

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

AMERICAN HOSPITAL ASSOCIATION, *et al.*,

Plaintiffs,

v.

SYLVIA MATHEWS BURWELL, in her official
capacity as SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendant.

Civil Action No. 1:14-CV-851-JEB

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

Plaintiffs the American Hospital Association, Baxter Regional Medical Center, Covenant Health and Rutland Regional Medical Center (collectively, "Plaintiffs," and Baxter, Covenant, and Rutland collectively, the "Plaintiff hospitals") respectfully oppose the July 21, 2014 motion of Defendant Secretary of Health and Human Services, Sylvia Mathews Burwell ("HHS"), seeking an extension of time until September 11, 2014 to answer or otherwise respond to Plaintiffs' Complaint and Motion for Summary Judgment. In support of their opposition, Plaintiffs state as follows:

1. Plaintiffs initiated this action on May 22, 2014 by filing a mandamus Complaint in order to remedy severe delays in HHS's adjudication of Medicare claim appeals that are causing significant harm to Plaintiffs and other hospitals.

2. As set forth more fully in Plaintiffs' Complaint and Motion for Summary Judgment, systemic delays within the four-step Medicare administrative appeals process are postponing by years the adjudications to which providers like Plaintiff hospitals are entitled by

statute. While these delays continue, Plaintiff hospitals and AHA member hospitals are deprived of millions of dollars in Medicare reimbursement at issue in their appeals and are forced to operate without substantial funds that could otherwise be used to advance patient care.

3. HHS's motion for a forty-five-day extension of time would only further delay resolution of the time-sensitive issues at the heart of this litigation. Although Plaintiffs regularly consider extension requests as a matter of professional courtesy, this case is unique because the very problem that necessitated this lawsuit is delay. Appeals that are required by the Medicare Act to be heard and decided by an Administrative Law Judge within ninety days are likely to take at least *two years* before they are even assigned for review, let alone heard or decided, under HHS's current policies. As a result, the Court should not further postpone the resolution of Plaintiffs' lawsuit by granting HHS's request.

4. In its motion, HHS argues that it requires an extension of forty-five days to allow sufficient time for its responses to be "reviewed at senior levels within HHS as well as the Department of Justice," Mot. ¶ 4, but this argument fails to account for the fact that the Federal Rules already address this concern by providing for an extended, sixty-day period for government agencies and officers sued in their official capacity to respond to a complaint. *See* Fed. R. Civ. P. 12(a)(2). Moreover, as HHS notes, *see* Mot. ¶ 6, Plaintiffs' Motion for Summary Judgment is largely legal in nature. The Motion makes the same fundamental points as the Complaint, and most of the factual support is sourced from HHS's own files, because there has been no discovery. As such, HHS should not require an additional forty-five days beyond the sixty it already has had (i.e., a 75% increase in its response time) to respond to the issues raised by this lawsuit.

5. For the foregoing reasons, Plaintiffs respectfully oppose Defendant's Motion for Extension of Time to Respond to the Complaint and Plaintiffs' Motion for Summary Judgment and request that HHS be required to respond to Plaintiffs' Complaint and Motion for Summary Judgment within the times set forth in the applicable Federal and Local Rules.

Respectfully submitted,

/s/ Adam K. Levin

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