

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

BROOKS-TLC HOSPITAL SYSTEM, INC. d/b/a )  
BROOKS MEMORIAL HOSPITAL )  
529 Central Avenue )  
Dunkirk, New York 14048 )  
)  
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a ) Case No.  
DUKE REGIONAL HOSPITAL )  
3643 North Roxboro Road )  
Durham, North Carolina 27704 )  
)  
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a )  
DUKE HEALTH RALEIGH HOSPITAL )  
3400 Wake Forest Road )  
Raleigh, North Carolina 27609 )  
)  
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a )  
DUKE UNIVERSITY HOSPITAL )  
2301 Erwin Road )  
Durham, North Carolina 27710 )  
)  
GEISINGER MEDICAL CENTER )  
100 North Academy Avenue )  
Danville, Pennsylvania 17822 )  
)  
HENRY FORD HEALTH SYSTEM d/b/a HENRY FORD )  
HOSPITAL )  
2799 West Grand Boulevard )  
Detroit, Michigan 48202 )  
)  
KALEIDA HEALTH )  
100 High Street )  
Buffalo, New York 14203 )  
)  
LAKELAND HOSPITAL AT NILES AND ST. JOSEPH, )  
INC. d/b/a LAKELAND REGIONAL MEDICAL )  
CENTER )  
1234 Napier Avenue )  
St. Joseph, Michigan 49085 )  
)  
MOBILE INFIRMARY ASSOCIATION d/b/a MOBILE )  
INFIRMARY MEDICAL CENTER )  
5 Mobile Infirmary Circle )  
Mobile, Alabama 36607 )

ST. CLARE'S CORPORATION AS SUCCESSOR IN )  
INTEREST TO ST. CLARE SCHENECTADY )  
40 North Main Avenue )  
Albany, New York 12203 )

ST. VINCENT'S MIDTOWN HOSPITAL f/k/a ST. )  
CLARE'S HOSPITAL AND HEALTH CENTER )  
415 West 51st Street )  
New York, New York 10019 )

THE UNITY HOSPITAL OF ROCHESTER )  
1555 Long Pond Road )  
Rochester, New York 14626 )

TRINITY HEALTH SYSTEM f/d/b/a )  
MERCY HOSPITAL - DETROIT )  
5555 Conner Avenue )  
Detroit, Michigan 48213 )

TRINITY HOSPITAL HOLDING COMPANY d/b/a )  
TRINITY HEALTH SYSTEM )  
380 Summit Avenue )  
Steubenville, Ohio 43952 )

VHS SINAI-GRACE HOSPITAL, INC. d/b/a SINAI )  
GRACE HOSPITAL )  
6071 West Outer Drive )  
Detroit, Michigan 48235 )

Plaintiffs, )

v. )

ALEX M. AZAR, II Secretary, )  
United States Department of )  
Health and Human Services, )  
200 Independence Avenue S.W. )  
Washington, District of Columbia 20201, )

Defendant. )

\_\_\_\_\_ )

**COMPLAINT FOR JUDICIAL REVIEW AND DECLARATORY  
AND INJUNCTIVE RELIEF UNDER THE MEDICARE ACT**

**NATURE OF ACTION**

1. This case concerns the proper treatment in the calculation of the Medicare Part A disproportionate share hospital (“DSH”) payment of inpatient hospital days for patients who were enrolled in Medicare Advantage plans under Part C of the Medicare Act. The Court of Appeals has now ruled against the agency in three actions challenging the agency’s repeated attempts to apply its Part C days policy change first adopted in 2004 to deny Medicare DSH payments to hospitals. *See Northeast Hosp. Corp. v. Sebelius*, 657 F.3d 1, 16–17 (D.C. Cir. 2011) (finding application of 2004 rule to prior periods impermissibly retroactive); *Allina Health Services v. Sebelius*, 746 F.3d 1102, 1105 (D.C. Cir. 2014) (“*Allina I*”) (vacating 2004 rule because it was not a logical outgrowth of proposed rule); *Allina Health Servs. v. Price*, 863 F.3d 937, 943–44 (D.C. Cir. 2017) (“*Allina II*”) (holding that the agency must undertake notice-and-comment rulemaking before the policy of the 2004 vacated rule can take effect). But the agency refuses to acquiesce in those decisions or in the Supreme Court’s recent decision in *Allina II* affirming the Court of Appeals’ decision. *Azar v. Allina Health Servs.*, 139 S. Ct. 1804 (2019). Instead, the agency has continued to apply the Part C days policy adopted in the now-vacated 2004 rule in violation of these decisions, including in the payment determinations at issue for the plaintiff hospitals in this case, in a recently issued proposed rule seeking to re-adopt the same 2004 policy retroactively, and in a ruling that would leave undisturbed the payment determinations from which hospitals have appealed and, as construed by the agency’s administrative Board, not permit further administrative or judicial review of those determinations. The agency’s continued attempts to apply the 2004 policy should be rejected because they are inconsistent with the Court of Appeals’ decision in

*Northeast Hospital*, fail any test of reasoned decision-making, and are inconsistent with congressional intent in adopting the Medicare DSH statute.

