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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel. ELLEN F.
ROSENBLUM, Attorney General for the State
of Oregon,

Movant,

v.

PROVIDENCE HEALTH & SERVICES –
OREGON,

Respondent.

Case No. 24CV12145

MEMORANDUM IN SUPPORT OF EX PARTE
MOTION FOR ORDER TO SHOW CAUSE FOR
FAILURE TO OBEY INVESTIGATIVE
DEMAND

ORS 20.140 - State fees deferred at filing

Oral Argument Requested

[Request To File Under Seal]

The Oregon Attorney General, Ellen F. Rosenblum, brings this proceeding to enforce two civil investigative demands (CIDs) issued by the Oregon Department of Justice (“DOJ”) to Providence Health & Services – Oregon (“Providence”). The CIDs were issued pursuant to the Attorney General’s authority to investigate potential violations of the Unlawful Trade Practices Act (“UTPA”). The Attorney General, through DOJ, seeks an order compelling Providence to produce documents from ten custodians that DOJ identified on November 1, 2023, using search terms that DOJ provided on November 30, 2023. The documents sought are all within the scope of the CIDs served in September 2022 and May 2023.

Documents produced from an initial group of 15 custodians and several initial investigative interviews indicate Providence’s billing and charity practices may have violated Oregon laws and impacted thousands of consumers. Providence implemented sharp practices to minimize charity care—free medical care that Providence is required by law to provide to low-income Oregonians. Documents produced to date also indicate that Providence even sent

1 Medicaid enrollees to collections when they could not pay, in violation of Oregon law.
2 Providence recently settled a case involving many of the same practices with the Washington
3 Attorney General’s Office. Providence paid \$25 million to settle and provided debt relief to
4 Washington patients worth millions more.¹

5 DOJ needs additional information to evaluate Providence’s practices and to determine the
6 scope of the impact on Oregon consumers. In November 2023, DOJ provided Providence with a
7 list of just ten additional custodians and search terms for them. After a number of efforts to
8 confer, in January 2024, Providence proposed that it would provide documents for seven
9 custodians,² but only on certain topics, a proposal that DOJ rejected.³ After substantial efforts to
10 meet and confer over three months, Providence’s position is that: (1) it will not produce
11 documents from certain custodians; (2) for the remaining custodians, Providence will produce
12 documents relevant to specific topics identified by Providence; and (3) has objected claiming
13 burden to applying the proposed search terms. Providence has made no proposal to produce
14 responsive document from these custodians and to date has not produced a single document from
15 their custodial files.

16 Providence’s generalized proportionality arguments are irrelevant and without merit in
17 the context of the Attorney General’s investigation of potential violations of Oregon’s consumer
18 protection laws in order to protect the public. Providence apparently contends that since it has
19 already searched and produced documents for an initial group of custodians,⁴ it should not be
20 required to produce *any* documents from the custodial files of three of the ten additional

21 ¹ Ex. 37 (Washington AG’s Office, “*Providence must provide \$157.8 million in refunds and debt*
22 *relief for unlawful medical charges to low-income Washingtonians*” (2024));
23 [https://www.atg.wa.gov/news/news-releases/ag-ferguson-providence-must-provide-1578-](https://www.atg.wa.gov/news/news-releases/ag-ferguson-providence-must-provide-1578-million-refunds-and-debt-relief)
24 [million-refunds-and-debt-relief](https://www.atg.wa.gov/news/news-releases/ag-ferguson-providence-must-provide-1578-million-refunds-and-debt-relief) (with linked consent decree).

24 ² Ex. 63 at pp. 12-13.

25 ³ Ex. 63 at 1-3.

26 ⁴ Using agreed search terms, Providence searched and produced custodial files of 15 custodians.
It also searched some additional custodial accounts, using narrower terms and date ranges.

1 custodians. Providence has not provided any information that would establish that these
2 custodians do not possess responsive information. However, Providence is a very large
3 nonprofit organization that employs thousands, and it treats thousands of Oregon patients. It
4 receives hundreds of millions of dollars each year in Medicaid revenue for treatment of Oregon
5 patients. Asking for a search of 25 or 30 custodial files from such a large organization, whose
6 business practices are impacting thousands of Oregonians, is reasonable and in the public
7 interest. Providence has no basis to unilaterally deem these custodians off-limits and the
8 documents for the three custodians should also be produced.

9 In addition to refusing to produce information from these three custodians, Providence
10 has further sought to sharply limit the topics for production on each of the other seven
11 custodians, despite the fact that Providence itself identified some of these custodians as persons
12 “most knowledgeable” on numerous other topics. Providence’s position that it may unilaterally
13 limit custodians to self-selected topics should be rejected. To limit the burden of production,
14 DOJ has already proposed a limited number of custodians, as well as the use of reasonable
15 search terms – many quite similar to ones used already used by the parties. Providence simply
16 has no basis to exclude production of responsive documents from the limited custodians. In
17 DOJ’s investigation, it has become apparent Providence custodians’ work has not been as narrow
18 as the limits proposed by Providence, with custodians often having documents showing their
19 involvement on a variety of issues, many of which are interrelated.

20 DOJ is entitled to investigate the existence and scope of Providence’s potential violations
21 of Oregon law. DOJ’s request for documents from ten additional custodians is reasonable given
22 the scope of Providence’s operations and the seriousness of the potential violations at issue.
23 Providence should be required to produce the files for the additional custodians without further
24 delay, using the search terms designated by DOJ on November 30, 2023.

