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 JANIS M. ORLOWSKI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Janis M. Orlowski, hereby declare and state the following:

1. My name is Janis M. Orlowski, M.D. 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 Washington, D.C.

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 the Association of American Medical Colleges (AAMC). If called upon as a witness, I could and would testify to these facts.

3. I am the Chief, Health Care Affairs of AAMC. I have served in this capacity since November 17, 2013. In this role, I am responsible for evaluation, data, regulatory work, and new programs in the area of clinical care delivery transformation. In my capacity as Chief, Health Care Affairs, I have personal knowledge of the impact that the new CMS rule relating to mandatory disclosures of negotiated charges that is challenged in this lawsuit will have on AAMC's members.

4. AAMC is a not-for-profit organization headquartered in Washington, D.C. AAMC represents and serves more than 150 accredited U.S. and Canadian medical schools; over 400 major teaching hospitals and health systems, including Veterans Affairs medical centers; and more than 300,000 full-time faculty members, resident physicians, and medical students. Its mission is to transform healthcare in four primary mission areas: medical education, patient care, medical research, and diversity, inclusion, and equity in health care. For example, by providing resources, data, and expertise, AAMC works to sustain the missions of member teaching hospitals to foster innovations in patient care, ensure outstanding educational experiences for future physicians, and make patient care, safer, more affordable, and more accessible. AAMC also ensures that members' perspectives and needs are heard and addressed in national health-policy development, legislative and regulatory debates, and judicial matters. It does so through advocacy and litigation.

5. On behalf of its members, AAMC (with its co-plaintiffs) has filed this lawsuit challenging a recent rule issued by Centers for Medicare & Medicaid Services (CMS) requiring the public disclosure of charges privately negotiated between hospitals and insurers (Final Rule).

6. In the Final Rule, CMS requires hospitals (including AAMC's member hospitals) to publicly disclose the following information on their websites: (a) "Gross charges," "payer-

specific negotiated charges," "the amount the hospital is willing to accept in cash from a patient," and "the minimum and maximum negotiated charges" for "all items and services"; and (b) "Payer-specific negotiated charges," "the amount the hospital is willing to accept in cash from a patient for an item or service," and "the minimum and maximum negotiated charges for 300 common shoppable services."

7. Teaching hospitals and medical colleges are committed to training the next generation of health care providers, providing high quality medical care, and giving patients the information they need to make informed decisions about their health care. Specifically, AAMC supports policy options that would require disclosure of the out-of-pocket amounts patients will be expected to pay for care, as our research shows that this is what patients care about the most when it comes to the financial aspects of their healthcare decisions.

8. Notwithstanding CMS's claim that the disclosures required by the Final Rule will help patients make informed healthcare choices, the Final Rule is likely to confuse patients and harm hospitals. The Final Rule suggests to that there is a direct correlation between negotiated rates and patients' out-of-pocket costs. But patients' out-of-pocket costs depend on a number of factors unrelated to the insurer-negotiated rates, including but not limited to whether the service is covered by the insurance policy, whether the hospital is in-network or out-of-network, the amount of the patient's annual deductible (and how much of it has been used up), the amount of the family's annual deductible (and how much of it has been used up), any co-payment requirements, and whether the patient has complied with contractual requirements, such as pre-authorization and medical necessity. In addition, it is possible that unexpected problems will be discovered during the cost of treatment which will have an impact on the cost of the care and the amount the patient will have to pay.

9. Patients will understandably be confused by the mandated disclosure of information relating to insurer-specific negotiated rates when those amounts do not reveal the amount that the patient must pay to a hospital.

10. The Final Rule will cause concrete and imminent harm to the nation's hospitals, including AAMC's members. Hospitals (including AAMC's members) and insurers typically negotiate contracts governing the prices that specified insurance plans will be expected to pay for specific services. Those contracts contain a number of different types of payment arrangements, including fee-per-service, per diem charges, risk sharing, and alternative payment structures. Those contracts also typically contain a confidentiality provision prohibiting both parties from publicly disclosing the insurer-specific negotiated rates. AAMC's member hospitals carefully comply with those contractual provisions, both in order to avoid breaching their contractual obligations and to ensure vigorous competition in the marketplace.

11. By mandating the public disclosure of insurer-negotiated rates, the Final Rule will threaten open competition in the market place, hurting hospitals and ultimately patients. It also will dis-incentive hospitals from entering into alternative payment arrangements—*i.e.*, not based on the "fee per service" model—designed to reduce costs.

12. The Final Rule's requirement that hospitals disclose "the amount the hospital is willing to accept in cash from a patient" also rests on a faulty premise: that there is a single cash figure that a hospital would be willing to accept from an uninsured patient (or one who is unable or unwilling to use his insurance) for a specified service. But we know from our members that hospitals' decisions about how much to charge uninsured patients typically are multi-factored, and include consideration of patient-specific information such as how promptly the patient is

willing to pay, the patient's financial circumstances, and the total amount due. The disclosure required by the Final Rule could mislead patients into believing that additional discounts are unavailable, potentially preventing them from seeking medically necessary care.

13. In addition, the Final Rule imposes a substantial burden on AAMC's member hospitals. Compliance with the rule will require our member hospitals to divert critical resources toward gathering the voluminous information required by the rule, converting it into the mandated format (particularly for the "shoppable services" disclosures), navigating the technical aspects of uploading and hosting the information on their websites, and updating it regularly.

14. To meet the Final Rule's effective date of January 1, 2021, many of our member hospitals will have to start devoting resources toward compliance almost immediately.

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: Janis M. Orlowski, MD
Janis M. Orlowski, MD
Chief, Health Care Affairs