UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN HOSPITAL ASSOCIATION, *et al.*, Plaintiffs, v. ERIC D. HARGAN, in his official capacity as ACTING SECRETARY OF HEALTH AND HUMAN SERVICES, Defendant.	Civil Action No. 14-cv-00851 (JEB)

DECLARATION OF GEORGE G. MILLS

I, George G. Mills, declare as follows:

1. I am the Deputy Director of the Center for Program Integrity (CPI) at the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS or Department). I have held this position since June 2015. Prior to this position, from August 2013 to June 2015, I was the Deputy Director of the Office of Financial Management (OFM) within CMS, and from January 2009 to August 2013, I was the Director of the Provider Compliance Group within OFM.

2. Among my duties in my current position, I oversee CMS's program integrity efforts to combat fraud, waste, and abuse in the Medicare and Medicaid programs, including the Recovery Audit Contractor program. I have worked closely with my counterparts in OFM, the agency's designated claims settlement official, to ensure that CMS's settlement efforts are consistent with its program integrity mission.

3. The statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties (including information furnished by the Department of Justice (DOJ)).

4. CMS generally treats the identification of program integrity concerns as an indication of potentially inappropriate billing practices that precludes compromise and makes individual adjudication of an appellant's claims through the regular Medicare appeals process appropriate. *See, e.g.,* 42 C.F.R. § 405.376(c)(2) (Medicare overpayment may be compromised if, *inter alia*, there "is no indication of fraud, the filing of a false claim, or misrepresentations").

5. Below, I provide data on the percentage of pending appeals before the Office of Medicare Hearings and Appeals (OMHA) from providers and suppliers that present some or all of the following program integrity concerns:

- Open investigations by DOJ and the HHS Office of the Inspector General (HHS-OIG) encompassing a wide range of alleged improper practices, including criminal investigations and investigations under the False Claims Act;
- Open investigations by CMS program integrity contractors regarding potentially improper billing practices;
- Settlements of FCA investigations with DOJ within the past five years; or
- Revocations of Medicare billing privileges due to improper billing practices within the past five years.

6. The data focuses on appellants that had more than 3,000 appeals pending at OMHA as of October 20, 2017, and therefore constituted at least 0.6% of the pending appeals at OMHA as of that date. There are other appellants with comparable program integrity concerns

(such as open FCA investigations), but with a smaller volume of pending appeals. They are not included in the data below.

7. At least 41.2% of pending appeals at OMHA (or approximately 219,200 appeals) were filed by appellants that are the subject of open investigations by DOJ and HHS-OIG.

8. At least 38.3% of pending appeals at OMHA (or approximately 204,000 appeals) were filed by appellants that are the subject of open investigations by CMS program integrity contractors.

9. At least 33.3% of pending appeals at OMHA (or approximately 177,300 appeals) were filed by appellants that have settled a FCA investigation with DOJ within the past five years.

10. At least of 6% pending appeals at OMHA (or approximately 31,600 appeals) were filed by appellants that have had their Medicare billing privileges revoked within the past five years.

11. At this time, CMS cannot negotiate comprehensive, reasonable administrative settlements or other resolutions to resolve the appeals filed by such appellants without putting the Medicare Trust Funds at risk. In some instances, the appeals are within (or potentially within) the scope of ongoing investigations where the Government has concerns about potentially fraudulent conduct or improper billing. While such investigations are pending, it is impossible for the Government to know the breadth and scope of any eventual enforcement actions, or if enforcement actions will even be pursued. The Government likewise cannot evaluate whether settlement is appropriate and, if so, what settlement range is reasonable. For these reasons, CMS generally does not settle with appellants that are subject to open investigations.

12. In some instances, the appellant's past conduct (as evidenced by a prior FCA settlement, for example) makes settlement untenable. The Government protects the Medicare Trust funds by putting the appellant's appeals to OMHA on a case-by-case basis.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on November 22, 2017 in Baltimore, Maryland

George G. Mills