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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
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**DECLARATION OF DARREL
CUMMINGS, CHIEF OF STAFF OF
THE LOS ANGELES LGBT
CENTER, IN SUPPORT OF
PLAINTIFFS' 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, Darrel Cummings, hereby state as follows:

2 1. I am currently the Chief of Staff of the Los Angeles LGBT Center (“the Center”), a not-
3 for-profit 501(c)(3) organization based in Los Angeles, California, that provides a variety of
4 services to members of the lesbian, gay, bisexual, and transgender (“LGBT”) communities. I have
5 served in that capacity since 2003, and also previously served as Chief of Staff from 1993 through
6 1999. More broadly, I have been an advocate on LGBT issues since 1979. I submit this declaration
7 in support of Plaintiffs’ Motion for Summary Judgment and in support of their opposition to
8 Defendants’ Motion to Dismiss or, in the alternative, for Summary Judgment.

9 2. The Center was founded in 1969 and offers programs, services, and global advocacy
10 that span four broad categories: health, social services and housing, culture and education, and
11 leadership and advocacy. The mission of the Center is to fight bigotry and build a world where
12 LGBT people thrive as healthy, equal, and complete members of society. Today the Center’s more
13 than 650 employees provide services for more LGBT people than any other organization in the
14 world, with about 500,000 client visits per year.

15 3. As the largest provider of services to LGBT people in the world, many of the Center’s
16 patients tell us that they come to the Center seeking culturally competent healthcare due to being
17 denied care or discriminated against based on their real or perceived sexual orientation, gender
18 identity and HIV status. The Center’s client population is disproportionately low-income and
19 experiences high rates of chronic physical and mental conditions, homelessness, unstable housing,
20 trauma and discrimination, and stigmatization in healthcare services. Many of these clients come
21 to the Center from different areas of California, other states, and even other nations to seek services
22 in a safe and affirming environment.

23 4. The Center is one of the nation’s largest and most experienced providers of LGBT health
24 and mental healthcare. We accept a variety of health insurance plans, including Medi-Cal
25 (California’s Medicaid program), Medicare, and most private insurance plans. We also provide
26 services to uninsured individuals. We work with these individuals to help them access insurance
27 through Covered California (California’s Affordable Care Act “exchange”), and/or navigate other
28 medical- and drug-assistance programs. Where insurance is not available, our services are offered

1 on a sliding-scale basis, based on ability to pay. We pride ourselves on providing leading-edge
2 healthcare, regardless of individuals' ability to pay.

3 5. The Center receives various forms of Health and Human Services funding, including
4 Public Health Service Act funding. Approximately 80 percent of the Center's funding originates
5 from the federal government, including, but not limited to, funding under the Ryan White
6 Comprehensive AIDS Resources Emergency Act of 1990, direct funding from the Centers for
7 Disease Control and Prevention, discounts under the 340B Drug Discount Program, and Medicaid
8 and Medicare reimbursements. The Center also receives federal funding for research programs,
9 and is currently a participant in multiple federally-funded studies, including through National Heart,
10 Lung, and Blood Institute; National Institute of Allergy and Infectious Diseases; National Institute
11 of Child Health and Human Development; the National Institutes of Health, National Institute of
12 Drug Abuse, and the Patient-Centered Outcomes Research Institute. The Center is, therefore,
13 subject to the substantive requirements of the Denial-of-Care Rule and has a reasonable fear that it
14 could be at risk of sanction and loss of federal funding as a result of the Denial-of-Care Rule.

15 6. As a federally qualified health center, the Center is required to serve anyone on a
16 nondiscriminatory basis who walks into its doors. The Denial-of-Care Rule's vague language
17 makes it difficult for the Center to decipher how to proceed in light of contradictions between the
18 Denial-of-Care Rule on the one hand and, on the other hand, nondiscrimination requirements,
19 medical statutes, rules, standards of care, ethics requirements, and accreditation standards. The
20 Denial-of-Care Rule invites chaos within the Center, will consume the Center's resources, and will
21 make it more difficult for the Center to provide the same level of premier care to its patients. The
22 Center cannot function in such an environment.

