

1 Jeffrey T. Sprung, WSBA #23607
 Martha Rodríguez López, WSBA #35466
 2 Paul Crisalli, WSBA #40681
 R. July Simpson, WSBA #45869
 3 Jeffrey C. Grant, WSBA #11046
Assistant Attorneys General
 4 ROBERT W. FERGUSON
 ATTORNEY GENERAL
 5 Washington Attorney General’s Office
 800 Fifth Avenue, Suite 2000
 6 Seattle, WA 98104
 (206) 464-7744

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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 BILL MOSS
 IN SUPPORT OF STATE OF
 WASHINGTON’S MOTION FOR
 PRELIMINARY INJUNCTION

12 v.

NOTED FOR: July 17, 2019
 With Oral Argument at 1:30 p.m.

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
 15 HEALTH AND HUMAN
 SERVICES,

16 Defendants.
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18 I, Bill Moss, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

19 1. I am the Assistant Secretary to the State of Washington, Department
 20 of Social and Health Services (DSHS), Aging and Long-Term Support
 21 Administration (AL TSA). I was appointed the Assistant Secretary of AL TSA by
 22 the Secretary of the Department of Social and Health Services in February of

1 2013 and serve at the pleasure of Governor Jay Inslee. The Assistant Secretary is
2 a member of the Department's Secretary's Cabinet. My duties as the Assistant
3 Secretary of AL TSA include supervising the AL TSA divisions in administering
4 and overseeing state programs for long-term services and supports that serve our
5 state's aging population and adults with disabilities.

6 2. Over the past two decades, I have provided leadership in a number
7 of positions within DSHS and AL TSA, which include Director of the Home and
8 Community Services Division, Office Chief for Home and Community
9 Programs, and Assistant Regional Administrator for Home and Community
10 Services. In 2017, Governor Jay Inslee appointed me to hold the interim seat as
11 the Acting Secretary for DSHS. I participate on a number of state and national
12 boards and workgroups, including the Training Partnership, which delivers
13 innovative training for long-term care workers in Washington; as Vice Chair for
14 the Health Benefits Trust Board, which provides advisory oversight of affordable
15 benefits for long-term care workers; as Chair of the State of Washington's
16 Dementia Action Collaborative Working Group; Health Care Apprenticeship
17 Program Board (HCAP), and as a previous board member on the National
18 Association of State Units on Aging and Disabilities (NASUAD) (Region X
19 Regional Representative).

20 3. DSHS provides Washington residents assistance with employment,
21 food, cash and medical care, long-term care for adults, rehabilitation services for
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1 youth, support and vocational rehabilitation for individuals with disabilities, and
2 psychiatric care for adults and children. These services are provided through
3 seven different administrations. Each administration contributes to DSHS's
4 mission to Transform Lives. Those administrations are the Aging and Long-term
5 Support Administration (AL TSA), the Behavioral Health Administration (BHA),
6 the Developmental Disabilities Administration (DDA), the Economic Services
7 Administration (ESA), the Rehabilitation Administration (RHA), the Financial
8 Services Administration (FSA), and the Services and Enterprise Support
9 Administration (SESA). The estimated total amount of DSHS funding at risk is
10 for State Fiscal Year 2020 is \$2,529,082,000 and for State Fiscal Year 2021 is
11 \$2,765,114,000.

12 4. AL TSA is comprised of the Office of the Assistant Secretary, the
13 Office of Communication, Government and External Relations, the Office of
14 Deaf and Hard of Hearing Residential Care Services Division, Management
15 Services Division, Home and Community Services Division, and the Adult
16 Protective Services Division. More than 2,450 staff work for the administration
17 at the state headquarters in Olympia and in regional offices throughout the state.
18 AL TSA also contracts with the thirteen statewide Area Agencies on Aging that
19 provide in-home services to individuals sixty years of age and older and clients
20 with disabilities that meet the nursing facility level of care criteria, and their
21 families.

