

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

ASSOCIATION OF AMERICAN)
PHYSICIANS & SURGEONS, INC.,)
1601 N. Tucson Blvd., Suite 9,)
Tucson, AZ 85716,)

Plaintiff,)
v.)

KATHLEEN G. SEBELIUS,)
SECRETARY OF HEALTH &)
HUMAN SERVICES,)
200 Independence Avenue, SW)
Washington, DC 20201,)
in her official capacity,)

Civil Action No. ___-_____

and,)

MICHAEL J. ASTRUE,)
COMMISSIONER, SOCIAL)
SECURITY ADMINISTRATION)
6401 Security Boulevard)
Baltimore, MD 21235,)
in his official capacity,)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Association of American Physicians and Surgeons, Inc. (“AAPS”) seeks declaratory and injunctive relief based on the following allegations.

NATURE OF THE ACTION

1. AAPS brings this action under the Medicare Act (“Medicare”), the Social Security Act (“Social Security”), the Administrative Procedure Act (“APA”), various restrictions on federal action in Article I of the U.S. Constitution, and the Fifth and Tenth Amendments to enjoin Defendants Sebelius and Astrue (collectively, “Defendants”) from compelling AAPS members to participate in Medicare Part A as a condition of receiving Social Security benefits and to purchase health insurance approved by Defendant Sebelius.

2. As set forth more fully in Paragraph 73, AAPS seeks the following injunctive and declaratory relief:

(a) Vacate the Social Security Program Operations Manual System (“POMS”) on (a) *Waiver of Hospital Insurance Entitlement by Monthly Beneficiary*, POMS HI 00801.002, (b) *Withdrawal Considerations*, POMS HI 00801.034, and (c) *Withdrawal Considerations When Hospital Insurance is Involved*, POMS GN 00206.020, (i) as promulgated without the required notice-and-comment rulemaking, and (ii) for mandating (without authority) that AAPS members and their patients participate in Medicare Part A as a condition to receiving Social Security benefits;

(b) Enjoin the re-promulgation of regulations similar to POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 as *ultra vires*;

(c) Vacate the mandate in the newly enacted Patient Protection and Affordable Care Act (“PPACA”) that individuals and businesses with 50 or more employees purchase health insurance or pay compensating penalties as outside the authority of Congress to enact and the federal government to enforce;

(d) Enjoin the promulgation and enforcement of federal standards for health insurance as outside the authority of Congress to enact and the federal government to enforce;

(e) Declare PPACA unenforceable in its entirety because it lacks a severability clause and cannot be funded without the insurance mandates on individuals and businesses of 50 or more employees; and

(f) Order Defendants Sebelius and Astrue to submit an accounting on the solvency of Medicare and Social Security, respectively, to this Court.

The requested relief is necessary to preserve individual liberty and choice under Social Security, as well as to prevent the PPACA from bankrupting the United States generally and Medicare and Social Security specifically and from unconstitutionally denying individual (and state) liberty from *ultra vires* federal dictates.

PARTIES

3. Plaintiff AAPS is a not-for-profit membership organization incorporated under the laws of Indiana and headquartered in Tucson, Arizona. AAPS' members include thousands of physicians nationwide in all practices and specialties, many in small practices. AAPS was founded in 1943 to preserve the practice of private medicine, ethical medicine, and the patient-physician relationship. As set forth more fully in Paragraphs 9-20, AAPS members include without limitation medical caregivers – who also are consumers of medical care – as well as medical employers and owners and managers of medical businesses. AAPS members practice or reside in most (if not all) states in the Union.

4. Defendant Sebelius is the Secretary of Health and Human Services, the head of the U.S. Department of Health and Human Services (“HHS”), an executive department of the United States government.

5. Defendant Astrue is the Commissioner of the Social Security Administration (“SSA”), an independent agency within the executive branch of the United States government.

JURISDICTION AND VENUE

6. This action arises out of Defendants' ongoing violations of Medicare, Social Security, the APA, various clauses in Article I of the U.S. Constitution, and the Fifth and Tenth Amendments. As such, this action raises federal questions over which this Court has jurisdiction pursuant to: 28 U.S.C. §1331; the Acts of March 3, 1863, 12 Stat. 762, and June 25, 1936, 49

Stat. 1921 (as amended); D.C. Code §11-501; and this Court's equity jurisdiction.

