

**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 WRIGHT LASSITER**

I, Wright L. Lassiter III, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am Chief Executive Officer of plaintiff Alameda County Medical Center ("Alameda"). I submit this declaration in support of Plaintiffs' complaint and motion for a preliminary and permanent 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 based on information contained in Alameda's files upon which I normally rely, upon publicly available information, and other factual matters known to me.

3. In my capacity as Chief Executive Officer, I am responsible for all aspects of Alameda's operations, including its financial operations and its participation in and payments from Medi-Cal, the California Medicaid program.

4. I have served as Alameda's Chief Executive Officer since September, 2005.

5. Alameda is the public hospital and health system for Alameda County, California, with its roots in the Alameda County Infirmary opened as Fairmont Hospital in 1864 and Highland Hospital in 1927. For over 140 years, the Medical Center's mission has been to maintain and improve the health of all Alameda County residents regardless of ability to pay. Highland Hospital has been the major emergency medical services provider for Alameda County residents since the facility first opened its doors. It is the official Trauma Center for Northern Alameda County. John George Psychiatric Pavilion (JGPP) provides 80 in-patient psychiatric beds and Psychiatric Emergency services. JGPP is the primary service provider for 99% of all acute psychiatric emergencies in Alameda County. Alameda County Medical Center operates three freestanding health centers providing full service primary care to adults and children. The Medical Center is the sole provider of specialty care services to Alameda County's indigent, and one of a very few facilities in the County providing specialty care to Medi-Cal patients. In December 1993, the clinics merged organizationally with the Alameda County Medical Center. As detailed in Paragraph 12 below, Alameda is now an independent Public Hospital Authority, specifically established by County Code under the authority granted by State statute.

6. Alameda's mission, as defined by State statute and County code, is a commitment "to maintaining and improving the health of all Alameda County residents, regardless of ability to pay. [Alameda] . . . provide[s] comprehensive, high quality medical treatment, health promotion and health maintenance through an integrated system of hospitals, clinics, and health services staffed by individuals who are responsive to the diverse cultural needs of our community. [Alameda], as a training institution, is committed to maintaining an environment that is supportive of a wide range of educational programs and activities. Education, including

continuing education, of medical students, residents, nursing and other staff, along with clinical research, are all essential components of our environment.” Alameda County Code, Sec. 2.120.050; Cal. Health & Safety Code Sec. 101850.

7. Alameda provides a full range of basic and specialized health care services in several facilities primarily to Medicaid, low-income and uninsured residents of Alameda County. Alameda operates Highland Hospital in Oakland, a general acute care hospital with a daily average patient load of 236 beds, and an acute care psychiatric hospital in San Leandro with a daily average patient load of 80 beds. Alameda also operates a 159-bed rehabilitation and skilled nursing facility at Fairmont Hospital, outpatient clinics, and free-standing community health centers.

8. Alameda’s Level-Two Trauma Center, one of only three in the county, provides the most intensive and technologically sophisticated trauma care available. In FY 2007, Alameda provided care to 1,127 trauma patients, and provided 116,272 patient days at three campuses, with an average daily census of 319. We had 14,814 admissions at our three campuses. In addition, Alameda generated 252,234 outpatient visits in 29 specialty and 8 primary care.

9. Alameda is the most important safety net health care provider in Alameda County. Highland is the closest hospital with a trauma center to the low income neighborhoods in Oakland, and we provide care to many more low-income and uninsured patients than any other facility in the County. Alameda is the single largest provider of Medi-Cal patient days for patients in Alameda County.

10. Approximately 53 percent of Alameda’s patients are enrolled in Medi-Cal, and 14 percent are Medicare beneficiaries. Only 5 percent of our inpatients are covered by private insurance. The remaining patients are uninsured. Alameda's revenue budget is \$460 million per

year of which approximately \$140 million is from patient payors, \$116 from federal and state supplemental programs, \$102 million from County funded programs for the indigent, inpatient behavioral services and trauma care, \$89 million from Measure A sales tax revenue, and approximately \$12 million from other sources.

11. As a direct consequence of our efforts to fulfill our mission of providing high quality health care to all County residents, including Medi-Cal enrollees, Alameda's current financial situation is highly precarious. Although, just recently, Alameda has managed to reverse several years of negative operating margins, it lacks the funds necessary for strategic capital and facility renovation and program enhancements. Mere survival is a constant challenge, as we continuously struggle to keep revenues growing at the same pace as our rising expenses.

12. Alameda was founded by Alameda County, and historically was owned and operated directly by the County under the governance of the County Board of Supervisors. In 1998, the Alameda County Hospital Authority was established pursuant to State law and Alameda County ordinance, and the governance of the Medical Center passed to the Board of Trustees of this independent public hospital authority. *See* Alameda County Administrative Code, Section 2.120.020; California Health and Safety Code § 101850.