23 7. The Center provides a wide spectrum of healthcare services, including, but not limited
24 to, HIV treatment, testing, and prevention care, as well as treatment for gender dysphoria and
25 mental healthcare. The Center has medical providers who specialize in the care of transgender
26 patients and who provide a full range of primary care services in addition to hormone therapy, pre-
27 and post-surgical care, and trans-sensitive pap smears, pelvic exams, and prostate exams. The
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1 Center's broad array of healthcare services are all under one roof, from counseling and therapy to
2 pharmaceutical and nutrition needs.

3 8. The Denial-of-Care Rule will worsen health disparities between the LGBT community
4 and other communities. With existing health and healthcare disparities in the LGBT community –
5 particularly the shortage of LGBT/HIV culturally competent providers – the Denial-of-Care Rule's
6 broad and vague language and invitation to providers to engage in discrimination will further
7 exacerbate existing barriers to healthcare and result in negative community health outcomes.

8 9. For example, the Center's providers have observed patients arriving at the Center with
9 acute medical conditions that could have been avoided but-for the patients' reluctance to seek
10 routine and necessary medical care for fear of discrimination and being turned away. A shocking
11 number of LGBT patients fear going to a healthcare provider due to negative past experiences
12 directly related to their sexual orientation or gender identity. The Denial-of-Care Rule will
13 exacerbate those numbers as a result of increased discrimination and denials of healthcare
14 treatment. For similar reasons, LGBT people are less likely to have a primary care provider whom
15 they consider their personal doctor. That means that in times of need, LGBT people are more likely
16 to randomly select a healthcare provider with whom they do not have a relationship, and they are
17 at increased risk of finding a provider who is not LGBT-affirming. With an increase in refusals of
18 healthcare services as a result of the Denial-of-Care Rule, LGBT people will be far less likely to
19 receive the healthcare treatment that they need because, after being turned away, they are unlikely
20 to seek other care out of fear of repeated rejections.

21 10. This directly affects the Center because there will be an increase in community members
22 seeking referrals to LGBT-affirming services that the Center does not have sufficient resources to
23 provide, an increase in community members experiencing the trauma of discriminatory or
24 unwelcoming healthcare experiences, and worsened community health outcomes among the
25 population that the Center serves. Additionally, the Center will have to expend more resources on
26 its health promotion campaigns to ensure that LGBT patients access necessary preventative
27 screenings and testing (including for cancer, HIV and other STIs) given that the Denial-of-Care
28 Rule will change the healthcare landscape for the LGBT patient population.

1 11. For some patients that the Center serves, especially those who live in regions with
2 limited options for LGBT-affirming healthcare services, finding LGBT-inclusive healthcare
3 options is already a struggle. Additionally, for some medical specialties, there are only a handful
4 of healthcare providers in a patient's region who have the specialty necessary to treat the patient,
5 so a denial of care by even one provider could make it practically impossible for an LGBT patient
6 to receive the specific healthcare service sought. This is even more concerning in regions where
7 patients' only options are religiously-affiliated organizations that could claim religious or moral-
8 based objections to providing any and all care to LGBT patients as a result of the Denial-of-Care
9 Rule, in contradiction to medical ethics and standards of care.

10 12. The Denial-of-Care Rule's overly broad language invites increased discrimination
11 against LGBT people and people living with HIV at other healthcare centers, outside of the Center.
12 The Center's healthcare providers – particularly its counselors, psychiatrists and other behavioral-
13 health staff – have treated many patients who have experienced traumatic stigma and discrimination
14 based on sexual orientation, gender identity, HIV status, and/or other factors. The stories that
15 patients tell the Center's staff about their discriminatory experiences outside of the Center include:

- 16 a. One transgender patient was unable to find supportive mental-health housing
17 due to discriminatory experiences based on gender identity, which led to the
18 patient being homeless.
- 19 b. Another transgender patient, who developed profuse bleeding after surgery,
20 was denied treatment at an emergency room where they were told by an
21 emergency room doctor: "what do you want me to do about it?" They arrived
22 at the Center in distress three days later, having lost a significant amount of
23 blood.
- 24 c. A transgender patient needed to have a pelvic exam. The Center referred
25 him to a specialist who denied services to him because he was transgender.
- 26 d. Patients have stated that their physicians told them that they do not need HIV
27 testing because they are not engaging in same-sex sexual relationships. Not
28 only is that conclusion contrary to medical guidelines, but when patients

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refuted assumptions about their sexual relationships, they were met with disapproval.

