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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.

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

18 STATE OF CALIFORNIA, by and through  
 ATTORNEY GENERAL XAVIER BECERRA,  
 19 Plaintiff,  
 20 vs.  
 21 ALEX M. AZAR, et al.,  
 22 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**

23 COUNTY OF SANTA CLARA et al.,  
 Plaintiffs,  
 24 vs.  
 25 U.S. DEPARTMENT OF HEALTH AND  
 26 HUMAN SERVICES, et al.,  
 27 Defendants.

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

1 I, Bruce Hinze, declare:

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

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

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

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

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

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

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

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

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

12  
13 I declare under penalty of perjury under the laws of the United States and the State of  
14 California that the foregoing is true and correct to the best of my knowledge.

15  
16 Executed on August 26, 2019 in San Francisco, California.

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19 Bruce Hinze  
20 Bruce Hinze  
21 Attorney V  
22 California Department of Insurance  
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