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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA; THE STATE OF DELAWARE; THE STATE OF MARYLAND; THE STATE OF NEW YORK; THE COMMONWEALTH OF VIRGINIA, Plaintiffs, **v.** **ALEX M. AZAR, II, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; R. ALEXANDER ACOSTA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF LABOR; U.S. DEPARTMENT OF LABOR; STEVEN MNUCHIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; U.S. DEPARTMENT OF THE TREASURY; DOES 1-100,** Defendants, and, **THE LITTLE SISTERS OF THE POOR, JEANNE JUGAN RESIDENCE; MARCH FOR LIFE EDUCATION AND DEFENSE FUND,** Defendant-Intervenors.	4:17-cv-05783-HSG **DECLARATION OF KAREN NELSON IN SUPPORT OF STATES' MOTION FOR PRELIMINARY INJUNCTION**

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I, Karen Nelson, declare:

1. I am the President and CEO of Planned Parenthood of Maryland, Inc. (PPM). I have been President and CEO of PPM since March 2016. I have worked for Planned Parenthood organizations since 1994, including serving as President and CEO from 2008-2016 for Planned Parenthood of Central and Western New York and its predecessor organization, Planned Parenthood of Western New York.

2. This declaration is based on my professional knowledge, my review of PPM's records, and the knowledge that I have acquired in the 24 years of service with affiliates of Planned Parenthood. If called and sworn as a witness, I could and would testify competently to the information contained in this declaration.

3. There are two Planned Parenthood affiliates that operate health centers in Maryland: PPM and Planned Parenthood of Metropolitan Washington, DC, Inc. (PPMW). PPM and PPMW are separately incorporated entities. PPMW is responsible for services in Montgomery and Prince George's counties, and PPM has responsibility for the rest of the state. Planned Parenthood's mission in Maryland includes providing a wide range of high quality, affordable reproductive health care services; education to empower individuals to make informed reproductive choices; and advocacy to protect the right to make those choices.

4. Collectively, PPM and PPMW currently operate nine health centers and serve more than 33,000 family planning patients each year in Maryland. A map of the locations of Planned Parenthood health centers in Maryland is attached as Exhibit A.

5. The two Final Rules, as published on November 15, 2018 by the U.S Health and Human Services Department, in conjunction with the U.S. Department of Labor and the U.S Department of Treasury, would have a devastating impact on some women in Maryland who rely on PPM and PPMW for health care services, including contraceptive services. The Final Rules would also have a severe impact on the State of Maryland which would have to increase funding for public health programs to ensure women have access to contraceptive services to fill the void filled by employers who refuse to provide insurance coverage that was formerly required by law.

Planned Parenthood's Role in Supporting Patients and Promoting Public Health in Maryland

6. Planned Parenthood provides services to 32% of women who need publicly funded contraceptive services in Maryland.[1] In 2017, Planned Parenthood of Maryland provided family planning services to 27,527 patients in Maryland at its health centers in Annapolis, Baltimore, Easton, Frederick, Owings Mills, Towson, and Waldorf. In 2017, Planned Parenthood of Metropolitan Washington, DC provided family planning services to 5,480 patients in Maryland at its health centers in Gaithersburg, Suitland, and Silver Spring (the Silver Spring location closed in 2017).

7. Both PPM and PPMW provide services to individuals who are uninsured, participate in a Medicaid program, or are covered by private insurance.

8. When patients do not have insurance coverage or have insurance without contraceptive coverage, patients pay a portion of the cost of their care as determined by a sliding fee scale based on income. Planned Parenthood covers the remainder of the cost of care using its own funding as well as grants from the Title X program.

9. In Fiscal Year 2017, PPM received $1,704,159 in Title X funds, and in Fiscal Year 2017, PPMW received $130,483 in Title X funds. Since the amount of funding is a fixed grant, it cannot increase within the grant year because of increases in patient volume.