7. Pursuant to 28 U.S.C. §1391(e), venue is proper in the District of Columbia.

Pursuant to 5 U.S.C. §703, venue is proper in any court of competent jurisdiction.

8. An actual and justiciable controversy exists between AAPS and Defendants.

PLAINTIFF'S STANDING

9. AAPS members include without limitation retired physicians and other retired medical caregivers on Social Security, practicing physicians and other medical caregivers, and physicians and others who own or manage medical businesses. All individual AAPS members are consumers of medical services in addition to their various capacities as medical caregivers.

10. To the extent that they relate to third parties (as distinct from AAPS and AAPS members), the allegations of injury (Paragraphs 11-20) are made on the basis of information and belief, formed after reasonable inquiry, which likely could be proved conclusively after a reasonable opportunity for discovery.

Ongoing Injuries from Compelled Participation in Medicare Part A

11. Some AAPS members who are retired and receive Social Security would like to cease participating in Medicare Part A, but POMS HI 00801.002, POMS HI 00801.034, POMS GN 00206.020 prevent their doing so without losing eligibility for Social Security. These AAPS members do not wish to lose eligibility for Social Security.

12. AAPS members who are practicing physicians and other medical caregivers who have opted out of Medicare would like to compete with medical caregivers within Medicare in serving retired Americans, but the retired patients have greater difficulty retaining such AAPS members because POMS HI 00801.002, POMS HI 00801.034, POMS GN 00206.020 compel their participation in Medicare Part A. As such, POMS HI 00801.002, POMS HI 00801.034, and

POMS GN 00206.020 give an advantage to these competitors vis-à-vis AAPS members who have opted out of Medicare.

13. Many patients prefer to avoid Medicare Part A specifically and Medicare generally because the quality of care and treatment is better outside of these Medicare programs. Similarly, many physicians prefer to operate outside Medicare Part A specifically and Medicare generally to avoid federal restrictions on the practice of medicine.

Ongoing Injuries from Health Insurance Legislation

14. AAPS members include the owners of businesses with more than 50 employees, who are subject to a new PPACA requirement to purchase health insurance for employees or else pay a penalty, and the imposition of this pair of requirements reduces the present value of such businesses. For example, one such owner currently uses high-deductible insurance coupled with health-savings accounts for employees. This approach does not comply with PPACA's health-insurance controls. The addition of these major new costs in 2014 and subsequent years has reduced the value of the business *today*. Removing those new costs would restore the lost value.

15. The current health insurance premiums for AAPS members will rise or have risen, based on PPACA's requirements, including without limitation (a) prohibiting insurers from excluding pre-existing conditions (children immediately, and everyone in 2014), (b) prohibiting insurers from setting lifetime limits, (c) requiring insurers to cover preventive health services and to allow children to remain on their parents' plans through age 26, and (d) restricting insurers' use of annual limits on coverage.

16. PPACA's new insurance mandates forces up the insurance costs for most Americans.

Physicians' Third-Party Standing to Assert Patients' Rights

17. In addition to the concrete, first-party injuries alleged in Paragraphs 11-16, AAPS members who are physicians also have standing to protect the patient-physician relationship both from their capacity as “vendors” under this Circuit’s vendor-standing decisions and under principles of third-party standing.

Procedural Injuries

18. Defendants have denied AAPS and its members the opportunity for a rulemaking that the APA required Defendants to hold before adopting legislative rules that affect AAPS members’ interests. If the Court grants the procedural relief requested in Paragraph 73, and Defendants initiate a rulemaking on their linkage of Social Security benefits with Medicare Part A, AAPS and its members would comment in that rulemaking proceeding. By taking the complained-of actions without the rulemaking proceedings required by the APA, Defendants denied AAPS and its members’ procedural rights conferred by Congress.

19. In addition to the procedural injuries in Paragraph 18, AAPS members suffer concrete injuries, *see* Paragraphs 11 to 17, which fall within the zone of interests of the relevant statutes, *see* Paragraph 20. Accordingly, Plaintiffs have procedural standing, which relaxes the showings required for immediacy and redressability for substantive standing.

