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 8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**  
 9 **AT YAKIMA**

10 STATE OF WASHINGTON,

NO. 2:19-cv-00183-SAB

11 Plaintiff,

DECLARATION OF MIKE  
 KREIDLER IN SUPPORT OF  
 STATE OF WASHINGTON’S  
 MOTION FOR PRELIMINARY  
 INJUNCTION

12 v.

13 ALEX M. AZAR II, in his official  
 capacity as Secretary of the United  
 States Department of Health and  
 Human Services; and UNITED  
 STATES DEPARTMENT OF  
 HEALTH AND HUMAN  
 SERVICES,  
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NOTED FOR: July 17, 2019  
 With Oral Argument at 1:30 p.m.

17 Defendants.

18 Myron Bradford “Mike” Kreidler, declares:

19 1. I am over the age of eighteen years old, have personal knowledge of  
 20 all facts and matters in my Declaration, and am competent to testify to the matters  
 21 below.

22 2. I was first elected Insurance Commissioner in 2000 and have served

1 continuously since then; I was re-elected to my fifth term in 2016. Before being  
2 elected Insurance Commissioner, I received a master's degree in public health  
3 from UCLA, was a doctor of optometry, and practiced with Group Health  
4 Cooperative for twenty years. I also served sixteen years in the Washington State  
5 Legislature and two years as a member of the United States House of  
6 Representatives.

7 3. As the elected Insurance Commissioner, I am responsible for  
8 managing Washington's Office of Insurance Commissioner (OIC), which  
9 protects Washington's insurance consumers and oversees and regulates the  
10 insurance industry. The OIC currently has approximately 246 employees and a  
11 statewide network of more than 400 volunteers. Among its responsibilities, OIC  
12 licenses and audits the 38 insurers domiciled in Washington; regulates and may  
13 revoke the authorization or registration of the more than 2,100 other insurers that  
14 do business in Washington; tests, licenses, and regulates the more than 182,000  
15 individuals and businesses licensed to solicit insurance in Washington. As part  
16 of its regulation of health insurance, the OIC seeks to promote, among other  
17 goals, timely and non-discriminatory access to medical care and essential health  
18 benefits.

19 4. I am familiar with the recent regulatory action taken by the United  
20 States Health and Human Services (HHS) in the form of its proposed Final Rule,  
21 set forth in the Protecting Statutory Conscience Rights in Health Care;

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1 Delegations of Authority, RIN 0945-AA10. Although I have many concerns  
2 about this particular Final Rule, there are four provisions which particularly  
3 threaten the right of Washington consumers to receive timely and affordable  
4 medical care or health coverage. Contrary to existing Washington and federal  
5 law, the Final Rule (a) significantly expands the scope of those who may object  
6 to providing health care; (b) allows a person, or institution, to unilaterally and  
7 absolutely refuse to provide medical care or health insurance coverage;  
8 (c) removes any obligation to refer the patient to alternative sources of, or even  
9 provide information about, other medical care, coverage, or options; and (d) does  
10 not require notice or disclosure of the reason for the refusal, even to the patient.  
11 These changes, individually and collectively, pose an immediate and irreparable  
12 harm to Washington's health care consumers. The following is a summary of the  
13 adverse consequences these changes in the Final Rule will likely have.

14 5. The Final Rule (a) will harm Washington insurance consumers, and  
15 patients, by delaying timely access to medical care; (b) will likely result in denial  
16 of access to medically necessary health care services; and (c) will likely increase  
17 unlawful discrimination against patients. These adverse consequences, and  
18 others, will likely have a disproportionate impact on (a) women; (b) those who  
19 live in rural communities or geographical areas with limited medical treatment  
20 options; (c) and members of the lesbian, gay, bisexual, transgender, queer or  
21 (LGBTQ) community. The following are some, but likely not all, of the adverse  
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1 effects the Final Rule will have on Washington’s insurance consumers.