10. PPM and PPMW provide reproductive health care services including wellness exams, contraception counseling, breast health exams, cancer screenings, birth control, HPV vaccinations, sexually transmitted infection testing and treatment, pregnancy testing and option counseling, emergency contraception, sterilization, and abortion services.

11. Of the 33,007 patients to whom PPM and PPMW provided services in 2017, 30,138 were female. The payor mix for this group was:

[1] Response to Inquiry Concerning the Availability of Publicly Funded Contraceptive Care to U.S. Women, Guttmacher Institute, May 2017.4

a. 10,197 Medicaid patients (including Medicaid, MCHP, and Medicaid Family Planning Program), representing 33% of PPM and 18% of PPMW's patients at Maryland health centers;

b. 8,562 Title X patients, representing 22% of PPM and 46% of PPMW's patients at Maryland health centers;

c. 3,939 patients who receive services, including abortion, not covered under Title X or who fall into a miscellaneous eligibility category, representing 12% of PPM and 14% of PPMW's patients at Maryland health centers; and

d. 10,309 commercially insured patients, representing 33% of PPM and 22% of PPMW's patients at Maryland health centers.

Risk to Planned Parenthood's Insured Patients

12. As noted above, over 10,000 of Planned Parenthood's patients at Maryland health centers have commercial insurance. Planned Parenthood patients who are covered by insurance plans which the employer self-funds are at risk for losing contraception coverage under the Final Rules because their employers could claim a religious or moral exemption and would not have to seek accommodation if they discontinue coverage. Since 1998, Maryland has mandated that most state-regulated plans cover contraception.[2] In 2016, the Maryland Contraceptive Equity Act broadened coverage requirements for State-regulated plans with contraception coverage.[3] In 2018, Maryland again improved coverage by requiring coverage of 12-months dispensing of contraception.[4] However, self-funded insurance plans are not required to comply with State law, as these plans are exempt from State insurance laws by the federal Employee Retirement Security Act (ERISA).

[2] House Bill 457 – Health Benefit Plans – Coverage for Prescriptive Contraceptives Drugs or Devices, 1998, http://mgaleg.maryland.gov/webmga/frmMain.aspx?tab=subject3&ys=1998rs/billfile/hb0457.htm

[3] House Bill 1005/Senate Bill 848 – Health Insurance – Contraceptive Equity Act, 2016, http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb1005&stab=01&pid=billpage&tab=subject3&ys=2016rs

[4] House Bill 1283 - Health Insurance - Prescription Contraceptives - Coverage for Single Dispensing, 2018, http://mgaleg.maryland.gov/2018RS/bills/hb/hb1283T.pdf

13. Since the Final Rules permit an individual to refuse insurance coverage of contraception, even more of Planned Parenthood's insured patients are at risk. Some patients are not the policy holders of their insurance plans, but rather they are covered under the plans of a parent, spouse, or partner. Women could lose contraceptive coverage because of the religious or moral objections of the policy holder. Women facing domestic violence within their families are also at risk for loss of contraception coverage. If the policy holder is the abuser, that person may discontinue contraceptive coverage. Planned Parenthood has seen many domestic violence victims whose partners or family members try to block access to birth control as part of controlling, abusive behavior.

Increase in Women Seeking Family Planning Services at Planned Parenthood

14. With the Final Rules, women in insurance plans which the employer self-funds will be at risk of losing contraceptive coverage. Since approximately 1.49 million Marylanders are covered through self-funded insurance plans, a substantial number of women are at risk for losing contraception coverage.[5] Employers are not required to provide any accommodation if they discontinue contraceptive coverage.

15. Based on my experience and since Planned Parenthood is a trusted provider of reproductive health services, I believe that many women who lose contraceptive coverage will turn to Planned Parenthood sites across the State. Women know that Planned Parenthood's mission is "Care. No matter what." The only systemic options for covering the cost of these services are the Title X Program, the Medicaid Family Planning Program, and Medicaid/MCHP.