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1 **I. BACKGROUND**

2 **A. Why DOJ Is Investigating Providence**

3 DOJ is investigating Providence’s compliance with the UTPA and related charity care
4 statutes that govern nonprofit hospitals and affiliated clinics – issues with significant public
5 interest. Nonprofit hospitals like Providence are exempt from many federal, state, and local
6 taxes, a significant benefit. In return, as described below, these hospitals are obligated to comply
7 with federal and state laws for “charity care”—financial assistance to patients.

8 DOJ has reason to believe that Providence has failed to comply with Oregon law, and that
9 the number of impacted patients and the amounts involved are significant. Providence generally
10 employed similar policies and billing practices in both Washington and Oregon. Pursuant to the
11 terms of a consent decree with the Washington Attorney General, Providence agreed to pay more
12 than \$25 million in patient refunds, attorney fees and other amounts. Providence also agreed to
13 provide further debt relief of about \$11.4 million and represented that it had already written off
14 more than \$125 million in outstanding balances charged to patients affected by certain practices.⁵

15 **B. Protections Provided by the UTPA and the Charity Care Laws**

16 The UTPA prohibits a variety of unfair trade practices. Violations include making false
17 or misleading statements,⁶ unconscionably taking advantage of consumers,⁷ and unlawful debt
18 collection practices.⁸ Unlawful debt collection practices include collecting or attempting to
19 collect charges covered by Medicaid and practices made unlawful by a charity care statute.⁹

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22 ⁵ Ex. 37 at pp. 1-2 (*Providence must provide \$157.8 million in refunds and debt relief for
unlawful medical charges to low-income Washingtonians*”).

23 ⁶ ORS 646.607; ORS 646.608.

24 ⁷ ORS 646.608 (false or misleading statements); ORS 646.607(1) and ORS 646.605(10)
(unconscionable tactics); ORS 646.607(6), ORS 646.639 (unlawful collection practices).

25 ⁸ ORS 646.607(6), ORS 646.639.

26 ⁹ ORS 646.639(2)(q).

1 Oregon’s charity care statutes provide numerous additional protections. Hospitals are
2 required to have a financial assistance policy that is consistently carried out.¹⁰ Hospitals must
3 widely publicize the policy, and a copy of the policy must be provided to patients in various
4 situations.¹¹ The policy must also provide certain levels of assistance. For example, patients
5 whose household income is not more than 200% of the federal poverty level (“FPL”) guideline
6 amount must receive a 100% adjustment of their costs.¹² Before sending patients to outside
7 collections, hospitals must also screen to determine if the patient qualifies for financial assistance
8 under that 200% test.¹³ The failure to conduct such screenings can violate the UTPA.¹⁴

9 **C. Facts Leading DOJ to Believe Violations Have Occurred**

10 DOJ has several concerns about Providence’s practices, some of which are described
11 below. DOJ has sought documents from the ten additional custodians because DOJ believes they
12 will have documents that address those concerns.

13 **1. The Top-Down Push to Collect More from Poor Patients**

14 In 2018, Providence kicked off an initiative called “RevUp,” with the assistance of the
15 McKinsey consulting firm, which reportedly was paid millions of dollars for its advice. A key
16 goal of RevUp was to increase revenue, including amounts collected from patients. RevUp was
17 pushed along by the corporate parent’s chief financial officer. Numerous sharp practices ensued.

18 **2. Scripting that Fails to Promptly Disclose Financial Assistance**

19 As part of RevUp, in 2018 McKinsey and Providence developed a training program, with
20 scripts for conversations with patients about collections. The scripting put charity care last: staff
21

22 ¹⁰ ORS 442.610(a) (policy must meet federal requirements); 26 CFR 1.501(r)-4(d) (policy must
be carried out consistently).

23 ¹¹ ORS 646A.677(2) and ORS 442.610(3) (posting requirements); ORS 646A.677(4)(b) (provide
24 copy before sending to collections); 26 CFR 1.501(r)-4(b)(ii) (policy must be widely publicized).

25 ¹² ORS 442.614.

26 ¹³ ORS 646A.677(4)(a); ORS 442.614.

¹⁴ ORS 646.639(2)(u).

1 were directed to tell a patient about financial assistance only after making a number of requests
2 for payment.¹⁵ The idea was to “Avoid asking questions that allow the [patient] to assume there
3 is an option NOT to pay.”¹⁶ The training document admits that its purpose was to “minimize our
4 uncompensated care buckets”—“bad debt and charity.”¹⁷

5 An email sent to Pacific Northwest employees in 2018 took the same tack. It directed
6 that, during in-room collection efforts, “don’t present FA [financial assistance] unless patient
7 expresses the need for it or asks about it.”¹⁸ A Providence vice president conceded during a
8 witness interview that the message was “deceptive” and contrary to Providence’s professed
9 values of compassion for the poor and integrity.¹⁹ One of the ten additional custodians for which
10 production is sought, Anthony Valdez, sent the message. He voiced his discomfort but told
11 employees they needed to proceed anyway: “This is big push from our top leaders and we have
12 no say with it, we have to take it and move forward.”²⁰

13 3. As Little Charity as Possible

14 The push for less charity continued. During a July 2019 meeting about charity, the
15 corporate CFO told executives that “people need to pay their bills and not go on vacation.”²¹
16 Tracy Tsihlakis, another custodian for which production is sought, noted later that leadership
17 “would be unhappy if we were fined or in the news for not adhering to regulatory requirements,
18 or not providing adequate charity.”²² A vice president who attended the meeting was appalled -
19 “like some of these people can’t put food on their tables. It isn’t about vacations. If a sister had

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21 ¹⁵ Ex. 3 at p. 6.

22 ¹⁶ *Id.* at p. 11.

23 ¹⁷ *Id.* at p. 10.

