

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

THE AMERICAN HOSPITAL ASSOCIATION,)
ASSOCIATION OF AMERICAN MEDICAL)
COLLEGES, THE FEDERATION OF)
AMERICAN HOSPITALS,)
NATIONAL ASSOCIATION OF CHILDREN'S)
HOSPITALS, INC., 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.)
))
ALEX M. AZAR II,)
in his official capacity as SECRETARY OF)
HEALTH AND HUMAN SERVICES,)
))
Defendant.)

)

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

**DECLARATION OF MANUELA WOLF IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Manuela Wolf, hereby declare and state the following:

1. My name is Manuela Wolf. 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 Blair, Nebraska.
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 Memorial Community Hospital and Health System (Memorial Community). If called upon as a witness, I could and would testify to these facts.

3. I am the President and CEO of Memorial Community. I have served in this capacity since March 7, 2018. In this role, I am responsible for the daily operations and the realization of the short and long term strategic goals of the organization. In my capacity as President and CEO, I am familiar with the impact that the Final Rule at issue in this lawsuit will have on Memorial Community and its operations.

4. Memorial Community is a 21-bed Critical Access Hospital in Blair, Nebraska that was founded in 1956. Today, Memorial Community is a 501(c)(3) not-for-profit organization that provides primary care, specialty physician services, and surgery and obstetric services in an inpatient as well as an outpatient setting. Memorial Community has three associated Rural Health Clinics in Blair, Fort Calhoun, and Tekamah, Nebraska and serves a population of approximately 20,000 residents throughout its primary service area. Memorial Community is a member of the American Hospital Association.

5. Memorial Community 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). Memorial Community and other hospitals will suffer immediate and concrete harm if the Final Rule is allowed to go into effect.

6. Memorial Community is dedicated to ensuring that patients have adequate and reasonable information available to enable them to make informed decisions. Memorial Community currently publishes 4,131 standard charges for medical services provided at Memorial Community, in a machine readable format, on its website. In addition, patients have access to significantly reduced prices and pricing information for specific treatments and procedures through the organization's partnership with the MDSave Website, which allows

patients to purchase services at a discount. Memorial Community employs a Financial Counselor and scheduling staff that are available to patients on a one-on-one basis to determine deductibles, co-payments, and any other out of pocket expenses that patients will be subject to. In addition, we strongly support providing patients with information about their expected out-of-pocket costs.

7. Memorial Community maintains various payor agreements with a number of health insurers as well as government payors such as Medicare and Medicaid. Those agreements reflect a variety of different types of payment arrangements depending on the specific insurer and the specific plan: sometimes insurers pay a dollar amount per service, sometimes they pay a managed care capitated amount, sometimes they pay a per diem amount, and sometimes they have value-based contracts.

8. Whether Memorial Community provides a discount for cash payment depends on receiving payment in full, and promptly, as agreed on a case by case basis. It would be misleading to list either one discounted cash price or the gross charge for any particular item or service as the “discounted cash price,” because patients might be misled into believing that no further discount was available.

9. In addition to specific value-based contracts that are entered into between Memorial Community and the Payor directly, the organization also uses a third party to assist with entering into contracts with insurers. As a result, Memorial Community does not have access to all of its contracts with insurers.

10. As is standard in the industry, Memorial Community actively seeks to protect the confidentiality of the rates it negotiates with specific insurers. Payor contracts include specific language requiring that the confidentiality of the contract terms, including rates, be maintained.

The confidentiality of insurer-negotiated rates is critical to hospitals' ability to negotiate at arm's length with payers, and vice versa. If insurer-specific negotiated charges were publicly known, no insurer would pay more than the rate paid by its competitors.


11. The burden that the Final Rule imposes upon Memorial Community is both concrete and imminent. It will take a substantial amount of time to prepare to come into compliance with the Final Rule. As noted, we do not have access to all of our insurer agreements. Even when we do, the agreement does not always specify a dollar amount per service. As a result, compliance with the Final Rule would require us to assign someone manually to review historical claims histories in order to determine what individual insurers are actually paying for each service under each insurance plan. That would be a mind-boggling effort that could take hundreds of man-hours to complete.

12. Once we gather that financial data, we would then need to format it in a manner that complies with the Final Rule, including putting the information relating to the 300 "shoppable" services into a "consumer friendly" format.

13. The burden associated with the foregoing steps would require us to devote a significant amount of resources, possibly as much as a full-time person, to the tasks described above for an extended amount of time. That effort would in turn divert resources that could otherwise be expended for patient care.

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: 

Manuela Wolf
President and CEO
Memorial Community