

**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 PETER RAPP

I, Peter Rapp, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am the Executive Vice President of the Declarant Oregon Health and Science University (“OHSU”) and the Executive Director of the OHSU Hospitals and Clinics of the OHSU Hospitals and Clinics. 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 OHSU’s files upon which I normally rely, publicly available information, and other factual matters known to me.

3. I have served as Executive Director of the OHSU Hospitals and Clinics since April 2002.

4. In my capacity as Executive Director of the OHSU Hospitals and Clinics, I am responsible for all aspects of OHSU's operations and finances, including participation in the Oregon Medicaid program and payments received thereunder.

5. OHSU, the only academic health center in the State of Oregon, is a public corporation operating under specific authority granted by the Oregon legislature. *See* Oregon Statutes Chapter 353.020 and 353.030 where the Oregon Legislative Assembly established OHSU as a governmental entity that is designated to carry out missions of the state of Oregon, including:

- (a) Provide high quality educational programs appropriate for a health and science university;
- (b) Conduct research in health care, engineering, biomedical sciences and general sciences;
- (c) Engage in the provision of inpatient and outpatient clinical care and health care delivery systems throughout the state;
- (d) Provide outreach programs in education, research and health care;
- (e) Serve as a local, regional and statewide resource for health care providers; and
- (f) Continue a commitment to provide health care to the underserved patient population of Oregon.

6. OHSU is the only academic health center in the State of Oregon, consisting of hospitals and clinics, and schools of medicine, dentistry, nursing, science and engineering. We train over 350 medical residents annually.

7. OHSU serves as the tertiary care center for the State of Oregon and Southwest Washington State, and is a regional Level I Trauma Center and a major transplant center.

8. OHSU operates primary care clinics throughout the state of Oregon.

9. OHSU serves a significant safety net role in Portland and in Oregon, both in terms of serving large numbers of underserved populations with Medicaid and with no third party coverage, and in terms of providing specialized services not available from other hospitals in the State. Of the 395,000 patients we treat every year, 16.52% are Medicaid beneficiaries, 3.69% are charity patients, and 5.47% are self-pay patients with no coverage.

10. OHSU relies heavily on Medicaid program funding. Our revenues from Medicaid are 16.59%. OHSU currently receives Pro-Share payments up to an upper payment limit (UPL) and graduate medical education (GME) payments above its reported GME costs. The Oregon Medicaid agency has paid Pro-Share payments to OHSU up to the UPL since 2001, in recognition of OHSU's public mission and role as a public academic teaching hospital. This funding supports the hospital's ability to provide Medicaid services and enables OHSU to serve as the sole provider in the State of certain under-compensated but critical specialty services.

11. CMS reviewed and approved State plan amendments authorizing these payments. OHSU retains 100% of the Medicaid funds paid to use and have used it for patient care services.

12. Under 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"), OHSU will be treated as a unit of government. As a result, OHSU will be subject to the cost limit on payments to governmental providers under the Rule, and will lose the federal share of the Pro-Share and

GME payments we currently receive over our costs. We estimate that OHSU will lose \$2.8 million annually in federal Medicaid funding.

13. This \$2.8 million loss, which would be 18 percent of our net income budget for FYE2007 of \$15.6 million, will severely damage our ability to continue to provide health care services as set forth in our public missions of ORS 353, including our teaching mission.

14. If these losses go through as projected OHSU will be forced to consider cuts to its programs to address this shortfall, including under-reimbursed specialty services, and Medicaid and charity care.

15. I am not aware of any plans for States to make up for the significant losses in federal funding with additional State revenues.

16. Given the State's difficult financial situation, new state funding to make up for lost federal funds is unlikely. The loss of this federal funding will mean less funding for payments to OHSU as the State's primary safety net provider, for the services we provide to Medicaid and other vulnerable patients. This will be devastating to the ability of OHSU to care for Oregon's medically underserved population.


17. When we learned that CMS had proposed this Rule last January, and purported to finalize the Rule in May, we recognized the impact that Rule would have on our facilities. We drafted a comment letter to the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services (HHS) in response to the Proposed Rule, and a supplemental letter in response to the Final Rule, explaining our hospital's circumstances and our concerns with the provisions of the Rule. These letters are attached as Exhibits A and B. While CMS changes the definition of a unit of

government to include certain state teaching hospitals, which we appreciate, CMS went forward with the Rule without addressing our concerns about the cost limit or our overall concerns about the restrictive definition of a unit of government.

18. OHSU is a member of the American Hospital Association and the Association of American Medical Colleges.

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

Executed on: March 10, 2008


Peter Rapp
Oregon Health & Sciences University