24 ¹⁸ Ex. 4 at p. 2.

25 ¹⁹ Ex. 5 (Grankowski Tr. p. 50:22 to p. 56:19).

26 ²⁰ Ex. 4 at p. 2.

²¹ Ex. 6 at p. 2.

²² *Id.* at p. 1.

1 been present she would have gone white and passed out.”²³ Not long after the meeting,
2 Providence decided to proceed anyway with a range of cuts to charity. The same vice president
3 explained that the CFO “was very clear he wanted everything done and as little going to charity
4 as possible.”²⁴

5 **4. Sending Medicaid Enrollees to Outside Collections**

6 In November 2019, a few months after the charity cuts had been adopted, one of those
7 changes led to a number of Medicaid enrollees being sent to collections. Specifically,
8 Providence decided to exclude patients from an automated charity screening if they had a
9 balance after insurance. Patients with Medicaid insurance were thereby excluded from that
10 screening, and some ended up being sent to an outside collection agency.²⁵

11 Providence knew this practice was a problem from the start. In December 2019, a
12 Providence manager who had already called out the problem warned that Providence “was
13 sending the poor to bad debt” – to outside collection firms.²⁶ Numerous emails followed about
14 the problem.²⁷ Providence says it changed this practice in Oregon in 2020, but it was slow to
15 make amends. In October 2022, after the *New York Times* published an article about the
16 problem,²⁸ Providence finally announced that it would refund payments made by affected
17 Medicaid enrollees.²⁹ Refunds were paid to Medicaid enrollees in Oregon in 2023,³⁰ three years

18 _____
19 ²³ *Id.* at p. 2.

20 ²⁴ Ex. 7 at p. 1.

21 ²⁵ Ex. 8 at pp. 1-2, 4.

22 ²⁶ Ex. 9 at p. 1.

23 ²⁷ *See, e.g., id.*, Exs. 10 - 12.

24 ²⁸ Ex. 13 at pp. 1-4, *New York Times*, “*They Were Entitled to Free Care. Hospitals Hounded*
25 *them to Pay*,” <https://www.nytimes.com/2022/09/24/business/nonprofit-hospitals-poor-patients.html> (September 24, 2022, updated December 15, 2022).

26 ²⁹ Ex. 14 at pp. 1-2, *New York Times*, “*Hospital System to Refund Patients Who Were Entitled to*
Free Care,” <https://www.nytimes.com/2022/10/04/business/providence-hospital-poor-patients.html> (October 4, 2022).

³⁰ *See, e.g., Ex. 15.*

1 after managers had warned of the problem. Four of the additional custodians requested by the
2 DOJ were identified by Providence as persons most knowledgeable on various Medicaid issues:
3 Derek Johnson, Meghan Erickson, Eva Stearns, and Yeni Villanueva.

4 **5. Improper Billing of Medicaid Enrollees**

5 Even before Providence sent Medicaid patients to collections, Providence was also billing
6 Medicaid enrollees. Oregon law makes it unlawful to seek to collect charges covered by
7 Medicaid.³¹ One of the custodians whose files are sought, a manager named Eva Stearns,
8 warned in 2019 that billing Medicaid patients was a mistake: “Billing Patients with Medicaid has
9 been a circling topic for years. It has gone back and forth. We have a lawsuit and then we go
10 back to not billing any patients. Then we circle about it for a few years and start billing again
11 and the cycle starts over. *** I will not continue to push back, but I just needed to be sure we are
12 all on the same page because this will circle back around.”³²

13 14 **6. Providence Maximizes Collections from Patients Who Qualify for Charity and Then Limits Refunds to Them**

15 Oregon law requires that, before sending patients to outside collections, hospitals must
16 screen patients to determine whether the patient’s household income is 200% of the FPL or
17 less.³³ Non-profit hospitals can perform this screening using commercially available tools.³⁴
18 Providence uses a tool provided by Experian. When the Experian score shows that a patient
19 meets the 200% FPL standard, Providence provides what it calls “presumptive” charity.

20 Providence took several steps to maximize recovery from patients who would qualify for
21 charity care, and then limited refunds after they qualified. DOJ has reason to believe that several

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23 ³¹ ORS 646.639(2)(q); ORS 414.066; *see also* Ex. 17, at 1; *see also* Ex. 46, at 2, 3 (sending
24 Medicaid patients to collections was contrary to Providence policy).

25 ³² Ex. 16.

26 ³³ ORS 646A.677(4)(a); ORS 442.614(1)(a)(A)

³⁴ ORS 646A.677(5).

1 of these actions constitute deceptive and unconscionable practices that violate the UTPA. Steps
2 to maximize such payments included:

- 3 • Apparently, Providence intentionally delayed making a charity determination.
4 Providence could have received FPL scores from Experian at day 45 of the billing
5 cycle. Instead, Providence decided to delay receipt of those scores for another 60
6 days to maintain collection efforts, and then did so only shortly before patients
7 with unpaid bills were sent to outside collections.³⁵ Why? Providence delayed
8 scoring so that it could collect more from patients who would eventually qualify
9 for presumptive charity.³⁶
- 10 • Providence said little to patients about presumptive charity. Its financial
11 assistance policy does not explain the eligibility criteria Providence uses for
12 presumptive charity,³⁷ despite laws requiring this.³⁸
- 13 • Providence apparently took payments from patients who had been found eligible
14 for a charity adjustment. An email to staff directed: “What if a patient calls in to
15 pay their balance or set up a payment plan and the adjustment has already been
16 taken? Please reverse [the adjustment] and take the payment or set them up on a
17 [payment plan]”³⁹

18 Executives and managers were hostile to providing refunds to patients who had an
19 Experian score that qualified them for charity.⁴⁰ Providence also adopted practices that made it
20 difficult for patients to obtain a refund. For example:

21 _____
22 ³⁵ See Ex. 18 (Siemienczuk Tr. at pp. 190: 9-12, 194:8 to 195:9, 196:19 to 197: 7); Ex. 19, at 1, 4.