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1 5. In addition to the programs and services provided through ALTSA,
2 DDA provides services to approximately 34,000 Washingtonians. DDA provides
3 services and supports to eligible individuals with developmental and intellectual
4 disabilities, administering programs designed to assist individuals and their
5 families to obtain services in their homes and communities. DDA also provides
6 services in Intermediate Care Facilities for Individuals with Intellectual
7 Disabilities (ICF/IID) and State Operated Nursing Facilities that offer 24-hour
8 housing support and training in daily living skills for clients with disabilities.

9 6. DSHS is tied together by a single mission: to transform lives. Each
10 administration within DSHS has a refined focus on this mission. The
11 development of vision and core value statements within DSHS administrations
12 took place years ago in an effort to unify the Department under one mission. As
13 a result, each administration's mission is aligned with the overall mission of
14 DSHS.

15 7. Individually we have the following missions:
16 a. ALTSA: To transform lives by promoting choice, independence
17 and safety through innovative services. ALTSA's vision is to
18 support seniors and people with disabilities to live with good
19 health, independence, dignity, and to have control over the
20 decisions that affect their lives. Our core values include:
21 collaboration, respect, accountability, compassion, honesty and
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integrity, pursuit of excellence, open communication, diversity and inclusion and commitment to service.

b. DDA: To transform lives by providing support and fostering partnerships that empower people to live the lives they want.

8. Like other administrations within DSHS, DDA convened workgroups of DDA leaders representing a breadth of program areas, vetted drafts through varied stakeholder groups, and published a vision statement and set of core values tailored to reflect DDA’s commitment to the clients and families we support. DDA’s vision is to:

- a. Supporting individuals to live in, contribute to, and participate in their communities;
- b. Continually improving supports to families of both children and adults;
- c. Individualizing supports that will empower individuals with developmental disabilities to realize their greatest potential;
- d. Building support plans based on the needs and the strengths of the individual and the family; and
- e. Engaging individuals, families, local service providers, communities, governmental partners and other stakeholders to continually improve our system of supports.

1 DDA's Core Values are:

- 2 a. Respect gained through positive recognition of the importance of
- 3 all individuals;
- 4 b. Person-Centered Planning to support each person to reach their
- 5 full potential;
- 6 c. Partnerships between DDA and clients, families and providers in
- 7 order to develop and sustain supports and services that are
- 8 needed and desired;
- 9 d. Community Participation by empowering individuals with
- 10 developmental disabilities to be part of the workforce
- 11 contributing members of society.

12 **AL TSA and DDA Provide Critical Home- and Community-Based Services**
13 **to Washingtonians in Need**

14 9. AL TSA and DDA support clients through Medicaid state plan
15 services, including the 1915k Community First Choice option, Private Duty
16 Nursing, 1915c, and 1115 waivers.

17 10. The majority of AL TSA's home and community-based services are
18 funded partially or entirely by HHS, including Medicaid State Plan and Medicaid
19 waiver services, and the Older Americans Act. The range of residential care
20 options funded at least in part by HHS includes nursing homes, which provide
21 24-hour supervised nursing care, personal care, therapy, nutrition management,
22 organized activities, social services, room, board and laundry; assisted living

1 facilities, which are facilities in a community setting where staff assume
2 responsibility for the safety and well-being of an adult; and adult family homes,
3 which are regular neighborhood homes where staff assume responsibility for the
4 safety and well-being of an adult. Services also include in-home personal and
5 nursing care and adult day care, which is a supervised nonresidential program
6 that includes services appropriate for adults with medical or disabling conditions.
7 Individuals attending may receive assistance with personal care, counseling,
8 general therapeutic/recreational activities, general health monitoring and
9 nutritious meals.

10 11. Services that may be offered in the above settings or in the
11 community include information and assistance, environmental modifications,
12 nutrition services, legal services, family caregiver supports, wellness/prevention,
13 specialized medical equipment and supplies, community choice guides,
14 supported employment, supported housing, elder abuse prevention and long-term
15 care ombudsman services.

16 12. Area Agencies on Aging work with local communities and tribal
17 nations to develop and prioritize a menu of additional services that meet the needs
18 of individuals in their area. These may include transportation, adult day care,
19 minor home repairs, foot care, and many more services unique to the needs in the
20 local area.

