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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

STATE OF OREGON et al.,
Plaintiffs,

v.

ALEX M. AZAR II et al.,
Defendants.

Case No. 6:19-cv-00317-MC (Lead Case)
Case No. 6:19-cv-00318-MC (Trailing Case)

STATES' OPPOSITION TO
DEFENDANTS' MOTION FOR STAY
OF PROCEEDINGS PENDING
APPEAL OF THIS COURT'S
PRELIMINARY INJUNCTION

AMERICAN MEDICAL ASSOCIATION et al.,
Plaintiffs,

v.

ALEX M. AZAR II et al.,
Defendants.

Contrary to repeated and clear guidance from the Ninth Circuit that district court litigation should proceed uninterrupted during interim appeals on a preliminary injunction, *e.g.*, [California v. Azar](#), 911 F.3d 558, 583 (9th Cir. 2018), HHS nonetheless seeks to stay these proceedings pending appeal while simultaneously demanding that grantees—including the State Plaintiffs here—come into immediate compliance with the Final Rule challenged in this litigation. The State Plaintiffs oppose HHS’s motion (Docket No. 176).

In the interest of economy, the State Plaintiffs join in full the opposition to HHS’s stay motion filed earlier today by the AMA Plaintiffs, Docket No. 181, and file separately to address only the first factor of the legal standard for granting a stay: the “possible damage which may result from the granting of a stay.” [Lockyer v. Mirant Corp.](#), 398 F.3d 1098, 1110 (9th Cir. 2005).

HHS asserts that the States would not be harmed by a stay of the district court proceedings (Docket No. 176 at 9), but makes no effort to rebut the showing of immediate injury that the States presented at length in originally seeking provisional relief. *See* Docket Nos. 36 to 69. As this Court recognized, the States would suffer irreparable harm from implementation of the Final Rule. [Oregon v. Azar](#), ___ F. Supp. 3d ___, 2019 WL 1897475, at *2, 15 (D. Or. Apr. 29, 2019). That harm to the public health of residents in each of the States—and to the economic interests of the States—is ongoing, and additional harm is imminent. In addition, HHS has announced to grantees that compliance with the Final Rule is required as of July 15, 2019, *see* Declaration of Alan E. Schoenfeld in Support of Plaintiffs’ Opposition to Defendants’ Motion for Stay of Proceedings Pending Appeal of This Court’s Preliminary Injunction (“Schoenfeld Decl.”), Docket No. 182, Ex. 1, p. 2; and has further demanded that grantees submit an “Assurance and Action Plan documenting steps to come into compliance” by August 19, *see*

Schoenfeld Decl, Docket No. 182, Ex. 2, p. 2. The State Plaintiffs and all grantees and subgrantees within the states are now faced with precisely the disruption we previously predicted: the command to implement sudden and far-reaching changes to a program that, up until July 15, had allowed them to provide health care consistent with their ethical obligations for largely the past fifty years. Title X grantees and subgrantees unable or unwilling to comply with HHS's command that they comply with the Final Rule as of July 15 and document their "Action Plan" by August 19 may become ineligible—mid-grant—for further expenditures of Title X funds. Their exit from the program, if necessary, could dramatically impair the public health and would irreparably harm the States' economic interests.

Reaching the merits of the States' claims—as quickly as possible—is therefore necessary to avoid further harm to the public health of their citizens as well as their economies. The States therefore respectfully request that the Court deny HHS's motion to stay these proceedings.

DATED: August 2, 2019

Respectfully submitted,

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