

1 XAVIER BECERRA  
 Attorney General of California  
 2 MICHAEL L. NEWMAN  
 Senior Assistant Attorney General  
 3 KATHLEEN BOERGERS  
 Supervising Deputy Attorney General  
 4 ANNA RICH, State Bar No. 230195  
 KARLI EISENBERG  
 5 BRENDA AYON VERDUZCO  
 Deputy Attorneys General  
 6 1515 Clay Street, 20th Floor  
 P.O. Box 70550  
 7 Oakland, CA 94612-0550  
 Telephone: 510-879-0296  
 8 Fax: 510-622-2270  
 E-mail: Anna.Rich@doj.ca.gov  
 9 *Attorneys for Plaintiff State of California, by and  
 through Attorney General Xavier Becerra*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 **STATE OF CALIFORNIA, BY AND THROUGH**  
 16 **ATTORNEY GENERAL XAVIER BECERRA,**

17 Plaintiff,

18 v.

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

24 Defendants.

**DECLARATION OF SHIVAUN M.**  
**NESTOR 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, Shivaun M. Nestor, declare and state as follows:

2 1. I am the Director of the Family Planning and Preconception Health Program  
3 (“FPPHP”) in the Maternal, Child and Adolescent Health Section of the San Francisco  
4 Department of Public Health (“SFDPH”), an agency of the City and County of San Francisco,  
5 California. I make this declaration on behalf of SFDPH. I have personal knowledge of the facts  
6 stated herein and, if called as a witness, I would testify competently thereto.

7 2. FPPHP offers a wide range of services to patients through SFDPH’s Community  
8 Health Network, including reproductive life planning; reproductive health exams; birth control  
9 counseling and prescriptions; emergency contraception; preconception health screening and  
10 education; pregnancy tests, counseling, and referral; testing and treatment for sexually transmitted  
11 infections (“STIs”); testing and counseling for HIV; and sexual health education and counseling.  
12 FPPHP offers these services at no or low cost to women, men, and adolescents in the City and  
13 County of San Francisco.

14 3. SFDPH receives Title X funding through Plaintiff Essential Access Health. In  
15 calendar year 2018, SFDPH received a total of \$234,286 in Title X funding, which it used to fund  
16 family-planning projects for 6,623 patients at 10 sites/clinics. In addition to family-planning  
17 services, these 10 sites/clinics also offer other types of care, including primary care.

18 4. Approximately 40% of the patients served by SFDPH’s Title X-funded clinics are  
19 Latinx, approximately 35% are Asian or Pacific Islander, approximately 20% are African-  
20 American, and the remainder are white or Middle Eastern. Almost 100% of SFDPH’s Title X  
21 patients are at 250% of the federal poverty level (“FPL”) or below. Only 1% of SFDPH’s Title X  
22 patients have private health insurance, while 47% are on Medi-Cal (California’s Medicaid  
23 program), and the remainder are either uninsured or enrolled in California’s Family Planning,  
24 Access, Care, and Treatment (“Family PACT”) program.

25 5. SFDPH uses Title X funds to support a variety of projects to improve patient  
26 access and quality of care, including provider training, technical assistance, public education and  
27 outreach, and special projects to address emerging public health challenges.

1           6.       SFDPH uses Title X funding to develop training programs that have greatly  
2 improved the quality and effectiveness of care offered at SFDPH’s Title X clinics. Using Title X  
3 funds, SFDPH trains approximately 20–30 clinical staff members every year with respect to key  
4 aspects of their services, including contraceptive counseling and prescriptions, STI testing and  
5 treatment, harm reduction approaches, and pregnancy testing and counseling. SFDPH also  
6 provides smaller training to specific clinics upon request. Without Title X funding, SFDPH’s  
7 ability to provide these trainings will be greatly inhibited.

8           7.       SFDPH is using Title X funds to develop protocols for registered nurses (“RNs”)  
9 to dispense oral emergency contraceptives. One such protocol that is currently pending will  
10 enable registered nurses to dispense pills, patches, and contraceptive rings. These protocols will  
11 significantly expand patient access to important contraceptive methods.

12           8.       SFDPH has also used Title X funds to support the training of primary care  
13 physicians on the implantation of long-acting reversible contraceptive (“LARC”) devices, such as  
14 intrauterine devices (“IUDs”), which are an important and effective contraceptive option for  
15 many patients. Developing competency in the implantation of IUDs is time-consuming and  
16 expensive, so many primary care physicians without obstetric-gynecological expertise would not  
17 have the resources to become trained on their own. But with Title X funds, primary care  
18 physicians in SFDPH’s Title X-funded clinics have developed that expertise and can provide  
19 high-quality family-planning care to their patients. Indeed, thanks to Title X funds, all but one of  
20 the Title X-funded clinics that serve adult-aged patients in SFDPH’s network are able to provide  
21 same-day LARC access. Without Title X funds, SFDPH would be greatly hampered in its ability  
22 to support the training of physicians in the use of these important contraceptive methods, leaving  
23 patients served by the SFDPH network with a lower standard of care.

24           9.       SFDPH uses Title X funds to educate the public on important topics relating to  
25 family planning and reproductive health. For example, SFDPH uses Title X funds to support its  
26 “Go Folic” project to increase community awareness of the importance of folic acid  
27 supplementation, which prevents birth defects. SFDPH also uses Title X funds to support a  
28

1 public education campaign to combat chlamydia, whose rates have increased in San Francisco  
2 and across California. And with Title X funds, SFDPH has partnered with the San Francisco  
3 Unified School District, Planned Parenthood, and other youth-serving health agencies to make  
4 San Francisco a leader in developing evidence-based sex education curricula and outreach.  
5 Indeed, thanks to those public education and outreach efforts, we now frequently see adolescents  
6 visiting Title X clinics seeking birth control *before* they become sexually active—a major public-  
7 health accomplishment. Without Title X funds, SFDPH would face significant obstacles in  
8 supporting these public education campaigns.

9       10. SFDPH uses Title X funds to support special projects to address emerging public  
10 health challenges. For example, when teen pregnancy rates increased in certain middle schools  
11 and high schools, SFDPH used Title X funds to start “pop-up” clinics at those schools where  
12 students could access contraceptive, reproductive, and sexual health care. SFDPH has also used  
13 Title X funds to conduct “secret shopper” studies at clinics in SFDPH’s network to ensure that the  
14 clinics were providing access to same-day pregnancy testing and emergency contraception. With  
15 the information learned from the “secret shopper” project, SFDPH implemented policies to ensure  
16 that clinics provide pregnancy testing and emergency contraception within 24 hours of a patient’s  
17 request.

18       11. If the new Title X rule promulgated by the Department of Health and Human  
19 Services (“HHS”) goes into effect, SFDPH will forego Title X funds entirely because the new  
20 rule imposes conditions that SFDPH cannot tolerate.

21       12. In particular, the new rule’s restrictions on counseling patients on abortion or  
22 referring patients for abortion would interfere with the provider-patient relationship, and would  
23 conflict with medical providers’ ethical obligations to not withhold information from patients  
24 concerning their condition and options.

25       13. Complying with the new rule’s physical and financial separation requirements  
26 more broadly would incur costs too great for SFDPH clinics to bear. Though SFDPH maintains  
27 complete physical and financial separation at our one Title X clinic site where medication  
28

1 abortion is offered, all SFDPH clinics provide counseling on abortion options and referrals for  
2 abortion when requested. At present, facilities where abortion options counseling and abortion  
3 referrals are provided are not physically separate from the rest of the Title X-funded family-  
4 planning services offered. Under the new Title X rule, those clinics will be effectively prohibited  
5 from providing such counseling and referral unless they do so in separate facilities with separate  
6 personnel, records, websites, and phone numbers. These clinics cannot bear the cost of setting up  
7 separate facilities, so SFDPH will have to forego Title X funds.

8 14. Without Title X funds, SFDPH will have to substantially curtail all of the projects  
9 discussed above, which will lead to a lower quality of care offered to our patients.

10  
11 I declare under penalty of perjury under the laws of the United States that the foregoing is  
12 true and correct and that this declaration was executed on March 20, 2019 in San Francisco,  
13 California.

14  
15  
16  
17   
SHIVAUN M. NESTOR