

**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 MELINDA REID HATTON

I, Melinda Reid Hatton, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Senior Vice President and General Counsel for Plaintiff the American Hospital Association (“AHA”). 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 AHA’s files upon which I normally rely, publicly available information, and other factual matters known to me.
3. I have served as AHA’s General Counsel since 2007, and prior to that as Chief Washington Counsel for AHA beginning in October 2000.
4. AHA is a non-profit corporation incorporated under the laws of the State of Illinois. AHA has offices in Washington, D.C.

5. AHA is the primary national membership organization for hospitals in the United States. Its membership includes approximately 5,000 hospitals, health systems, networks, and other providers of care. AHA's mission is to promote high quality health care and health services through leadership and assistance to hospitals in meeting the health care needs of their communities.

6. AHA represents its members' interests in matters before Congress, the Executive Branch, and the courts, as well as with other public and private entities. AHA 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. 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.

8. AHA submitted a comment letter to CMS on March 15, 2007, outlining our concerns with the Proposed Rule's unauthorized and unwarranted new policies, and their detrimental impact on safety net hospitals and Medicaid beneficiaries' access to care. A true and correct copy of AHA's comment letter is attached hereto and made a part hereof as Exhibit A.

9. AHA 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).

10. 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"). AHA submitted a comment letter on July 13, 2007 in response to the Rule. A true and correct copy of AHA's supplemental comment letter is attached hereto and made a part hereof as Exhibit B.

11. 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.

12. The attached comment letters detail AHA's concerns that a cost-based limit on hospital payments only to government-operated providers is arbitrary and capricious, inappropriately differentiates between government-operated hospitals and other hospitals with no rational basis, is precluded by clear statements in the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000, and would create an unwarranted burden on providers and States.

13. The comments further explain 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.

14. The comments also contain our concern that CMS did not provide sufficient data to support its estimated savings from the spending cuts in the Rule, raising questions about the rationale upon which CMS based these sweeping changes.

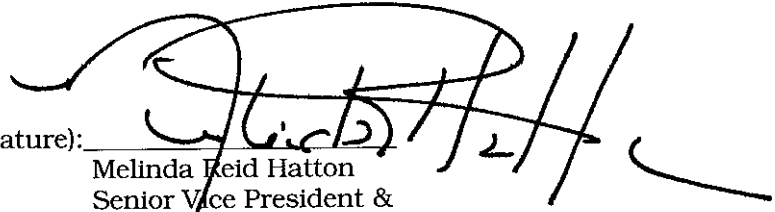
15. AHA and its members have an interest in delivering quality health care to Medicaid and other low-income recipients in an efficient manner and at payment rates sufficient to enable them to continue to meet their patients' needs. If the provisions of this Rule are implemented, many of AHA's safety net hospital members will be required to make deep cuts in essential services that they have struggled to provide in the past.

16. These cuts will undermine the ability of states and hospitals to ensure quality of care and access to services for Medicaid beneficiaries, as well as to continue their substantial investments in health care initiatives to promote the policy goals of CMS and the Department of Health and Human Services ("HHS"), including adoption of electronic health records, reducing disparities in care provided to minority populations, and enhancing access to primary and preventative care.

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

Executed on: March 10 2008
Washington, DC

(Signature):

A handwritten signature in black ink, appearing to read 'Melinda Reid Hatton', written over a horizontal line. The signature is stylized with a large loop at the top and several vertical strokes on the right side.

Melinda Reid Hatton
Senior Vice President &
General Counsel
American Hospital Association