

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

**ALAMEDA COUNTY MEDICAL
CENTER,**)

et al.)

Plaintiffs,)

v.)

**MICHAEL O. LEAVITT, in his official
capacity as Secretary, United States
Department of Health and Human Services,**)

et al.)

Defendants.)

Civil Action No.

Case: 1:08-cv-00422
Assigned To : Robertson, James
Assign. Date : 3/11/2008
Description: TRO/PI

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Alameda County Medical Center ("Alameda"), the National Association of Public Hospitals and Health Systems ("NAPH"), the American Hospital Association ("AHA"), and the Association of American Medical Colleges ("AAMC") (collectively referred to as "Plaintiffs"), move this Court for a Preliminary Injunction against Defendants, the Honorable Michael O. Leavitt, in his official capacity as Secretary of the United States Department of Health and Human Services (the "HHS Secretary" or "Secretary"), the United States Department of Health and Human Services ("HHS"), the Honorable Kerry Weems, in his official capacity as Acting Administrator of the Centers for Medicare & Medicaid Services (the "CMS Administrator" or "Administrator"), and the Centers for Medicare & Medicaid Services ("CMS") (collectively, "Defendants") for the following reasons:

1. As set forth in more detail in the Complaint, the Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction ("Plaintiffs' Memorandum"), and in the Declarations submitted herewith, Plaintiffs challenge the issuance of a regulation by Defendant HHS, through Defendant CMS, on May 29, 2007 (the "Rule"), purported to be effective July 30, 2007. 72 Fed. Reg. 29748.

2. The Rule violates various provisions of Title XIX of the Social Security Act, 42 U.S.C. §§ 1396—1396v (the "Medicaid Statute"), as amended through the years, and also violates a moratorium that Congress passed specifically preventing Defendants from implementing the very Rule being challenged, and which the President signed into law (the "Moratorium"). U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, Pub. L. No. 110-28, § 7002(a), 121 Stat. 112 (2007).

3. The Rule purports to re-write core Medicaid policies and would fundamentally alter the federal-state partnership that is the essence of the Medicaid program. The Rule would devastate the Medicaid program.

4. In particular, the Rule is invalid for the following reasons:

- The Rule re-establishes a cost-based limit on Medicaid payments, which Congress repealed as inefficient and administratively burdensome, and imposes this cost limit on payments to governmental providers, but not other providers, in violation of Sections 1902(a)(30)(A) and 1902(a)(13)(A) of the Social Security Act as amended;
- By imposing a provider-specific cost limit, the Rule overrides a Congressional mandate for regulations that recognize aggregate limits based on Medicare payment principles, as contained in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 ("BIPA"), H.R. 5661, 106th Cong. (1999), enacted into law by reference in Pub. L. No. 106-554, § 1(a)(6), 114 Stat. 2763 (2000);

- The Rule restricts the permissible sources of the State's share of Medicaid expenditures to units of government with direct access to tax revenues, a condition that Congress has never imposed on States and that contravenes decades of Medicaid payment policies, in violation of Sections 1902(a)(2) and 1903(w)(7)(G) of the Social Security Act; and
- The Rule violates the Moratorium that was enacted to prevent implementation of the Rule.
- The Rule is not a reasonable construction of the Medicaid Statute or BIPA and is arbitrary and capricious.

5. Not only has HHS ignored clear Congressional intent, but it has discarded its own longstanding interpretations of the Medicaid Statute in favor of arbitrary and capricious policies not rationally related to the agency's stated objectives.

6. As described in more detail in Plaintiffs' Memorandum and Declarations, Plaintiffs will suffer irreparable injury under the Rule. If allowed to stand, the Rule will dangerously undermine the stability of Medicaid's safety net providers, which include Plaintiff Alameda County Medical Center and many member hospitals of Plaintiffs NAPH, AHA, and AAMC. The Rule will force many financially-strapped providers to reduce or eliminate critical inpatient and outpatient services, reduce essential community-wide services, lay off staff, and abandon capital improvement projects. These hospitals and other providers will be unable to recover funding lost due to the Rule. Ultimately, the loss of federal funds will jeopardize the adequacy and quality of care for the Medicaid population and the entire health care safety net system; these harms are also irreparable. At a time when State governments are under increasing financial strain, this Rule will simultaneously reduce the federal financial commitment to State Medicaid programs and limit the permissible non-federal sources upon which States can draw to meet the needs of their Medicaid beneficiaries.

7. Plaintiffs do not have an adequate remedy at law, Plaintiffs have a substantial likelihood of success on the merits, Plaintiffs will suffer irreparable harm, any harm to CMS is outweighed by the harm to Plaintiffs, and the injunction sought is in the public interest.

8. Accordingly, Plaintiffs respectfully move for a preliminary injunction to require Defendants to withdraw the Rule and enjoin Defendants from implementing it. Plaintiffs further request that the Court waive any security bond and issue a ruling on the their Motion for a Preliminary Injunction prior to the expiration of the Moratorium on May 25, 2008.

WHEREFORE, Plaintiffs pray that this Honorable Court enter an order, before May 25, 2008:

- A. Granting a preliminary injunction, in the form submitted herewith, requiring Defendants to withdraw the Rule and enjoining Defendants from implementing the Rule until this Court has the opportunity to determine the merits of this action;
- B. Waiving the posting of any security bond in connection with the issuance of the preliminary injunction; and
- C. Awarding such further relief as this Court deems appropriate.

Respectfully submitted,

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