

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

THE AMERICAN HOSPITAL ASSOCIATION,  
MISSOURI BAPTIST SULLIVAN HOSPITAL,  
MUNSON MEDICAL CENTER, LANCASTER  
GENERAL HOSPITAL, TRINITY HEALTH  
CORPORATION, and DIGNITY HEALTH,

*Plaintiffs,*

v.

KATHLEEN SEBELIUS, in her official capacity  
as Secretary of Health and Human Services,

*Defendant.*

Case No. 1:12-cv-1770 (CKK)

**PLAINTIFFS' PROPOSED MOTION FOR SUMMARY JUDGMENT**

Plaintiffs the American Hospital Association, Missouri Baptist Sullivan Hospital, Munson Medical Center, Lancaster General Hospital, Trinity Health Corporation, and Dignity Health respectfully submit this motion for summary judgment against defendant Kathleen Sebelius, Secretary of Health and Human Services.

Plaintiffs bring this action to end a set of unlawful government practices that have deprived hospitals of Medicare reimbursement for hundreds of millions of dollars' worth of care provided to Medicare beneficiaries. As set forth in the accompanying memorandum, Plaintiffs challenge the validity of the CMS policy prohibiting full Part B Medicare reimbursement following a Part A denial even though all agree that the items and services that the Plaintiff-hospitals have provided were medically necessary, reasonable, and not otherwise excluded from Medicare reimbursement by statute. CMS's policy is invalid for at least five reasons: First, the Medicare Act requires reimbursement for reasonable and medically necessary items and services provided, and CMS's policy accordingly is contrary to the language and purpose of the Medicare

Act. Second, the policy is arbitrary and capricious. Third, CMS's enforcement of the policy in the face of a growing number of administrative appeals decisions to the contrary is arbitrary and capricious. Fourth, the policy is invalid for lack of notice and comment rulemaking. And fifth, the policy is invalid because it establishes a substantive legal standard but was not promulgated as a regulation. Finally, Plaintiffs also explain that the administrative adjudicators violated the Medicare Act's limitation on liability provision by failing to award them either Part A or Part B payment for these items and services when hospitals had no reason to reasonably know that Medicare would not reimburse them.

Plaintiffs' claims are grounded in facts conclusively established by the administrative record, or lack thereof; no genuine issues of material fact prevent the Court from granting Plaintiffs summary judgment as a matter of law. *See* Fed. R. Civ. P 56(c).

Dated: December 13, 2012

Respectfully submitted,

Melinda Reid Hatton (D.C. Bar No. 419421)  
Lawrence Hughes (D.C. Bar. No. 460627)  
AMERICAN HOSPITAL ASSOCIATION  
325 Seventh Street, N.W.  
Washington, D.C. 20001  
(202) 638-1100

/s/ Catherine E. Stetson  
Sheree R. Kanner (D.C. Bar No. 366926)  
(sheree.kanner@hoganlovells.com)  
Catherine E. Stetson (D.C. Bar No. 453221)  
(cate.stetson@hoganlovells.com)  
Dominic F. Perella (D.C. Bar No. 976381)  
(dominic.perella@hoganlovells.com)  
Lindsay Breedlove (D.C. Bar No. 1005921)  
Margia K. Corner (D.C. Bar No. 1005246)  
HOGAN LOVELLS US LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
(202) 637-5600

*Attorneys for Plaintiffs*