Zone of Interests

20. The injuries to AAPS and its members satisfy the prudential zone-of-interests tests because AAPS’s mission includes its members’ medical practices and their own medical care, including the economic and liberty interests in both medical practice and medical care. Nothing requires that AAPS members participate as party plaintiffs.

SOVEREIGN IMMUNITY

21. The United States has waived its sovereign immunity for actions against the United States, its instrumentalities, and officers for non-monetary injunctive and equitable relief and for the entry of judgments and decrees against the United States in such actions. The United States has waived sovereign immunity for this action and for the relief sought in Paragraph 73.

22. With Defendants specifically named in their official capacities, sovereign immunity does not shield Defendants' *ultra vires* actions. This Court possesses equity jurisdiction over federal officers derived both from the Court's enabling legislation and from the historic equity jurisdiction of Maryland courts over Maryland officers, prior to Maryland's ceding the District of Columbia as a federal enclave.

23. As a matter of historical fact, at the time that the states ratified the U.S. Constitution, the equitable, judge-made doctrine that allows use of the sovereign's courts in the name of the sovereign to order the sovereign's officers to account for their conduct (*i.e.*, the rule of law) was as least as firmly established and as much a part of the legal system as the judge-made doctrine of federal sovereign immunity. No act of Congress limits this Court's equity jurisdiction for an action against Defendants' *ultra vires* acts.

IRREPARABLE HARM AND INADEQUATE ALTERNATE REMEDIES

24. Plaintiffs' action is not barred by the APA's "adequate-remedy bar," 5 U.S.C. §704, or analogous equitable doctrines because no other provision of law provides an adequate alternate legal remedy for the injuries to AAPS's members.

25. Administrative remedies are not adequate (and indeed are futile) for AAPS members who are retirees and wish to leave Medicare Part A while remaining on Social Security because the Defendants have signified that they stand by the POMS and, in any event, the POMS

set standards for the administrative hearings whereas AAPS seeks to invalidate the POMS.

26. Administrative remedies are not even available for AAPS members who are practicing physicians and other medical caregivers that have opted out of Medicare and wish to enter professional relationships with retirees, but the POMS' requiring retirees to forgo Social Security as the cost of opting out of Medicare Part A interferes with the ability of such practicing AAPS member physicians and other medical caregivers that have opted out of Medicare. The retirees do not wish to lose their eligibility for Social Security (and so continue to participate in Medicare Part A), and the AAPS member physicians and other medical caregivers could not initiate an administrative challenge to the retirees' benefits in any event.

27. Because this Court has jurisdiction as a threshold matter, the Declaratory Judgment Act, 28 U.S.C. §§2201-2202, provides this Court the power to "declare the rights and other legal relations of any interested party..., whether or not further relief is or could be sought." 28 U.S.C. §2201; *accord* FED. R. CIV. P. 57 advisory committee note ("the fact that another remedy would be equally effective affords no ground for declining declaratory relief").

28. A plaintiff's irreparable injury and lack of an adequate legal remedy justify injunctive relief. In addition to the declaratory relief requested in Paragraph 73, Plaintiffs are entitled to injunctive relief because (a) imminent and ongoing exposure to unlawful federal mandates under PPACA and denial of federal benefits under the POMS constitute irreparable injury; (b) as set forth in Paragraphs 24-26, Plaintiffs lack an adequate alternate legal remedy.

CONSTITUTIONAL AND STATUTORY BACKGROUND

29. The Constitution that created the United States from the several states embodies a form of federalism based on the dual sovereignties of the federal government on the one hand and the state governments on the other.

30. Article I, section 1, provides Congress the authority to tax and to spend to provide for the general welfare of the United States. Article I, section 8, authorizes Congress to regulate interstate commerce. Article I, sections 2 and 9, prohibit capitations and direct taxes.

31. The Fifth Amendment prohibits the taking of private property for public use without just compensation.

32. The Tenth Amendment reserves to the states or to the people all powers not expressly provided to the federal government.

Medicare and the Social Security Act

33. Medicare Act is codified at 42 USC §§1395 *et seq.*, and Social Security is codified at 42 USC §§401 *et seq.* Together, these two statutes provide medical care (Medicare) and a pension (Social Security) for retired Americans and represent the principal government safety net for them.

