

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NAZARETH HOSPITAL and : CIVIL ACTION  
ST. AGNES MEDICAL CENTER :  
 :  
 : No. 10-3513  
v. :  
 :  
 :  
KATHLEEN SEBELIUS, Secretary :  
Department of Health and Human Services :

**MEMORANDUM - ORDER**

AND NOW, this 11th day of July, 2012, upon oral argument and submission of briefs on cross-motions for summary judgment, the Secretary's non-payment of inpatient hospital services claimed by plaintiffs Nazareth Hospital and St. Agnes Medical Center is remanded.

Jurisdiction is § 1395oo(f)(1) and 28 U.S.C. § 1331.

Within 60 days, the Secretary shall consider whether the agency's rule-making and procedures for Medicare's "disproportionate patient percentage" and Section 1115 demonstration projects violate the rights of Pennsylvania hospitals arbitrarily and capriciously – and without a rational basis.<sup>1</sup> See 42 U.S.C. S§ 1395ww(d)(5)(vi)(II), 1315(a)(2)(A); 42 C.F.R. § 412.106(b)(4)(ii) (2002).

The Secretary may hold an evidentiary hearing, including consideration of the following for FY ending December 31, 2002:

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<sup>1</sup> In FYE December 31, 2002, Pennsylvania did not have a Section 1115 waiver for inpatient hospital services. The underpayments in dispute are ca. Nazareth \$249,762 and St Agnes \$606,337, plus the possibility of monumental costs for the government. The basic conflict here is whether the federal government or the states should bear the ultimate expense of paying for health care for those unable to do so. The amount of resources put into this litigation has been deplorably humongous. No effort appears to have been made to resolve the issues.

- How were plaintiff hospitals compensated for inpatient services in Pennsylvania's General Assistance program in FY 2002?
- Were GA inpatients in Pennsylvania hospitals the same or different from hospital inpatient populations in other states via a Section 1115 demonstration project, and, if so, how?
- Were costs of inpatient hospital services arising from Pennsylvania's GA program the same or different from those incurred in Section 1115 demonstration projects in other states?
- Most importantly, the Secretary shall marshal and apply the evidence that supports the Secretary's decision.

The Secretary shall make findings and conclusions and return the remanded decision by September 14, 2012.

- By July 20, 2012, the parties shall seriously consider alternative dispute resolution – and notify the Court if willing to proceed with this possibility.

BY THE COURT:

/s/ Edmund V. Ludwig  
Edmund V. Ludwig, J.