### **JURISDICTION AND VENUE**

2. This action arises under the Medicare Act, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq.
3. Jurisdiction is proper under 42 U.S.C. § 1395oo(f)(l).
4. Venue is proper in this judicial district under 42 U.S.C. § 1395oo(f)(l).

### **PARTIES**

5. The plaintiff hospitals in this action and hospital fiscal years at issue are as follows:
  - 1) Brooks-TLC Hospital System, Inc. d/b/a Brooks Memorial Hospital, Provider No. 33-0229, fiscal year ending December 31, 1999;
  - 2) Duke University Health System Inc. d/b/a Duke Regional Hospital, Provider No. 34-0155, fiscal years ending June 30, 2003 and June 30, 2004;
  - 3) Duke University Health System, Inc. d/b/a Duke Health Raleigh Hospital, Provider No. 34-0073, fiscal year ending June 30, 2004;
  - 4) Duke University Health System, Inc. d/b/a Duke University Hospital, Provider No. 34-0030, fiscal years ending June 30, 2004 and June 30, 2005;
  - 5) Geisinger Medical Center, Provider No. 39-0006, fiscal years ending June 30, 2004 and June 30, 2005;
  - 6) Henry Ford Health System d/b/a Henry Ford Hospital, Provider No. 23-0053, fiscal year ending December 31, 1999;
  - 7) Kaleida Health, Provider No. 33-0005, fiscal year ending December 31, 2004;
  - 8) Lakeland Hospital at Niles and St. Joseph, Inc. d/b/a Lakeland Regional Medical Center, Provider No. 23-0021, fiscal year ending September 30, 1999;
  - 9) Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center, Provider No. 01-0113, fiscal year ending March 31, 2005;
  - 10) St. Clare's Corporation as successor in interest to St. Clare Schenectady, Provider No. 33-0066, fiscal years ending December 31, 1999 and December 31, 2004;

- 11) St. Vincent's Midtown Hospital f/k/a St. Clare's Hospital and Health Center, Provider No. 33-0230, fiscal year ending December 31, 1999;
- 12) The Unity Hospital of Rochester, Provider No. 33-0226, fiscal year ending December 31, 2004;
- 13) Trinity Health System f/d/b/a Mercy Hospital - Detroit, Provider No. 23-0147, fiscal year ending June 30, 1999;
- 14) Trinity Hospital Holding Company d/b/a Trinity Health System, Provider No. 36-0211, fiscal year ending December 31, 2003; and
- 15) VHS Sinai-Grace Hospital, Inc. d/b/a Sinai Grace Hospital, Provider No. 23-0024, fiscal year ending December 31, 2004.

6. The defendant is Alex M. Azar, in his official capacity as Secretary of the United States Department of Health and Human Services (“Secretary”), the federal agency that administers the Medicare program. References to the Secretary herein are meant to refer to him, to his subordinates, and to his official predecessors or successors as the context requires.

7. The Centers for Medicare & Medicaid Services (“CMS”) is the component of the Secretary’s agency with responsibility for day-to-day operation and administration of the Medicare program. CMS was formerly known as the Health Care Financing Administration. References to CMS herein are meant to refer to the agency and its predecessors.

## **LEGAL AND REGULATORY BACKGROUND**

### **Medicare Payment Determinations and Appeals**

8. Part A of the Medicare Act covers “inpatient hospital services.” 42 U.S.C. § 1395d(a)(1). Since 1983, the Medicare program has paid most hospitals for the operating costs of inpatient hospital services under the prospective payment system (“PPS”). 42 U.S.C. § 1395ww(d); 42 C.F.R. Part 412. Under PPS, Medicare pays predetermined, standardized amounts per discharge, subject to certain payment adjustments. *Id.* One of the PPS payment adjustments is the DSH payment. *See* 42 U.S.C. § 1395ww(d)(5)(F); 42 C.F.R. § 412.106.

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