34. Defendants maintain a Program Operations Manual System (“POMS”), which includes (a) *Waiver of Hospital Insurance Entitlement by Monthly Beneficiary*, POMS HI 00801.002, (b) *Withdrawal Considerations*, POMS HI 00801.034, and (c) *Withdrawal Considerations When Hospital Insurance is Involved*, POMS GN 00206.020.

35. POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 represent Defendants’ and SSA’s considered views on the issue of eligibility for Social Security vis-à-vis participation in Medicare Part A. Because that connection is not present in the regulations or statutes, legal consequences flow from POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 (namely, non-participation in Medicare Part A denies eligibility for Social Security). POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 represent the Defendants “final agency action” on the subject.

Patient Protection and Affordable Care Act

36. On March 23, 2010, PPACA became law after a party-line vote in the Senate and nearly a party-line vote in the House, with 34 Democrats opposing the bill and no Republicans supporting it. PPACA greatly expanded federal control over the medical industry, which represents approximately one sixth of the national economy. The United States has never adopted such major legislation on such a narrow, party-line vote.

37. PPACA mandates that individuals maintain federally approved insurance or pay a penalty, I.R.C. §5000A, and mandates that “large employers” (*i.e.*, those employing 50 or more fulltime employees) provide federally approved insurance or pay a penalty, I.R.C. §4980H.

38. PPACA includes several provisions relevant to standing: (a) prohibiting insurers from excluding pre-existing conditions (children immediately, and everyone in 2014), §2704(a); (b) prohibiting insurers from setting lifetime limits, §2711(a)(2); (c) requiring insurers to cover preventive health services and to allow children to remain on their parents’ plans through age 26, §2714(a); and (d) restricting insurers’ use of annual limits on coverage, §2711(a)(2).

Administrative Procedure Act

39. The APA requires executive agencies to conduct notice-and-comment rulemaking when promulgating or amending substantive or legislative rules. 5 U.S.C. §553(b)-(c). Although an initial interpretation of a regulatory or statutory provision can be exempt from the notice-and-comment requirements, 5 U.S.C. §553(b)(A), the APA nonetheless requires agencies to undergo notice-and-comment rulemaking when amending a prior interpretation or when the purported interpretation in fact creates or destroys new rights or obligations.

FACTUAL BACKGROUND

40. Although millions of Americans rely on Medicare and Social Security in their

retirement planning, both programs are unsustainable in the long run under the status quo because their incoming funds will cease to cover their outgoing obligations. Because it can barely (if at all) afford to continue Medicare and Social Security, the United States cannot afford another major entitlement program like PPACA without first addressing the potential insolvency of Medicare and Social Security.

41. PPACA's supporters in Congress intentionally and misleadingly claimed that PPACA would reduce the federal deficit by approximately \$138 billion over the first ten years, based on scoring from the Congressional Budget Office ("CBO"). With CBO scoring, however, the assumptions that Congress imposes bind CBO, even if the assumptions are not realistic.

42. All informed stakeholders know the limitations of CBO scoring, such as counting ten years of revenues (including approximately \$500 billion from Medicare) to pay for six years to PPACA coverage, double counting revenues from other programs such as Social Security (approximately \$50 billion) and the Community Living Assistance Services and Supports ("CLASS") Act (approximately \$70 billion), and moving related expenses into stand-alone bills solely to avoid including their totals in the PPACA score (*e.g.*, the approximately \$210 billion "doc fix" to stop a scheduled 21-percent cut in Medicare payments to doctors).

43. On or about March 17, 2010, Defendant Sebelius published an op-ed piece on the PPACA bill entitled "Patient's plea makes the best case for health care reform," which cited CBO for the proposition that "the president's plan will lower the federal deficit by about \$100 billion over the next 10 years." Defendant Sebelius' op-ed did not disclose the limitations of the CBO analysis, although she knew them.

44. On or about March 24, 2010, CBO reported that Social Security would pay out more than it took in revenue for 2010, something that has not occurred in decades and that SSA

had not predicted to occur until 2016. The economic downturn exacerbated Social Security's balance sheet by provided less income from employment taxes and increased claims for eligibility because of the sluggish economy.

COUNT I
APA RULEMAKING VIOLATION FOR POMS

45. Plaintiff incorporates Paragraphs 1-44 and 48-73 as if fully set forth herein.

46. POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 are substantive rules, which therefore required notice-and-comment rulemaking as the means of promulgating them. Defendants did not conduct notice-and-comment rulemaking to implement POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020.

