

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

THE AMERICAN HOSPITAL
ASSOCIATION, et al.,

Plaintiffs,

v.

SYLVIA M. BURWELL, in her
official capacity as Secretary of Health and
Human Services,¹

Defendant.

Civil Action No. 14-609 (RBW)

NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant respectfully notifies the Court of a recent decision in a related case, American Hospital Association v. Burwell, — F. Supp. 3d —, No. 12-1770, 2014 WL 4628312 (D.D.C. Sept. 17, 2014) (Kollar-Kotelly, J.), rejecting a challenge brought by the lead Plaintiff here to the Secretary’s alleged policy to apply a one-year filing deadline to the rebilling of certain denied Medicare Part A claims under Part B — the same challenge that Plaintiffs bring in Count II of their complaint in this case. Compl. ¶¶ 102-09. A copy of the decision is attached.

In granting the Secretary’s motion to dismiss, Judge Kollar-Kotelly concluded that the court lacked jurisdiction under the Medicare statute, 42 U.S.C. § 405(g)-(h), explaining that “[e]ach of [plaintiffs’] theories fails because of the limitation of jurisdiction by § 405(g) to review of ‘final decision[s] . . . made after a hearing.’” Slip op. at 11. The court also concluded that it lacked jurisdiction under the general federal question statute, 28 U.S.C. § 1331, reasoning that “[t]o allow Plaintiffs access to the courts through § 1331 because they cloaked their Medicare Act

¹ Pursuant to Fed. R. Civ. P. 25(d), Sylvia M. Burwell is substituted for her predecessor as Secretary of Health and Human Services.

challenge in the garb of a challenge to a general policy would subvert the channeling function of 405(h) in the first instance.” Slip op. at 14.

These conclusions support the Secretary’s argument in this case that Count II should be dismissed for lack of jurisdiction. See Def.’s. Mot. to Dism. 29-36 [Doc. No. 8]; Reply in Supp. of Defs.’ Mot. to Dism. 17-25 [Doc. No. 15].

Dated: October 20, 2014

Respectfully submitted,

JOYCE R. BRANDA
Acting Assistant Attorney General

SHEILA M. LIEBER
Deputy Director

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Tel: (202) 514-3338
Fax: (202) 616-8470
E-mail: Eric.Beckenhauer@usdoj.gov

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2014, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on Plaintiffs' counsel of record.

/s/ Eric Beckenhauer
ERIC B. BECKENHAUER