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 ESSENTIAL ACCESS HEALTH, INC.
 11 and MELISSA MARSHALL, M.D.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 ESSENTIAL ACCESS HEALTH, INC.;
 MELISSA MARSHALL, M.D.,

16 Plaintiffs,

17 v.

18 ALEX M. AZAR II, Secretary of U.S.
 19 Department of Health and Human Services;
 U.S. DEPARTMENT OF HEALTH AND
 20 HUMAN SERVICES; and DOES 1-25,

21 Defendants.

Case No. 3:19-cv-01195-EMC

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

Date: April 18, 2019
 Time: 12:30 p.m.
 Dept: Courtroom 5, 17th Floor
 Judge: Hon. Edward M. Chen

Date Filed: March 4, 2019

Trial Date: None Set

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.



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