2 6. As noted, the Final Rule significantly broadens the scope of those  
3 who may refuse to provide medical care by extending it beyond medical  
4 providers, medical facilities, and other health care institutions (such as health care  
5 insurers). For example, in addition to allowing refusals to provide medical care  
6 by medical providers, the Final Rule will also extend this option to their  
7 employers and employees, such as call center staff, receptionists, or scheduling  
8 personnel. In addition to medical facilities, the Final Rule will also apply to  
9 third-party administrators. By extending the option to refuse medical care or  
10 provide health coverage, based on a personal bias against a particular medical  
11 service or patient, the Final Rule threatens the right of Washington consumers to  
12 receive either medical care or health coverage, or both.

13 7. The Final Rule threatens the fundamental right to be free from  
14 discrimination, as it interferes with enforcement of Washington State laws that  
15 prohibit discrimination on the basis of race, color, ancestry, marital status, sex,  
16 sexual orientation, gender, and gender identity.

17 8. The Final Rule creates a greater risk that millions of dollars of  
18 federal funding may be withheld if Washington does not comply with its  
19 mandate, in the judgment of HHS’s Office of Civil Rights, despite the fact that  
20 such “compliance” is contrary to Washington, and federal, law.

21 9. As part of its regulation of health care coverage, OIC requires that  
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1 health insurers provide timely access to medical care. Health insurers submit their  
2 medical provider network data to OIC, which includes information about medical  
3 providers who are available to provide medical care to policyholders of that  
4 insurer. OIC also receives consumer calls, requests for information, and  
5 complaints from patients who encounter difficulty receiving timely access to  
6 medical care.

7 10. The Final Rule will likely make it more difficult for patients to  
8 access the care they need in a timely manner, given its expansive reach. When  
9 care is delayed or denied, it can result in more costly care at a later date, which  
10 can result in adverse medical outcomes. In addition to the increased medical risks  
11 and costs, the Final Rule will likely create greater confusion—for patients,  
12 providers, medical institutions, and health care insurers—given its conflict with  
13 already existing state and federal laws.

14 11. Should medical providers, or their non-medical staff, now exercise  
15 the discriminatory refusals of care invited, and protected, by the Final Rule, the  
16 medical provider networks of health care insurers may be not be able to provide  
17 timely access to specific, reasonable, or necessary medical care. As a result, these  
18 insurers will be required to arrange for care for their policyholders with out-of-  
19 network providers, action that will likely result in increased costs to the insurers  
20 (or their policyholders). In addition to the increased costs, patients forced to seek  
21 out-of-network medical care may pay uncovered higher costs directly.

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1           12. Concerns about access to necessary and timely health care are not  
2 hypothetical. Throughout my medical and public service careers I have heard  
3 from and spoken with many people who have experienced difficulty getting  
4 access to medical care because of who they are or because of the type of medical  
5 care they needed.

6           13. Since 2014, I have made it clear to health carriers in Washington  
7 that they cannot arbitrarily exclude treatment for gender affirmation services,  
8 such as hormone therapy, mental health services, and surgical care. Any  
9 treatments for gender dysphoria must be offered in parity with other medical  
10 services. Although state law prohibits discrimination on the basis of gender  
11 identity, as Washington's Insurance Commissioner, I am concerned that the Final  
12 Rule threatens coverage for this type of medical care and may encourage others  
13 to engage in such discriminatory conduct by refusing to provide medical care.

14           14. As Washington's Insurance Commissioner, I am responsible for  
15 enforcing the federal Affordable Care Act (ACA) and state laws that require  
16 health care insurance policies to provide coverage for preventative care. The  
17 Final Rule will likely interfere with the ability of women to get access to, or even  
18 information about, the full range of reproductive health services that the must be  
19 covered by health insurance.

20           15. It is likely that the Final Rule will create more difficulties for women  
21 who seek to timely and consistently fill their prescriptions for contraceptives each  
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1 month. As a consequence, it is likely that some women will become  
2 unintentionally pregnant, despite having a prescription for contraceptives. By  
3 allowing more pharmacists or others to interfere with access to contraceptives,  
4 the Final Rule will impose increased, and unfair, hardships on women, some of  
5 whom will then face unintended pregnancies or abortions that would otherwise  
6 not have occurred.

