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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. C19-02405 WHA
No. C19-02769 WHA
No. C19-02916 WHA

DECLARATION OF MARK GHALY 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

I, Mark Ghaly, declare:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated herein. If called as a witness, I could and would testify competently to all the matters set forth below.

2. I am the Secretary of the California Health & Human Services Agency (CHHS). The California Health & Human Services Agency (CHHS) is the state's largest agency. The Secretary of CHHS is a member of the Governor's Cabinet. CHHS oversees twelve departments and five offices that provide a range of health care services, social services, mental health services, alcohol and drug services, income assistance, and public health services to Californians from all walks of life. More than 33,000 people work for departments in CHHS at state headquarters in Sacramento, regional offices throughout the state, state institutions and residential facilities serving the mentally ill and people with developmental disabilities.

3. I was appointed Secretary of CHHS by Governor Newsom in April 2019. I am a Secretary in Governor Newsom's cabinet. My duties as Secretary of CHHS include supervising the CHHS departments and offices in administering and overseeing state programs for health care and social services. CHHS departments are instrumental in implementing Governor Newsom's goal of achieving universal coverage in the state and expanding access to care.

4. Before my appointment as Secretary of CHHS, I served for over a decade in various health care programmatic and policy leadership roles in county government. Most recently, since April 2018, I served as the Director for Health & Social Impact at the Los Angeles County Chief Executive Office, where I spearheaded and supported a number of health care, housing, and employment initiatives for the County. From 2011 until April 2018, I was the Deputy Director for Community Health and Integrated Programs for the Los Angeles County Department of Health Services. In that role, I directed clinical services for county correctional facilities; the Los Angeles County Whole Person Care Pilot Program; and created and developed a program for individuals facing chronic illnesses and homelessness to obtain permanent housing and appropriate treatment. Before my appointment in Los Angeles County, I served for five years in the City and County of San Francisco as the Medical Director for Southeast Health Center, a

public health clinic located in the Bayview-Hunters Point community. As Medical Director, I supervised clinic operations and promoted community-based initiatives to improve population health. In 1996, I earned a Bachelor of Arts degree in Biology and Biomedical Ethics from Brown University. In 2002, I earned a Doctorate of Medicine from Harvard Medical School, as well as a Masters in Public Health from the Harvard School of Public Health. And in 2006, I completed my residency training in Pediatrics at the University of California, San Francisco.

5. CHHS oversees the Department of Aging, the Department of Child Support Services, the Department of Community Services & Development, the Department of Developmental Services, the California Emergency Medical Services Authority, the Department of Health Care Services, the Department of Managed Health Care, The Department of Public Health, the Department of Rehabilitation, the Department of Social Services, the Department of State Hospitals, the Office of Health Information Integrity, the Office of Law Enforcement Support, the Office of Statewide Health Planning and Development, the Office of Systems Integration, and the Office of the Patient Advocate.

6. I am familiar with the rule Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, RIN 0945-AA10, issued by the U.S. Department of Health and Human Services (HHS) on May 2, 2019, and published in the Federal Register on May 21, 2019 (Rule).

7. The Rule will impose an immediate cost on CHHS and the departments and offices it oversees due to its notice, assurance and certification, recordkeeping, and reporting requirements. Although the Rule indicates that the notice requirements are voluntary, the Rule also states that adherence to the notice requirements will be taken into consideration when assessing whether an agency is in compliance.

8. The Rule potentially places at risk all federal funds CHHS receives from the U.S. Department of Health and Human Services. For fiscal year 2019-2020, CHHS expects $77.6 billion in total federal funds in a total budget of $163 billion. Federal funds make up much of CHHS's budget, and a substantial portion of those federal funds come from appropriations subject to the Rule. Loss of this funding would have a devastating impact on California. State programs and local programs that depend on pass-through funding would be unable to absorb

such a loss of funding without cutting staff and services. The state and local governments would be unable to make up this shortfall in funding, and the programs would need to be cut as a consequence.

