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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.

STATE OF CALIFORNIA, by and through ATTORNEY GENERAL XAVIER BECERRA,
Plaintiff,
vs.
ALEX M. AZAR, et al.,
Defendants.

COUNTY OF SANTA CLARA et al,
Plaintiffs,
vs.
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,
Defendants.

No. C 19-02405 WHA
No. C 19-02769 WHA
No. C 19-02916 WHA

DECLARATION OF MARI CANTWELL 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

Date: October 30, 2019
Time: 8:00 AM
Courtroom: 12
Judge: Hon. William H. Alsup
Action Filed: 5/2/2019

I, Mari Cantwell, declare:

1. I am the Medicaid Director for the State of California and Chief Deputy Director of Health Care Programs at the California Department of Health Care Services (DHCS). I have held the Chief Deputy position since 2013 and the State Medicaid Director position since 2015. I have worked in the field of health care policy and finance for almost 20 years. Prior to the positions I hold now, I served as the Deputy Director of Health Care Financing for DHCS, and previously as the Vice President of Finance Policy for the California Association of Public Hospitals and Health Systems. I hold a B.A. in Public Policy from Brown University, and a Masters in Public Policy with a focus in Health Policy from the University of California, Los Angeles.

2. DHCS has the mission to provide Californians with access to affordable, integrated, high-quality health care, including medical, dental, mental health, substance use treatment services, and long-term care. Our vision is to preserve and improve the overall health and well-being of all Californians. DHCS administers and oversees multiple federally-funded health care programs, including Medicaid, Children's Health Insurance Program, and several health-related federal grants. DHCS funds health care services for approximately 13 million members of Medi-Cal, California's Medicaid program. Among the programs administered by DHCS, some of which are mandated and/or financed by the federal government and others required by state law, are: Community Mental Health Block Grant; Substance Use Abuse Prevention and Treatment Block Grant; Medi-Cal Access Program; California Children's Services program; Child Health and Disability Prevention program; the Genetically Handicapped Persons Program; the Newborn Hearing Screening Program; the Family Planning, Access, Care, and Treatment program (Family PACT); Program of All-Inclusive Care for the Elderly, and Every Woman Counts. DHCS also administers programs for underserved Californians, including farm workers and American Indian communities.

3. I am familiar with the final rule entitled "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" (the Rule), published in the Federal Register on May 21, 2019, effective date November 22, 2019.

4. As discussed further below, I anticipate that the Rule will increase costs for DHCS and sub-recipients, and will likely have negative impacts to health care access in the State.

5. The Rule places at risk all federal funds DHCS receives from the U.S. Department of Health and Human Services, as well as from the U.S. Department of Education and the U.S. Department of Labor, if California is determined to be in violation of the Rule. DHCS is extremely dependent on the receipt of federal funding. The approximated total amount of federal funds DHCS received in the 2018-19 State Fiscal Year was $63.68 billion.

6. The Rule will impose immediate costs on DHCS, which will be incurred across the fee-for-service and managed care Medi-Cal delivery systems and various other health care programs administered by DHCS across the State of California. This includes, but is not limited to, the following activities: changes to internal and external DHCS webpages; preparation and physical posting of revised notices at all DHCS locations, including both for the public and for DHCS workforce; preparation and publication of revisions to DHCS applications, policy guidance and similar materials for providers, health plans, beneficiaries, other contractors or sub-recipients, and DHCS workforce; and providing notice to and overseeing implementation by all political subdivisions of the State, various DHCS contractors such as managed care plans, and various other sub-recipients of the implicated federal funds. As a preliminary estimate, DHCS projects immediate costs in the range of $3.5 Million to $4.5 Million (total funds). Such costs include projected staff and contractor expenses, as well as information technology/system costs over a variety of Medi-Cal delivery systems and other DHCS health care programs.

7. The Rule imposes significant ongoing recordkeeping and compliance costs on DHCS, particularly considering the many sub-recipients across various Medi-Cal delivery systems and separate DHCS-administered health care programs (potentially in the thousands or more). It is my understanding that a sub-recipient's violation of the Rule similarly places all federal funds at risk, in addition to DHCS compliance as a recipient. Medi-Cal sub-recipients include independent political subdivisions of the State, such as counties. In order to comply with the Rule's assurance/certification and compliance processes, 84 Fed. Reg. 23269–71 (codified at 45 C.F.R. 88.4, 88.6), DHCS will need to develop and maintain a comprehensive system for

