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9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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 13 **STATE OF CALIFORNIA, BY AND THROUGH**  
 14 **ATTORNEY GENERAL XAVIER BECERRA,**

15 Plaintiff,

16 v.

17  
 18 **ALEX AZAR, IN HIS OFFICIAL CAPACITY AS**  
**SECRETARY OF THE U.S. DEPARTMENT OF**  
 19 **HEALTH & HUMAN SERVICES; U.S.**  
**DEPARTMENT OF HEALTH AND**  
 20 **HUMAN SERVICES; DOES 1-100,**

21 Defendants.  
 22

**DECLARATION OF TATIANA W. SPIRTOS, M.D. IN SUPPORT OF A MOTION FOR A PRELIMINARY INJUNCTION**

Date: April 18, 2019  
 Time: 12:30 p.m.  
 Dept: Courtroom 5, 17<sup>th</sup> Floor  
 Judge: The Honorable Edward M. Chen  
 Trial Date: Not set  
 Action Filed: March 4, 2019

1 I, Tatiana W. Spirtos, M.D., declare as follows:

2 1. I am currently the Vice-Speaker of the House of Delegates for the California  
3 Medical Association (CMA) and have served on CMA's Board of Trustees since 2009. CMA's  
4 House of Delegates and Board of Trustees review, debate, and set health care policy that governs  
5 CMA's advocacy in the Legislature, regulatory agencies, and the courts.

6 2. The California Medical Association (CMA) is a nonprofit, incorporated  
7 professional association of more than 44,000 members throughout the State of California. For  
8 more than 150 years, CMA has promoted the science and art of medicine, the care and well-being  
9 of patients, the protection of public health, and the betterment of the medical profession. CMA's  
10 physician members practice medicine in all specialties and settings, including providing  
11 comprehensive reproductive health services.

12 3. I am a licensed physician practicing in the State of California. I have been  
13 practicing medicine for 38 years as an obstetrician-gynecologist. I currently practice with the  
14 Women's Care Medical Group – Stanford Children's Health in Redwood City, California.

15 4. I received my undergraduate degree from the University of Chicago. I received my  
16 medical degree at Northwestern University Medical Center. I completed my residency at Los  
17 Angeles County Medical Center/University of Southern California. I am board certified in  
18 obstetrics and gynecology by the American Board of Obstetrics and Gynecology.

19 5. I am familiar with the rule “Compliance with Statutory Program Integrity  
20 Requirements” (the Rule), published in the Federal Register on March 4, 2019.

21 6. CMA submitted comments to the United States Department of Health and Human  
22 Services (HHS) on July 31, 2018 on the Notice of Proposed Rulemaking, published in the Federal  
23 Register on June 1, 2018, that preceded the Rule.

24 7. CMA policy supports full funding of Title X Family Planning Services. CMA  
25 policy oppose limits on the ability of women to choose or obtain an abortion or that restrict access  
26 to safe and professional abortion services.

27 8. Established in 1970, Title X is the only federal program dedicated to funding  
28 family planning services and preventative health services for low-income individuals. Title X

1 supports the delivery of family planning and related services including contraception, STD  
2 prevention and treatment, pregnancy tests, and life-saving cancer screenings.

3 9. California's Title X provider network is the largest in the nation and serves  
4 1,000,000 low-income individuals throughout the state – over 25% of Title X patients nationwide.  
5 In California, \$1.3 billion is saved annually thanks to public investment in family planning and  
6 related services provided at Title X-funded health centers.

7 10. In California, 366 health centers deliver Title X services, 63 health care agencies  
8 receive Title X funding and 38 of 58 counties have Title X-funded health care sites.

9 11. The Rule will withhold federal funds to qualified family planning providers that  
10 offer abortion services, will prohibit in most cases referrals for abortion, will restrict counseling  
11 about abortion services, and will eliminate current requirements that Title X sites offer a broad  
12 range of evidence-based family planning services.

13 12. The Rule interferes with the patient-physician relationship and is likely to  
14 seriously undermine the effectiveness of the Title X program and make it more difficult for low-  
15 income patients in California to access the full range of reproductive health care and thus reverse  
16 established medical access for California women.

