

**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 JAMES N. VALENTI**

I, James N. Valenti, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am Chief Executive Officer (“CEO”) of Declarant El Paso County Hospital District, doing business as R.E. Thomason General Hospital (“Thomason”). 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 Thomason’s files upon which I normally rely, publicly available information, and other factual matters known to me.

3. I have served as CEO of Thomason since September 2004.

4. In my capacity as CEO, I am responsible for all aspects of Thomason's operations and finances, including participation in the Texas Medicaid program and payments received thereunder.

5. Thomason is a hospital district of the State of Texas established under state statute and a governmental entity. Texas Health & Safety Code, Chapter 281.

6. Thomason is El Paso's only not-for-profit, community-owned hospital and healthcare system and a regional referral center for patients in need of specialty care.

7. Our mission is to enhance the health and wellness of the El Paso community by making high quality, affordable healthcare services accessible to all. Our tradition of respectful service is enriched by our participation in healthcare-related education, research and innovation.

8. Thomason is the primary teaching institution of the Texas Tech University School of Medicine's Regional Academic Health Sciences Center in El Paso. As such, the Thomason/Texas Tech campus is the only academic healthcare setting in far West Texas and Southern New Mexico.

9. Thomason is the region's only Level 1 Trauma Center within a 250-mile radius of El Paso. Thomason's Emergency Department is among the busiest in El Paso, treating more than 62,000 patients annually. Our emergency department is also home to a unique nighttime pediatric service not available at any other local hospital.

10. Thomason also operates Thomason C.A.R.E.s Clinics, neighborhood primary care centers we established to reduce unnecessary and expensive trips to the emergency department. More than 35,000 people a year receive close-to-home, affordable, family medical care at the clinics.

11. Thomason is a significant provider of care to Medicaid patients in El Paso County, and the major safety net provider in our community. Of the patients we treat every year, 25 percent are Medicaid beneficiaries, 19 percent are charity patients, and 26 percent are self-pay patients with no coverage.

12. Thomason has an operating budget of \$330 million. Based on this budget (and without implementation of the Medicaid cost limit rule), Thomason anticipates having a 2.7 percent [\$9 million] operating margin, which, as a governmental, non-profit entity, Thomason plans to reinvest into the health system to provide additional services to the uninsured, recruit additional providers for this historically underserved community, and recapitalize the District with sorely needed equipment and technology.

13. Thomason is particularly reliant on Medicaid payments. 25 percent of our revenues are from Medicaid. Thomason currently receives Medicaid payments above its costs. These payments, the Texas public upper payment limit (UPL) payments, are limited by the lesser of hospital charges or the combined cost of services to Medicaid patients and patients without insurance. These payments allow Thomason to invest in the services described above, which are particularly essential to Medicaid patients.

14. Thomason has taxing authority as a hospital district under Texas law and direct access to tax revenues as a component unit of El Paso County. Thomason has not had an increase in its tax rate to support the growing demand for services or to help offset the rising costs of prescription drugs, medical supplies, physician contracts, technology, salaries or utilities since the late 1980's.

15. 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”), Thomason will be treated as a unit of government, based on our taxing authority and direct access to tax revenues. As a result, Thomason 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 Thomason will lose \$22 million annually in federal Medicaid funding.

16. This \$22 million loss, constituting nearly 7 percent of our operating budget, is two and a half times our estimated operating margin and will leave our system with a significant deficit of approximately \$13 million (which does not include potential negative impacts of State cuts as a result of Medicaid reform plans). This is too great a financial reduction for Thomason to offset.

17. In order to continue operating, Thomason will be forced to develop an immediate action plan which would have to include curtailing or eliminating services to a community that is already underserved. This will include limiting further expansion of some services despite growing community need, and cutting particularly costly services. For example, Thomason provides essential Family Planning Services within the community, which are of particular benefit to teenagers who are at-risk. The elimination of this program will mean that the costs incurred by the Medicaid program will increase because of the costs of providing care to unplanned children. These cuts will increase barriers to access for Medicaid patients. This loss also would be detrimental to our efforts to improve our facilities and equipment.

18. We have also attempted to determine whether the State would provide funding to offset this loss. Based on communications with State officials, we understand

that this is unlikely. Based on estimates from the Texas Health and Human Services Commission, it is anticipated that the Texas Medicaid Program will lose over \$500 million in Medicaid funding in 2008 including \$480 million in losses to hospitals.

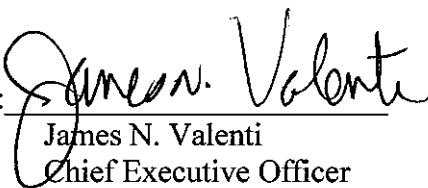
19. The loss of this federal funding will mean less funding for payments to the State's safety net providers generally, including Thomason, for the services we provide to Medicaid and other vulnerable patients. This will be devastating to the ability of Thomason and the rest of the State's safety net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

20. When we learned that CMS had 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 facilities. Our Board of Managers unanimously adopted a Resolution in Opposition to the Medicaid Rules and authorized a comment letter to the Centers for Medicare and Medicaid Services (CMS) in 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 and other public hospitals in Texas. The Resolution and Comment Letter are attached as Exhibits A and B. CMS went forward with the Rule without addressing our concerns.

21. Thomason is a member of the National Association of Public Hospitals and Health Systems and the American Hospital Association.

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

Executed on: March 6, 2008

(Signature):   
James N. Valenti  
Chief Executive Officer  
Thomason Hospital