tracking and monitoring compliance at DHCS, as well as compliance status of all sub-recipients to DHCS in the State. This system will require dedicated staff and contractor resources to fulfill the many compliance activities required in the Rule including, but not limited to: maintaining complete and accurate records of compliance with the Rule, including sub-recipients (45 C.F.R. 88.6(b)); tracking all accommodation requests and complaints across multiple programs (45 C.F.R. 88.6(b)(2)); facilitating investigation of DHCS or any sub-recipient (45 C.F.R. 88.6(c)); implementing, or overseeing sub-recipient implementation of, any corrective action required under the Rule (45 C.F.R. 88.6(a)); reporting of any recipient or subrecipient compliance reviews or complaints to the Office for Civil Rights for the past three years (45 C.F.R. 88.6(d)); and providing ongoing oversight of and training to the many sub-recipients across the State. As a preliminary estimate, DHCS projects annual recordkeeping and compliance costs in the range of $1 million to $2 million (total funds). Such costs include projected staff and contractor expenses, as well as information technology/system costs over a variety of Medi-Cal delivery systems and other DHCS health care programs.

8. In developing its annual budget, DHCS does so with the expectation that it will receive a projected amount of federal funds it is entitled to under federal law and its agreements with federal agencies, but are put at risk under the Rule. Given the joint federal-state nature of the Medicaid program, the federal funds on which DHCS relies each fiscal year are extensive, and implicated in nearly every activity contemplated under the DHCS budget, including both medical assistance and administrative expenditures. With the size and complexity of DHCS programs, the annual process for developing the Medi-Cal budget necessarily begins well in advance of the subject State's fiscal year. One of the most crucial components of that process is accurately projecting the approximate federal funding available for the myriad of DHCS activities addressed through the budget. These projections of anticipated revenues, most notably the available federal funding, are the foundation from which all spending decisions are made and policy priorities are set. Approximately one-third of California's population receives healthcare services through coverage financed or administered by DHCS, making the department the largest healthcare purchaser in California. A sudden, more-than-temporary disruption in anticipated federal funds

would cause budgetary and operational chaos, upending the foundational assumptions on which the budget is crafted and negotiated. This could have far-reaching detrimental consequences, not only for beneficiaries accessing covered services, or providers and managed care plans receiving payment for rendering services, but also could complicate or in some cases halt ongoing administration of the programs at the State and local levels.

9. Any gap in federal funding or protracted period of significant federal funds being withheld from California, or worse yet a permanent loss of federal funds, would force the State to consider significant, devastating, and consequential spending reductions to make up for lost funding that could not be replaced with new State revenue sources. Due to mandates in federal Medicaid law, these options would be limited to program areas where California exceeds federal minimums, for example optional benefits or eligibility groups, or supplemental or enhanced payments for providers or managed care plans. Such cuts would likely constrain access to healthcare for affected populations and underserved communities statewide, leading individuals to either forego necessary care or resort to more costly emergency settings, and the impact of such increased uncompensated care costs would reverberate throughout the entire California economy, including putting a massive strain on the state's coffers.

10. The elimination of funding to DHCS would harm California's healthcare system and economy. Given the breadth and scope of this unprecedented rule, and lack of clarity and certainty around its enforcement, services to beneficiaries could be harmed.

11. The Rule will likely make it more difficult for beneficiaries of DHCS-administered programs to access an array of covered and medically necessary services. Given the Rule's expansive breadth, the potential for impeded access is not just with respect to a healthcare entity's ability to refuse to provide an affected service. Rather, that ability to abstain seemingly extends broadly and includes referrals and information sharing with a patient. Because of this, I believe it is likely the Rule will constrain provider supply and impede access to certain service categories, particularly in rural or otherwise underserved regions of the State. In addition, the potential for negative impacts would likely be disproportionately borne by vulnerable population groups, such as low-income women and the LGBTQ community. Further, these potential, negative impacts to

access would be significantly exacerbated in the event a sizable portion of federal funds is withheld due to a violation by DHCS or one of its many sub-recipients.

12. The Rule will also put women at greater risk of unintended pregnancies. My responsibilities at DHCS includes oversight of the Office of Family Planning (OFP) which is responsible for developing family planning policy in Medi-Cal and administering family planning-related programs. OFP administers the Family PACT program which is California's innovative approach to provide comprehensive family planning services to eligible low income men and women that do not otherwise qualify for full scope Medi-Cal coverage. The goal of FPACT is to ensure that low-income women and men have access to health information, counseling, and family planning services to reduce the likelihood of unintended pregnancy and to maintain optimal reproductive health. The intent of the program is to provide eligible California women and men access to comprehensive family planning services in order to establish the timing, number and spacing of their children and maintain optimal reproductive health. A rule that allows pharmacists and other providers to interfere with a woman's access to contraceptives and other reproductive health care will result in a hardship on the participants in this program likely leading to increased costs because of delays or other barriers to receiving desired services,

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 29, 2019 in Sacramento, CA.

Mari Cantwell
Chief Deputy Director, Health Care Programs
California Department of Health Care Services