17 **The Rule will interfere with the physician-patient relationship.**

18 13. The Rule bans Title X physicians from giving women comprehensive information  
19 about their health care options. Specifically, the Rule eliminates the existing requirement that  
20 patients be provided with referrals upon request for the full range of pregnancy options, including  
21 prenatal care and delivery; infant care, foster care, or adoption; and abortion. That requirement is  
22 replaced with a complete prohibition on health care providers providing a referral for abortion.  
23 This provision restricts physicians from speaking freely with their patients, violates core ethical  
24 standards, and undermines the physician-patient relationship.

25 14. Consistent with ethical and medical standards, the previous Title X regulations  
26 required projects to give pregnant patients the opportunity to receive information and counseling  
27 about: prenatal care and delivery; infant care, foster care, or adoption; and abortion. If a patient  
28

1 requests such information and counseling, projects must provide neutral, factual information and  
2 nondirective counseling on each of the options, as well as referrals upon request.

3 15. The Rule makes several changes which undermine the provider-patient  
4 relationship and have the potential to cause harm to pregnant individuals. The Rule eliminates the  
5 requirement that Title X projects provide neutral, factual information and nondirective options  
6 counseling to pregnant individuals. The previous Title X regulations directed Title X projects to  
7 “[o]ffer pregnant women the opportunity to be provided information and counseling” on all  
8 pregnancy options. All such counseling must be neutral, factual, and nondirective. By eliminating  
9 the requirement for Title X programs to provide pregnancy counseling on all pregnancy options  
10 and prohibiting the programs from "encouraging" or "promoting" abortion, the Rule effectively  
11 forbids any mention of abortion to a patient. This will have a chilling effect on the ability of  
12 physicians to care for their patients when even mentioning abortion while counseling a pregnant  
13 patient on their options could violate Title X regulations.

14 16. The Rule prohibits Title X projects from providing referrals for abortion. In  
15 addition to eliminating the requirement for nondirective pregnancy options counseling, the Rule  
16 actively bans Title X programs from providing abortion referrals stating that when a referral is  
17 provided for abortion, that referral treats abortion as a method of family planning in violation of  
18 the Title X. This would force physicians to provide only some of the options and exclude any  
19 referral information about abortion. At the same time, the Rule mandates physicians to refer  
20 pregnant patients to prenatal care regardless of the patient's wishes or what is in the patient's best  
21 medical interest. This compromises the ability of physicians providing family planning services  
22 to provide comprehensive care that is tailored to the individual wishes and needs of their patients.

23 17. Under the Rule, if a pregnant patient explicitly requests a referral for abortion, the  
24 Title X program is permitted, but not required, to provide the patient with a list of licensed,  
25 qualified, and comprehensive health care providers, some of which may or may not provide  
26 abortion services, in addition to prenatal care. Despite the patient's wishes, the majority of the  
27 providers on the list must not provide abortion services. Additionally, the list cannot identify the  
28 providers that perform abortions and the Title X program may not indicate which providers on the

1 list offer abortion services, thus requiring the patient to vet the listed providers themselves to  
2 receive the care they seek. This appears to encourage Title X programs to provide confusing and  
3 misleading information to patients, practically implicates physicians to provide biased and  
4 incomplete pregnancy counseling, and forces physicians to actively take part in being a barrier to  
5 the care.

6 18. The Rule will force Title X providers to violate their ethical obligations to their  
7 patients. Physicians have an ethical and professional duty to provide patients with complete,  
8 accurate, and unbiased information about their health care options so that they can make informed  
9 and voluntary decisions about their care. This proposal directly conflicts with the policy adopted  
10 by medical professional associations, including the CMA, American College of Obstetricians and  
11 Gynecologists (ACOG) and the American Medical Association, which assert that patients should  
12 receive complete and accurate information to inform their health care decisions. ACOG  
13 recommends that a “pregnant woman who may be ambivalent about her pregnancy should be  
14 fully informed in a balanced manner about all options, including raising the child herself, placing  
15 the child for adoption, and abortion ... There is an ethical obligation to provide accurate  
16 information that is required for the patient to make a fully informed decision.” Similarly, the  
17 American Medical Association states in its Code of Medical Ethics that providers “present  
18 relevant information accurately and sensitively, in keeping with the patient’s preferences” and  
19 that “withholding information without the patient’s knowledge or consent is ethically  
20 unacceptable.”