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1 13. DDA services include in-home, residential, employment and
2 facility-based services such as personal care services, respite care, alternative
3 living services, companion home services, skills acquisition training, personal
4 emergency response, nurse delegation, nursing services, nursing assessment,
5 community transition services from institutional care, ICF/IID, children's
6 behavior support services, community protection services, adult day care,
7 attendant care, child care for foster children, child development services, chore
8 services, information and education, medical and dental services, overnight
9 planned respite services, psychological counseling, recreational counseling,
10 community guide, environmental adaptations, occupational therapy, physical
11 therapy, positive behavior support and consultation, risk assessment, psychiatric
12 services, speech, hearing, and language services, staff and family consultation
13 and training services, transportation and wellness education.

14 **The Final Rule Jeopardizes Every Person Served by DSHS**

15 14. Based on my review of Protecting Statutory Conscience Rights in
16 Health Care Delegations of Authority, published in the Federal Register on
17 May 21, 2019 (Final Rule), the Final Rule will have significant impacts on
18 DSHS.

19 15. The Final Rule creates a categorical right by providers to refuse to
20 provide information or services to which they have a religious or moral objection.
21 This would include a provider's objection to an individual's socioeconomic
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1 status, race, color, gender/gender identity, sexual orientation, religion, national
2 origin, language spoken, political preference, etc. The Final Rule does not
3 specifically identify which religious values are protected and puts all people in
4 Washington at grave risk as it will decrease access to providers.

5 16. The lack of direction in the Final Rule increases the likelihood of
6 harm or death since it permits a personal objection at the time of service,
7 including the front door to any service. This jeopardizes every person served by
8 the Washington DSHS. As an example, without advance documentation of an
9 individual employee's objection to a service, a denial at the time of service puts
10 those we serve at extreme risk of losing essential services without access to
11 alternatives. This also creates an environment where front door staff may refuse
12 access when skilled providers are not aware that services are being denied by
13 their practice.

14 17. Washington and the nation are in the midst of a massive long-term
15 care services and healthcare workforce shortage. Seventy percent of
16 Washingtonians over age sixty-five will need long-term services and supports in
17 their lifetime. By 2035, the number of individuals age seventy-five and older will
18 increase by approximately 150%.¹

19 18. The Final Rule allows providers to deny service to individuals at
20 their moral or religious discretion. As a result, facilities that are already
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22 ¹ Source: DSHS Research and Data Analysis.

1 short-staffed will experience an increased strain when employees choose not to
2 care for an individual. This presents safety concerns for understaffed teams that
3 are unable to adequately care for patients, especially in emergency situations.
4 Conflict between staff may occur when providers deny service during busy times
5 when staff are already feeling overworked. These additional pressures will lead
6 to a higher turnover rate, perpetuating the shortage of long-term care and
7 healthcare workers. This could also result in health and safety risks for clients.

8 19. There simply are not enough workers to fill this gap. Allowing
9 providers to refuse services to individuals based on a personal objection greatly
10 reduces the overall pool of available providers to serve everyone in need.

11 20. The lack of providers negatively impacts our healthcare system as a
12 whole. When providers refuse necessary services to individuals that help them
13 maintain their health, individuals are left to seek costly care through emergency
14 room visits. This creates an overflow in our hospitals and turns our emergency
15 rooms into care facilities. The overflow creates an increased risk for staff and
16 takes away necessary professionals from tending to other emergency patients.
17 Increased emergency room visits results in a detrimental financial burden to
18 individuals, families and taxpayers to cover costly care. Family caregivers and
19 persons in need of care may also feel forced to seek treatment through alternate
20 systems that will lack the regulatory oversight necessary for safe care.

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1 21. Washington has many rural regions that lack a variety of providers.
 2 If there are only a few providers in the area and some are refusing services, this
 3 reduces an individual’s choice of provider, which is in violation of the federal
 4 regulation 431.51, requiring states to offer free choice of providers for Medicaid
 5 home- and community-based services. According to CMS regulations, states
 6 must ensure participants are afforded “choice among settings, and regarding
 7 services and supports and who provides them.” When the only local provider
 8 refuses service as a result of a personal objection, individuals in that area will not
 9 be served, creating increased health disparities between our communities. It is
 10 more than just a slight inconvenience for people—it is depriving them of critical,
 11 lifesaving services and supports needed to maintain their health and well-being.

