

**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 PATRICK R. WARDELL

I, Patrick R. Wardell, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am President and Chief Executive Officer of Declarant Hurley Medical Center (“Hurley”). 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 Hurley Medical Center’s files upon which I normally rely, publicly available information, and other factual matters known to me.

3. I have served as President and Chief Executive Officer of Hurley since 2005.

4. In my capacity as President and Chief Executive Officer, I am responsible for all aspects of Hurley’s operations and finances, including participation in the Michigan Medicaid program and payments received thereunder.

5. Hurley Medical Center is a publicly owned, nonprofit teaching hospital in the City of Flint, Genesee County, Michigan.

6. The mission of Hurley Medical Center is "*Clinical Excellence and Service to People*". Hurley's vision is to be a premier public teaching medical center recognized as a regional resource for advanced specialized health care.

7. Hurley is the largest hospital in Genesee County with 461 beds and is the region's safety net health care provider and premier public medical center and teaching hospital, providing safe, reliable, high-quality care for thousands of Genesee County residents each year. Hurley is one of the largest employers in Genesee County and provides about 2,445 full time jobs to local residents, the majority of whom belong to one of nine organized labor unions.

8. Hurley Medical Center is the only medical center in the region that provides specialty care in: Trauma, emergency and critical care services, advanced burn center, kidney transplantation, neonatal intensive care, pediatric intensive care, high risk pregnancy care, and psychiatric services. Hurley's Bariatric Center received the verification of "Center of Excellence" by the American College of Surgeons in 2007. The volume of patients seeking care and treatment in Hurley is tremendous. In FY 2006, Hurley served 22,495 inpatients (including Newborn). The number of outpatient visits totaled 472,208. The number of babies born at Hurley was 2,893 and more than 75,751 patients visited Hurley's Emergency Department. Hurley currently averages treating about 1500 patients a week.

9. It is Hurley's mission to provide medical care to everyone, without regard to ability to pay. Almost 20 percent of Genesee County residents rely on Medicaid. One in five children in Genesee County lives in poverty. 27 percent of the people of Flint live in poverty, significantly more than the national average of 11.7 percent. The Flint and Genesee County community,

particularly the poor, has depended on Hurley Medical Center for the past 100 years. As the primary Medicaid health care provider in the region, Hurley provides more than \$36 million a year in uncompensated and charity care to the community. Hurley provides over 66 percent of the region's uncompensated health care. For fiscal year ended 6/30/07, Hurley provided \$45 million in uncompensated care. 36.8 percent of our revenues for the period ending December 31, 2007 were from Medicaid, and 6.5 percent of our revenues are from self-pay/uninsured patients. Uninsured and Medicaid beneficiaries comprise a significant portion of the Medical Center's patient population and is far greater than the typical hospital.

10. The following table lists the Net Income of the Medical Center for the fiscal year ended June 30th for years indicated:

2005	\$ 771,000
2006	\$ (13,344,000)
2007	\$ (807,000)
Six Months FY 2008	\$ (209,000)

The cumulative loss of the Medical Center over this period is \$13.6 million. These losses are a result of the large proportion of patients served that have no or inadequate insurance coverage. The Hospital has managed to absorb these losses through management of balance sheet reserves. Unfortunately, current reserves have diminished to a level that is not sustainable.

11. Hurley Medical Center was established by the City of Flint as a part of the city government in 1906. It is a city-chartered hospital with a governing Board of Hospital Managers appointed by the Mayor of the City of Flint, with approval of the Flint City Council. Hurley has enjoyed governmental status for more than 100 years.

12. More specifically, Hurley was established as a city hospital under Sections 6-101 and 6-201 of the Flint City Charter in 1906, as amended in 1974. The City Charter classifies Hurley as a "multiple member body of the City of Flint", and provides that "[m]ultiple member bodies,

including boards and commissions, may be established by the City by ordinance or resolution." Hurley was established by Resolution passed by the Flint City Council on or about 1906, which accepted a bequest of land and money made by James J. Hurley pursuant to the terms of a will that provided that the City was to build a "free hospital" for the people of the City of Flint and that the hospital was to be called "Hurley Hospital." The City Charter further provides that such bodies may exercise those powers and duties granted by the City, provided that they do not conflict with provisions of this Charter or State law." *Id.*, 6-101.