21 19. Providing patients with complete, accurate, and unbiased information about their  
22 health care options serves to protect patients and ensure that they receive high quality, evidence-  
23 based care. The Rule would force physicians to practice outside of the established standards of  
24 care based on politics, rather than scientific evidence. Patients will be unable to receive the full  
25 range of options available to them or have trouble locating a provider to perform an abortion,  
26 delaying care and increasing the likelihood of the procedure being more complicated and costly.

27 20. CMA strongly opposes legislation or regulations that attempt to dictate the content  
28 of physician conversations with their patients. Protecting the sanctity of the patient-physician

1 relationship, including defending the freedom of communication between patients and their  
2 physicians, is a core priority for CMA. The ability of physicians to have open, frank, and  
3 confidential communications with their patients has always been a fundamental tenet of high  
4 quality medical care.

5 **The Rule will reduce access to the full range of contraceptive methods and services.**

6 21. Evidence indicates that access to the full range of contraceptive methods and  
7 services lead to better health outcomes. Patients who are able to use the method of their choice  
8 are more likely to use contraception consistently and effectively. When used consistently and  
9 correctly, contraception can significantly reduce the risk of unintended pregnancy.

10 22. The previous Title X regulations required funded projects to provide medical  
11 services related to family planning and to offer "a broad range of acceptable and effective  
12 *medically approved* family planning methods." (Emphasis added). The Rule eliminates the  
13 requirement that projects offer the full range of family planning methods, and further eliminates  
14 "medically approved" from the regulatory requirement. The Rule will no longer require that sites  
15 follow the Quality Family Planning recommendations of the Centers for Disease Control and  
16 Prevention and the Office of Population Affairs (OPA), which OPA has incorporated into its  
17 program guidance for Title X projects. Instead, the Rule emphasizes non-medical services, such  
18 as abstinence, natural family planning, and other fertility awareness-methods to prevent  
19 pregnancy, and adoption as a way to manage infertility. The emphasis on non-medical services is  
20 contradicted by data showing that fertility awareness methods are among the least effective  
21 methods of family planning, and the Food and Drug Administration has warned that these are not  
22 reliable forms of contraception.

23 23. Further, the Rule states that Title X projects need not provide every acceptable and  
24 effective family planning method or service, as long as they offer a "broad range" of family  
25 planning methods and services. Individual entities within a project are permitted to offer only a  
26 single method as long as the entire project offers a broad range. This represents a marked shift  
27 from the previous OPA's program guidance that required Title X sites to follow the Quality  
28 Family Planning recommendations, which since 2014 have recommended providing *all* FDA-

1 approved contraceptive methods. The Rule appears to be reallocating Title X funds away from  
2 health care providers that offer a full range of family planning methods and services to shift Title  
3 X funds to other projects that emphasize non-medical services and that refuse to provide Title X  
4 patients with the full range of family planning services.

5 24. Taken together, the changes to the Title X regulations set forth in the Rule will  
6 reduce access to the full range of family planning services for low-income individuals. It will  
7 likely reverse the progress Title X providers have made in offering comprehensive family  
8 planning services, making it more difficult for Title X patients to access their preferred  
9 contraceptive method. With fewer Title X sites offering the full range of contraceptive services  
10 and methods, low-income individuals will not receive complete and accurate information  
11 regarding their treatment and care options, could be forced to settle for a method that is not right  
12 for them, or forgo family planning services, contraception, or appropriate care altogether.

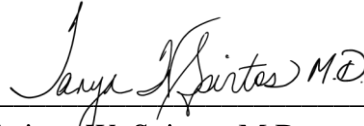
13 25. Contrary to the assertion by HHS that the changes in the Rule will improve access  
14 and quality of care at Title X projects, the Rule will seriously undermine the ability for low-  
15 income patients to access comprehensive, evidence-based, quality reproductive health care in a  
16 timely manner. Instead, it is likely to limit access to critically needed care that could result in  
17 harm to patients.

18 26. Moreover, the Rule intrudes upon the physician-patient relationship by prohibiting  
19 physicians from providing their patients with accurate and complete information and services  
20 regarding their pregnancy options, contrary to established medical and ethical duties to act in the  
21 best interest of their patients.

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

Executed on March 15, 2019 in Redwood City, California.



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Tatiana W. Spirtos, M.D.  
Vice Speaker of CMA's House of Delegates  
California Medical Association