9. Federal funding comes to the departments CHHS oversees from appropriations acts approved by Congress and signed by the president. The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Public Law 115-245, which was enacted September 28, 2018, makes appropriations for the following programs (among others), which provide funding to CHHS and the departments and offices it oversees:

- Title XIX of the Social Security Act, to operate and make payments for Medicaid which provides healthcare coverage for low-income adults, families and children, pregnant women, the elderly, and people with disabilities;
- The Child Support Enforcement and Family Support Programs for child support enforcement and family support programs;
- The Social Security Block Grant Program to assist states in delivering social services by helping reduce dependency, increase self-sufficiency, prevent abuse and neglect, and limit institutional care, if possible;
- The Older Americans Act of 1965 for programs that serve older adults, adults with disabilities, family caregivers, and residents in long-term care facilities; ;
- The 21st Century Cures Act, section 1003(c), and the State Opioid Response Grants Program to assist state response to the opioid crisis;
- The Ryan White HIV/AIDS Program to provide primary medical care and essential support for people with HIV/AIDS; and
- The Rehabilitation Act of 1973 to ensure that individuals with disabilities have access to programs and activities that are funded by federal agencies and to federal employment.

10. In developing its annual budget, CHHS did so with the expectation that it would receive the federal funds to which it is entitled to under its existing agreements under the

aforementioned federal programs—these funds are now being placed at risk under the Rule. Under the regulatory language of the Rule, however, it is now unclear how HHS will implement and enforce monetary consequences for noncompliance with the Rule given the new and broader definitions, number of laws that now fall within the ambit of the Rule, and expanded enforcement tools. Also, the Rule makes CHHS departments liable for the actions of third parties in a manner that is unprecedented in CHHS' experience and unworkable in practice.

11. In California, county and local partners administer the vast majority of health and human services programs, often as sub-recipients of federal funding that flows through CHHS departments. Counties and local partners are independent legal entities and make compliance determinations independently from CHHS. If a sub-recipient is deemed to be in violation of the Rule and federal funding is withheld from these programs, local communities statewide will suffer devastating consequences. A sudden disruption in anticipated federal funds would create budgetary chaos for CHHS, the departments and offices it oversees, and the many entities that receive pass-through federal funding.

12. Already, State officials and I have discussed how the administration can comply with the Rule's requirements while simultaneously abiding by California laws. For example, representatives of the Department of Managed Health Care and I have discussed how to ensure that licensed plans abide by California law that requires health plans to provide basic, non-discriminatory health care services while not running afoul of this Rule and jeopardizing billions of dollars in federal funding.

13. It is estimated that the Department of Health Care Services, which administers California's Medicaid program, known as Medi-Cal, and other federally funded health care programs, will receive more than $60.3 billion in federal funding for services and operations in Fiscal Year 2018-2019. Much of this funding is expended by the state in expectation of reimbursement from the federal government.

14. The loss of federal Medicaid or Children's Health Insurance Program funding in California would largely end the delivery of basic health care services to more than 13 million low income, elderly and pregnant individuals, as well as individuals with disabilities. Numerous

studies have shown that not having access to coverage leads individuals to postpone or forgo needed medical treatment, including both preventive treatment as well as treatments for major acute or chronic conditions. Lack of access to timely treatment leads to increased emergency room use and hospitalizations, and a decline in health. Additionally, when uninsured individuals ultimately undergo medical treatment, as everyone eventually must, they often receive unaffordable medical bills, causing serious financial harms. These can include medical debt and bankruptcy.

15. The Department of Social Services estimates that it will receive nearly $2.93 billion in federal funding for various child welfare and refugee assistance programs and over $7.87 billion in federal funding for the In-Home Supportive Services program during Fiscal Year 2018-2019.

16. If federal dollars are reduced or eliminated pursuant to implementation of the Rule, additional social services programs would be impacted, resulting in significant reductions or potentially termination of crucial supports and services that include, but are not limited to: programs for foster care placements and the prevention of child abuse awarded under Titles IV-E and IV-B; the Adoption Assistance Program, which provides financial and medical support to promote the adoption of children who otherwise would remain in long-term foster care; the Kinship Guardianship Program, which promotes permanency for foster children living with an approved relative caregiver; the In-Home Supportive Services Program, which provides services to the elderly and individuals with disabilities to remain safely within in community settings as opposed to institutional placement; and the Refugee and Entrant Assistance Program, which coordinates the delivery of benefits and services to refugees and entrants in the state.