23 ³⁶ Ex. 20 (Petouhoff Tr. at pp. 172:11-17, 173:25 to 175:11).

24 ³⁷ See, e.g., Ex. 26 at p. 3.

25 ³⁸ ORS 442.610 (policy must comply with IRS regulations); 26 CFR 1.501(r)-4(b)(2) (policy
must include the “eligibility criteria [for] each discount, free care, or other level of assistance...).

26 ³⁹ Ex. 22.

⁴⁰ Ex. 23 at p. 1.

- 1 • As one executive put it: “I don’t think we’re telling them that we qualified them
2 for presumptive charity. It’s more saying that if they believe they might be
3 eligible to apply and include an application. That way, if they don’t [apply] we
4 can keep their payment.”⁴¹
- 5 • Patients who paid after a presumptive charity adjustment was taken and had a
6 credit balance over \$500 were required to submit an application for a refund
7 within 30 days, even though their Experian score qualified them for charity. If
8 they failed to submit an application in 30 days, Providence retained the
9 payment.⁴²

10 Materials produced to date indicate that a number of the additional custodians, including
11 Jeff Logan, Derek Johnson, and Meghan Erickson, should have knowledge about these practices.

12 7. A Double Standard for Charity Determinations

13 Despite Providence’s assurance to patients that it had a “uniform” way of determining
14 charity,⁴³ and despite laws requiring it to carry out its financial assistance policies consistently,⁴⁴
15 Providence applied a double standard to its “presumptive” charity. *Before* sending Oregon
16 patients to collections, Providence applied granted charity if patients had scores of 200% FPL or
17 less.⁴⁵ However, *after* patients endured up to two years or more in outside collections, when it
18 was in Providence’s interest to book more charity, Providence applied more lenient standards.
19 When the collection agencies returned uncollectible accounts at that point,⁴⁶ Providence booked

21 _____
22 ⁴¹ Ex. 24 at p. 2.

23 ⁴² Ex. 25.

24 ⁴³ *See, e.g.*, Ex. 26 at p. 1.

25 ⁴⁴ ORS 442.610(a) (policy must meet federal requirements); 26 CFR 1.501(r)-4(d) (policy must
be carried out consistently).

26 ⁴⁵ Ex. 35 at pp. 3-4.

⁴⁶ Ex. 28 (Siemieniczuk Tr. at pp. 145:24-146:6, 147:4-8, 150:16-18).

1 charity using Experian scores of 300%, 350%, or 400% FPL.⁴⁷ By using more lenient charity
2 standards for these accounts, Providence was able to report higher charity numbers to the state.
3 Millions of dollars were involved.⁴⁸

4 Executives were concerned about the inconsistent criteria. An assistant vice president
5 conceded during a witness interview that she had been concerned that Providence was using one
6 set of criteria to benefit patients and another set of criteria to benefit Providence.⁴⁹ Emails
7 produced to date show that the additional custodians, including Jeff Logan, Derek Johnson, Eva
8 Stearns, and Curt Jennings, will likely have knowledge about these practices.

9 II. DOJ'S AUTHORITY TO OBTAIN THIS INFORMATION

10 The UTPA provides that, when it appears to DOJ that a person has engaged in, is
11 engaging in, or is about to engage in any act or practice declared to be unlawful by [the
12 UTPA],” DOJ may issue an investigative demand that requires that person “to appear and
13 testify, to answer written interrogatories, or to produce relevant documentary material or
14 physical evidence for examination, at such reasonable time and place as may be stated in
15 the investigative demand *** concerning conduct of any trade or commerce which is the
16 subject matter of the investigation.”⁵⁰ If a person fails to comply with the CID, DOJ is
17 authorized to seek a court order granting various forms of relief, including an order for
18 relief “as may be required, until the person obeys the investigative demand.”⁵¹

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22 ⁴⁷ See, e.g., Ex. 29 at p. 1 (350% for 2019); Ex 30 at p. 1 (400% for 2020); Ex. 31 at p. 1 (300%
for 2021). Experian scores of 0% FPL also appear to have been handled inconsistently.

23 ⁴⁸ Providence documents indicate that, for 2019, the amount of bad debt returns reported as
charity in Oregon was \$11.98 million. (Ex. 29, at 2). For 2020, the number was at least \$12.99
24 million. (Ex. 32, at 3). For 2021, perhaps about \$8 million. (See Ex. 33 at p. 3).

25 ⁴⁹ Ex. 34 (Petouhoff Tr. p. 232:6-22; see also *id.* at p. 229:11-22, p. 230:3-22).

26 ⁵⁰ ORS 646.618(1).

⁵¹ ORS 646.626((1)(b)).

1 **III. ARGUMENT**

2 DOJ’s limited request for responsive information from ten management
3 custodians is reasonable given the massive scope of Providence’s operations, the
4 seriousness of the potential violations uncovered through DOJ’s investigation to date, and
5 the recently settled litigation in Washington. Providence has not provided any
6 information that would establish that these custodians do not possess responsive
7 information, and its continued delays based upon a generalized “proportionality” standard
8 must be rejected.