13. As described by the County in our enabling legislation, the system was transferred to the Authority in an effort to improve the efficiency, effectiveness and economy of the community health services provided by the medical center, and was deemed to be "the best way to fulfill [the County's] commitment to the medically indigent, special needs, and general populations of Alameda County in a manner that constitutes an ongoing material benefit to the [C]ounty and its residents." Alameda County Administrative Code, Section 2.120.010; Cal. Health & Safety Code Section 101850(a)(1).

14. Alameda continues to serve the same role as the County's health system and to be significantly integrated with the County. Alameda County owns the medical center's land and buildings, and the County's Board of Supervisors appoints our governing board. The statute creating the authority commits Alameda to continue its mission of providing care to all county residents regardless of ability to pay. *See* Alameda County Administrative Code, Section 2.120.050. The hospital authority is deemed a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs (*see* Alameda County Administrative Code, Section 2.120.030(gg) ; Cal. Health & Safety Code Sec. 101850(i)), and is subject to state and federal taxation laws that are applicable to counties generally. *See* Alameda County Administrative Code, Section 2.120.030(z). In addition, Alameda is presented as a discrete component unit in Alameda County's Comprehensive Annual Financial Report.

15. Alameda is designated a governmental entity by statute. *See* Cal. Health & Safety Code Sec. 101850(j). All rights and obligations of hospitals owned or operated by a county are conferred on Alameda as a matter of law. Cal. Health & Safety Code Sec. 101850(m). Alameda employees are public employees within the meaning of the Meyers-Milias- Brown Act. Alameda, as a public entity, is subject to the open meeting requirements of the Brown Act and its documents are public records within the meaning of the California Public Records Act.

16. In 2004 Alameda County residents approved a sales tax increase of 0.5% known as Measure A, which passed with greater than the required 2/3 vote, with 75% of proceeds to help prevent closure of Alameda clinics and hospital facilities. The Measure specifically cited Alameda's role as provider of care to the county's indigent population.

17. California operates its Medicaid program, Medi-Cal, under a demonstration approved by the Department of Health and Human Services ("HHS") (through the Centers for Medicare

and Medicaid Services (“CMS”). Through Medicaid demonstrations, States are permitted to waive certain federal requirements for Medicaid programs in order to try new ways to expand coverage to targeted populations, institute new services for certain groups of Medicaid beneficiaries, etc. States must follow the written Terms and Conditions of their demonstration, as approved by CMS, which detail the rules and financing of the demonstration and also specify which federal requirements have been waived.

18. California does not have waivers of Section 1902(a)(2) of the Social Security Act or of 42 CFR § 433.50, the relevant authorities for the unit of government definition under the Rule.

19. The Terms and Conditions contain a change of law provision requiring the State to conform its demonstration to changes in federal statutes or regulations that take effect after the demonstration was approved. *See* Special Terms and Conditions, Medi-Cal Hospital/Uninsured Care Demonstration, Sec. II.3.

20. The demonstration is for five years ending August 31, 2010. Although the demonstration is eligible for renewal, the renewal will be subject to conformity with all applicable statutes and regulations, unless waived by CMS.

21. For over a decade, Alameda has contributed funds to help the State finance its Medi-Cal program. Alameda is currently expressly authorized under the Special Terms and Conditions of the Medi-Cal demonstration to contribute to the funding of Medicaid expenditures, through certifications that we have expended funds on items and services eligible for federal match under the Medicaid program. Thus, at the outset of the demonstration (before issuance of the Rule), CMS approved Alameda's designation as a “government-operated hospital[] to be reimbursed on a certified public expenditure basis.” *See* Attachment C, Special Terms and Conditions, Medi-Cal Hospital/Uninsured Care Demonstration. The certifications by Alameda and other public

providers support the non-federal share of supplemental Medicaid payments not only to public hospitals, but to children's hospitals and other private safety net hospitals as well. These supplemental payments are targeted additional payments that States typically make above and beyond base Medicaid payments to help support the range of additional services and benefits provided by safety net providers and to support their mission of providing services to the indigent. As a result of Alameda's ability to certify expenditures and receive resulting federal matching funds, Alameda currently receives supplemental safety net payments. Without these supplemental safety net payments we would expect the following impact to the care provided to the residents of Alameda County, 1) Longer waits in the emergency room for inpatient beds, aggravating an already significant problem for Alameda, 2) Forced ration-based healthcare, longer wait times in the clinics for specialists and primary care, delayed surgeries. Some outpatient primary and specialty clinics may close entirely, 3) Closure of inpatient units , 4) Focus on acute services rather than preventative services, and as a result, would be seeing sicker patients, 5) Reduction in HIV services, physician training programs, health education and outreach programs, and dental services, and 6) Reduction in work force.