7       16. The Final Rule will likely limit access to medical services for  
8 victims of sexual assault who are seeking treatment to prevent pregnancy. A  
9 delay of such treatment can result in unintended pregnancies. For example, it can  
10 reasonably be anticipated that some of victims of sexual assault will be  
11 transported from one emergency room to another, and to a more distant and  
12 inconvenient one at that, so that they may receive the medical care needed. In  
13 addition to the trauma of such an experience, there is the increased risk of an  
14 unwanted pregnancy.

15       17. Aside from pre-pregnancy contraceptive care, the Final Rule will  
16 disproportionately and unfairly impact women who seek access to abortion  
17 services. When access to abortion services is delayed, the type of procedure that  
18 will be medically appropriate may change, and may result in greater cost.

19       18. One of the most troubling aspects of the Final rule is that by  
20 expanding the objection rights of insurance carriers, providers, and employers, it  
21 threatens to unravel the careful balance our state Legislature created under  
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1 RCW 48.43.065, commonly referred to as the Conscience Clause. This statute  
2 gives carriers, providers, and employers, the right to object to providing  
3 mandated coverage on the basis of religious or conscience. However, the rights  
4 of individual enrollees remain protected. If a provider, employer or carrier objects  
5 to coverage of a particular service, then the carrier (when the employer or  
6 provider objects) or the employer (when the carrier objects) must provide  
7 information to enrollees about how they can access services they are entitled to  
8 under state law.

9 19. The Final Rule not only allows objectors to refuse to provide  
10 services, but also allows them to refuse to refer consumers back to their carrier  
11 or employer who could provide crucial and time sensitive information on how to  
12 access services. Even worse, the Final Rule appears to allow carriers and  
13 employers themselves to refuse to provide enrollees with the information they  
14 need to access services.

15 20. It is likely that the Final Rule will also limit access to medical  
16 services in rural communities and other geographical areas where there are  
17 limited numbers of health care providers, a circumstance which will endanger  
18 patients. This is a real risk in Washington, as many parts of our State are sparsely  
19 populated and have limited access to medical providers or facilities.

20 21. Although the Final Rule provides that “. . . patients in rural areas are  
21 more likely than patients in urban areas to suffer adverse health outcomes as a  
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1 result of being denied care” (84 Fed. Reg. at 23253), it has simultaneously  
2 promulgated a number of provisions which expand those who can, and under  
3 what circumstances are able to, interfere with a patient’s need for timely and  
4 necessary medical care.

5 22. As noted, many parts of Washington consist of rural communities,  
6 which have fewer options for access to primary care doctors and specialists. For  
7 those enrolled in employer funded or “self-insured” plans, this impact will be  
8 even more dangerous. Individuals enrolled in a fully insured plan can always  
9 contact their carrier for information about how to access the coverages they are  
10 entitled to receive under state law and the terms of their health plan. But for  
11 self-insured employer plans, there is no health carrier for individual enrollees to  
12 call if their employer refuses to pay for coverage that those enrollees are seeking.  
13 Therefore, those enrollees may have even greater obstacles in obtaining  
14 medically necessary treatment.

15 23. The effects of the Final Rule will likely prove to be  
16 disproportionately harmful in areas where there are smaller numbers of medical  
17 providers or insurers, as the challenges to timely access to necessary medical care  
18 are greater. Some of these challenges include substantially increased driving  
19 distances, increased transportation and travel costs, and increased delay. Worse,  
20 others may not be able to afford these increased costs, and have to forego (or at  
21 least delay) the medical care they need, circumstances which can result in even  
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1 greater illness.

2 I declare under penalty of perjury under the laws of the State of  
3 Washington and the United States of America that the information in my  
4 Declaration is true and correct.

5 DATED this 20th day of June, 2019, at Olympia, Washington.

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MIKE KREIDLER

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**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 24th day of June, 2019, at Seattle, Washington.

*s/ Paul Crisalli*  
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PAUL CRISALLI, WSBA #40681  
Assistant Attorney General