12 22. Trust is the cornerstone of the provider-client relationship. People
 13 should not have to worry if they will get the best quality care because of a
 14 provider’s personal beliefs.

15 **The Final Rule Puts Range of Long-Term Care Options at Risk**

16 23. I have reviewed our funding sources to determine where we receive
 17 funds. Total funding from HHS (and potentially Department of Education and/or
 18 Department of Labor) for the next two years are:

19	State Fiscal Year 2020	\$2,529,082,000
20	State Fiscal Year 2021	\$2,765,114,000

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1 24. HHS funding is used to support over 100,000 individuals living in
2 Washington State to offer a wide range of services and supports to promote
3 choice so that individuals may remain independent in the community settings of
4 their choice to the greatest extent possible. While some of the funding is used for
5 direct service (such as the Developmental Disabilities Administration's
6 Residential Habilitation Centers and state psychiatric hospitals), most funding
7 goes to contracted service providers for direct care services and to local Area
8 Agencies on Aging. Contracted service providers include nursing homes, adult
9 family homes, assisted living facilities, individual providers, private duty nurses
10 and nurse delegation providers. The local Area Agencies on Aging receive funds
11 to provide case management, plan and administer Older Americans Act programs
12 (such as meal delivery), and contract with home care agencies. HHS funding is
13 also issued to Tribal Nations for administration of tribal health programs. A small
14 portion of funds are paid directly to clients for reimbursement for goods and
15 services through the New Freedom program.

16 25. If a sub-recipient includes all of our contracted providers, then the
17 following AL TSA sub-recipients would be impacted:

- 18 a. 43,000 Individual Providers. Individual providers are home care
19 aides that serve clients in their own homes and are employed by
20 the individual receiving care. They assist with activities of daily
21 living, including bathing, toileting, grooming, and transportation
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to medical appointments, walking, standing and more. Individual providers work one-on-one with the client and require a high level of trust.

b. 3,800 licensed and certified facilities, including nursing facilities, adult family homes and assisted living facilities. Nursing facilities provide 24-hour supervision, nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board and laundry. DSHS works with the Centers for Medicare and Medicaid Services to oversee these facilities. Adult family homes are regular neighborhood homes where staff assume responsibility for the safety and wellbeing of their residents. A room, meals, laundry and supervision and varying levels of assistance are provided. These homes can have up to six residents. Assisted living facilities are in a community setting where staff provide housing, meals, laundry, supervision and assistance. These facilities can have seven or more residents.

c. Forty-six home care agencies are contracted with our department and employ home care aides to assist clients in their own homes with daily tasks such as meal preparation, medication reminders,

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laundry, light housekeeping, errands, shopping, transportation, and companionship.

d. 456 Care Coordinators. The Health Home Program was created by the federal Affordable Care Act. It allows states to provide Health Home services, including care coordination and comprehensive care management to individuals who are eligible for (a) Medicaid or (b) both Medicare and Medicaid. The purpose of the Health Home program is to improve outcomes, reduce future health care costs, and improve the experience of care. Care Coordinators assist these individuals in coordinating medical care, long-term services and supports, and behavioral health services.

26. If the definition of healthcare is interpreted narrowly, this could apply to DDA state operated service settings and contracted providers who are enrolled or contracted to provide strictly traditional medical services such as nursing, counseling, physical therapy, speech, hearing and regional crisis teams. Examples of state staff with medical credentials include doctors, dentists, psychologists and nurses. Conversely, if the definition of healthcare is interpreted more broadly, as we assume it is, it would apply to the traditional medical services as well as all of the waiver and state plan services administered by the DDA.

1 27. All of these providers serve our clients with necessary assistance for
2 daily life. Without these providers and services, individuals would not receive
3 adequate care that would result in increased cases of neglect and self-neglect.

