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

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, BY AND THROUGH ATTORNEY GENERAL XAVIER BECERRA, Plaintiff, **v.** **ALEX AZAR, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; DOES 1-100,** Defendants.	**DECLARATION OF MARI CANTWELL IN SUPPORT OF A MOTION FOR A PRELIMINARY INJUNCTION** Date: April 18, 2019 Time: 12:30 p.m. Dept: Courtroom 5, 17th Floor Judge: The Honorable Edward M. Chen Trial Date: Not set Action Filed: March 4, 2019

I, Mari Cantwell declare:

1. I am the Medicaid Director for the State of California and Chief Deputy Director of Health Care Programs at the California Department of Health Care Services (DHCS). I have held the Chief Deputy position since 2013 and the State Medicaid Director position since 2015. I have worked in the field of health care policy and finance for almost 20 years. Prior to the positions I hold now, I served as the Deputy Director of Health Care Financing for DHCS, and previously as the Vice President of Finance Policy for the California Association of Public Hospitals and Health Systems. I hold a B.A. in Public Policy from Brown University, and a Masters in Public Policy with a focus in Health Policy from the University of California, Los Angeles.

2. As the State Medicaid Director and Chief Deputy Director of Health Care Programs at DHCS, my responsibilities include the management of California's Medicaid program under title XIX of the federal Social Security Act, referred to in California as "Medi-Cal." In this role, I oversee the Office of Family Planning (OFP) which is responsible for developing family planning policy in Medi-Cal and administering family planning-related programs in the purview of DHCS.

3. The OFP is charged by the California Legislature "to make available to citizens of the State who are of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families." Cal. Welf. & Inst. Code § 14501(a). The purpose of family planning is to provide women and men a means by which they decide for themselves the number, timing, and spacing of their children. Family planning services are a covered Medi-Cal benefit for individuals eligible for full scope coverage under the Medi-Cal State Plan.

4. In addition to family planning services for traditional Medi-Cal eligible individuals, the OFP also administers the Family Planning, Access, Care, and Treatment (Family PACT) program. Family PACT is California's innovative approach to provide comprehensive family planning services to eligible low-income men and women who do not otherwise qualify for full scope Medi-Cal coverage. In 2016-17, the most recent fiscal year for which data is available, Family PACT served approximately 1.07 million income eligible men and women of childbearing age at no cost through a network of approximately 2,400 providers.

1 5. The Title X family planning program, the federal program that funds providers
2 throughout the State to support the delivery of quality preventive and reproductive healthcare,
3 works alongside the Family PACT program. Title X funding helps increase access to family
4 planning services beyond what would be possible through the Family PACT program alone by
5 providing funds to help expand clinic hours, conduct family planning outreach and education,
6 introduce new technologies, or provide staff training or bilingual or interpreter services. These
7 services are not covered by Family PACT's fee-for-service program. Additionally, Title X
8 funding helps promote access to Family PACT services.
9 6. Family PACT works to achieve the following key objectives: (1) to increase access
10 to publicly funded family planning services for low-income California residents who have no
11 other source of health care coverage for family planning, (2) to increase the use of effective
12 contraceptive methods by clients, (3) to promote improved reproductive health, and (4) to reduce
13 the rate, overall number, and cost of unintended pregnancies.
14 7. When established by the California Legislature in 1996, Family PACT was funded
15 solely through the California State General Fund. From December 1999 through June 2010,
16 California received additional funding from the Centers for Medicare and Medicaid Services
17 (CMS) through a Section 1115 Demonstration Waiver. In March 2011, California received
18 federal approval to transition Family PACT to the Medi-Cal State Plan as an optional eligibility
19 category pursuant to 42 U.S.C. § 1396a(a)(10)(A)(ii)(XXI), retroactive to July 2010.
20 8. Family PACT serves clients who (1) are California residents; (2) with an income at or
21 below 200% of the federal poverty guidelines; (3) have no other source of health care coverage
22 for family planning services; and (4) have a medical necessity for family planning services.
23 Clients can receive services the day that they enroll. Enrollment must be renewed annually.
24 9. Family PACT enrollees receive services through various clinician providers,
25 including private physicians in individual or group settings, nonprofit community-based clinics,
26 OB/GYNs and physicians representing general practice, family practice, internal medicine, and
27 pediatrics. Planned Parenthood provides approximately 35% of the family planning visits that are
28

reimbursed by Family PACT. Medi-Cal licensed pharmacies and laboratories also participate by referrals from enrolled Family PACT clinicians.