9 **A. History of DOJ’s Efforts to Obtain Information from Providence**

10 DOJ served its first CID in July 2022. Providence served responses and objections in
11 September 2022. Providence began producing documents in September 2023, mostly documents
12 already produced to Washington in the litigation there. In the winter of 2023, DOJ designated an
13 initial list of custodians. The parties eventually agreed on search terms. Over the next several
14 months, Providence produced responsive documents. DOJ also served a second CID in May
15 2023, and responsive documents for that CID have been produced in a similar fashion.

16 On November 1, 2023, DOJ provided a list of ten additional custodians, all managers.
17 These custodians were selected based on the information obtained from the initial custodians.
18 Search terms were provided on November 30, 2023. The terms include search terms pertinent to
19 issues DOJ identified in its review of Providence’s initial productions. For example, the terms
20 include the word “screening” when used within 15 words of “financial assistance” or “charity,”
21 or “bad debt” when used within five words of “charity.”⁵²

22 The ten custodians are:

- 23 • **Anthony Valdez** – Mr. Valdez was a supervisor of Oregon employees who spoke
24 to Providence patients. He sent the “avoid financial assistance” email described
25 above and made clear he didn’t agree with the message from leadership. As a

26 ⁵² Ex. 2.

1 supervisor, he likely had more real time interactions than higher-ups about the
2 application of Providence’s policies by such employees.

- 3 • **Jeff Logan** – Mr. Logan is a group vice president who joined Providence in 2021.
4 As shown below, he was involved in a broad range of activities involving
5 collections and financial assistance, but Providence refuses to search his files.
- 6 • **Derek Johnson** – Mr. Johnson is a manager at Providence involved in collections
7 and financial assistance issues. As shown below, Providence has listed him as the
8 person most knowledgeable on a broad range of topics, but declines to produce
9 documents on many of them.
- 10 • **Tracey Tsihlakis** – Ms. Tsihlakis was the executive director of administration at
11 Providence’s Revenue department, a high-ranking “L3” leader at Providence,
12 located here in the Pacific Northwest. DOJ has her correspondence with the
13 initial custodians, but believe she likely has additional relevant materials.
- 14 • **Curt Jennings** – Mr. Jennings worked at a Providence affiliate that was engaged
15 in collections work, before becoming Providence’s director of business
16 relationships. He was a liaison with the outside collection agencies that worked
17 or Providence, before leaving Providence to join one of those agencies. He was
18 involved in a range of issues, including presumptive charity and the double-
19 standard applied to bad debt returns.⁵³
- 20 • **Eva Stearns** – Ms. Stearns has been a manager of acute billing and is the
21 executive director of regulatory billing, which includes issues under Medicaid.
22 Providence has produced emails between her and the initial custodians, including
23 emails warning about certain practices, but we have seen few emails between Ms.
24 Stearns and others, such as those who reported to her.
- 25 • **Sandy Banzer** – Ms. Banzer has been the patient access director for the larger
26 Providence organization. Patient access includes obtaining payments from
patients when they register at the hospital. To the best of our knowledge, none of
the initial custodians focused on patient access.
- **Maureen Nosler** – Ms. Nosler was the patient access director for Oregon
hospitals. Patient access directors at Providence’s Oregon hospitals reported to
her.
- **Meghan Erickson** – Ms. Erickson has held positions involving refunds, such as
the director of cash posting and credit balances resolution. Providence identified
her as most knowledgeable on two topics, Medicaid refunds and financial
assistance refund practices.
- **Yeni Villanueva** – Ms. Villanueva has been the director of Medicaid billing and
the director of billing and collections. Providence identified her as most
knowledgeable on three topics (billing practices involving Medicaid patents,

26 ⁵³ Ex. 45 at pp. 1-2.

1 causes of Medicaid enrollees being sent to collections, and corrective measures),
2 but refuses to produce her files.

3 On January 24, 2024, after multiple emails and at least three conferral calls regarding
4 these custodians, DOJ gave notice that unless documents for these custodians were produced in
5 fifteen days, by February 8, 2024, DOJ would move to compel. Repeating a point made
6 repeatedly during the last year, DOJ said that Providence could remove privileged material by
7 searching for attorney names and by searching for terms like “attorney,” and that DOJ would
8 return any inadvertently produced privileged material under a “clawback” agreement.

9 DOJ has acted reasonably to limit the burden of this investigation. Providence complains
10 that it has already produced documents from the custodial accounts of 15 custodians. However,
11 it is not unusual for an investigation to start with one group of custodians and add others as the
12 investigators learn more. Moreover, in emails and during meet and confer sessions, DOJ has
13 repeatedly reminded Providence that DOJ reserved the right to identify additional custodians.⁵⁴

14 **B. The Court Should Reject Providence’s Effort to Reduce the Number of** 15 **Custodians**

16 DOJ has made efforts to limit the number of designated custodians to a fraction of the
17 individuals who likely have relevant documents. Nevertheless, Providence refuses to produce
18 documents for three of the ten additional custodians. As shown below, these custodians likely
19 possess information relevant to the potential violations DOJ is investigating. Providence should
20 be compelled to produce documents from the custodial files for these persons.

21 **1. Jeff Logan.** Mr. Logan, a group vice president, is in charge of Providence’s call
22 centers and other financial interactions with patients. He joined Providence in 2021, and his time
23 at Providence covers a time when six persons in the initial group of custodians had either left
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26 ⁵⁴ See, e.g., Ex. 55 at 1.

1 Providence or had moved away from patient collections.⁵⁵ He is a member of Providence’s
2 Revenue Governance committee, a group of executives who run the Revenue division. He was
3 involved in numerous issues being investigated here. For example, he was involved in
4 Providence’s delaying the receipt of Experian scores so as to collect more from qualifying
5 patients,⁵⁶ and in reclassifying bad debt as charity when accounts were returned by collection
6 agencies.⁵⁷ He also was tasked with undertaking “a systemwide review of our financial
7 assistance policies, billing-related communications to patients, financial aid applications, and
8 training materials for revenue cycle [employees].”⁵⁸ There is no reason to shield his files from
9 investigation.

