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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. C19-02405 WHA
 No. C19-02769 WHA
 No. C19-02916 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 RICARDO LARA
 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, Ricardo Lara, declare:

2 1. I am the elected Insurance Commissioner of the State of California. I was elected
3 to this position in November 2018 and was sworn into office on January 7, 2019. I am the first
4 openly LGBTQ person to be elected to statewide office in California. As Insurance
5 Commissioner, I oversee the California Department of Insurance (CDI). Prior to being elected
6 California's Insurance Commissioner, I was elected to and served in the California State
7 Legislature from 2010-2018.

8 2. I am familiar with the final Rule, Protecting Statutory Conscience Rights in Health
9 Care; Delegations of Authority, RIN 0945-AA10, published in volume 84, number 98 of the
10 Federal Register on May 21, 2019, beginning at page 23170.

11 3. If called upon to do so, I could and would testify competently about the contents of
12 this declaration.

13 4. CDI is the largest consumer protection agency in the state and is responsible for
14 regulating California's insurance market, which is the largest in the country. CDI implements
15 and enforces consumer protection laws related to health insurance, including but not limited to,
16 essential health benefits requirements, anti-discrimination protections and laws pertaining to
17 timely access to medical care.

18 5. Based upon my knowledge and experience, I believe the Rule will harm patients
19 by delaying timely access to medical care, result in denial of access to medically necessary health
20 care services, and increase discrimination against patients. This Rule invites discrimination and
21 threatens the health of Californians, particularly women, members of the lesbian, gay, bisexual,
22 transgender, queer or questioning (LGBTQ) community, people of color, and persons living in
23 communities with limited medical treatment options.

24 6. This Rule flies in the face of decades of civil rights laws, court rulings, and our
25 progress as a nation. This Rule allows a broad range of individuals and entities (such as medical
26 providers, medical facilities, insurers, third-party administrators, employers, and their employees
27 such as medical personnel, call center staff, receptionists, scheduling staff and others) to impose
28 their personal bias against a particular medical service or patient. By giving these individuals and

1 entities free rein to put their biases above the needs of patients, this Rule allows these individuals
2 and entities to interfere with patient care, to refuse to provide care, or to refuse to provide health
3 insurance coverage for medically necessary health care services. This Rule will therefore have a
4 chilling effect on the practice of medicine, hospital operations, and insurance coverage for
5 medically necessary services. This Rule threatens a fundamental right, the freedom from
6 discrimination, which state and federal laws guarantee to all people.

7 7. The Rule interferes with enforcement of state laws that prohibit discrimination on
8 the basis of race, color, ancestry, marital status, sex, sexual orientation, gender, and gender
9 identity.

10 8. With this Rule, the federal government threatens to withhold billions of dollars
11 from California unless we deny Californians the privacy and anti-discrimination protections
12 enshrined in state law and our state constitution.

13 9. CDI enforces laws that require that health insurers provide timely access to
14 medical care. Health insurers submit their medical provider network data to CDI, which includes
15 information about medical providers who are available to provide medical care to policyholders
16 of that insurer. CDI receives consumer calls, requests for information, and complaints concerning
17 patients who encounter difficulty receiving timely access to medical care.

18 10. This rule will make it more difficult for patients to access the care they need in a
19 timely manner. When care is delayed or denied, this often results in more costly care being
20 necessary at a later date, which can result in adverse medical outcomes. This Rule will cause
21 confusion for patients as they attempt to exercise their right to access the full range of medically
22 appropriate care, but encounter new roadblocks. The Rule will also create confusion for health
23 facilities, providers and insurers, given that they are bound by state laws that protect patient
24 access to medically necessary health care, while these rules may interfere with the provision of
25 timely access to care.

26 11. If providers exercise the discriminatory refusals of care invited by this Rule,
27 insurers may find that their medical provider networks are now insufficient to provide timely
28 access to specific necessary services. As a result, these insurers will be required to arrange for

1 care for their policyholders with out-of-network providers. This would likely result in increased
2 costs to the insurer that would then be passed on to policyholders. Also, given the overbroad
3 scope of the Rule, an insurer's employee, who has no medical background or involvement in the
4 actual treatment of the insured patient, might nonetheless object on the basis of this Rule to
5 participating in arranging this out-of-network care, further delaying or preventing the patient from
6 accessing care. Similarly, this Rule also increases the likelihood that a patient who goes to an in-
7 network medical facility will be forced to see an out-of-network medical provider to get the care
8 they need, which in some situations will result in the patient having to pay higher, out-of-network
9 cost-sharing.

10 12. Throughout my career in public service, I have heard from people who have
11 experienced difficulty getting access to medical care because they are transgender.

12 13. A 2015 national transgender survey shared with CDI found that 33% of
13 respondents who had seen a health care provider in the past year reported having at least one
14 negative experience related to being transgender such as verbal harassment, refusal of treatment,
15 or having to educate the medical provider about transgender people to receive appropriate care.

16 14. Progress has been made in terms of increasing access to needed medical care for
17 transgender Californians. In 2012, CDI issued regulations clarifying that insurers are prohibited
18 from denying, canceling, and limiting or refusing insurance coverage based on gender identity,
19 expression or transgender status. Health insurance coverage in California is prohibited from
20 arbitrarily excluding coverage for gender affirmation services including (but not limited to)
21 hormone therapy, mental health services and surgical services. However, this Rule seeks to
22 reverse that progress, and may embolden those who might engage in such harassment or refusal
23 to provide care.