13. Section 6-201 of the City Charter established the "Board of Hospital Managers," appointed by the Mayor with the approval of the City Council. Section 6-202 of the Flint City Charter provides that "[t]he Board shall have the supervision and exclusive management of all hospitals owned by the City and shall make and enforce all rules for such supervision and management in accordance with Section 1-801 of this Charter." *Id.* 6-202. In 1985, the United States Department of Treasury documented in a letter to Hurley, attached as Exhibit B, its status as a governmental entity, declaring it to be an instrumentality of a political subdivision of the state of Michigan, and thus, exempt from Federal income tax as provided under Section 115(a)(2) of the Code. *See also* Ex. C, Hurley Tax Certificate of Exemption.

14. The City of Flint, as a Home Rule City, has defined Hurley Medical Center in its City Charter to be a multiple member body of the City, and thus, a unit of government. The State of Michigan has defined a "Home Rule City" (The Home Rule City Act – M.C.L. 117.1 et. seq.), which the city of Flint qualifies, and mandates and delegates to such cities full executive and legislative authority in accordance with the terms of their duly enacted city charters.

15. Hurley has participated in financing the State's non-federal share of Medicaid through Certified Public Expenditures ("CPEs") and Intergovernmental Transfers ("IGTs") for a

number of years. For the purposes of these Michigan programs, Hurley has always been treated as a unit of government. It is our understanding that these programs have been approved by CMS through the State of Michigan Department of Community Health.

16. Through several CPE and IGT programs in concert with the State of Michigan Department of Community Health, Hurley received a net benefit of approximately \$7.0 million in the current fiscal year. These funds are provided to Hurley to support its mission to serve its patients as a public safety net hospital. Without this support Hurley would be required to severely curtail services.

17. Based on Hurley's analysis of 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"), it does not appear that Hurley meets the new restrictive definition of a unit of government, despite its status as a political subdivision of the State and a multiple member body of the City of Flint.

18. Under the Rule, an entity may qualify as a unit of government 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. As a multiple member body of the City of Flint, with a separate governing board pursuant to Charter, Hurley does not have independent taxing authority, nor does it have 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, since the City of Flint is not legally obligated to fund Hurley's expenses, liabilities and deficits under the terms of the Charter. Hurley does not

receive appropriated funding as a State university teaching hospital, nor is it an Indian Tribe or Tribal organization.

19. If it were determined that Hurley does not meet this new restrictive definition of a unit of government, Hurley would no longer be eligible to certify the substantial expenditures it incurs in providing care to Medicaid patients or to make intergovernmental transfers, and would therefore lose the supplemental Medicaid payments funded by the federal match for these Medicaid-eligible expenditures.

20. The CPE amount of benefit to Hurley for 2008 is approximately \$3.5 million, and for IGTs, the benefit for 2007 is approximately \$2.5 million. We estimate that Hurley will lose at least this amount of funding annually if Hurley were determined not to be a unit of government due to the new definition under this Rule. By excluding Hurley from the definition of entities eligible to make CPEs/IGTS for Medicaid financing purposes, the State will lose the federal matching funding for the expenditures certified by Hurley and or funds transferred by Hurley, that currently supports these payments.

21. Hurley Medical Center currently operates in a deficit that is not sustainable. The CPE and IGT support that Hurley receives represents approximately 2 percent of the Medical Center's operating budget. The impact of this loss of funds on hospital services would be catastrophic, and would have serious consequences such as possible reductions in staffing and curtailment of plans for future capital projects that are greatly needed by the hospital and the community, such as a much need renovation and expansion of Hurley's existing Emergency Department. As I have stated above, Hurley's Emergency Department ("ED") receives almost 80,000 visits per year and this number is expected to grow in keeping with national trends which show a 15 percent increase in ED visits while the total number of EDs in the U.S. decreased by

