

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

CENTRAL CALIFORNIA FOUNDATION FOR)
HEALTH d/b/a DELANO REGIONAL)
MEDICAL CENTER)
1401 Garces Highway)
Delano, California 93215)
)
COMMUNITY HOSPITAL OF THE)
MONTEREY PENINSULA)
PO Box HH)
Monterey, California 93942)
)
COUNTY OF KERN d/b/a KERN MEDICAL CENTER)
1700 Mount Vernon Avenue)
Kern, California 93306)
)
COUNTY OF MONTEREY d/b/a NATIVIDAD)
MEDICAL CENTER)
1441 Constitution Boulevard)
Salinas, California 93906)
)
COUNTY OF SAN JOAQUIN d/b/a SAN JOAQUIN)
GENERAL HOSPITAL)
2615 Chester Avenue)
Bakersfield, California 93301)
)
DOCTORS MEDICAL CENTER – SAN PABLO)
2000 Vale Road)
San Pablo, California 94806)
)
EL CAMINO HOSPITAL)
2500 Grant Road)
Mountain View, California 94040)
)
ENLOE MEDICAL CENTER)
1531 Esplanade)
Chico, California 95926)
)
MARSHALL MEDICAL CENTER)
1100 Marshall Way)
Placerville, California 95667)
)
NORTHBAY MEDICAL CENTER)
4500 Business Center Drive, Suite 244)

Case No.

Fairfield, California 94534)
)
 PASADENA HOSPITAL ASSOCIATION, LTD)
 d/b/a HUNTINGTON MEMORIAL HOSPITAL)
 100 West California Boulevard)
 Pasadena, California 91109)
)
 POMERADO HOSPITAL)
 15615 Pomerado Road)
 Poway, California 92064)
)
 STANFORD HEALTH CARE – VALLEYCARE)
 1111 East Stanley Boulevard)
 Livermore, California 94550)
)
 WASHINGTON TOWNSHIP HOSPITAL)
 DISTRICT d/b/a WASHINGTON HOSPITAL)
 2000 Mowry Avenue)
 Fremont, California 94538)
)
 ZUCKERBERG SAN FRANCISCO GENERAL)
 HOSPITAL & TRAUMA CENTER – ACUTE f/d/b/a)
 SAN FRANCISCO GENERAL HOSPITAL)
 1001 Potrero Avenue)
 San Francisco, California 94110)
)
 Plaintiffs,)
)
 v.)
)
 XAVIER BECERRA, 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 the 2004 rule to prior periods impermissibly retroactive); *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1105 (D.C. Cir. 2014) (“*Allina I*”) (vacating the 2004 rule because it was not a logical outgrowth of the proposed rule); *Allina Health Servs. v. Price*, 863 F.3d 937, 943–44 (D.C. Cir. 2017), *aff’d sub nom. Azar v. Allina Health Servs.*, 139 S. Ct. 1804 (2019) (“*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. *Allina II*, 139 S. Ct. 1804. 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 procedurally invalid, as the Court of Appeals has now twice ruled, 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)(1) and 28 U.S.C. § 1331.
4. Venue is proper in this judicial district under 42 U.S.C. § 1395oo(f)(1).

PARTIES

5. The plaintiff hospitals in this action and hospital fiscal years (or portions thereof) at issue are as follows:

- (1) Central California Foundation for Health d/b/a Delano Regional Medical Center, Provider No. 05-0608, Fiscal Year ending in December 31, 2013;
- (2) Community Hospital of the Monterey Peninsula, Provider No. 05-0145, Fiscal Year ending in December 31, 2013;
- (3) County of Kern d/b/a Kern Medical Center, Provider No. 05-0315, Fiscal Year ending in June 30, 2013;
- (4) County of Monterey d/b/a Natividad Medical Center, Provider No. 05-0248, Fiscal Year ending in June 30, 2013;
- (5) County of San Joaquin d/b/a San Joaquin General Hospital, Provider No. 05-0167, Fiscal Year ending in June 30, 2013;
- (6) Doctors Medical Center – San Pablo, Provider No. 05-0079, Fiscal Year ending in December 31, 2013;
- (7) El Camino Hospital, Provider No. 05-0308, Fiscal Year ending in June 30, 2013;
- (8) Enloe Medical Center, Provider No. 05-0039, Fiscal Year ending in June 30, 2013;
- (9) Marshall Medical Center, Provider No. 05-0254, Fiscal Year ending in October 31, 2013;
- (10) Northbay Medical Center, Provider No. 05-0367, Fiscal Year ending in December 31, 2012;
- (11) Pasadena Hospital Association, Ltd d/b/a Huntington Memorial Hospital, Provider No. 05-0438, Fiscal Year ending in December 31, 2013;
- (12) Pomerado Hospital, Provider No. 05-0636, Fiscal Year ending in June 30, 2013;
- (13) Stanford Health Care – ValleyCare, Provider No. 05-0283, Fiscal Year ending in June 30, 2013;
- (14) Washington Township Hospital District d/b/a Washington Hospital, Provider No. 05-0195, Fiscal Year ending in June 30, 2013; and

(15) Zuckerberg San Francisco General Hospital & Trauma Center – Acute f/d/b/a San Francisco General Hospital, Provider No. 05-0228, Fiscal Year ending in June 30, 2012.

6. The defendant is Xavier Becerra, 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.

9. After the close of each fiscal year, a hospital is required to file a “cost report” with a Medicare Administrative Contractor designated by the agency. 42 C.F.R. §§ 413.20, 413.24.

10. The Medicare Administrative Contractor analyzes a hospital’s cost report and issues a year-end determination, called a Notice of Program Reimbursement (“NPR”), as to the amount of Medicare program reimbursement due the hospital for services furnished to Medicare patients

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