

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

ALLINA HEALTH SERVICES, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 14-01415 (RMC)
	)	
SYLVIA M. BURWELL, Secretary,	)	
United States Department of Health and	)	
Human Services,	)	
	)	
Defendant.	)	

**DEFENDANT’S OBJECTION TO RELATED CASE DESIGNATION  
UNDER LOCAL CIVIL RULE 40.5**

Defendant, Sylvia M. Burwell, in her official capacity as Secretary of the United States Department of Health and Human Services (“the Secretary”), respectfully submits her objection to the Notice of Designation of Related Cases, ECF No. 2, submitted by plaintiffs, 10 hospitals, in this action. Plaintiffs contend that this case is related to *Allina Health Servs., et al. v. Sebelius*, Civ. No. 10-1463 (D.D.C.) (Collyer J.) (“*Allina I*”). It is not. To invoke the related-case exception embodied in Local Civil Rule 40.5, plaintiffs must show, among other things, that *Allina I* is “still pending on the merits in the District Court.” LCvR 40.5(a)(3). Plaintiffs cannot satisfy this burden. *Allina I* is currently on remand. The challenged regulation is no longer in effect having been declared procedurally invalid. That part of this Court’s November 15, 2012 Opinion and Order was upheld by the D.C. Circuit and is not “pending on the merits.”

The two cases also do not share common factual issues or grow out of the same event or transaction. The D.C. Circuit vacated the portion of this Court’s November 15,

2012 Opinion and Order, which specified a particular outcome on remand, directing the district court to leave to the agency on remand the task of determining how Medicare Part C days should be treated for purposes of calculating plaintiffs' fiscal year 2007 disproportionate share hospital ("DSH") payments in the absence of the vacated rule. *See Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1111 (D.C. Cir. 2014) (affirming "the portion of the district court's opinion [in *Allina I*] vacating the rule" and "revers[ing] the portion of the district court's opinion directing the Secretary to recalculate the hospitals' [DSH] reimbursements using the alternate methodology"). As the D.C. Circuit explained in *Allina I*, "[t]he question whether the Secretary could reach the same result through adjudication was not before the district court; therefore, the court erred by directing the Secretary how to calculate hospitals' reimbursements, rather than just remanding after identifying the error." *Id.* Because, as the D.C. Circuit recognized, *Allina I* did *not* involve the Secretary's interpretation of the DSH statute reached in the absence of the vacated 2004 Final Rule, it would not be related to *Allina I* even if that case were still pending on the merits, which it is not.

To be sure, both cases concern the proper treatment of Medicare Part C days in calculating a hospital's DSH payments. But that is a legal, not factual, question, and *Allina I* and *Allina II* do not share common issues of fact. *See, e.g.*, Oct. 27, 2008 Order in *Atlanticare Reg'l Med. Ctr. v. Leavitt*, Civ. No. 08-872 (D.D.C.) (Kessler, J.), ECF. No. 15, at 1 (sustaining defendant's objection to related case designation, explaining that "[p]ursuant to Local Civil Rule 40.5, this case involves a question of law — namely, whether [HHS] violated the [APA] in calculating [the reimbursement] — not an issue of fact."). And even the legal issues in the two cases differ.

Because plaintiffs cannot show that the current case is related to *Allina I* within the meaning of Local Rule 40.5, the Secretary respectfully requests that the Court transfer this case to the Calendar and Case Management Committee for random assignment.

Dated: October 16, 2014

Respectfully submitted,

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