4 **The Final Rule will Impact DSHS's Ability to Dependably Provide**
5 **Required Medical Services**

6 28. Members of our team at AL TSA are dedicated to finding suitable
7 providers for our clients. The process is challenging and requires careful
8 coordination of what environment will best suit the client, availability, proximity
9 to their home community, and services needed. The ability for providers to deny
10 services to individuals adds an additional element of complexity to the process.
11 Staff will be presented with a smaller pool of providers to choose from.
12 Additionally, staff will need to address denials that prevent individuals from
13 receiving care or that withdraw pre-determined services. These added challenges
14 will slow down the process of matching individuals with services and prevent
15 them from receiving care in a timely manner.

16 29. This will result in the loss of health care and services for some of
17 our most vulnerable clients. Providers or direct support professionals could be
18 unwilling to provide necessary transportation and coordination for both medical
19 or pharmacy services related to birth control or abortion services.

20 30. Abortions will take place in unhealthy, unsterile environments
21 without health care, counseling, or other supportive services available. The
22 inability to provide birth control exacerbates the number of abortions attempted

1 in unhealthy conditions. It also does not take into account individuals with
2 disabilities who utilize birth control to prevent pregnancies because they are
3 dangerous to their overall health.

4 **The Final Rule Directly Conflicts with Anti-Discrimination Laws and**
5 **Policies**

6 31. AL TSA and DDA exist for the purpose of helping people to achieve
7 a better quality of life. Being lesbian, gay, bisexual, transgender or queer
8 (LGBTQ) is not a choice, a behavior, or a lifestyle. Rather, it is an integral part
9 of who individuals are at their very core. It is not up to a government entity or its
10 employees or contractors to make philosophical, theological, or political
11 judgments about personal identities. However, we do have a professional, legal,
12 and ethical obligation to put personal opinions or biases aside and provide the
13 very best care to those we serve. Rejecting behaviors toward LGBTQ people can
14 have catastrophic consequences. Those who work in human services must make
15 every effort to ensure safety and acceptance for LGBTQ people.

16 32. DSHS is committed to identify avenues of opportunity that allow for
17 our department to grow and improve, so that we may professionally and
18 adequately support all persons regardless of who they are or who they love. As
19 such, in an effort to show our acceptance of all persons, AL TSA flies the Pride
20 Flag during the month of June, has worked with the University of Washington on
21 LGBTQ issues such as recommendations on how to collect sexual orientation and
22 gender identity data. We are co-sponsors on conferences targeted for LGBTQ

1 populations. We changed rules to reflect state-registered domestic partners
2 including our nursing home regulations which now allow these residents to share
3 a room if they desire. We have created an atmosphere where people can be
4 themselves. Our programs and services are open to everyone. The Federal Rule
5 undoes all of this and takes us backwards from the forward progress we have
6 made.

7 33. The Federal Rule directly conflicts with Washington state law
8 (Wash. Rev. Code 49.60.030) and DSHS policy which prohibit discrimination on
9 the basis of sexual orientation and gender identity. DSHS Administrative Policy
10 7.22 goes further to require respect for everyone with whom we interact
11 regardless of difference.

12 34. Those who identify as LGBTQ are presently at a higher risk for
13 discrimination, prejudice, denial of civil and human rights, harassment, and
14 family rejection. The Final Rule puts this already vulnerable population, prone to
15 hardship and heartache, at further risk. People who are LGBTQ may feel unsafe
16 asking for support, services, or even worse, be denied the assistance and
17 compassion they deserve simply because of who they are. The Final Rule will
18 have dire consequences for our LGBTQ community, particularly as they reach
19 an age where they will, like any person, need supportive services that develop as
20 one ages. We may see our LGBTQ sisters, brothers, friends, family, and
21 neighbors denied support with access to meal preparation and eating,
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1 transportation to healthcare appointments, a safe and supportive living
2 environment in a community setting of their choice, bathing and dressing
3 assistance, and social and human interaction.

4 35. The Final Rule is asking this vulnerable group of people to not be
5 themselves while purporting to protect peoples' freedoms. What the Final Rule
6 ultimately does is jeopardize the safety and well-being of people who are
7 LGBTQ—putting them at risk for abuse, neglect and possibly even death if
8 ultimately denied the supports and services they need.

