

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

OAKS OF MID-CITY NURSING &  
REHABILITATION CENTER,

CIVIL ACTION

VERSUS

NO. 11-360-JJB-DLD

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
ET AL

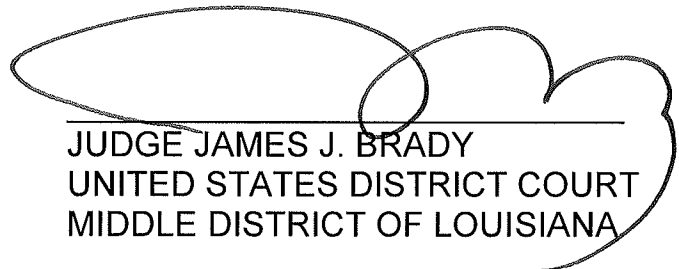
**ORDER**

HAVING CONSIDERED Defendant's Motion (doc. 10) to Dismiss,

IT IS HEREBY ORDERED that Defendant's motion be DENIED. On July 14, 2011, this Court issued a ruling (doc. 132) in a related case, *D & W Health Services, Inc. v. Kathleen Sebelius, et al*, 3:2010-cv-00319-JJB-SCR. In that case, D & W, the present Plaintiff's owner and operator, asserted that the Secretary of the United States Department of Health and Human Services ("the Department") had wrongfully terminated Plaintiff's Medicare/Medicaid provider agreement and imposed civil monetary penalties and that the Department's administrative process in reaching that final decision deprived D & W of Due Process. In its July 14 ruling, this Court held that it was without jurisdiction to hear D & W's claims because the United States Courts of Appeals had exclusive jurisdiction to hear suits involving civil monetary penalties. In doing so, the Court noted the danger of reaching a result contrary to the Court of Appeals on the existence or severity of the violations which led to D & W's termination and the

constitutionality of the process employed in reaching that decision. Because this suit involves those very same issues, this Court will exercise its authority to determine its own jurisdiction *sua sponte*, and conclude that it is also without jurisdiction to hear Plaintiff's claims. The parties will have ten (10) days to file briefs discussing why the Court should or should not retain jurisdiction.

Signed in Baton Rouge, LA this 15<sup>th</sup> day of July, 2011.



JUDGE JAMES J. BRADY  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA