

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

AFFINITY HEALTHCARE SERVICES,	:	
INC. d/b/a AFFINITY HOME HOSPICE	:	
SERVICES <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Civil Action No.: 10-0946 (RMU)
	:	
v.	:	Re Document Nos.: 16, 19, 26, 28
	:	
KATHLEEN SEBELIUS,	:	
in her official capacity as Secretary of the	:	
U.S. Department of Health and	:	
Human Services,	:	
	:	
Defendant.	:	

ORDER

GRANTING THE PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT; DENYING THE DEFENDANT’S CROSS-MOTION FOR SUMMARY JUDGMENT; DENYING AS MOOT THE DEFENDANT’S MOTION TO DISMISS THE ORIGINAL COMPLAINT; DENYING AS MOOT THE PLAINTIFFS’ RENEWED MOTION FOR A TEMPORARY RESTRAINING ORDER

For reasons stated in the court’s Memorandum Opinion, separately and contemporaneously issued this 25th day of October, 2010, it is hereby

ORDERED that the defendant’s motion to dismiss the original complaint is **DENIED as moot**; and it is

FURTHER ORDERED that the plaintiff’s renewed motion for a temporary restraining order is **DENIED as moot**; and it is

ORDERED that the plaintiffs’ motion for summary judgment is **GRANTED**; and it is

FURTHER ORDERED that the defendant’s cross-motion for summary judgment is **DENIED**; and it is

ORDERED that the July 21, 2010 decision of the CMS Administrator reversing and vacating the grant of expedited judicial review to the Affinity plaintiffs is vacated and without effect; and it is

FURTHER ORDERED that the hospice cap regulation found at 42 C.F.R. § 418.309(b)(1) is arbitrary and capricious and in excess of statutory authority; and it is

ORDERED that HHS is enjoined prospectively from using the current regulation found at 42 C.F.R. § 418.309(b)(1) to calculate the plaintiffs' hospice cap liability; and it is

FURTHER ORDERED that the cap repayment demands issued to all of the plaintiffs for 2006, as well as the cap repayment demands issued to plaintiffs Destiny Hospice and Hospicio Toque de Amor for 2007, are set aside; and it is

ORDERED that this matter is remanded to HHS for a recalculation of the plaintiffs' cap repayment obligation using the proportional method called for in 42 U.S.C. § 1395f(i)(2)(C).

SO ORDERED.

RICARDO M. URBINA
United States District Judge