9 36. In 2008, Washington passed the Death with Dignity Act, which went
10 into effect March 5, 2009. The Act, under the purview of the Department of
11 Health, allows terminally ill adults to end their life with lethal doses of
12 medication prescribed by medical or osteopathic physicians. Individuals
13 self-administer, but the Final Rule likely may cut off the source of the medication.
14 Today, participation by physicians and health care companies in Washington is
15 voluntary; however, this could lessen or deplete the pool of physicians and
16 pharmacies willing to participate. It may also remove the grievance process that
17 allows patients to lodge complaints against a physician who violates the Act and
18 the protections surrounding the individual's life, health and accident insurance.
19 AL TSA has clients who choose to utilize these services, and they will no longer
20 have this choice. Additionally, service providers may have a conflict in
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1 supporting the implementation of care identified in advanced directives, hospice
2 services, or Physician's Orders for Life-Sustaining Treatment (POLSTs).

3 37. The Final Rule generates an opportunity for providers to not
4 recognize a spouse or significant other as the decision-maker for a person in need
5 of care if they are part of a same sex marriage or partnership with that person. As
6 an organization, AL TSA strives and believes that one's end of life wishes,
7 preferences and healthcare decisions should be accommodated regardless if they
8 are heterosexual or LGBTQ. The strongest and best advocate a person can have
9 is often their spouse or partner, but this Final Rule builds a potential barrier where
10 providers can opt to not recognize a person as a spouse or partner simply because
11 they may be LGBTQ. Additionally, service providers may have a conflict in
12 supporting the implementation of care identified in advanced directives, hospice
13 services, or POLSTs.

14 38. This will have a devastating impact on the lives of many during a
15 time when we, as a state organization, should be doing our best to ensure a person
16 is supported, comfortable and receiving the highest quality of care possible in a
17 setting without judgement, harassment, or fear.

18 39. The Final Rule appears to conflict with the Nightingale and
19 Hippocratic Oaths to do no harm and protect patient's safety.

20 40. DSHS has calculated an estimate of costs for staffing related for
21 AL TSA and DDA combined to implement and comply with the Final Rule, half
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1 for each administration. These costs include program managers, administrative
 2 support positions, staffing for additional time spent by case managers,
 3 supervisors, residential surveyors, investigators, record keeping and public
 4 disclosure, as well as human resources and information technology support for
 5 the increased staffing. These costs also include the cost of creating and sending
 6 poster and brochures to all employees and subcontractors.

7	State fiscal year 2020	114.4 FTE	\$14,574,000
8	State fiscal year 2021	115.8 FTE	\$14,438,000

9 41. This includes changes to websites, policies and applications for both
 10 employees, subcontractors and recipients; Management Bulletins to Area
 11 Agencies on Aging; notices to Individual Providers; Provider Letters to all
 12 licensed and certified community residential providers; notices to employees; and
 13 training of employees, subcontractors and recipients. The cost to print and
 14 distribute posters and brochures to external subcontractors and recipients and to
 15 employees is estimated to be nearly \$80,000 (\$78,168.16).

16 42. DSHS estimates that, to implement the Final Rule in the next twelve
 17 months, the cost is \$14,574,000 for ALTSA and DDA.

18 43. Currently, DSHS serves all people regardless of race, sexual
 19 orientation or identification or socioeconomic status. Therefore, we do not
 20 currently have policies, procedures or personnel in place to document
 21 information regarding religious or moral denials made by providers.

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1 44. The Final Rule will impose an immediate cost on DSHS due to its
2 notice, assurance and certification, record keeping and reporting requirements.
3 This requires us to restructure our system and add additional staff and technology
4 to appropriately manage recordkeeping of denials.