Impact to the Title X Program

16. Title X is a federal family planning grant program that in Maryland is administered by the Maryland Department of Health. Planned Parenthood receives a total of $1,834,641 (PPM and PPMW Fiscal Years 2017). Other Title X providers include local health departments and

[5] Maryland Insurance Administration, *2017 Maryland Covered Lives Report* (December 2017), https://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/2017-Report-on-the-Number-of-Insured-and-Self-Insured-Lives-MSAR7797.pdf

community health centers. All Title X providers are non-profit organizations or local health departments. The total Maryland budget for Title X is $9.9 million, with $6 million in State funds and $3.9 million in federal funds.[6] Under legislation enacted by the Maryland General Assembly in 2017, the State of Maryland may have to bear significantly greater financial responsibility for the Title X program using State general funds.[7] If the U.S. Department of Health and Human Services finalizes rules published on June 1, 2018 for the Title X program, the State must backfill federal funds for existing Title X providers who lose federal funding because of a prohibition on the provision or referrals for abortion services.

17. The Title X program has been successful in reducing unintended pregnancies in Maryland. In 2014, Title X providers in Maryland were responsible for assisting women in avoiding 14,000 unintended pregnancies.[8]

18. Women with incomes up to 250% of the federal poverty level are eligible for the Title X program whether they are uninsured or have commercial insurance. Under the proposed rule from the U.S. Department of Health and Human Services published on June 1, 2018, commercially insured women over 250% of the federal poverty level would also be eligible for contraceptive services if their employer-sponsored plan does not cover the contraceptive services sought by the woman because of a sincerely held religious or moral objection to providing such coverage.[9] For women with insurance, Title X covers family planning services not covered by the individual's insurance policy. All Title X participants, with the exception of those with the lowest income levels, must contribute to the cost of their care according to a sliding fee schedule approved by the Maryland Department of Health.

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[6] Fiscal Note for House Bill 1083 – Family Planning Services - Continuity of Care, Department of Legislative Services, February 2017, http://mgaleg.maryland.gov/2017RS/fnotes/bil_0003/hb1083.pdf

[7] House Bill 1083 – Family Planning Services – Continuity of Care, 2017, http://mgaleg.maryland.gov/2017RS/chapters_noln/Ch_28_hb1083T.pdf

[8] *State Facts on Publicly Funded Family Planning Services: Maryland*, Guttmacher Institute, September 2016, https://www.guttmacher.org/fact-sheet/state-facts-publicly-funded-family-planning-services-maryland

[9] 83 Fed. Reg. at 25530.

19. With the Final Rules, I believe that there will be an influx of insured patients who will turn to Title X for support when they lose contraception coverage. Planned Parenthood is the largest provider of publicly funded family planning services. In 2015, Planned Parenthood provided contraceptive services to nearly one-third of the women seeking services at publicly funded clinics.[10] I believe that Planned Parenthood will see a large portion of the women seeking services when they lose contraceptive insurance coverage.

20. Title X is funded through a fixed amount in the State budget. I believe that it will be difficult for the current budget levels to accommodate the increase in women seeking support after losing contraception coverage in their insurance plans. The State would have to increase State funding of Title X to ensure that patients across Maryland can be accommodated by the program. Planned Parenthood, as is likely the case with other Title X providers, is not in the position to absorb an influx of new patients into Title X without State financial support.

21. Even if the State were to increase Title X funding, there is still a financial burden on the patient. Prior to the Final Rules, insurance plans have been required to provide contraceptive counseling and most contraceptive options without copayment. If women lose contraception coverage and turn to Title X, under the current regulatory scheme, they will have to pay a portion of their costs, based on a sliding fee scale, with the exception of individuals with the lowest-income levels. With cost sharing requirements under a sliding fee scale, contraception may be unaffordable, particularly for more expensive methods such as IUDs.

