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' MOTION FOR AN EXPEDITED STATUS CONFERENCE

Plaintiffs hereby move this Court pursuant to Federal Rule of Civil Procedure 16(a) to convene a status conference at the Court's earliest convenience to set an expedited briefing schedule that will resolve Plaintiffs' claims quickly and efficiently on summary judgment.

Plaintiffs seek an expeditious resolution of their claims because they, and rest of the nation's hospitals, are being harmed on an ongoing basis by an arbitrary government policy: The Centers for Medicare & Medicaid Services (CMS) has refused, and is still refusing, to pay the nation's hospitals for hundreds of millions of dollars' worth of medically necessary care that they provide to Medicare beneficiaries. When an individual goes to the hospital, the attending physician must decide whether the patient should be treated on an inpatient or an outpatient basis. Many of the same services can be provided to the patient either way. But the doctor's decision regarding the patient's admission matters significantly in the Medicare context, for if the hospital treats the patient as an inpatient, it requests reimbursement under Medicare Part A, and if it treats the patient as an outpatient, it requests reimbursement under Medicare Part B.

The decision to admit a patient is a complex medical judgment committed to the discretion of the physician. Nonetheless, in recent years the Secretary of Health and Human Services acting through CMS has employed private third parties called Recovery Audit Contractors, or RACs, to review physicians' admission decisions. Months, and often years, after the fact, RACs examine cold paper records and determine—at an alarming rate—that the physicians were wrong and patients should not have been admitted to hospitals.

Those determinations trigger the CMS policy plaintiffs challenge in this case. When a RAC denies an inpatient claim, it typically does not challenge the actual treatment the hospital provided; it simply determines that that treatment should have been provided on an outpatient basis. But when that happens, CMS does not allow the hospital to be paid under Medicare Part B for the outpatient services it provided. Instead, CMS "claws back" the entirety of the Part A payment and *refuses* to authorize payment under Part B, except for a few small items like splints and casts. CMS, in other words, refuses to pay for the bulk of the care at all, even though all agree that the care was reasonable and medically necessary.

CMS's policy is invalid for several independent reasons; to name just a few, it conflicts with the Medicare Act, it has never been explained by the agency, and it never underwent notice-and-comment rulemaking. Plaintiffs thus have brought this suit to prevent CMS from continuing to enforce this invalid policy against the nation's hospitals. And they seek an early status conference—and expedited briefing—because resolving this matter at an accelerated pace is essential. Each day that CMS enforces the policy prohibiting full Part B payment following a Part A denial, hospitals lose hundreds of thousands of Medicare reimbursement dollars for medically necessary items and services they have provided to beneficiaries. This loss of revenue

has real-world negative effects on the health care options available to everyone who needs hospital services.

Resolving this case in an expedited manner should not present any logistical difficulties. This administrative review case raises a question of law. It can be resolved based on the administrative record. And that record is small: fewer than 100 pages of administrative decisions and briefs provide the record necessary to resolve the legal question presented.

Because they seek to overturn this policy as quickly as possible, Plaintiffs stand ready to brief it on the merits—more than ready, in fact. They have lodged a proposed motion for summary judgment with the Court as an exhibit. *See* Ex. A. They have attached the administrative materials to their proposed motion for summary judgment. And they are prepared to file that motion, respond to the Government's opposition, and submit a reply in support, on an expedited schedule and at this Court's earliest direction.

Rule 16(a) provides that a court may, in its discretion, direct attorneys for the parties to appear before it for a conference in order to expedite matters. Because of the strong public interest in a prompt and orderly resolution of the issues raised by this case, Plaintiffs respectfully request that the Court schedule an initial status conference at its earliest convenience to set an accelerated schedule for future proceedings. Counsel for Plaintiffs are available for a status conference any time during the next 30 days except on December 24 through January 2, January 7, and January 10.

Respectfully submitted,

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Dated: December 13, 2012

STATEMENT IN ACCORDANCE WITH LOCAL RULE 7(m)

Pursuant to Local Rule 7(m), I hereby certify that I attempted to contact Jeffrey Smith, counsel for the defendant Kathleen Sebelius, multiple times by phone and e-mail in a good-faith effort to resolve this matter without a motion. Efforts to contact him were unavailing.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December, 2012, copies of the foregoing Motion for an Expedited Status Conference, the exhibit thereto, and a proposed order were served by certified first-class U.S. mail upon the following:

Kathleen Sebelius
Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20204

_/s/ Dominic F. Perella
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