5 45. Providers denying services to individuals will result in an increased
6 number of cases of abuse and neglect. According to Washington law (Wash. Rev.
7 Code 74.34.020), “abandonment means action or inaction by a person or entity
8 with a duty of care for a vulnerable adult that leaves the vulnerable person without
9 the means or ability to obtain necessary food, clothing, shelter, or health care”
10 and “neglect means a pattern of conduct or inaction by a person or entity with a
11 duty of care that fails to provide the goods and services that maintain physical or
12 mental health of a vulnerable adult, or that fails to avoid or prevent physical or
13 mental harm or pain to a vulnerable adult; or an act or omission by a person or
14 entity with a duty of care that demonstrates a serious disregard of consequences
15 of such a magnitude as to constitute a clear and present danger to the vulnerable
16 adult's health, welfare, or safety, including but not limited to conduct prohibited
17 under RCW 9A.42.100.” Each time a provider refuses service of a vulnerable
18 adult, they are committing abuse or neglect.

19 46. In 2018, Adult Protective Services investigated more than 60,000
20 cases of abuse and neglect. Provider denials will cause cases to exponentially
21 grow, causing an increased strain on staff members. As a result, Washingtonians
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1 will suffer from inadequate services in response to abuse and neglect. To meet
2 the increased demand and maintain fair service, we would have to hire additional
3 investigators and social workers, which would create an increased budget strain
4 on the state and its taxpayers.

5 47. We believe that it is the right of all residents to receive services
6 without discrimination. We have worked diligently to provide services that
7 adequately meet the needs of various populations and help reduce health
8 disparities. Our residents trust that they can and will receive the best care
9 available, regardless of who they are. The Rule undermines this belief and allows
10 for certain populations to easily become marginalized. As a result, our
11 department will see an increased number of discrimination lawsuits. Each lawsuit
12 requires special attention, staff time and results in monetary losses.

13 48. The following are the types of sub-recipients or “any person, or any
14 entity to whom there is a pass-through of federal financial assistance [through
15 DSHS] from HHS”:²

- 16 a. Over 56,000 people receive Meal Assistance such as home-
17 delivered meals
18 b. 63,400 Medicaid clients receive services in a variety of settings

19 _____
20 ²This includes foreign governments, but does not include ultimate
21 beneficiary. Note that there is an exception in certification section 88.4 (c)(4) for
22 tribes.

- 1 i. 40,700+ served at home
- 2 ii. 12,500 served in adult family homes and assisted living
- 3 facilities
- 4 iii. 600 receive managed care
- 5 iv. 9,500 served in nursing homes
- 6 c. 600 people receive ODHHS case management to obtain needed
- 7 services through coordination of services, translation of
- 8 documents, advocacy, and/or the teaching of new abilities and
- 9 skills
- 10 d. Licensing and inspections of long-term care facilities
- 11 i. 3,600 licensed adult family home, nursing home,
- 12 enhanced service facility, and assisted living providers
- 13 ii. 70,600 licensed beds in the above facilities
- 14 iii. 2,600 annual inspections, surveys and certifications of the
- 15 above facilities

16 ALTSA clients are served by a variety of facilities, organizations and individuals
17 that provide a broad menu of services to meet those clients' needs and
18 preferences. This range of services and supports are integral to the department's
19 mission of promoting choice, independence and safety through innovative
20 services with a vision of supporting seniors and people living with disabilities to
21 live with good health, independence, dignity and control over the decisions that

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1 affect their lives. The Final Rule jeopardizes this range of services and supports,
2 which are provided by the following facilities, organizations, and individuals.

3 **1. Area Agencies on Aging (AAAs)–Thirteen Total**

4 49. Area Agencies on Aging are local government organizations
5 designated by the Aging and Long-Term Support Administration to provide a
6 network of in-home and community services, support programs and assistance to
7 older adults, adults with disabilities and family caregivers.

8 **2. Adult Family Homes–3,022 Total/2,662–Adult Family Home
9 Providers with Contracts**

10 50. Adult Family Homes (AFHs) are regular residential homes licensed
11 to care for two to six residents. The homes are private businesses and provide the
12 residents with a room, meals, laundry, supervision, and personal care. The
13 services provided to residents depend on the needs of each individual resident
14 and the skill level of the provider. Some homes are able to provide nursing
15 services or other special care and services.