Impact of Increase of Women Turning to the Medicaid Family Planning Program

22. The Medicaid Family Planning Program is a limited benefits program that covers family planning services. The program is administered by the Maryland Medical Assistance Program. The funding for the Medicaid Family Planning Program is based on volume of services covered, rather than a fixed budget. In fiscal 2016, the State spent $3.2 million on the program,

[10] Frost et al, "Publicly Funded Contraceptive Services at U.S. Clinics, 2015" Guttmacher Institute, April 2017, https://www.guttmacher.org/sites/default/files/report_downloads/publicly_funded_contraceptive_services_2015_tables_1-7.pdf

with 10% of funding from general funds and 90% from federal funds.[11] The average monthly enrollment was 12,852.[12] Higher enrollment would lead to an increase in State expenditures.

23. The program provides coverage to uninsured individuals or wrap-around coverage for commercially insured patients. Participants may have incomes up to 250% of the federal poverty level. There are no cost-sharing requirements for participants.

24. Planned Parenthood provides services to women that are covered under the Medicaid Family Planning Program. Because Medicaid claims systems do not distinguish between Medicaid fee-for-service and Medicaid Family Planning, I cannot attest to the number of Planned Parenthood patients covered by this program.

25. Due to the Final Rules, I believe that insured patients will seek wrap-around coverage from the Medicaid Family Planning Program. This will result in an increase in State funds needed to support this program.

Impact of Increase of Women and their Families Turning to the Medicaid/MCHP Programs

26. The Maryland Medicaid Program and Medicaid Children's Health Program (MCHP) cover a full range of services, including family planning, to low income women and their families. For Medicaid, participants may have incomes of up to 138% of the federal poverty level. MCHP covers individuals up to age 19 with incomes up to 300% of the federal poverty level. Most Medicaid and MCHP participants receive their coverage through the managed care program called HealthChoice. In calendar year 2015, HealthChoice spent $33.7 million on family planning services with 10% from State funds and 90% in federal funds.[13]

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[11] Department of Legislative Services, Fiscal Note for House Bill 1083 – Family Planning Services, Continuity of Care, February 2017, http://mgaleg.maryland.gov/2017RS/fnotes/bil_0003/hb1083.pdf

[12] Department of Legislative Services, *Operating Budget Analysis of the Medical Care Programs Administration*, February 2017, http://mgaleg.maryland.gov/pubs/budgetfiscal/2018fy-budget-docs-operating-M00Q01-DHMH-Medical-Care-Programs-Administration.pdf

[13] Department of Legislative Services, Fiscal Note for House Bill 1083 – Family Planning Services, Continuity of Care, February 2017, http://mgaleg.maryland.gov/2017RS/fnotes/bil_0003/hb1083.pdf

27. Planned Parenthood provides services to a significant number of Medicaid and MCHP participants - over 10,000 in 2017 alone.

28. As a result of the Final Rules, I believe that some eligible women will forgo employer coverage and enroll in Medicaid or enroll in Medicaid for wrap-around coverage. Women with children may switch their children from their employer's family plans to MCHP or enroll their children for wrap-around coverage. As a result, the cost of coverage will shift from the employer to the State and federal government. Maryland will pay 10% of the cost of family planning services and up to 50% for the cost of other services, depending on the eligibility category of the participant.

Impact on Women without Contraception Coverage

29. "Family planning is one of the 10 great public health achievements of the 20th century. The availability of family planning services allows individuals to achieve desired birth spacing and family size, and contributes to improved health outcomes for infants, children, women, and families," according to Healthy People 2020.[14]

30. If women who lose contraceptive coverage do not qualify for or are unable to obtain coverage under one of the programs I have outlined above, they face a higher risk for unintended pregnancy and associated poor health outcomes. The rate of unintended pregnancy among women who are not using contraception is 45%.[15] Contraception services are basic, preventive health care for women, improve the lives of families, and should be part of insurance coverage.

31. Women at Planned Parenthood frequently tell us that birth control is essential in allowing them to complete their educations, follow their career paths, and make their own choices about if or when to have children.

