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 LAWRENCE A. McANDREWS

I, Lawrence A. McAndrews, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the President and Chief Executive Officer for the National Association of Children's Hospitals ("N.A.C.H."). 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 N.A.C.H.'s files upon which I normally rely, publicly available information, and other factual matters known to me.

3. I have served as N.A.C.H.'s President and Chief Executive Officer since 1995 and President and Chief Executive Officer of the National Association for Children's Hospitals and

Related Institutions since 1992. Prior to that, I served as the President and Chief Executive Officer for Children's Mercy Hospital in Kansas City, Missouri.

4. N.A.C.H. is a non-profit corporation organized and existing under the laws of the State of Georgia. N.A.C.H.'s offices are in Alexandria, Virginia. N.A.C.H. is the public policy affiliate of the National Association of Children's Hospitals and Related Institutions (NACHRI). NACHRI is an organization of children's hospitals with 218 members in the United States, Canada, Australia, the United Kingdom, Italy, China, Mexico and Puerto Rico. NACHRI promotes the health and well-being of all children and their families through support of children's hospitals and health systems that are committed to excellence in providing health care to children.

5. N.A.C.H. is a trade organization of 141 children's hospitals in the United States and supports children's hospitals in addressing public policy issues that affect their ability to fulfill their missions to serve children and their families. N.A.C.H. fulfills its mission and vision through federal advocacy, collaboration, and communication designed to strengthen the ability of children's hospitals and health systems to influence public policy makers, understand federal and state policy issues, advance access and quality of health care for all children, and sustain financially their missions of clinical care, education, research and advocacy. N.A.C.H. represents its members' interests in matters before Congress, the Executive Branch, and the courts, as well as with other public and private entities.

6. N.A.C.H. has a long history of advocating on behalf of its members on matters related to payment for services provided to Medicaid recipients and the financing of the Medicaid program.

7. Although they are only about 3 percent of all hospitals, children's hospitals provide 43 percent of all inpatient care days for low income children. Children's hospitals also provide almost all the hospital care for children with complex conditions, such as heart conditions or cancer.

8. Our member hospitals are particularly dependent on Medicaid funding. Children are the majority of Medicaid enrollees, and one in four children in the United States currently rely on Medicaid for health insurance coverage. Children insured by Medicaid account for over half of all inpatient days of care provided at freestanding acute care children's hospitals. Children insured by Medicaid accounted for 50% of all outpatient visits at free-standing children's hospitals and 57% of emergency room visits in 2006.

9. On January 18, 2007, the Centers for Medicare & Medicaid Services ("CMS") proposed the regulation, *Cost Limit for Providers Operated by Units of Government and Provisions To Ensure the Integrity of Federal-State Financial Partnership*, 72 Fed. Reg. 2236 ("Proposed Rule"). Among other things, CMS proposed to upend decades of Medicaid law to 1) limit Medicaid payments for government-operated hospitals to the costs of providing Medicaid services to Medicaid recipients, and 2) narrow the definition of units of government eligible to contribute to the non-federal share of Medicaid expenditures.

10. N.A.C.H. submitted a comment letter to CMS on March 12, 2007 outlining our concerns with the Proposed Rule's unwarranted new policies, and their detrimental impact on safety net providers and Medicaid beneficiaries', particularly children's, access to care. A true and correct copy of N.A.C.H.'s comment letter is attached hereto and made a part hereof as Exhibit A.

11. HHS purported to issue a final version of the rule by putting it on display at the Federal Register on May 25, 2007. 72 Fed. Reg. 29748 (May 29, 2007) ("Rule").

12. The Rule, if implemented, threatens to eliminate hundreds of millions of dollars annually in federal funding from State Medicaid programs.

13. The vast majority of N.A.C.H.'s members are not governmental hospitals and have not been treated as such under State Medicaid programs. Therefore, they are not faced with losing the ability to contribute to the non-federal share or being subject to a cost limit under the Rule. However, our members are so reliant on Medicaid revenues that this Rule's drastic impact on State Medicaid programs would have a substantial deleterious impact on our member hospitals and their Medicaid patients.

14. Changes to the way States finance their Medicaid programs would have real consequences for the 29 million children in the country who rely on Medicaid for health insurance coverage. Because children are the majority of Medicaid enrollees any changes made to the program, such as those in the Rule, would have a disproportionate impact on them.

15. The children treated at children's hospitals rely on Medicaid and the coverage it provides for all medically necessary care. With insufficient financing for their share of Medicaid, States would be forced to find new funding sources (of which N.A.C.H. is not aware) or make cuts to the program, which would directly affect children's eligibility and the benefits and services provided. These types of cuts would have a significant impact on children's hospitals' patients and threaten our members' ability to provide quality health care to all children.

16. States faced with budget shortfalls would likely institute reimbursement cuts, which would likely include disproportionate share hospital payment decreases, to make up for the loss

of federal funds. Because such a large percentage of our patients rely on Medicaid for their health insurance coverage, any decreases in reimbursement can have a profound impact on our ability to provide care to all children, including our Medicaid patients. Significant reductions in Medicaid funding will put at risk the ability of children's hospitals to continue to provide critical medical services to those in their communities with nowhere else to turn.

17. When faced with payment decreases, children's hospitals face tough decisions about the effect of such decreases on the services provided. The resulting reduction of services would affect all children, not just children on Medicaid.

18. N.A.C.H. and its members have an interest in delivering quality health care to Medicaid and other low-income children in an efficient manner and at payment rates sufficient to enable them to continue to meet their patients' needs. If the provisions of this Rule are implemented, many of N.A.C.H.'s safety net hospital members will be required to make deep cuts in essential services that they have struggled to provide in the past and will be unable to maintain their current levels of support for low-income and uninsured patients.

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

Executed on: March 5, 2008
Washington, DC

(Signature): Lawrence A. McAndrews

Lawrence A. McAndrews
President and CEO
National Association of Children's Hospitals