

# Exhibit W

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

THE AMERICAN HOSPITAL ASSOCIATION,  
800 Tenth Street, NW, Suite 400  
Washington, DC 20001, *et al.*,

*Plaintiffs,*

—v—

ALEX M. AZAR II, in his official capacity as the  
Secretary of Health and Human Services,  
200 Independence Avenue, SW  
Washington, DC 20201, *et al.*,

*Defendants.*

Case No. \_\_\_\_\_

**AFFIDAVIT OF ROBIN DAMSCHRODER**  
**IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, Robin Damschroder, state as follows under the pains and penalties of perjury.

1. I am Robin Damschroder of Henry Ford Health System (“HFHS”), a Plaintiff in this action.

2. I currently serve as the Chief Financial Officer of HFHS. I hold a Masters in Health Services Administration.

3. The information set forth in this affidavit is based upon my personal knowledge.

**HFHS and the Population It Serves**

4. Founded in 1915 by auto pioneer Henry Ford, HFHS is a non-profit integrated health care delivery system headquartered in Detroit, Michigan. HFHS serves the metropolitan Detroit and Jackson areas of Michigan. The system has 30,000 employees, 26 medical centers, six acute care hospitals with a total of 2,405 inpatient beds, including Henry Ford Hospital (“HFH”), which is our flagship hospital and is a large academic safety net hospital located within the city of Detroit, and Henry Ford Allegiance (“HF Allegiance”), located in the city of Jackson.

5. HFH and HF Allegiance have a long and distinguished history of serving as safety-net hospitals for vulnerable people living in their communities. There are no public hospitals in Detroit or Jackson, so the few private hospitals in these cities share the burden of charity care and other forms of uncompensated care in the city as well as in the surrounding communities.

6. Located in Detroit's Midtown, HFH has served the Detroit community—which has the highest rate of concentrated poverty among the top 25 metro areas in the United States—for over 100 years and serves 22% of the Medicaid population in the region. HFH is an 877-bed tertiary care hospital, education and research center, which provides comprehensive and advanced inpatient and outpatient care. HFH is also a Level 1 trauma center and one of the largest U.S. teaching hospitals.

7. Located in Jackson, HF Allegiance is a 475-bed healthcare organization that has served as the sole health system for the south central Michigan community since 1918. With more than 400 physicians, HF Allegiance's network of 40 facilities complements traditional acute care with mission-based services to address the health needs of its economically-challenged, underserved community. Jackson has a median income of \$28K and a 36% poverty rate. It serves 19% of the Medicaid population in the region.

8. Both HFH and HF Allegiance are members of the American Hospital Association, another Plaintiff in this case.

9. HFH is also a member of the Association of American Medical Colleges and American Essential Hospitals, also Plaintiffs in this case.

10. The communities served by HFH and HF Allegiance also include a significant number of Medicare beneficiaries. In fiscal year 2016, Medicare was responsible for approximately 47% of HFH and 48% of HF Allegiance's gross revenues.

11. Both HFH and HF Allegiance are “covered entities,” as defined in 42 U.S.C. § 256b(a)(4)(L), for purposes of the 340B drug program created by Congress in 1992 (“the 340B Program”), servicing a large percentage of indigent patients.

**The Impact of the 340B Provisions of the OPPS Rule on HFHS, HFH, and HF Allegiance**

12. The 340B Provisions of the OPPS Rule, issued by the Centers for Medicare and Medicaid Services (“CMS”) of the Department of Health and Human Services, which went into effect on January 1, 2018, have reduced Medicare payments to hospitals for drugs purchased by those hospitals under the 340B discounted drug program (“340B Program”).

13. Prior to 2018, the CMS payment rate for these drugs was Average Sales Price (“ASP”) plus 6%. The OPPS Rule reduced this payment rate to ASP minus 22.5%.

14. The almost 30% payment reduction set forth in the 340B Provisions of the OPPS Rule has resulted in a severe reduction in drug payments to HFH and HF Allegiance. That loss totals approximately \$9 million through the end of June 2018. Approximately \$4.5 million of that loss was due to reduction in Medicare fee-for-service payments and approximately \$4.5 million was due to reduction in payments from Medicare Advantage plans (privately administered plans which tie payments for pharmaceuticals to payments under the OPPS). If the 340B Provisions remain in effect, HFHS expects that these losses will double by the end of 2018. These cuts have been partially offset by the budget neutrality provisions of the OPPS Rule, but by the end of 2018, HFH and HF Alliance are forecast to suffer net outpatient cuts of \$6 million and \$2.5 million, respectively.

15. Participation in the 340B program and the margin between hospitals’ drug acquisition costs and Medicare payment rates that this program creates have helped HFH and HF Allegiance provide uncompensated health care programs to its communities, including the

underserved and indigent populations within those communities, that would otherwise be financially unsustainable.

16. The forms of uncompensated care that HFH and HF Allegiance are able to provide because of 340B Program discounts include: providing free and reduced cost medications to the underserved across HFHS; staffing the Community Health and Social Services (“CHASS”) Clinic, which provides free primary care services to about 1,300 uninsured and underinsured Detroit residents every month in Southwest Detroit, with HFHS physicians; operating school-based and community health programs in 11 child and adolescent health centers and two mobile medical units, which provide primary care services in Detroit, Warren, and Mount Clemens; and embedding pharmacists in primary care and specialty clinics in Detroit to optimize treatment of chronic diseases and expand patient access through face-to-face appointments. Collectively, these programs further the goal of preventing the need for “charity care” in the form of expensive treatments for uninsured patients.

17. HFHS provided over \$443 million in uncompensated care in 2017 across its system. The total uncompensated care includes charity care, bad debt and Medicare and Medicaid underpayments. Only a small fraction of the uncompensated care we provide is counted as charity care, but we need the 340B program savings to help cover all forms of uncompensated care that we provide.

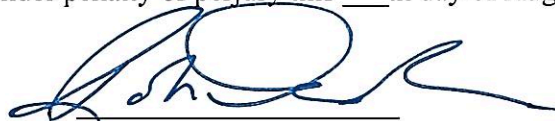
18. In short, without the 340B program, HFHS would not be able to provide the breadth of uncompensated care or other services that it currently provides across its system to vulnerable and low-income individuals.

19. The 340B Provisions of the OPPS Rule at issue in this case are threatening HFHS programs (including the programs described above in paragraph 16) by depriving HFHS of the

resources that allow these programs to exist, eroding its margin and diminishing its capacity to provide essential services.

20. If the 340B Program cuts in the OPPS Rule continue, HFHS will be forced to evaluate – and likely limit or curtail, some of the more costly programs designed to serve our most vulnerable community members.

Signed under penalty of perjury this \_\_\_\_th day of August, 2018.



Robin Damschroder  
Chief Financial Officer  
Henry Ford Health System