47. For the foregoing reasons, the issuance of POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 was arbitrary, capricious, an abuse of discretion, not otherwise in accordance with the law, in excess of authority granted by law, *ultra vires*, and without observance of procedure required by law.

COUNT II
ULTRA VIRES TYING OF MEDICARE AND SOCIAL SECURITY

48. Plaintiff incorporates Paragraphs 1-47 and 51-73 as if fully set forth herein.

49. POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 require the acceptance of Medicare Part A as a condition to receipt of Social Security benefits. That requirement is *ultra vires* Medicare, Social Security, and the implementing regulations because the statutes allow participating in Social Security without participating in Medicare Part A.

50. For the foregoing reasons, the issuance of POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 was arbitrary, capricious, an abuse of discretion, not otherwise in accordance with the law, in excess of authority granted by law, and *ultra vires*.

COUNT III
UNLAWFUL EMPLOYER INSURANCE MANDATE

51. Plaintiff incorporates Paragraphs 1-50 and 56-73 as if fully set forth herein.

52. Nothing in Article I or elsewhere in the U.S. Constitution authorizes the federal government to require private employers, with no direct connection to or contract with the federal government, to purchase health insurance for employees, and nothing in Article I or elsewhere in the U.S. Constitution authorizes the federal government to set the acceptable terms of health insurance.

53. The federal criteria for acceptable insurance represent a means of subsidizing federal policy on acceptable insurance terms (*e.g.*, exclusion of pre-existing conditions, annual and lifetime limits on coverage, and extended coverage) by spreading costs to private parties, without relying on the Spending Clause or the taxing authority. By forcing up premiums generally, the federal imposition of criteria for acceptable insurance policies and coverage thus represents a regulatory taking, without just compensation, in violation of the Fifth Amendment.

54. Because the requirement for employers to insure their employees or pay a penalty is central to PPACA's economic viability and because PPACA contains no severability clause, Congress intended the entire PPACA to be unenforceable if the employer insurance mandate is held invalid.

55. For the foregoing reasons, PPACA's uncompensated mandate for employers with 50 or more employees to purchase federally approved health insurance is not in accordance with the law, in excess of authority granted by law, and *ultra vires*.

COUNT IV
UNLAWFUL INDIVIDUAL MANDATE

56. Plaintiff incorporates Paragraphs 1-55 and 61-73 as if fully set forth herein.

57. Nothing in Article I or elsewhere in the U.S. Constitution authorizes the federal government to require individual citizens, with no direct connection to or contract with the federal government, to purchase health insurance, and nothing in Article I or elsewhere in the U.S. Constitution authorizes the federal government to set the acceptable terms of health insurance for such individuals.

58. The federal criteria for acceptable insurance represent a means of subsidizing federal policy on acceptable insurance terms (*e.g.*, exclusion of pre-existing conditions, annual and lifetime limits on coverage, and extended coverage) by spreading costs to private parties, without relying on the Spending Clause or the taxing authority. By forcing up premiums generally, the federal imposition of criteria for acceptable insurance policies and coverage thus represents a regulatory taking, without just compensation, in violation of the Fifth Amendment, and an unlawful capitation or direct tax in violation of violation of Article I, sections 2 and 9, of the Constitution.

59. Because the requirement for individuals to purchase insurance or pay a penalty is central to PPACA's economic viability and because PPACA contains no severability clause, Congress intended the entire PPACA to be unenforceable if the individual mandate is held invalid.

60. For the foregoing reasons, PPACA's uncompensated mandate for individuals to purchase federally approved health insurance is not in accordance with the law, in excess of authority granted by law, and *ultra vires*.

COUNT V
ACCOUNTING FOR MEDICARE

61. Plaintiff incorporates Paragraphs 1-60 and 67-73 as if fully set forth herein.

62. Federal executive officers such as Defendant Sebelius owe a fiduciary duty to the American people to properly implement important federal programs such as Medicare. Notwithstanding that millions of Americans rely on Medicare, that program faces insolvency because of federal mismanagement.

