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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO, Plaintiff, vs. ALEX M. AZAR II, et al., Defendants.	No. C 19-02405 WHA No. C 19-02769 WHA No. C 19-02916 WHA
STATE OF CALIFORNIA, by and through ATTORNEY GENERAL XAVIER BECERRA, Plaintiff, vs. ALEX M. AZAR, et al., Defendants.	**DECLARATION OF BRUCE HINZE IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**
COUNTY OF SANTA CLARA et al,, Plaintiffs, vs. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., Defendants.	Date: October 30, 2019 Time: 8:00 AM Courtroom: 12 Judge: Hon. William H. Alsup Action Filed: 5/2/2019

I, Bruce Hinze, declare:

1. I am an attorney in good standing licensed to practice before all courts of the State of California. I am employed in an Attorney V classification with the California Department of Insurance ("CDI" or "the Department"), and am the senior attorney in the CDI Health Policy Approval Bureau (HPAB), which monitors health insurer legal compliance, and provide the Insurance Commissioner with legal advice regarding health insurance. My duties include estimating the anticipated workload and costs that may result from proposed legislation. If called upon to do so, I could and would testify competently about the contents of this declaration.

2. My duties include the review and analysis of proposed federal rules relating to health coverage for their impacts on the California health insurance market. I am familiar with the final rule, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, RIN 0945-AA10, published in volume 84, number 98 of the Federal Register on May 21, 2019, beginning at page 23170.

3. In accordance with regulations promulgated by CDI, under California Code of Regulations title 10, § 2240.5, health insurers are required to annually submit reports through the System for Electronic Rate and Form Filing ("SERFF") demonstrating compliance with the network adequacy requirements of §2240.1. I was the lead attorney when the most recent revisions of these regulations were adopted in 2008, 2015, and 2016. I was also the lead in subsequent implementation of a network analytic software suite, and am the lead trainer and resource for all staff regarding network analysis.

4. The CDI network adequacy regulation requires, at California Code of Regulations title 10, § 2240.1(b)(1), that insurer networks include sufficient providers in-network to provide covered services, and, if a network provider does not provide a service that is otherwise within the scope of their practice, that the insurer must ensure there are sufficient providers within the network to provide that service.

5. The final federal rule, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" would permit providers to decline to provide services within their scope of practice based on an asserted moral or religious objection. However, CDI's current

network adequacy regulation does not require identification of objecting network providers and the objected services, nor does CDI's network adequacy analytics software provide the Department with the capability to excise objecting providers from an insurer's data set within the software suite in order to audit the adequacy of the insurers' network for services to which some providers may object to providing on conscience grounds. CDI will have to add to its network analysis procedures, in the short term, an inquiry to selected insurers regarding: (1) the number and location of objecting providers, (2) identification of procedures not provided by these objecting providers otherwise within providers' scope of practice, and (3) identification of the network providers, if any, who provide the objected service[s] whose presence in the network backfills for the objecting providers in terms of assuring network adequacy. However, the Department will not be able to independently verify that the network is adequate. This spot inquiry will involve the expenditure of additional staff time by CDI, and by insurers. I estimate that this additional spot inquiry would involve at least 10 hours of additional time in the Attorney III category for each inquiry, analysis of insurer response, and rectification of compliance deficiencies, involving at least ten health insurers. This will represent an additional personnel cost of $11,000 per year. Insurers are charged a single fee for each network submission, and so this additional compliance review will result in no offsetting revenue to CDI.

6. In the first full calendar year after the final rule, CDI will undertake a rulemaking process to develop a revised network adequacy regulation to reflect additional insurer data submission requirements to determine adequacy of networks where providers decline to provide services within the scope of their license based on the provisions of the proposed rule. Promulgation of a revised regulation under the California Administrative Procedures Act involves at least one year of staff time in developing the proposed regulation text, soliciting public comment, and revising the text after public comments. Promulgation of such a regulation would involve approximately 1,160 hours of Attorney IV time at a cost of $157,000, as well as approximately 1,130 hours of time for staff in a variety of classifications, at a cost of $99,000, for a total personnel cost to CDI for the regulation of $256,000. Subsequent to the effective date of this regulation, review of insurer submissions would involve approximately 10 additional hours of

Attorney III time per submission, involving approximately 27 annual network filings, for an additional annual personnel cost of approximately $29,700 per year.

7. I am also the Department's lead counsel in the promulgation of guidance and regulations regarding uniform provider directory standards, pursuant to California Insurance Code section 10133.15(k). The Department is already in the early phase of the rulemaking process described in that section. However, the final rule will add additional complexity to the rulemaking regarding provider directory standards, as the Department will consider requirements regarding consumer disclosure of procedures and services not covered by a provider exercising the options described in the final rule. Consideration of these additional provider directory requirements related to the final rule will require approximately 80 additional hours of Attorney IV time during the rulemaking process, representing a cost of $10,828.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on August 26, 2019 in San Francisco, California.

Bruce Hinze

Bruce Hinze
Attorney V
California Department of Insurance