10 **2. Maureen Nosler.** Ms. Nosler is the director of onsite access in Oregon. Patient access
11 includes patient registration, admitting, and obtaining patient payments. It is the “front end” of
12 the collection process. DOJ has asked for the custodial files of only two managers in patient
13 access. Nevertheless, Providence is willing to produce documents for only one of them, Ms.
14 Banzer, the executive director of patient access for the system. Ms. Nosler is focused on Oregon.
15 DOJ has explained to Providence that we believe that managers at various levels will have
16 different types of information about these matters. Ms. Nosler is particularly relevant because
17 Providence hospitals in Oregon have their own on onsite access managers, who apparently report
18 to Nosler.

19 **3. Yeni Villanueva.** In response to an interrogatory Providence identified Ms.
20 Villanueva as “most knowledgeable” on several topics, including when and how Providence bills
21 Medicaid-eligible persons, the events or causes that led Providence to refer Medicaid enrollees to
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23 ⁵⁵ Kim Sullivan, Kathleen Dowling, Kathryne Rouse, Jan Grankowski, Lynn Petouhoff, and Lesa
24 Wood.

25 ⁵⁶ Ex. 40.

26 ⁵⁷ Exs. 57, 58, 59.

⁵⁸ Ex. 41 (Kikuchi Tr. at p. 174:11-18); see *also* Ex. 21 (response to *Times* article).

1 collections, and measures taken to stop collecting debts from Medicaid enrollees.⁵⁹ DOJ has a
2 well-founded belief that she will have relevant documents, and Providence's refusal to produce
3 her documents should be rejected.

4
5 **C. The Court Should Reject Providence's Effort to Limit CID Topics for the
6 Custodians.**

7 Providence also seeks to restrict the CID topics for which documents will be produced for
8 the seven custodians for whom it is willing to produce documents.⁶⁰ As the examples below
9 demonstrate, those efforts should be rejected.

10 **1. Topics for Derek Johnson.** Providence wants to limit documents from Mr. Johnson's
11 account to the issue of sending Medicaid enrollees to outside collections, including the refunds
12 paid to those Medicaid enrollees.⁶¹ However, Providence identified Mr. Johnson as a most
13 knowledgeable person on numerous other topics that go well beyond sending Medicaid enrollees
14 to collections, such as (a) Providence's payment plan practices, (b) refunds to persons deemed
15 eligible for financial assistance, which includes many persons who are not Medicaid enrollees,
16 (c) the advantages and disadvantages of the Experian tool, (d) whether Providence provided
17 patients with a copy of its financial assistance policy before sending an unpaid charge to a debt
18 collection firm, and (e) the location of documents responsive to the second CID.⁶² None of these
19 topics are covered by any of the limited topics Providence has proposed for *any* of the additional
20 custodians.⁶³

21 Similarly, during an interview of a key witness who was also listed with Johnson as most
22 knowledgeable on many topics going beyond Medicaid, the witness repeatedly said she did not

23 ⁵⁹ Ex. 48 at p. 1.

24 ⁶⁰ Ex. 63 at p. 13.

25 ⁶¹ *Id.*

26 ⁶² Ex. 48 at pp. 1-2.

⁶³ Ex. 63 at p. 13.

1 know, but identified Johnson as the person at Providence with knowledge of the subject matter.⁶⁴
2 Providence’s effort to shield much of his files should be rejected.

3 **2. Topics for Eva Stearns.** Providence has said it will produce documents from Ms.
4 Stearns’ account, provided they concern Medicaid enrollees sent to outside collections. As
5 described above, however, Ms. Stearns also warned in 2022 that Providence was improperly
6 billing Medicaid enrollees,⁶⁵ which occurred *before* they were sent to collections. She also
7 warned about Providence’s practices involving waivers – a process by which a Medicaid enrollee
8 would agree to personally pay expenses not covered by Medicaid.⁶⁶ Along with Maureen
9 Nosler, she also was involved in a review of improper billing by a Providence contractor.
10 Providence had outsourced some of its billing and financial assistance responsibilities to that
11 contractor, leading to numerous complaints.⁶⁷ The limits sought by Providence should be
12 rejected.

13 **3. Topics for Sandy Banzer and Tracy Tsihlakis.** Providence also seeks to limit
14 production for these custodians to “RevUp.” As DOJ has explained to Providence, after RevUp
15 supposedly stopped, Providence appears to have continued with other similar initiatives, using
16 different names. There is no reason to limit these witnesses to “RevUp” specifically. Ms.
17 Banzer should have knowledge about Providence’s patient access practices before and after
18 RevUp. Those practices should include how to explain financial assistance to customers and
19 other related topics. For example, she wrote about problems with the Providence contractor that

20 _____
21 ⁶⁴ See, e.g., Ex. 41 Kikuchi Interview at 62:2-10 (identifying Johnson as the person who would
22 know about Providence’s refund policies); 65:11-20 (identifying Johnson as the Providence
23 employee who knows about how Providence handles zero or blank FPL scores); 89:11-23
24 (identifying Johnson as the individual at Providence with knowledge of whether hospital-
25 affiliated clinics use presumptive charity scrubs); 92:16-25 (identifying Johnson as the person
26 who would know about whether patients without a social security number were sent to
collections because Experian could not run an FPL estimate).

⁶⁵ Ex. 16.

