

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN HOSPITAL ASSOCIATION,)
ASSOCIATION OF AMERICAN MEDICAL)
COLLEGES, NATIONAL ASSOCIATION)
OF CHILDREN’S HOSPITALS, INC.,)
THE FEDERATION OF AMERICAN)
HOSPITALS, MEMORIAL COMMUNITY)
HOSPITAL AND HEALTH SYSTEM,)
PROVIDENCE HEALTH SYSTEM -)
SOUTHERN CALIFORNIA d/b/a PROVIDENCE)
HOLY CROSS MEDICAL CENTER,)
AND BOTHWELL REGIONAL)
HEALTH CENTER,)

Plaintiffs,)

v.)

Civil Action No. 1:19-cv-3619-CJN

ALEX M. AZAR II,)
in his official capacity as SECRETARY OF)
HEALTH AND HUMAN SERVICES,)

Defendant.)

**DECLARATION OF LORI WIGHTMAN IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

I, Lori Wightman, hereby declare and state the following:

1. My name is Lori Wightman. I am over 21 years of age and competent to testify to the facts set forth herein. I am an adult citizen of the United States. I reside in Sedalia, MO.
2. The facts set forth in this declaration are based on my personal knowledge and upon information available to me through the files and records of Bothwell Regional Health Center (Bothwell). If called upon as a witness, I could and would testify to these facts.

3. I am the CEO of Bothwell. I have served in this capacity since June 17, 2019. In this role, I am responsible for all aspects of operations at Bothwell, ranging from quality to financial viability to recruitment and retention of Health Care Professionals. In my capacity as CEO, I am familiar with the impact that the Final Rule at issue in this lawsuit will have on Bothwell and its operations.

4. Bothwell is a city-chartered health center that has been serving central Missouri since 1930. Bothwell provides a full range of diagnostic, medical and surgical services, including cancer care, emergency services, orthopedics, cardiovascular care, neurodiagnostics, obstetrics and gynecology, pediatrics, outpatient services, diagnostic imaging, medical equipment and community outreach and education. Bothwell has 108 acute beds and employs more than 1,000 people in 12 different locations, with over 50 physicians providing state-of-the-art care in more than 20 specialty areas. Bothwell is a member of the American Hospital Association.

5. Bothwell has filed this lawsuit (along with its co-plaintiffs) challenging the negotiated charges rule issued by the Centers for Medicare & Medicaid Services (CMS) and published in the Federal Register on November 27, 2019 (the Final Rule). Bothwell and other hospitals will suffer immediate and concrete harm if the Final Rule is allowed to go into effect.

6. Bothwell fervently believes that patients should have adequate and reasonable information available to them so that they may make informed decisions about their health care. For that reason, Bothwell voluntarily provides information about its pricing on Focus on Hospitals, a website owned and operated by the Missouri Hospital Association. The website enables participating hospitals to voluntarily disclose a variety of information to patients, including average prices charged for specific services associated with in-patient treatment and

ER visits. *See* focusonhospitals.com. That information allows patients to compare charges across participating hospitals in Missouri. In addition, we strongly support policies that would provide patients with information about their expected out-of-pocket costs (which would entail input from insurers).

7. Bothwell negotiates directly with commercial payers to set the specific prices that will be paid for each hospital service. Each of our contracts with insurers contains a confidentiality provision that requires both parties to treat the negotiated pricing information as highly confidential. In compliance with those requirements, Bothwell takes active steps to protect the confidentiality of its insurer-negotiated rates. Among other things, access to insurer-specific rates is limited to a small number of employees, who are trained not to share the information publicly.

8. Public disclosure of the insurer-negotiated rate would be a breach of contract and could result in termination of the insurer contract. For that reason, the Final Rule puts hospitals between a rock and a hard place: hospitals will essentially have to choose between breaching our insurer contracts and subjecting ourselves to enforcement action by CMS for violating the Final Rule. And of course, once the contract is terminated, it would be even harder to negotiate reasonable rates with insurers once they have access to the rates negotiated with their competitors. To state the obvious, insurance companies would be incentivized to use information about their competitors' rates to drive all relevant prices to the lowest contract rate.

9. The majority of patients in Bothwell's service areas receive insurance coverage through either Medicare (53%) or Medicaid (12%), which typically are associated with lower payment rates than private commercial insurance. Termination of private insurer contracts would be particularly detrimental to independent hospitals like Bothwell, because the resulting

reduction in insurer-specific rates would leave Bothwell no choice but to reduce services to stay in operation, given the hospital's already-low margins. That puts Bothwell at risk of being unable to remain open to take care of the communities it serves.

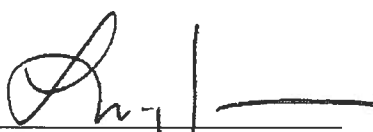
10. The burden of complying with the Final Rule would be substantial. We estimate that it would take one full-time employee about 12 months to prepare for implementation of the Final Rule. Those preparations would entail breaking down each insurance company's contract(s) and calculating the cost of each item and service. That data would then need to be manually loaded into a massive spreadsheet that would need to be formatted, uploaded, and hosted on-line. In addition, we would need to expend additional cost and effort preparing the mandated information for the 300 "shoppable services" into a "consumer-friendly" format, as dictated by the Final Rule.

11. Despite these efforts, the information still would not accurately reflect the amount the patient would have to pay out of pocket. Because patients' out-of-pocket costs turn on a number of individual factors, including a patient's coinsurance or co-payment obligations and applicable deductible, among other things, the disclosure of the information mandated by the Final Rule will not provide patients a reliable indicator of the actual costs that they will be responsible for, much less the exact amount.

12. In short, the burden and risks to hospitals of compliance with the Final Rule far outweighs any anticipated benefit to patients stemming from the Final Rule. Absent judicial relief, our ability to maximally serve our patients will be irreparably harmed.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 9th day of December 2019.

By: 
Lori Wightman
CEO of Bothwell Regional
Health Center