

XAVIER BECERRA, State Bar No. 118517
Attorney General of California
KATHLEEN BOERGERS, State Bar No. 213530
Supervising Deputy Attorney General
NELI N. PALMA, State Bar No. 203374
KARLI EISENBERG, State Bar No. 281923
Deputy Attorneys General
1300 I Street, Suite 125
Sacramento, CA 94244-2550
Telephone: (916) 210-7913
Fax: (916) 324-5567
E-mail: Karli.Eisenberg@doj.ca.gov
Attorneys for Plaintiff the State of California

**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; THE STATE OF WASHINGTON,

NO. 4:17-cv-05783-HSG

DECLARATION OF DR. JUDY ZERZAN-THUL

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.

1 || Defendants,

2 and.

3 THE LITTLE SISTERS OF THE POOR,
4 JEANNE JUGAN RESIDENCE; MARCH
FOR LIFE EDUCATION AND DEFENSE
5 FUND.

6 Defendant-Intervenors.

8 I, Dr. Judy Zerzan-Thul, declare as follows.

9 I am over the age of 18 and have personal knowledge of all the facts stated herein.
10 1. I am the Chief Medical Officer for the Washington State Health Care Authority
11 (HCA) and have been employed in this position since August 20, 2018. I am responsible for
12 assessing and improving the quality of care for State-purchased health care programs, including
13 Apple Health (which is commonly referred to as Medicaid) and the Employee and Retirees
14 Benefits program.
15

16 2. Prior to joining HCA, I was employed as the Chief Medical Officer for the State of
17 Colorado Department of Health Care Policy and Financing for nine years. In that capacity, I was
18 responsible for providing clinical guidance for Colorado Medicaid and the Children's Health
19 Insurance Program, including pharmacy and medical benefits, measuring and improving quality,
20 and data analysis.

22 3. I obtained my M.D. degree from Oregon Health & Science University. I also hold
23 a Master's degree in Public Health from the University of North Carolina. I am Board Certified

1 in Internal Medicine and I have over twenty years of experience as a medical doctor. I have an
 2 active current license to practice medicine in the states of Colorado and Washington.

3 4. The Health Care Authority administers federally and state funded medical
 4 assistance programs under the name Washington Apple Health, which is commonly referred to
 5 as Medicaid. Apple Health provides integrated health care services that promote health,
 6 wellbeing, and quality of life for almost 1.8 million Washington residents. As part of that
 7 mission, and as required by the Federal Government in order to participate in Medicaid, Apple
 8 Health provides coverage for reproductive health services including family planning and
 9 pregnancy related services for eligible Washington residents through a variety of programs.
 10 Family planning services include all FDA approved contraceptive methods and the clinical
 11 services necessary for clients to safely and effectively use their chosen contraceptive method.

12 5. Eligibility for Apple Health programs is based on several factors, including age,
 13 household size, tax filing status, pregnancy status, and income level. For example, childless
 14 adults are generally eligible up to 133% of the Federal Poverty Level (FPL), whereas pregnant
 15 women are eligible up to 193% of the FPL. Children under 19 are eligible up to 312% of the
 16 FPL. Through Apple Health, the Health Care Authority also administers a Family Planning Only
 17 Demonstration Waiver Program (FPO) that is an agreement with the Federal Government to
 18 provide coverage of family planning specific services for women and men otherwise ineligible for
 19 Medicaid, up to 260% of the FPL. Because FPL is established by income level and
 20 family/household size, generally a woman with a spouse and two children would qualify at a higher
 21 income level than a woman with no spouse or children.

1 6. In 2016, the Health Care Authority and its contracted Managed Care
 2 Organizations spent \$32,506,774.07 in combined federal and state dollars for coverage of family
 3 planning services for Apple Health clients enrolled in programs receiving federal funding.

4 7. The Health Care Authority serves as a secondary payor for services not otherwise
 5 fully covered by employer or higher education sponsored health plans for those clients that have both
 6 primary health coverage and Apple Health coverage. In 2016, the Health Care Authority provided
 7 secondary Apple Health coverage for 120,328 clients who had primary health coverage from other
 8 sources such as employer-sponsored coverage and student coverage. Of the total Apple Health clients
 9 that have primary health coverage from sources other than Apple Health, 69,652 are women, 38,336
 10 of which are ages 15-44.

12 8. If employers or colleges and universities in Washington choose to no longer cover
 13 contraception for their employees and students pursuant to the federal government's newly-
 14 created and expanded exemptions to the Affordable Care Act's contraceptive mandate, the cost
 15 of family planning services will shift to the State for employees who have or will seek and be
 16 qualified for Apple Health coverage as secondary insurance through the Health Care Authority.

18 9. Women who lose access to contraceptive coverage through employer and college
 19 or university sponsored insurance plans may be unable to afford their current form of
 20 contraception and have an unintended pregnancy. The potential for women to reduce or stop
 21 working due to pregnancy could change the families' income, potentially causing these families
 22 to become eligible for one of the Apple Health programs. The change in family size due to a new
 23 birth could also cause these families to become eligible for one of the Apple Health programs.
 24 This could result in an increase in state expenditures related to pregnancy and future family
 25 planning services.

1 10. In 2016, the Health Care Authority and its contracted Managed Care
2 Organizations spent on average \$9,886 per delivery. Additionally, there are pregnancy services
3 costs for pregnancy losses prior to 20 weeks gestation. Apple Health covered 42,516 deliveries
4 in 2016. Approximately 30% of Medicaid-funded births in 2013 were from unintended
5 pregnancies.
6

7 11. The Affordable Care Act's implementation correlates with a decrease in the FPO
8 program enrollment. The number of enrollees receiving FPO services dropped by 71% from the
9 2012-13 fiscal year to the 2014-15 fiscal year. By the 2016-17 fiscal year there was a further
10 drop of 48% in enrollees. Enrollment would be expected to increase if the expanded
11 contraceptive exemptions are allowed to take effect.
12

13 12. The State of Washington Public Employees Benefits Board (PEBB) Program
14 purchases and coordinates health benefits for more than 300,000 eligible public employees and
15 retirees. PEBB members may elect to add their spouse or state-registered domestic partner to
16 their health plan if they lose contraception coverage through their own employer's health plans.
17 When state employees do so, it will cost the State additional money to provide health coverage
18 for those spouses and state-registered domestic partners.
19

20 I declare under penalty of perjury under the laws of the State of Washington and the United
21 States of America that the foregoing is true and correct.
22

23 DATED this 17 day of December 2018 at Olympia, Washington.
24

25 DR. JUDY ZERZAN-THUL
26