⁶⁶ *Id.*

⁶⁷ Ex. 60.

1 engaged in improper billing practices (discussed above).⁶⁸ And Ms. Tsihlakis wrote many
2 emails that do not mention RevUp, such as the email quoted above warning about news media
3 and legal scrutiny of Providence’s charity cuts.⁶⁹ She also weighed in on other topics related to
4 financial assistance, such as Providence’s financial assistance policies in Oregon,⁷⁰ the timing of
5 presumptive charity,⁷¹ and refund requirements.⁷² Additionally, Tsihlakis corresponded with
6 two former managers at Providence whose accounts apparently were deleted a year after they left
7 Providence, and checking her account may yield emails with them that were deleted.⁷³ Limiting
8 these witnesses to RevUp would tell only part of the story.

9 As the above examples show, Providence’s effort to limit the topics for the ten additional
10 custodians should be rejected.

11 **D. Providence’s Proportionality Arguments Should be Rejected**

12 Providence has incorrectly argued that the material sought is not “proportional” to what
13 DOJ needs for its investigation. It must be emphasized the production sought is not in the
14 context of a civil lawsuit with defined claims. The DOJ has authority to investigate business
15 conduct to determine whether it violates Oregon’s consumer protection laws. Oregon law does
16 not require proportionality, but even if it did, Providence’s argument fails, for the following
17 reasons.

18 First, this matter involves a significant public health issue that warrants a thorough
19 investigation. Studies show that many patients defer care unless they are assured that they can
20

21 ⁶⁸ Ex. 51.

22 ⁶⁹ Ex. 6 at p. 1

23 ⁷⁰ Ex. 52.

24 ⁷¹ Ex. 53.

25 ⁷² Ex. 54.

26 ⁷³ Ex. 56 (Cari Balfour, who led efforts to collect from patients); Ex. 52 (Heidi Tosterud, the project manager charged with addressing HB 3076, the Oregon charity care law that took effect in 2020).

1 pay the bills.⁷⁴ Though Providence touts its commitment to charity care, the information
2 developed thus far shows significant problems with Providence’s practices. Providence is a large
3 player among Oregon’s hospitals, treating many thousands of Oregon patients. It operates eight
4 hospitals in Oregon, including two large hospitals, Providence Portland Medical Center and St.
5 Vincent Medical Center, each with over a billion dollars of revenue per year.⁷⁵ Providence also
6 operates 445 affiliated clinics in Oregon.⁷⁶ DOJ’s limited requests to date have been more than
7 reasonable given the seriousness of the issues and the evidence uncovered so far.

8 Second, numerous people were involved in the conduct here. The Providence system is a
9 very large organization, and the conduct being investigated occurred over several years. It
10 should be no surprise that DOJ might need documents from more than 20 or 30 custodians.
11 System-wide, Providence employs more than 100,000 persons.⁷⁷ Numerous individuals in three
12 states-- Washington, California, and Oregon-- were heavily involved in charity care and
13 Medicaid practices that have impacted Oregon patients. They included numerous executives and
14 managers at corporate headquarters in the Seattle area, in Oregon, and in the “Revenue Cycle”
15 division, the group that administered billing, collections, and charity care.

16 The system-wide nature of many practices also increased the number of Providence
17 employees involved in the activities here. Providence’s collection and financial assistance efforts
18 are carried out by hundreds of employees who spoke to patients about their bills, including
19 financial assistance counselors, hospital staff, and call center workers. For example, a call center
20 in Oregon served patients in Oregon, Washington, and other states, often using similar or the

21 _____
22 ⁷⁴ *Patients don’t know how to navigate the health care system – and it’s costing them*,
23 [https://www.vox.com/policy/2023/11/3/23943349/health-care-costs-medical-bills-debt-relief-
24 forgiveness-insurance](https://www.vox.com/policy/2023/11/3/23943349/health-care-costs-medical-bills-debt-relief-forgiveness-insurance) (2023).

25 ⁷⁵ Hospital and health System Financials, at p. 2,
26 <https://www.oregon.gov/oha/HPA/ANALYTICS/HospitalDocuments/Hospital%20and%20health%20system%20finance%20snapshot%20Providence%20St.%20Joseph.pdf>

27 ⁷⁶ *Id.*

1 same practices for patients in different states. The training that advanced Providence’s “how
2 would you like to pay” approach was used in multiple states. DOJ’s willingness to reduce
3 Providence’s obligation to produce responsive information to the CIDs, so that a substantial
4 amount of the information produced has been largely from a limited number of custodians, has
5 been more than reasonable.

6 Third, Providence has continually overstated its burden as grounds for continuing to
7 delay. Providence points to the number of documents it has produced, more than 100,000 to
8 date. However, this number is deceptive, as about half of those documents – and possibly more -
9 were duplicates or near duplicates, such as emails that were forwarded or were received by
10 different persons.

11 DOJ’s requests are reasonable, and the Court should direct Providence to produce the
12 requested materials, without the restrictions Providence seeks to impose.

13 **E. Delays by Providence in Addressing Custodians and Search Terms**

14 In determining an appropriate date by which Providence must produce the documents
15 withheld here the Court should also consider Providence’s delays. Providence insists that DOJ
16 should limit responsive documents to certain topics. At the same time, Providence did not
17 produce a search term hit report until February 23, 2024, almost three months after DOJ
18 provided revised search terms. And that search term hit report was for only three custodians.
19 Providence did not offer any search term proposal of its own. We also understand that
20 Providence has provided its counsel with documents for only three of the ten custodians
21 identified by DOJ four months ago. These delays can add several months to an investigation.

