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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff,
v.
ALEX M. AZAR II, *in his official capacity as
Secretary of Health and Human Services,
et al.*,
Defendants.

STATE OF CALIFORNIA, by and through
ATTORNEY GENERAL XAVIER
BECERRA,
Plaintiff

v.
ALEX M. AZAR, et al.,
Defendants.

COUNTY OF SANTA CLARA, et al.
Plaintiffs,

v.
U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,
Defendants.

Case Nos. 3:19-cv-2405-WHA
3:19-cv-2769-WHA
3:19-cv-2916-WHA

**DEFENDANTS' RESPONSE TO
ORDER RE USE OF TERM
"ENTITY"**

Judge: Hon. William H. Alsup

On November 8, 2019, the Court ordered the parties to “advise the Court of the extent to which HHS contends (or has contended) that ‘entity’ as used in the Church Amendment should be construed to include ‘health care entity’ as defined in the challenged rule.” Order, ECF No. 144. Defendants respond as follows:

The Rule provides a two-pronged definition of “health care entity.” 84 Fed. Reg. 23,264 (§ 88.2). One definition applies for purposes of the Coats-Snowe Amendment,¹ and one definition applies for purposes of the Weldon Amendment and section 1553 of the Affordable Care Act.² Neither definition of “health care entity” applies for purposes of the Church Amendments. In other words, HHS has not and does not contend that “entity” as used in the Church Amendments should be construed using the definition of “health care entity” in the Rule.

Separate from its definition of “health care entity,” the Rule also provides a definition of “entity,”³ which is not challenged by Plaintiffs. The Church Amendments contain the term “entity,” but not the term “health care entity.” See, e.g., 42 U.S.C. § 300a-7(c)(1) (“No *entity* which receives a grant, contract, loan, or loan guarantee [under certain programs] may (A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or” (emphasis added)). It is HHS’s position that “entity” in the Church Amendments should be defined as provided by the definition of “entity” in the Rule. There may be examples which would satisfy both the definition of “health care entity” in the Rule and the definition of “entity” in the Rule, such as an individual physician. Whether such entities are considered “entities” under the Church Amendments

¹ See 84 Fed. Reg. 23,264 (“*Health care entity* includes: (1) For the purposes of the Coats-Snowe Amendment (42 U.S.C. 238n) and the subsections of this part implementing that law (§ 88.3(b)), an individual physician or other health care professional, [definition continues]”).

² See 84 Fed. Reg. 23,264 (“*Health care entity* includes . . . (2) For the purposes of the Weldon Amendment . . . Patient Protection and Affordable Care Act section 1553 (42 U.S.C. 18113), and to sections of this part implementing those laws (§ 88.3(c) and (e)), an individual physician or other health care professional [definition continues]”).

³ See 84 Fed. Reg. 23,263 (§ 88.2) (“Entity means a ‘person’ as defined in 1 U.S.C. 1; the Department; a State, political subdivision of any State, instrumentality of any State or political subdivision thereof; any public agency, public institution, public organization, or other public entity in any State or political subdivision of any State; or, as applicable, a foreign government, foreign nongovernmental organization, or intergovernmental organization (such as the United Nations or its affiliated agencies).”).

would be determined by reference to the Rule’s definition of “entity” and not the Rule’s definition of “health care entity.”

Dated: November 12, 2019

Respectfully Submitted,

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