. Reg. 29748, 29774 (May 29, 2007); A.R. 2803.

5. The Secretary has found that government providers receiving Medicaid payments from states have either used the payments to subsidize health care (or other) operations unrelated to the Medicaid program, or have returned the payment, or a portion thereof, to the states. A.R. 3120-3121.

6. The Secretary has found that financing arrangements between states and government providers, pursuant to which government providers return Medicaid payments to states, “effectively divert Medicaid funds for non-Medicaid purposes, or overstate the computable expenditure that is being made” by the states. 72 Fed. Reg. at 29774.

7. Congress granted the Secretary the authority to ensure that states’ Medicaid payments “are consistent with efficiency, economy, and quality of care.” 42 U.S.C. § 1396a(a)(30)(A).

8. Among other things, the regulations clarified the scope of the entities permitted to finance the non-federal share of Medicaid reimbursements on behalf of states, established the actual cost of Medicaid services as a new upper payment limit for government providers, and required all providers (both private and government) to retain the full amount of Medicaid

reimbursement. 72 Fed. Reg. at 29748, 29832-29835.

9. On May 24, 2007, the Secretary submitted the rule to the Office of Federal Register for filing and publication. A.R. 355.

10. On May 25, 2007, the Office of the Federal Register displayed the rule.

11. On May 29, 2007, the Office of the Federal Register published the rule at 72 Fed. Reg. 29748.

Respectfully submitted,

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