22. Based on Alameda's analysis of the purported new CMS Rule, *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), Alameda would not meet the new restrictive definition of a unit of government, despite its historic and continued role as the public hospital and health system for Alameda County. Under the Rule, an entity may qualify as a unit of government only if it 1) has taxing authority; 2) has direct access to generally applicable tax revenues as an integral part of a unit of government with taxing authority which is legally obligated to fund the health care provider's expenses, liabilities, and deficits; 3) receives

appropriated funding as a State university teaching hospital; or 4) is an Indian Tribe or Tribal organization.

23. Alameda does not have taxing authority. Because of our Public Hospital Authority governance structure, we are not sufficiently integrated with the County, which is not legally obligated to fund Alameda's liabilities. *See* Alameda County Code, Section 2.120.030; Cal. Health & Safety Code Sec. 101850(k)(3). Alameda is not a state teaching hospital, nor is it a Tribal organization. Based on these factors, we do not believe Alameda would qualify as a unit of government under CMS's new, overly-restrictive definition.

24. As a result of losing its status as a governmental provider for Medicaid financing purposes under the Rule, Alameda would no longer be eligible to certify the substantial expenditures it incurs from providing care to Medicaid patients, and CMS would eliminate federal matching funds for its share of these significant expenditures.

25. Because Alameda would not qualify as a unit of government under the Rule, California would be required to remove Alameda from the list of hospitals eligible to make certifications and receive supplemental Medicaid funding under the terms of the waiver. The terms of the California waiver require that California make changes to comply with federal law (see ¶ 19 above), and the State does not have a waiver of the regulation at issue or the statutory authority that CMS claims in support of the new Rule.

26. CMS stated in the preamble to the final version of the Rule that it is unlikely that budget neutrality under the Medi-Cal waiver would be affected by the regulation. CMS did not indicate, however, that the unit of government definition would not be applied and that demonstrations would not have to be changed accordingly. Moreover, California would at the



very least be required to comply with the Rule and eliminate Alameda from the list of certifying providers when the waiver comes up for renewal in 2010.

27. Based on failure to meet the restrictive definition of a unit of government and the inability to certify public expenditures, Alameda expects to lose approximately \$85 million annually in supplemental Medicaid payments.

a. Specifically, Alameda would no longer be eligible to receive approximately \$62 million annually in Disproportionate Share Hospital (DSH) payments. Currently, Alameda receives DSH payments for government-operated hospitals; these payments are funded by CPEs from the list of governmental providers in an attachment to the waiver. *See* Special Terms and Conditions, Medi-Cal Hospital/Uninsured Care Demonstration, Sec. IV.30. While the waiver provides for a DSH pool for private hospitals, this pool is significantly smaller, and we have estimated that the available funds would be significantly less than current payments.

b. In addition, Alameda would no longer be eligible to receive approximately \$23 million in Safety Net Care Pool funding, as the waiver terms limit these payments to “[t]he 22 government-operated hospitals listed in Attachment C, the State, a county, or a city.” *See* Special Terms and Conditions, Medi-Cal Hospital/Uninsured Care Demonstration, Sec. IV. 35

28. The loss of 19% of \$460 million operating budget will threaten Alameda’s ongoing viability. Since Alameda operates at a near break-even level, the loss of this funding will increase the annual deficit by \$85 million. Faced with this magnitude of a loss, we cannot assure our survival by making only incremental changes, like eliminating certain services (e.g. care for the uninsured, trauma care, specialty services, acute rehabilitation services, acute psychiatric services, and outpatient specialty clinic services), decreasing capacity, or laying off a certain percentage of our staff. Instead, we have been forced to begin modeling around whether

Alameda will even be able to continue to operate, and if so, whether it would essentially cease to exist in its current form and reopen in a new form. Alameda County would face dissolution of the Hospital Authority and would lose the efficiency and greater flexibility achieved under the hospital authority model.

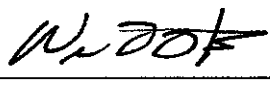
29. California is already experiencing a \$16 billion budget deficit. Based on recent communications with State officials, it is my understanding that while the State would prefer not to amend the demonstration to make Alameda ineligible for the payments Alameda now receives, I am not aware of any replacement State or local funding to compensate our hospital for the loss of federal funds resulting from the new Rule.

30. Furthermore, based on communications with State officials, I understand that it is highly unlikely that the State would be able to replace the non-federal share funds that Alameda currently certifies. I understand that this would mean the loss of federal funding for payments to other California public hospitals, as well, for the services we provide to Medicaid and other vulnerable patients. This would be devastating to the ability of Alameda and the rest of the State's safety net providers to care for California's medically underserved population.

31. Alameda submitted comment letters to CMS on March 16, 2007 regarding the proposed version of the Rule, and on July 13, 2007 in response to the final version of the Rule. These letters are attached as Exhibits A and B.

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

Executed on: March 10, 2008

(Signature):   
Wright Lassiter  
Chief Executive Officer  
Alameda County Medical Center