

**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 DAVID ENTWISTLE**

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

1. I am Chief Executive Officer (“CEO”) of Declarant University of Utah Hospitals and Clinics (“UUHC”). 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 UUHC’s files upon which I normally rely, publicly available information, and other factual matters known to me.

3. I have served as CEO of UUHC since 2007.

4. In my capacity as CEO, I am responsible for all aspects of UUHC's operations and finances, including participation in the Utah Medicaid program and payments received pursuant to that program.

5. UUHC receives State appropriations and is included in the State of Utah's financial reports as a unit of State government.

6. UUHC is an operating unit of the University of Utah, whose School of Medicine is Utah's only medical school. UUHC is the Utah's only academic medical center and is an important safety net provider. UUHC offers services in more than 120 specialties and serves as the clinical training ground for nearly 2,000 students and more than 600 medical residents, fellows, and interns. It is the only significant provider of inpatient psychiatric services. UUHC also provides pain clinic services and community clinic services.

7. Our mission is to serve the public by improving health and quality of life. We accomplish this through our commitment to excellence in education, research and clinical care. Over the years, our reputation of excellence has grown throughout the Intermountain West region. UUHC has been recognized as one of "America's Best Hospitals" for the last 13 years.

8. UUHC is recognized by its unique services for Utah and the Intermountain region. UUHC is Utah's largest hospital-based provider of ambulatory care services with 80 general and specialty clinics for outpatients. UUHC's burn center is the only burn treatment facility in the region, treating critically ill burn patients from Utah and neighboring states. UUHC provides care for Utahns and residents of five surrounding states in a referral area encompassing more than 10% of the continental United States. A

tertiary care referral center for the Intermountain west, UUHC is known for its programs in orthopedics, stroke, ophthalmology, cancer, newborn intensive care, radiology, fertility, radiology, genetic-related diseases and organ transplant. University Hospital is a nationally verified Level I trauma center.

9. UUHC is a significant provider of care to Medicaid patients in Utah, and sees out of state Medicaid patients referred for specialized care. Of the patients we treat annually, 28 percent are Medicaid beneficiaries, 2 percent are charity patients, and 4 percent are self-pay patients with no coverage.

10. UUHC has an annual operating budget over \$700 million. Based on this budget (and without implementation of the challenged Medicaid rule), UUHC projects that it will have a 5% [\$ 35 million] operating margin for fiscal year 2008, which, as a governmental entity, UUHC would reinvest into the health system to provide additional services to the uninsured, underinsured, and special needs populations; recruit additional providers for this community; upgrade and replace our aging facilities; and maintain or upgrade our specialized equipment necessary for the unique services we provide.

11. UUHC relies significantly on Medicaid payments. 21 percent of our revenues are derived from the Medicaid program. UUHC currently receives Medicaid payments above its direct costs of serving Medicaid patients, in recognition of our unique role in the State as described above. In particular, we receive enhanced funding to support medical education which is in excess of direct costs. These funds are used to support our medical education program to ensure a future supply of physicians in Utah to serve the State's Medicaid population. These enhanced payments allow UUHC to invest

in the services and facilities described above, which are particularly essential to Medicaid patients.

12. Under the purported new HHS regulation, *Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership*, 72 Fed. Reg. 29748 (May 29, 2007) (“Rule”), UUHC will continue to be treated as a unit of government, based on our direct access to tax revenues and clear position as part of State government, and our status as a State university teaching hospital that receives direct appropriations. As a result, UUHC will be subject to the cost limit on payments to governmental providers under the Rule, and will lose the federal share of the payments we currently receive over our costs. We estimate that UUHC will lose at least \$25 million annually in federal Medicaid funding.

13. This \$25 million loss, constituting more than 3.5 percent of our operating budget, is almost our entire operating margin. This is too great a financial reduction for UUHC to offset without impacting programs and services.

14. UUHC will be forced to develop an immediate action plan which would have to include curtailing or eliminating services to a patient population that is already underserved. This will include having to make cuts or reductions among services that are currently under-reimbursed, such as inpatient psychiatric services, pain clinic services, community clinics, inpatient beds, and medical school support. The cuts will be detrimental to our efforts to make needed improvements to our facilities and equipment and will require us to limit needed expansion of some services despite growing community need. For example, our planned expansion of psychiatric services will need

to be delayed pending funding resources. These cuts will increase barriers to access for Medicaid patients.

15. We have attempted to determine whether the State of Utah would provide funding to offset this loss. Based on communications with State officials, we understand that this is unlikely. Based on estimates the Utah Department of Health submitted to the House of Representatives Committee on Oversight and Government Reform, it is anticipated that the Utah Medicaid Program will lose \$216 million in federal Medicaid funding over five years as a result of this Rule.

16. The loss of this federal funding will mean less funding for payments to the State's safety net providers generally, including UUHC, for the services we provide to Medicaid beneficiaries and other vulnerable patients. This will be devastating to the ability of UUHC and the rest of Utah's safety net providers to care for Utah's medically underserved population.

17. When we learned that the Centers for Medicare & Medicaid Services ("CMS") proposed this Rule last January, and purported to finalize the Rule in May, we recognized the impact that this magnitude of loss in funding would have on our operations. We submitted comments to CMS and the Department of Health and Human Services ("HHS") in response to the Proposed Rule, explaining our hospital's circumstances and the devastating impact on Medicaid recipients in Utah. The letter is attached as Exhibit A. CMS went forward with the Rule without addressing our concerns.

18. UUHC is a member of the National Association of Public Hospitals and Health Systems, the American Hospital Association, and the Association of American Medical Colleges.

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

Executed on: March 11, 2008

(Signature):

A handwritten signature in black ink, appearing to read "D Entwistle", written over a horizontal line.

David Entwistle  
Chief Executive Officer  
University of Utah Hospitals and Clinics