22 To compensate for such delays, DOJ has suggested to Providence that it produce
23 documents for the ten custodians that are responsive to the search terms. To eliminate privilege,
24 counsel can search for attorney names and terms like “privileged,” attorney-client,” and so on.
25 Providence can also protect itself from inadvertent production of privileged documents by use of
26

1 a “clawback” agreement.⁷⁸ Providence has declined to use this approach, but given the delays by
2 Providence, this technique would allow it to produce documents in a reasonable time.

3 **E. HIPAA Does Not Excuse the Delays Here**

4 In February 2024, several months after DOJ provided the list of ten additional custodians,
5 Providence suggested that it should proceed at a slow pace because of Health Information
6 Portability and Accountability Act’s (“HIPAA”) requirements. HIPAA’s “privacy rule” does not
7 prevent Providence from producing the email and attachments sought by DOJ in this motion.

8 Under HIPAA regulations, Providence may share HIPAA-protected health information
9 (PHI) with DOJ attorneys involved in law enforcement in response to a civil investigative
10 demand.⁷⁹ The “law enforcement” exception in 45 C.F.R. § 164.512(f) allows a covered entity
11 like Providence to provide PHI in response to “a civil or an authorized investigative demand” so
12 long as: “(1) The information sought is relevant and material to a legitimate law enforcement
13 inquiry; (2) The request is specific and limited in scope to the extent reasonably practicable in
14 light of the purpose for which the information is sought; and (3) De-identified information could
15 not reasonably be used.”⁸⁰ The emails DOJ seeks here squarely satisfy all three requirements.
16 The use of limited search terms and custodians ensures the requested material is relevant, while
17 also placing a reasonable limitation on the scope of DOJ’s request given the scope of its
18 investigation. De-identified information cannot be used as the identities of any patients whose
19 billing and account collections are discussed in the requested email are relevant to the
20

21 ⁷⁸ See, e.g., *Rajala v. McGuire Woods, LLP*, No. 08-cv-2638, 2013 WL 50200 at *5, *13-14 (D.
22 Kan. Jan. 3, 2013) (refusing to find waiver when a clawback order had been entered, reasoning
23 that the order was “designed to reduce the time and costs attendant to document-by-document
24 privilege review and was entered with the express goal of eliminating disputes regarding
25 inadvertent disclosure of privileged documents...”). Providence has already made multiple
26 requests to “claw back” produced documents and no disputes about those requests have resulted.

⁷⁹ 45 CFR 164.512(f)(1) (HIPAA law enforcement exception, which includes civil investigative demands).

⁸⁰ 45 C.F.R. § 164.512(f)(1)(ii)(C).

1 investigation. Such patients may be entitled to remedial refunds or debt relief and may even be
2 important witnesses as victims of Providence’s misconduct.

3 As a final note, not only does HIPAA explicitly allow Providence to produce the material
4 DOJ is requesting in this motion, all PHI that Providence produces in response to the CIDs
5 would remain confidential in DOJ’s hands. Providence and DOJ have a confidentiality
6 agreement in place requiring DOJ to maintain the confidentiality of information produced.⁸¹ In
7 the unlikely event the Court finds this protection insufficient, DOJ would stipulate to a
8 reasonable protective order further protecting the confidentiality of any PHI produced by
9 Providence. Such a protective order would independently allow Providence to produce the
10 requested documents under the “judicial and administrative proceedings” exception.⁸²

11 **IV. CONCLUSION**

12 For the foregoing reasons, Providence has failed to produce relevant documents to DOJ,
13 and the Court should enter an Order requiring Providence’s prompt production of the withheld
14 documents and information, which requires Providence to:

- 15 (a) Produce documents for all ten custodians listed in DOJ’s November 30, 2023
16 correspondence (see Exhibit 1);
- 17 (b) Produce documents using the search terms identified by DOJ in its November 30,
18 2022 correspondence (see Exhibit 2);
- 19 (c) Begin producing documents within seven days of that Order; and complete that
20 production by a date set by the Court; and
- 21 (d) Take such other steps as the Court deems just and reasonable.

22
23 DATED: March 5th, 2024

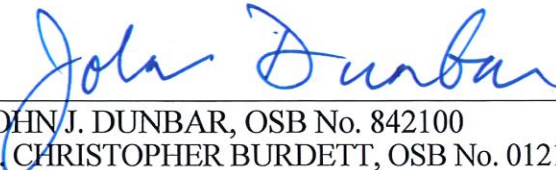
24
25 ⁸¹ Ex. 36.

26 ⁸² See 45 C.F.R. § 164.512(d).

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Respectfully submitted,

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Of Attorneys for Movant

1 **CERTIFICATE OF SERVICE**

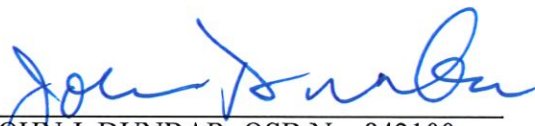
2 I certify that on March 5, 2024, I served the foregoing MEMORANDUM IN SUPPORT
3 OF EX PARTE MOTION FOR ORDER TO SHOW CAUSE FOR FAILURE TO OBEY
4 INVESTIGATIVE DEMAND upon the parties hereto by the method indicated below, and
5 addressed to the following:

6 Aaron E. Millstein
7 K&L Gates LLP
8 925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

- U.S. Mail
- Hand Delivery
- Overnight Courier
- Email: aaron.millstein@klgates.com

9 *Attorneys for the Respondent*
10 *Providence Health & Services.*

11 DATED March 5, 2024.

12 
13 _____
14 JOHN J. DUNBAR, OSB No. 842100
15 Assistant Attorney General
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17 Oregon Department of Justice
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