12 percent. As a Level I Trauma Center in Michigan's only public safety net hospital, Hurley's ED currently treats a challenging caseload of patients critically in need of our 24-hour specialty trauma care services. Hurley's ED patients include children who require the specialized staff and services of our separate Pediatric Emergency Department, uninsured patients who frequently utilize the ED as their only source of health care, patients victimized by the city's extremely high violent crime rate (third in the nation), patients injured in automobile accidents on the State's major I-75 highway corridor, and patients who are being evaluated for involuntary admission to Hurley's inpatient psychiatric unit. Additionally, Hurley's ED is the tri-county region's center for disaster preparedness and receives federal block grant money as part of the bioterrorism defense network. We are also the designated hospital should the U.S. President require emergency/trauma care during visits to our area. The resulting impact on access and services for Medicaid beneficiaries would be detrimental to the Genesee County community and the more than 22 additional counties we serve.

22. Maintaining the viability of Hurley's Level I Trauma Unit and Emergency Department is significant to the economic status and growth of this entire region of the State, as well as the health status of the community we serve. The hospital's ED acts as a major safety net for residents of Flint and Genesee County, as well as those representing the central and northern parts of our state; 29.1 percent of our patients originate from outside the City of Flint limits, but within Genesee County, and 13.4 percent of our patients originate outside Genesee County from various northern parts of the State. Hurley is situated in a city where one in three children live in poverty, a city with one of the highest violent crime rates in the U.S., and a city with pervasive economic and health issues. In an era where many public inner-city hospitals have been forced to close due to increased numbers of indigent patient care and reduced Medicaid and Medicare

reimbursements, this year Hurley celebrates 100 years of community service. With over 2,400 employees, Hurley is one of the area's largest employers and works closely with community partners to improve the health and quality of life for our community. Hurley acts as an anchor for the north end of the Flint River District which includes Kettering University, University of Michigan-Flint, and downtown Flint. Hurley is currently undertaking to coordinate neighborhood and community development initiatives for the Flint River District Strategy to revitalize these Flint neighborhoods into prosperous, stable, safe and environmentally friendly community. A severe reduction in funding would seriously undermine Hurley's ability to focus and dedicate resources to this initiative, which is of extreme importance to the continued viability and development of the Flint community.

23. Considering the prolonged and serious budgetary deficits faced by the State of Michigan, we understand based on our communications with state legislators that the State of Michigan is not in a financial position to make up for any significant losses in federal funding with significant additional State revenues.

24. In a recently-released report from the United States House of Representatives Committee on Oversight and Government Reform, the Michigan Medicaid director estimated a \$225.9 million for fiscal year 2008 and \$1.25 billion impact over the net five years based on the Rule, that could impact all Medicaid beneficiaries and the public hospitals that receive Medicaid support.

25. In the event that Hurley continues to qualify as a unit of government under this Rule, Hurley would stand to lose significant federal Medicaid funding due the Rule's cost limit on payments to governmental providers. The imposition of the cost limit on Hurley would reduce its funding by approximately \$12.8 million. Such a reduction would severely impact Hurley's

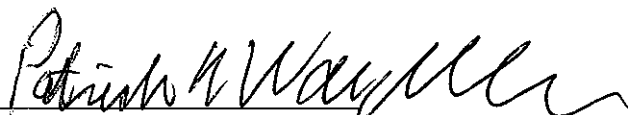
ability to continue its role as a public safety net hospital. This estimate represents approximately 4 percent of the hospital's operating budget.

26. When Hurley learned that CMS had proposed this Rule last January, we recognized the impact that this magnitude of loss in funding would have on our facilities. Members of Hurley's management team, under my direction, drafted a comment letter which I submitted to the Centers for Medicare and Medicaid Services ("CMS") in the Department of Health and Human Services ("HHS") explaining Hurley's circumstances and our concerns with the Rule. This letter is attached as Exhibit A.

27. Hurley 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 to the best of my knowledge.

Executed on: March 10, 2008

(Signature): 
Patrick R. Wardell
President & Chief Executive Officer
Hurley Medical Center