- e. Patients have expressed concern about traveling outside of Los Angeles for business because if they are ever in need of emergency medical assistance, they will not know where to go to ensure that they will receive nondiscriminatory, proper healthcare services.
- f. One patient recalled that when her late partner was in the hospital, she was there most of the time to care for her. There was a nurse who treated them kindly and appropriately until the nurse heard them refer to each other by “Honey.” The look on the nurse’s face changed and she treated the couple “like trash” after that. The patient remarked that allowing healthcare employees (everyone from those working in food service and housekeeping to physicians and nurses) to express their religious or moral views when providing care to patients results in placing LGBT patients in a “lesser-than” category of patients.
- g. Patients residing at assisted-living facilities have described discrimination and denials of care when their sexual orientation, gender identities, and HIV statuses were revealed. Patients who are transgender have described having to hide their gender identities and transgender status once they are no longer able to care for themselves and are required to find assisted-living arrangements.
- h. Patients have described being intentionally referred to by names and pronouns other than their preferred names while seeking healthcare services elsewhere.
- i. A patient described being given his positive HIV results by way of his provider placing a lab printout on the counter then leaving for 10 minutes and letting the patient read it. The patient was not given any further information, and was instead told to go to our Center.

1 j. Patients have reported that their primary care physicians do not feel
2 comfortable prescribing HIV preventatives, such as Truvada for PrEP, even
3 when such medications are appropriate and should be provided according to
4 current medical guidelines and standards of care. Patients also have reported
5 that their physicians shame them for requesting PrEP medications and then
6 deny them the medication, which is how they find their way to the Center.
7 For example, when one patient asked his provider about Truvada, his
8 physician questioned him as to why he needed it and proceeded to tell the
9 patient that he would not need the medication if he were more careful.
10 Another patient was denied PrEP altogether and lectured that he did not need
11 PrEP unless he was having sex with sex workers.

12 k. Patients also have expressed reluctance to use their insurance for PrEP
13 because they are afraid of having the drug documented on their insurance
14 record. These patients fear that a history of using a medically necessary HIV
15 preventative could be used against them in the future by making them targets
16 for discrimination based on sexual orientation, gender identity and/or
17 transgender status, and HIV status, given the current political climate and
18 discrimination in the healthcare context.

19 l. A significant number of patients come to the Center's Sexual Health and
20 Education Program for testing and sexual education rather than their primary
21 care physicians because they do not feel comfortable talking about their
22 sexual histories and choices out of fear of being treated negatively,
23 judgmentally, and with bias and discrimination.

24 m. Multiple patients have stated that they come to the Center to be tested for
25 sexually transmitted infections because the Center does rectal and throat
26 swabs instead of only urine tests. Not all healthcare providers do all three
27 forms of testing even though three-site testing provides the most accurate
28 results for testing and treating sexually transmitted infections. This is

1 especially true for gay men. Someone could test negative for a sexually
2 transmitted infection with a urine test, for example, but test positive with a
3 rectal swab. Patients report that when they specifically asked their outside
4 provider to do rectal swabs, they were judged. When patients are judged by
5 their physicians and/or cannot be out to their physicians about their sexual
6 orientation and/or gender identity out of fear of discrimination, LGBT
7 patients cannot receive the healthcare services that they need, including
8 prophylactic treatments, and may experience delays in medically necessary
9 treatments, resulting in more acute, life-threatening conditions.

10 13. Many of the Center's patients and LGBT people in general have reported that they are
11 not out to their other medical providers about their sexual orientation and/or gender identities out
12 of fear of discrimination and denial of healthcare. The discriminatory mischaracterization of
13 transgender-affirming care as "sterilization" in the preamble to the Denial-of-Care Rule will result
14 in an increase in the examples of discrimination cited above. For many transgender individuals,
15 gender confirmation surgery is a treatment for gender dysphoria and is not a surgery meant to affect
16 reproduction, just as a hysterectomy on a cancer patient is not intended to affect procreation. While
17 impacts on reproduction may be an incidental effect of some transgender-affirming care, such
18 treatment is *not* "sterilization."