17. Approximately 218,000 households are served in California under the Low-Income Home Energy Assistance Program (LIHEAP). Of the households served, 162,000 are considered a vulnerable population such as elderly, individuals with disabilities, or households with children under five. LIHEAP is the primary source of financial assistance for the eligible low-income households in California to manage and meet their immediate home heating and/or cooling needs. LIHEAP also provides emergency assistance to help low-income households

avoid the loss of home energy services and those facing life-threatening energy-related emergencies created by a natural disaster. The weatherization component of LIHEAP provides energy efficiency upgrades for low-income households, helping to reduce utility costs, while improving the health and safety of the occupants. The heating, cooling, and weatherization services LIHEAP helps to provide can mean the difference between life and death for recipients. Loss of federal funding for this program would deprive thousands vulnerable Californians of the support they need to keep their homes safe for habitation.

18. The California Department of Public Health's (CDPH) Immunization Branch receives substantial annual funding and support under the federal Health and Human Services appropriation, totaling almost $581 million annually. Approximately $537 million supports the Vaccines for Children program, an entitlement program allocated through the Centers for Medicare and Medicaid (CMS) which supplies vaccines for all children in the Medi-Cal program. About $8.7 million in direct assistance provides vaccines for uninsured and underinsured adults being immunized in local health departments and 500 federally qualified health center sites, as well as for outbreak containment. Of the remaining $35.4 million (financial assistance), half of this funding is CDPH support and half is provided through CDPH to all 61 local health departments around the state. If this $581 million in federal support is jeopardized or lost, the local health departments and federally qualified health clinics would be severely limited in their ability to provide immunizations to protect California communities against dangerous diseases, and the state Medicaid program would need to make up a $537 million shortfall in vaccine funding for its pediatric members.

19. CDPH's STD Control Branch receives approximately $8.8 million in annual federal funding. This funding is critical for STD control programs, and enables CDPH to monitor STDs, provide information about STD trends to the public and policy makers, identify effective strategies to control STDs based on the groups and regions most at risk, provide expert consultation and training to front line local disease prevention staff, and leverage partnerships with health care systems and others to prevent disease. Losing this funding would increase the

likelihood of further accelerating the rate of STD transmission at a time when STD rates, particularly syphilis and gonorrhea rates, are already rising in the state.

20. The Public Health Emergency Preparedness Program at CDPH coordinates preparedness and response activities for public health emergencies and supports surge capacity in health care and public health systems during emergencies. This program receives approximately $52.7 million in federal HHS funding annually, without which the state's emergency health care system could be unequipped to handle a public health crisis. These funds provide a whole community approach to emergency response for events ranging from communicable disease outbreaks like the current national measles outbreak to the catastrophic wildfires faced by California over the last few years. The funds provide for advanced planning and preparedness at the state and local level to handle the laboratory and epidemiology skills necessary to stop a communicable disease outbreak. The funds also provide for the safe evacuation of healthcare facilities and emergency medical transport, medical care in evacuation shelters, and the safe repopulation and return to normal operations of the medical and health infrastructure following an event.

21. In addition to the individual and public health harms that would occur if federal funding to these programs is terminated, the Rule will confuse health care consumers about which providers will perform what services and will unduly burden consumers as they try to navigate the health care delivery system. For example, if a consumer's primary care provider refuses to perform certain medically necessary services, such as sterilizations, and the provider refuses to provide the enrollee with a referral to another provider, the consumer may not be aware that the health plan must find another provider to perform the services. In such instances, the consumer may simply forgo the service and suffer serious consequences as a result. Additionally, health plans may be unaware that certain providers will refuse to perform certain services, which will add to the difficulties consumers may face as they try to find providers to perform medically necessary 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 26, 2019 in Sacramento, California.

Mark Ghaly, MD, MPH
Secretary
California Health & Human Services Agency