

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

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)  
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. )

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 DR. BERNARD KLEIN IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Dr. Bernard Klein, hereby declare and state the following:

1. My name is Dr. Bernard Klein. 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 Thousand Oaks, California.

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 Providence Health System - Southern California d/b/a Providence Holy Cross Medical Center (Providence). If called upon as a witness, I could and would testify to these facts.

3. I am the Chief Executive of Providence. I have served in this capacity since February 2013. In this role, I am responsible for overseeing Providence's day-to-day operations, approving contracts, and evaluating strategic relationships. In my capacity as Chief Executive, I am familiar with the impact that the Final Rule at issue in this lawsuit will have on Providence and its operations.

4. Providence was founded in 1961 to provide compassionate, quality health care to the San Fernando, Santa Clarita, and Simi Valleys in Southern California. Providence is home to the busiest emergency department in the San Fernando Valley and is one of two 24/7 trauma centers. The 377-bed, not-for-profit Catholic hospital offers both inpatient and outpatient health services, including programs in cancer, neurology, cardiology, orthopedics, women's services, neonatal intensive care, and more.

5. Providence is steadfast in serving the needs of its communities, with a special focus on those who are poor and vulnerable, providing high-quality care for everyone, regardless of coverage or ability to pay. Providence contributes to a robust community benefit program with an emphasis on collaborative partnerships that respond to the needs of many underserved populations. Among those served by Providence are families with low incomes, including a large population covered by Medicaid; the elderly; schools in high-poverty areas; those experiencing homelessness; and immigrants.

6. Providence's nationally recognized doctors and nurses are dedicated to excellent care for each and every patient. Providence is designated as a Magnet Hospital by the American Nurses Credentialing Center (ANCC), and has also been recognized by Modern Healthcare as a Best Place to Work in Healthcare. HealthGrades named Providence among the top 5 percent of all hospitals in the nation for overall clinical performance. Providence is a member of the American Hospital Association.

7. Providence has filed this lawsuit (along with its co-plaintiffs) challenging the negotiated charges rule issued by the Centers for Medicare & Medicaid Services (CMS) on November 27, 2019

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

8. To be clear, Providence fully supports price transparency and is dedicated to helping our patients understand their costs up front so they can make informed decisions. For instance, any of our patients can contact our financial services office and request an out-of-pocket estimate. Further, in accordance with the requirements of section 2718(e) of the Public Health Service Act, Providence makes publicly available a list of its standard charges online. Providence is also in the midst of developing technology solutions to provide patients with personalized information regarding their out-of-pocket costs for hospital health care items and services. In addition, we are strong advocates for public policy efforts that both support individual patient decision-making and improve opportunities for key stakeholders, including hospitals and insurers, to work together in the best interest of patients.

9. Providence has participating provider agreements with a variety of insurers whereby Providence has agreed to a discounted rate of payment off its billed charges for the covered services it provides to the insurer's members. These reimbursement arrangements cover a range of risk structures including but not limited to fee for services, capitation, bundled payments, and risk sharing arrangements.

10. It is standard in the industry for the payment rates negotiated between insurers and hospitals to be protected by confidentiality provisions preventing hospitals from disclosing them publicly. Providence carefully complies with those restrictions in order to ensure the confidentiality of its insurer-negotiated rates.

11. By mandating that these insurer-negotiated rates be publicly disclosed, the Final Rule threatens to upend free competition in the marketplace. For instance, the Final Rule reduces incentives

for insurers to participate in innovative payment arrangements, such as risk-sharing arrangements that could reduce overall costs and improve the quality of the health care services patients receive.

12. The Final Rule's requirement that hospitals disclose "the amount the hospital is willing to accept in cash from a patient" is equally problematic because Providence does not have a set amount that it will accept in cash from a patient for each item or service. Instead, we have a discount policy that offers a variety of discounts for particular situations, including prompt pay discounts and uninsured discounts. This policy provides for a range of discount percentages that may be tailored to the patient's personal situation and applied to the patient's account balance. Therefore, in order to comply with the Final Rule's requirement to disclose "the amount the hospital is willing to accept in cash from a patient," Providence would be required to determine new rates or would be forced to list the gross charge as the discounted cash price, which would misleadingly suggest to patients that discounts for paying in cash are not available to them. That could prevent some patients from seeking care.

13. The burden of complying with the Final Rule for Providence would be substantial. Providence has dozens of contracts with insurers. These contracts can include different reimbursement methodologies for different plans that the insurer offers. We do not currently have a comprehensive list of negotiated rates for all insurers and thus we would be required to create such a list. That undertaking would result in a massive list of charges that would be not only virtually impenetrable for our patients but also irrelevant to their need for clarity on their personal costs. We believe that such a list would involve hundreds of columns representing the different plans that insurers offer and thousands of rows representing the items and services offered by Providence.

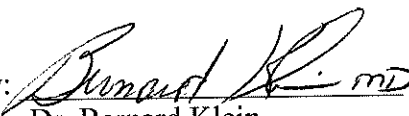
14. Providence has already convened a working group of over fifty employees representing over twelve departments including, but not limited to, payor contracting, revenue cycle, compliance, information technology, project management, and legal to begin determining how Providence will

comply with the Final Rule. In addition, we are studying whether we need to engage an information technology solution to assist us with complying with the Final Rule, particularly around providing information regarding the “shoppable services.” The information technology solution may be sourced internally or we may need to look to an outside vendor, such as Epic, which provides our Electronic Health Record technology.

15. The Final Rule requires hospitals to publicly disclose their negotiated rates and amount that they would be willing to accept in cash by January 1, 2021. Providence has already started devoting substantial resources to complying with the rule by the effective date.

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:   
Dr. Bernard Klein  
Chief Executive  
Providence Holy Cross Medical Center

