

1 XAVIER BECERRA  
 Attorney General of California  
 2 KATHLEEN BOERGERS, State Bar No. 213530  
 Supervising Deputy Attorney General  
 3 KARLI EISENBERG, State Bar No. 281923  
 STEPHANIE YU, State Bar No. 294405  
 4 NELI N. PALMA, State Bar No. 203374  
 Deputy Attorneys General  
 5 1300 I Street, Suite 125  
 P.O. Box 944255  
 6 Sacramento, CA 94244-2550  
 Telephone: (916) 210-7522  
 7 Fax: (916) 322-8288  
 E-mail: Neli.Palma@doj.ca.gov  
 8 *Attorneys for Plaintiff State of California, by and  
 through Attorney General Xavier Becerra*

9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12

13 CITY AND COUNTY OF SAN FRANCISCO,  
 14 Plaintiff,

15 vs.

16 ALEX M. AZAR II, et al.,  
 17 Defendants.

18 STATE OF CALIFORNIA, by and through  
 ATTORNEY GENERAL XAVIER BECERRA,  
 19 Plaintiff,

20 vs.

21 ALEX M. AZAR, et al.,  
 22 Defendants.

23 COUNTY OF SANTA CLARA et al,  
 24 Plaintiffs,

25 vs.

26 U.S. DEPARTMENT OF HEALTH AND  
 HUMAN SERVICES, et al.,  
 27 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

1 I, Mari Cantwell, declare:

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

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

26 3. I am familiar with the final rule entitled "Protecting Statutory Conscience Rights  
27 in Health Care; Delegations of Authority" (the Rule), published in the Federal Register on May  
28 21, 2019, effective date November 22, 2019.

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

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

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

21           7.       The Rule imposes significant ongoing recordkeeping and compliance costs on  
22 DHCS, particularly considering the many sub-recipients across various Medi-Cal delivery  
23 systems and separate DHCS-administered health care programs (potentially in the thousands or  
24 more). It is my understanding that a sub-recipient's violation of the Rule similarly places all  
25 federal funds at risk, in addition to DHCS compliance as a recipient. Medi-Cal sub-recipients  
26 include independent political subdivisions of the State, such as counties. In order to comply with  
27 the Rule's assurance/certification and compliance processes, 84 Fed. Reg. 23269-71 (codified at  
28 45 C.F.R. 88.4, 88.6), DHCS will need to develop and maintain a comprehensive system for

1 tracking and monitoring compliance at DHCS, as well as compliance status of all sub-recipients  
2 to DHCS in the State. This system will require dedicated staff and contractor resources to fulfill  
3 the many compliance activities required in the Rule including, but not limited to: maintaining  
4 complete and accurate records of compliance with the Rule, including sub-recipients (45 C.F.R.  
5 88.6(b)); tracking all accommodation requests and complaints across multiple programs (45  
6 C.F.R. 88.6(b)(2)); facilitating investigation of DHCS or any sub-recipient (45 C.F.R. 88.6(c));  
7 implementing, or overseeing sub-recipient implementation of, any corrective action required  
8 under the Rule (45 C.F.R. 88.6(a)); reporting of any recipient or subrecipient compliance reviews  
9 or complaints to the Office for Civil Rights for the past three years (45 C.F.R. 88.6(d)); and  
10 providing ongoing oversight of and training to the many sub-recipients across the State. As a  
11 preliminary estimate, DHCS projects annual recordkeeping and compliance costs in the range of  
12 \$1 million to \$2 million (total funds). Such costs include projected staff and contractor expenses,  
13 as well as information technology/system costs over a variety of Medi-Cal delivery systems and  
14 other DHCS health care programs.

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

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

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

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

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

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

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

17  
18 I declare under penalty of perjury under the laws of the United States and the State of  
19 California that the foregoing is true and correct to the best of my knowledge.

20  
21 Executed on August 29, 2019 in Sacramento, CA.

22  
23 

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