[14] Healthy People 2020, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, https://www.healthypeople.gov/2020/topics-objectives/topic/family-planning

[15] CHBRP Birth Control Report, at 22, citing Fitner, LB, Zolna MR, Declines in Unintended Pregnancy in the United States, 2008-2011, *New England Journal of Medicine* 374(9):843-552 (2016).

Creation of a Patchwork System of Coverage

32. Planned Parenthood is dedicated to serving all individuals regardless of income level or insurance status. Planned Parenthood, along with all other health care providers, need a consistent reimbursement system to ensure our patients' needs are met. Contraceptive services are basic preventive health care services, and I believe that they should be part of the continuum of services funded by any health insurer in either the commercial or public markets. If contraceptive coverage is not covered by an employer, only publicly funded programs, such as Title X and Medicaid programs, can provide a consistent reimbursement system for those services. Even then, the coverage system will be compromised, as not all women will meet eligibility requirements for those programs.

33. The proposed Final Rules allow employers, individuals, and insurers to separate contraceptive coverage from health care coverage. As a result, the Final Rules will create a confusing patchwork insurance system under which most services will be covered by private insurance. However, contraceptive coverage, regardless of whether the patient has employer-based insurance, may be provided by private insurance, a public program, or not at all. The result will be a confusing patchwork of coverage rules that will be difficult for both patients and providers to navigate.

Overall Impact on the State

34. I believe the Final Rules create financial risk to the State of Maryland. The State must bear the cost of increasing funding for public programs to ensure that all of its citizens have access to basic, preventive health services. If the State does not increase funding, women will be more at risk for unintended pregnancies, and the State will face the economic consequences of fewer women being able to finish their education and advance in the job market.

35. Finally, I also believe the Final Rules will impede efforts to improve the reproductive health of women in Maryland. Rather than using our resources to move forward to improve the health and lives of women in Maryland, we will need to divert resources to backfill contraceptive coverage dropped by employers.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

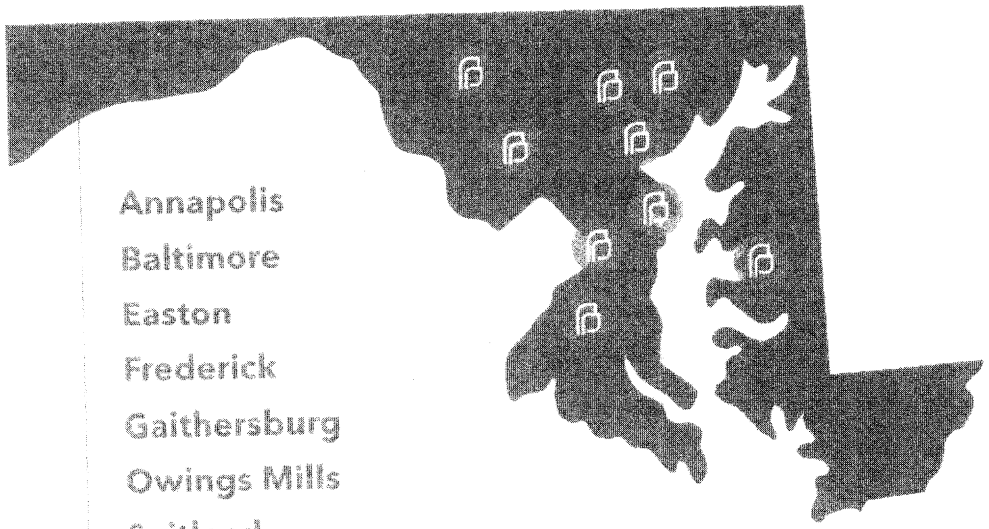
Executed on December 10, 2018, in Baltimore, Maryland.

Karen Nelson

Karen Nelson
President and CEO
Planned Parenthood of Maryland

Exhibit A:

Maryland Planned Parenthood Health Centers



Declaration of Karen J. Nelson, Planned Parenthood of Maryland, November 3, 2017