24 15. As some providers use this Rule to express their biases while practicing their
25 profession, this Rule will increase discrimination against LGBTQ Californians. This Rule can be
26 expected to increase the number of providers who will not treat someone because they are
27 LGBTQ. Some pediatricians or other primary care providers may decline to treat certain patients.
28 In some areas of California, this will make it very difficult for LGBTQ Californians to access the

1 care they need. This type of discrimination will have devastating impacts on the health and well-
2 being of patients, both those who are denied care and those who worry they will not be able to get
3 care due to this Rule.

4 16. This Rule will limit access to medical services such as human immunodeficiency
5 virus (HIV) preexposure prophylaxis (PrEP) and postexposure prophylaxis (PEP), which will
6 likely result in an increase in the number of people becoming HIV positive. This Rule threatens
7 public health.

8 17. The Federal Bureau of Investigation (FBI) reported that hate crimes have been on
9 the rise three years in a row, but this Rule gives medical providers and others permission to
10 discriminate against even those who need medical attention because they have just been victims
11 of violent hate crimes.

12 18. The federal government should not be encouraging unlawful discrimination by
13 adopting this regulation, which runs counter to existing state and federal privacy and anti-
14 discrimination laws, particularly when the result will be harm to the health and well-being of
15 already vulnerable populations.

16 19. Californians have a constitutionally guaranteed right to privacy. This Rule
17 threatens the ability of Californians to exercise their right to privacy and impedes access to basic
18 health care services.

19 20. As Insurance Commissioner, I enforce the Affordable Care Act (ACA) and state
20 laws that require health insurance policies to cover preventive health care. This Rule will
21 interfere with the ability of women to get access to and even information about the full range of
22 reproductive health services that the law requires be covered by health insurance.

23 21. Prior to the passage of the ACA, CDI heard from some women who had, at times,
24 experienced difficulty filling their prescriptions for contraceptives each month, resulting in their
25 skipping needed pills. Some of those women became pregnant, despite having a prescription for
26 contraceptives. A Rule that allows more pharmacists or others to interfere with a woman's access
27 to contraceptives will result in undue hardships for women, some of whom will then face
28 unintended pregnancies and abortions that would otherwise not have occurred.

1 22. This Rule will limit access to medical services for victims of sexual assault
2 seeking treatment to prevent pregnancy. Delaying such treatment will result in unintended
3 pregnancies. Under this Rule, we can expect that in some communities, a patient who is brought
4 to the nearest emergency room for treatment may need to later transport themselves to a different
5 medical facility where they can receive the treatment they need. By then, it may be too late to
6 prevent an unintended pregnancy.

7 23. This Rule also seeks to make it more difficult for women in many communities to
8 access abortion services. To the extent that a woman's access is delayed, the type of procedure
9 that will be medically appropriate may change and the cost of that procedure will be higher than if
10 she was able to access abortion services earlier in her pregnancy.

11 24. In a circumstance where sterilization is being used for preventive purposes, such as
12 a preventive oophorectomy (removal of ovaries) to reduce the risk of future cancers for women
13 with the high-risk BRCA genetic mutation, this Rule could make it possible for providers to delay
14 or prevent this treatment.

15 25. This Rule will limit access to medical services in rural communities and other
16 geographic areas with limited numbers of health care providers, which will endanger patients.

17 26. The Rule acknowledges that "...patients in rural areas are more likely than patients
18 in urban areas to suffer adverse health outcomes as a result of being denied care" (84 Fed. Reg. at
19 23253) and yet astoundingly the Rule creates a situation in which an overly broad range of people
20 and entities will have the ability to interfere with the ability of a patient who needs medical to
21 care to receive that care.

22 27. Rural communities in California often have fewer primary care doctors and
23 specialists than may be needed to serve a given community. Additionally, in some communities,
24 an individual or employer may only have a choice of one or two health insurers in particular
25 geographic areas when buying coverage. This Rule will be particularly harmful in areas where
26 the small number of medical providers and/or insurers serving the area already presents
27 challenges to timely access to medical care. Some people will have to drive long distances to
28 access care. Others will not be able to afford to travel to receive the medical care they need,

1 which may result in illness or even death that could have been prevented with timely access to
2 medical care.

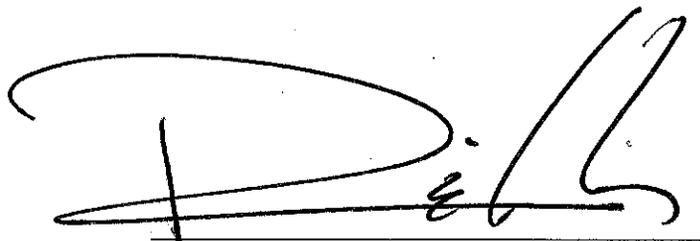
3 28. The Federal Office of Disease Prevention and Health Promotion has
4 acknowledged that LGBTQ persons already face health disparities linked to social stigma,
5 discrimination, and denial of their civil and human rights leading to higher rates of psychiatric
6 disorders, substance abuse and suicide. By allowing health care providers to discriminate against
7 LGBTQ persons, this Rule poses a direct threat to the health of LGBTQ patients.

8 29. This Rule will limit access to mental health care for some populations, resulting in
9 increased suicide rates and treatment costs for suicide attempts, and substance abuse and
10 treatment costs for substance abuse.

11 30. This Rule will interfere with serving the needs of a diverse community. The Rule
12 threatens the health and safety of Californians.

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

16
17 Executed on August 27, 2019 in Sacramento, California

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22 Ricardo Lara
23 Insurance Commissioner
24 State of California