

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

AMERICAN HOSPITAL ASSOCIATION
Liberty Place, Suite 700
325 Seventh Street, NW
Washington, D.C. 20004-2802

BAXTER REGIONAL HOSPITAL, INC. D/B/A/
BAXTER REGIONAL MEDICAL CENTER
624 Hospital Drive
Mountain Home, Arkansas 72653

COVENANT HEALTH
100 Fort Sanders West Boulevard
Knoxville, Tennessee 37922

RUTLAND HOSPITAL, INC. D/B/A RUTLAND
REGIONAL MEDICAL CENTER
160 Allen Street
Rutland, Vermont 05701

Plaintiffs,

v.

SYLVIA M. BURWELL, in her official capacity as
SECRETARY OF HEALTH AND HUMAN
SERVICES¹
200 Independence Avenue, SW
Washington, DC 20201

Defendant.

Civil Action No. 14-cv-00851 (JEB)

**DEFENDANT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO THE
COMPLAINT AND PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Defendant Sylvia
M. Burwell, Secretary of Health and Human Services, by and through undersigned

¹ Pursuant to Fed. R. Civ. P. 25(d), Sylvia M. Burwell, the current Secretary of Health and Human Services is automatically substituted as the named defendant for Kathleen Sebelius, the former Secretary of Health and Human Services

counsel, hereby moves—over Plaintiffs’ opposition—for a 45-day extension of time, up to and including September 11, 2014, to respond to the Complaint (ECF No. 1), and to respond to Plaintiffs’ motion for summary judgment (ECF No. 8). Defendant states that this motion is supported by good cause as follows:

1. Plaintiffs filed this action on May 22, 2014, served it on the United States Attorney on May 28, 2014, and filed a Motion for Summary Judgment on July 11, 2014. The Secretary’s responses to both the Complaint and the Motion for Summary Judgment are presently due July 28, 2014. With the requested 45-day extension, the Secretary’s responses would be due September 11, 2014.
2. Undersigned counsel was assigned to this case on June 27, 2014. Since then, she has been working diligently with attorneys in HHS’ Office of the General Counsel to analyze the allegations of the Complaint, research the relevant authorities, and develop the Secretary’s arguments in response to Plaintiffs’ allegations and summary judgment arguments.
3. The Complaint concerns current delays at the Administrative Law Judge (“ALJ”) stage of the Medicare administrative appeals process, an important issue that the Secretary and the Office of Medicare Hearings and Appeals (“OMHA”), U.S. Dept. of Health and Human Services (“HHS”) are actively addressing, as reflected in the July 10, 2014 testimony of OMHA’s Chief ALJ Nancy Griswold before the U.S. House of Representatives’ Committee on Oversight & Government Reform. *See* <http://www.hhs.gov/asl/testify/2014/07/t20140710a.html>.

4. Because of the significance of this issue, the Secretary's responses to the Complaint and summary judgment motion will be reviewed at senior levels within HHS as well as the Department of Justice. For that reason and also because of the additional work responsibilities and pre-scheduled travel of undersigned counsel and the primary HHS attorney assigned to this action, the Secretary requires additional time to prepare a thoroughly researched and developed response to the claim raised by the Complaint and Plaintiffs' arguments in support of their summary judgment motion. Absent of an extension of time, the Secretary will be substantially prejudiced in responding to the Complaint and summary judgment motion because she will be forced to present arguments that have not been sufficiently researched, considered and reviewed.
5. The Secretary respectfully submits that an extension of 45 days will afford her sufficient time to prepare and present to the Court a thoroughly researched and developed response to both the Complaint and the Motion for Summary Judgment. Multiple attorneys in the HHS Office of the General Counsel as well as undersigned counsel and undersigned counsel's immediate supervisor have pre-scheduled travel plans during the month of August, and a deadline of September 11, 2014, will allow for the necessary review of the Secretary's arguments before they are presented to the Court.
6. Further, the requested 45-day extension should not impede a speedy resolution of this matter. The Secretary anticipates that it will be

appropriately resolved on dispositive motions by the parties without discovery, as Plaintiffs appear to also contemplate given their Motion for Summary Judgment. The Secretary anticipates that she will file her dispositive motion on September 11, 2014, together with her opposition to Plaintiffs' summary judgment motion if this extension request is granted. Thus, following the parties' briefing on their respective dispositive motions, the case should be ready for resolution.

7. In accordance with LCvR 7(m), on July 16, 2014, the undersigned conferred with counsel for Plaintiffs regarding this motion. On July 18, 2014, Plaintiffs conveyed that they oppose the Secretary's requested extension on the grounds that, in Plaintiffs' view, it would exacerbate what Plaintiffs maintain to be extraordinary delays in the appeals process and that the Federal Rules of Civil Procedure provide the government 60 days to respond to the Complaint in the ordinary course. Plaintiffs further conveyed that they intend to file an expedited response to this motion.

Respectfully submitted this 21st day of July, 2014.

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Acting Assistant Attorney General
RONALD C. MACHEN JR.
United States Attorney

JENNIFER RICKETTS
Director, Federal Programs Branch
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