

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

**ALAMEDA COUNTY MEDICAL  
CENTER,**  
*et al.*  
  
**Plaintiffs,**  
  
v.  
  
**THE HONORABLE MICHAEL O.  
LEAVITT, in his official capacity as  
Secretary, United States Department of  
Health and Human Services,**  
*et al.*  
  
**Defendants.**

Civil Action No.

**DECLARATION OF IVY BAER**

I, Ivy Baer, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Regulatory Counsel of Plaintiff the Association of American Medical Colleges (“AAMC”). I submit this declaration in support of Plaintiffs’ complaint and motion for a preliminary injunction in the above-referenced action against Defendants.
2. I am of legal age and competent to testify. This declaration is made on personal knowledge, information contained in the AAMC’s files upon which I normally rely, publicly available information, and other factual matters known to me.
3. I have served as the AAMC’s Regulatory Counsel since 1996.
4. The AAMC is a non-profit corporation organized and existing under the laws of the State of Illinois. The AAMC is headquartered in Washington, D.C.

5. The AAMC represents approximately 400 major public and private general acute and specialty teaching hospitals and health systems, all 129 accredited U.S. allopathic medical schools, approximately 94 professional and academic societies, and the nation's medical students and residents. The mission of the AAMC is to improve the health of the public by enhancing the effectiveness of academic medicine. The AAMC pursues its mission by assisting academic medicine's institutions, organizations and individuals in carrying out their responsibilities for: educating the physician and medical scientist workforce; discovering new medical knowledge; developing innovative technologies for prevention, diagnosis and treatment of disease; and providing health care services in academic settings.

6. The AAMC represents its members' interests in matters before Congress, the Executive Branch, and the courts, as well as with other public and private entities. AAMC has a long history of advocating on behalf of its members on matters related to payment for services provided to Medicaid recipients and the financing of the Medicaid program.

7. Teaching hospitals are key participants in the health care safety net, providing a disproportionate amount of health care to Medicaid recipients and uninsured patients while maintaining their core missions of education, research, and innovative patient care. While they represent only 6 percent of all hospitals, about 25 percent of Medicaid discharges are from major teaching hospitals. Medicaid accounts for 16 percent of the health care provided by faculty practice groups, compared to only 10 percent provided by community-based multi-specialty groups.

8. Teaching hospitals also have unique roles beyond being important participants in the health care safety net. These include being sites for the clinical education of all types of health professional trainees; providing environments in which clinical research can flourish; and being

sources of specialized, unique referral/standby services. Major teaching hospitals also play a critical preparedness role as front-line responders in the event of an attack or natural disaster, and they are constantly refining their capabilities to fulfill this role.

9. Major teaching hospitals face significant financial challenges as a result of their missions. The aggregate total margin for the nation's major teaching hospitals is consistently and significantly below that of other hospital groups.

10. State Medicaid programs and the academic medical community have worked together over many years to ensure that the health care needs of Medicaid patients are met while allowing teaching hospitals and their faculty to also fulfill their other missions.

11. On January 18, 2007, the Centers for Medicare & Medicaid Services ("CMS") proposed the regulation, *Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership*, 72 Fed. Reg. 2236 ("Proposed Rule"). Among other things, CMS proposed to upend decades of Medicaid law to 1) limit Medicaid payments for government-operated hospitals to the costs of providing Medicaid services to Medicaid recipients, and 2) narrow the definition of units of government eligible to contribute to the non-federal share of Medicaid expenditures.

12. The AAMC submitted a comment letter to CMS on March 19, 2007, outlining our concerns with the proposed rule's unauthorized and unwarranted new policies, and their its detrimental impact on safety net hospitals and Medicaid beneficiaries' access to care. A true and correct copy of the AAMC's comment letter is attached hereto and made a part hereof as Exhibit A.

13. AAMC was involved in advocacy efforts to achieve a legislative moratorium on implementation of the Proposed Rule to provide Congress the opportunity to fully consider the

complex issues involved and to legislate as necessary. Congress passed this moratorium on May 24, 2007, and the President signed the legislation containing the moratorium into law on May 25, 2007. U.S. Troop Readiness, Veterans' Care, Katrina Recovery and Iraq Accountability Appropriations Act of 2007, Sec. 7002(a) (Pub. L. No. 110-28).

14. CMS purported to issue a final version of the rule by putting it on display at the Federal Register on May 25, 2007. 72 Fed. Reg. 29748 (May 29, 2007) ("Rule") AAMC submitted a comment letter on July 13, 2007 in response to the Final Rule. A true and correct copy of AAMC's supplemental comment letter is attached hereto and made a part hereof as Exhibit B.

15. The Rule, if implemented, will result in significantly reduced funding for Medicaid providers, in particular safety net hospitals and health systems, and will put at risk their ability to continue to provide critical medical services to those in their communities with nowhere else to turn. We are concerned that the changes in the Rule will significantly upset the delicate balance of resources upon which many teaching hospitals rely to fulfill their patient care and other missions.

16. The attached comment letters detail AAMC's concerns that imposing a cost-based limit on hospital payments to government-operated providers would be returning to an ineffective policy. Over time, Medicaid has moved away from cost-based reimbursement because it does not provide incentives for efficient performance. Increasingly, States have followed the Medicare model and established prospective payment systems for their Medicaid programs. This approach encourages efficiency by rewarding hospitals that constrain their costs below the payment amount.


17. The comments further express our concern that the cost limit inappropriately differentiates between government-operated hospitals and other hospitals, and is precluded by clear statements in the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000.

18. The comments further explain our belief that the Rule's severely constrained definition of a unit of government eligible to contribute funds to the non-federal share of Medicaid expenditures is inconsistent with the language and statutory framework of the Medicaid statute, Title XIX of the Social Security Act. Although the definition was revised in the final Rule to include state university teaching hospitals that receive direct appropriations from the State, some state university teaching hospitals do not receive appropriations and yet are nonetheless considered governmental under state law.

19. AAMC and its members have an interest in delivering quality health care to Medicaid and other low-income recipients in an efficient manner and at payment rates sufficient to enable them to continue to meet their patients' needs. If the provisions of this Rule are implemented, many of AAMC's member hospitals would be forced to take steps to offset this financial loss, which in some cases would include cutting essential services to Medicaid and other low-income patients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 6, 2008  
Washington, DC

(Signature)   
Ivy Baer  
Regulatory Counsel  
Association of American Medical  
Colleges