19 14. The Denial-of-Care Rule invites further discrimination justified by religious or moral
20 beliefs against the Center's patients and puts the health of LGBT patients at risk. The Rule
21 encourages LGBT patients to attempt to hide their LGBT identities when seeking healthcare
22 services, especially from religiously-affiliated healthcare organizations, in order to avoid
23 discrimination. When patients are unwilling to disclose their sexual orientation and/or gender
24 identity to healthcare providers out of fear of discrimination and being refused treatment, their
25 mental and physical health is critically compromised.

26 15. The Denial-of-Care Rule also adversely impacts the Center by necessitating the
27 diversion and reallocation of resources in order to provide referrals to patients, including for
28 patients that the Center does not have the resources to treat because of increased demand for the

1 Center's services as a result of the Rule. The Denial-of-Care Rule will cause an increased number
2 of LGBT patients and patients living with HIV to seek the Center's assistance in finding LGBT-
3 affirming healthcare providers. The Center will also have more difficulty finding LGBT-affirming
4 healthcare providers, especially those with niche specialties, given that the Rule emboldens
5 healthcare providers to refuse to treat LGBT patients.

6 16. The increase in referral requests requires the Center to allocate additional staff time to
7 pre-screen service referrals to ensure that staff are sending patients to LGBT-affirming providers
8 and not to providers who themselves or whose staff would cause additional harm to the Center's
9 patients. As a result of the Denial-of-Care Rule, the Center may need to hire a case-manager to
10 address the community's need for referrals to welcoming providers. The Center's staff and
11 resources have already been spent engaging in advocacy, policy analysis, and services to address
12 the ill-effects of the Denial-of-Care Rule. The Center will also have to divert resources away from
13 other programming to conduct informational sessions about the Denial-of-Care Rule to answer
14 patients' and staff members' questions about how the Rule will affect them and the services that
15 the Center provides.

16 17. It will be increasingly difficult to determine whether job applicants will be unwilling to
17 perform essential job functions, which is likely to undermine the Center's philosophy of fostering
18 a diverse workforce. The Center's current recruiting process is developed to ascertain whether a
19 job applicant will provide healthcare consistent with the Center's mission to establish a welcoming,
20 nondiscriminatory environment for all patients and staff, without violating the law. Providing care
21 in a non-discriminatory and inclusive manner, putting aside people's individual religious or moral
22 beliefs, is a core part of the Center's job criteria for new applicants. If the Center can no longer
23 inquire about whether an applicant will decide which patients to treat on the basis of religious
24 principles that are inconsistent with the Center's mission, hiring managers will be in a complex
25 position of trying to ascertain whether those job candidates might cause harm to patients while at
26 the same time considering risks and requirements under the Denial-of-Care Rule. The Center
27 cannot alter those job criteria without thwarting its mission.

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1 18. Furthermore, if the Center is required to get the consent of religious or moral objectors
2 to a proposed accommodation for their religious beliefs, the Center's operations will be negatively
3 affected, resulting in potential delays in treatment, prevention, and other supportive health services
4 to patients. Under the broad and vague language of the Denial-of-Care Rule, the Center will
5 constantly fear the realistic possibility that any of its staff – from janitorial to cafeteria or security
6 personnel – could discriminate against the Center's patients on the basis of religious beliefs, causing
7 extreme harm to the Center's patients and mission. The Center will have no recourse to reassure its
8 patients that the Center is a safe and affirming place for them to seek healthcare, which could cause
9 irreparable damage to the Center's reputation. Likewise, implementation of the notice provision in
10 the Denial-of-Care Rule that implicitly puts the onus on patients to request an LGBT-affirming
11 healthcare provider who will not have a religious-based objection to treating such patients would
12 result in immediate negative responses from clients and erode patient trust, further thwarting the
13 Center's mission.

14 19. In short, the Denial-of-Care Rule makes it difficult, if not impossible, for the Center to
15 continue providing the same level of social, mental, and physical healthcare to its patients. The
16 Center's mission includes addressing the need for equity in healthcare for all of the Center's
17 patients and the LGBT community generally. This mission will be frustrated by the Denial-of-Care
18 Rule as there will be a decline in overall LGBT-patient health and public health at large.

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

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22 Executed on September 4, 2019, in Los Angeles, California.

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25 Darrel Cummings
26 Chief of Staff
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