63. In the face of Medicare's prospective insolvency, politicians try to avoid the issue, and the Congress (through PPACA specifically but also generally) relies on budget gimmickry to avoid the difficult budgetary issues presented. Indeed, Congress in PPACA purports to cut half a trillion dollars from Medicare to pay for new entitlements that the United States cannot afford.

64. Defendant Sebelius knowingly stated that CBO's scorings showed that PPACA would reduce the federal deficit, when she knows that the opposite is true in reality, without the unrealistic and narrowing assumptions that CBO was compelled to make.

65. Congress and the American public need an honest accounting on Medicare's solvency to address the urgent situation facing Medicare.

66. For the foregoing reasons, Defendant Sebelius' conduct violates her fiduciary and equitable duties.

COUNT VI
ACCOUNTING FOR SOCIAL SECURITY

67. Plaintiff incorporates Paragraphs 1-66 and Paragraph 73 as if fully set forth herein.

68. Federal executive officers such as Defendant Astrue owe a fiduciary duty to the American people to properly implement important federal programs such as Social Security. Notwithstanding that millions of Americans rely on Social Security, that program faces

insolvency because of federal mismanagement.

69. In the face of Social Security's prospective insolvency, politicians try to avoid the issue, and the Congress (through PPACA specifically but also generally) relies on budget gimmickry to avoid the difficult budgetary issues presented.

70. Defendant Astrue knows that PPACA's budget scoring would redirect in excess of \$50 billion from Social Security, but has not taken any appropriate action to protect Social Security from PPACA on behalf of those who rely on him and Social Security for their retirement planning.

71. Congress and the American public need an honest accounting on Social Security's solvency to address the urgent situation facing Social Security.

72. For the foregoing reasons, Defendant Astrue's conduct violates his fiduciary and equitable duties.

PRAYER FOR RELIEF

73. Wherefore, Plaintiff AAPS respectfully asks this Court to grant the following relief:

A. Pursuant to 5 U.S.C. §706, 28 U.S.C. §§1331, 2201-2202, the Acts of March 3, 1863, 12 Stat. 762, and June 25, 1936, 49 Stat. 1921 (as amended), D.C. Code §11-501, Fed. R. Civ. Proc. 57, and this Court's equitable powers, a Declaratory Judgment that:

- (i) Defendants adopted POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 without the required notice-and-comment rulemaking;
- (ii) In conditioning eligibility for Social Security on participation in Medicare Part A, POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 are *ultra vires* Medicare and Social Security;

- (iii) The federal government lacks authority under the Commerce Clause and the Tenth Amendment to compel businesses or individuals to purchase health insurance or pay an offsetting penalty;
- (iv) Requiring the private purchase – by individuals or businesses – of insurance with greater coverage than the purchaser desires constitutes a regulatory taking;
- (v) Requiring individuals to purchase insurance with greater coverage than the purchaser desires constitutes a prohibited capitation or direct tax; and
- (vi) Defendants (and the Congress) have breached their fiduciary duties to the American people by allowing Social Security and Medicare to face insolvency.

B. Pursuant to 5 U.S.C. §706, 28 U.S.C. §§1331, 2202, the Acts of March 3, 1863, 12 Stat. 762, and June 25, 1936, 49 Stat. 1921 (as amended), D.C. Code §11-501, and this Court's equitable powers, an Order providing that

- (i) POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020 are vacated; and
- (ii) Defendants are enjoined from re-promulgating by rulemaking the substantive requirements of POMS HI 00801.002, POMS HI 00801.034, and POMS GN 00206.020, except to the extent that those substantive requirements are fully consistent with the declaratory relief in Paragraph 73(A);
- (iii) Defendant Sebelius is enjoined from promulgating federal criteria for acceptable health insurance policies applicable to private individuals or businesses;
- (iv) Defendant Sebelius and any and all federal officers acting in concert with her are enjoined from promulgating or enforcing any mandate that individuals or entities purchase and carry health insurance;

- (v) Defendant Sebelius shall prepare and submit to this Court an accounting on Medicare's solvency; and
 - (vi) Defendant Astrue shall prepare and submit to this Court an accounting on Social Securities' solvency.
- C. Pursuant to 28 U.S.C. §2412 and any other applicable provisions of law or equity, award AAPS its costs and reasonable attorneys fees.
- D. Such other relief as may be just and proper.

Dated: March 26, 2010

Respectfully submitted,



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