16 **3. Assisted Living Facilities–545 Total/315 with Contracts, 230
17 Without Contracts**

18 51. An assisted living facility (ALF), is a community setting licensed by
19 DSHS to care for seven or more residents. The majority are privately-owned
20 businesses. ALFs provide housing, basic services and assume general
21 responsibility for the safety and well-being of the resident. ALFs allow residents
22

1 to live an independent lifestyle in a community setting while receiving necessary
2 services from staff.

3 **4. Enhanced Services Facilities—4 Total**

4 52. The Washington State Legislature developed Enhanced Services
5 Facilities (ESF) to provide a community placement option for individuals whose
6 complicated personal care and behavioral challenges do not rise to a level that
7 requires an institutional setting. Rather than extended and unnecessary stays in
8 state psychiatric hospitals, individuals who are not eligible for inpatient
9 psychiatric treatment or who are assessed as discharge-ready can live in an ESF

10 **5. Home Care Agencies—46 Contracted With DSHS**

11 53. Home care agencies provide non-medical services to ill, disabled or
12 vulnerable people with functional limitations, enabling them to maintain their
13 highest level of independence and remain in their homes.

14 **6. Individual Providers—37,000 Total**

15 54. An individual provider is a personal aide who, under an individual
16 provider contract with the department or as an employee of a consumer directed
17 employer, provides personal care or respite care services to persons who are
18 functionally disabled or otherwise eligible under programs authorized and funded
19 by the Medicaid state plan, Medicaid waiver programs or similar state-funded in-
20 home care programs.

1 **7. Nurses–172 Total**

2 55. Our ALTSA nurses work as nurse compliance specialists, field
3 managers, regional administrators, nursing consultants, nursing care consultants,
4 program managers, assistant director and as a director. Our nurses help improve
5 the quality of care provided and assist in ensuring the safety and well-being of
6 clients in long-term care facilities and in their own homes across our state.
7 ALTSA nurses are integral to our work of transforming lives by promoting
8 choice, independence and safety through innovative services.

9 **8. Nursing Homes–215 Total**

10 56. ALTSA licenses nursing facilities in Washington State. A nursing
11 facility (NF), or nursing home, provides 24-hour supervised nursing care,
12 personal care, therapy, nutrition management, organized activities, social
13 services, room, board, and laundry. The majority are privately-owned businesses.

14 **9. Regional Service Centers–8 Total**

15 57. In partnership with the ALTSA, the Office of the Deaf and Hard of
16 Hearing regional service centers provide educational, technical and social
17 support for individuals who are deaf, deaf-blind or experiencing hearing loss.

18 **10. Adult Day Services (Adult Day Care and Adult Day Health)**

19 58. Adult Day Care (ADC) is a supervised nonresidential program.
20 Services are appropriate for adults with medical or disabling conditions that do
21 not require the intervention or services of a registered nurse or licensed
22 rehabilitative therapist. Individuals attending may receive assistance with

1 personal care, counseling on a consultation basis, general therapeutic/recreational
2 activities, general health monitoring and a nutritious meal.

3 59. Adult Day Health (ADH) is a structured program, lasting at least
4 four hours, that provides skilled nursing and rehabilitative therapy. Skilled
5 nursing or rehabilitative therapy must be provided on each attendance day.
6 Individuals may also receive counseling services, personal care, general
7 therapeutic/recreational activities, and a nutritious meal.

8 **11. AL TSA Staff—Over 2,450 Across the State**

9 60. Staff and contractor resources would be significantly impacted by
10 the Final Rule. The State would need to create a process and system for
11 documenting service denials, which would include both documenting within a
12 client's record and tracking the denials in a centralized location. Training and
13 preparation materials would need to be developed and administered for both staff
14 and contractors.

15 61. Because contractors would have a new obligation to document their
16 objections to providing service, the State would need to develop and implement
17 policies and procedures to address the new rules. All service and support
18 contracts through the State and local Area Agencies on Aging would need to be
19 amended to include new requirements for reporting refusals of service and other
20 exemptions. This Final Rule would also require additional contract monitoring
21 and investigation to ensure compliance with the new policies and procedures.

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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

PAUL CRISALLI, WSBA #40681
Assistant Attorney General