10. Family PACT benefits include all FDA approved contraceptive methods and supplies, family planning counseling and education, sexually transmitted infection (STI) testing and treatment, HIV screening, cervical cancer screening, male and female permanent contraception, and limited infertility services.

11. California has prioritized access to family planning healthcare services for adolescents. We strive to ensure adolescents have access to health information, counseling, and family planning services to reduce the likelihood of unintended pregnancy and to maintain optimal reproductive health. To that end, California passed the Healthy Youth Act of 2016, which requires school districts to provide students with accurate, inclusive, and comprehensive sexual and reproductive health education and HIV prevention education, at least once in high school and once in middle school.

12. In 2016-17, Family PACT served 58,917 adolescents between the ages of 10 and 17 years old, reaching a total of 146,224 youth 19 years old or younger who were able to obtain safe and accurate preventative and reproductive healthcare services. In 2016-2017, of total services accessed by adolescents using Family PACT, 24% involved contraceptive use, which included barrier methods, oral contraceptive pills, hormone injections, patch, ring, implants, intrauterine contraceptives, and emergency contraceptives. Additionally, 12% of services involved pregnancy and other laboratory testing, 27% of services accessed by adolescents were STI testing that included screenings for chlamydia, gonorrhea, HIV, HPV, herpes, and syphilis, and 28% involved evaluations, education, and counseling. Importantly, the majority of services accessed by adolescents involved clinical services.

13. California and the federal government jointly fund the majority of the costs of the Family PACT program according to applicable Federal Medical Assistance Percentage (FMAP) rates provided in Medicaid. Eligible family planning services and testing for STIs are reimbursed at a ninety percent FMAP rate. The diagnosis and treatment of STIs and other family planning-

related services are reimbursed at a fifty percent FMAP rate. California provides the remainder of the funding needed to provide services to Family PACT enrollees.

14. Beginning in January 2014, when the Patient Protection and Affordable Care Act (ACA) was first implemented, many Family PACT clients became eligible for full scope Medi-Cal for the first time, and a smaller proportion became eligible for subsidized private insurance through Covered California, the State's health insurance marketplace. Family PACT clients who transitioned to coverage through full scope Medi-Cal and Covered California were able to receive family planning services with their new coverage.

15. All Title X providers in California are required to be Family PACT providers. Because Family PACT is a fee-for-service program that reimburses only for direct clinical services to otherwise uninsured residents up to 200% of the federal poverty level, Title X plays an important role in helping reduce gaps in providing family planning healthcare.

16. Individuals with incomes up to 250% of the federal poverty level are eligible for Title X-funded services. This is a higher income limit than Family PACT's 200% eligibility threshold. This affords Californians in this income range access to subsidized family planning services not funded by any other public source.

17. I am familiar with the Final Rule issued by the U.S. Health and Human Services Department, on February 22, 2019 ("Title X Rule"). It is my understanding that the Title X Rule prohibits health facilities that provide abortion, refer patients for abortion services, or take "any other affirmative action to assist a patient to secure" an abortion from receiving any Title X funds, unless there is clear physical and financial separation between the Title X program and the facility that provides abortions or referrals. I understand that a Title X provider engaging in nondirective pregnancy counseling is permitted to provide a patient only with a referral list of licensed comprehensive primary health care providers that does not clearly identify which provide abortion services.

18. I anticipate that implementation of this Title X Rule will likely have serious, negative impacts on the health and well-being of Californians, and will likely increase costs for the State, including the Medi-Cal program.

19. The new Title X Rule will make it harder for patients to obtain timely and accurate local referrals for abortion services.

20. To the extent that the Title X Rule reduces the number of California clinics willing or able to participate in the Title X program, this reduction will create significant barriers for the more than one million men and women who depend on these Title X providers to access reproductive and sexual healthcare services.

21. Those patients who are not covered by Family PACT (because their incomes are between 200 and 250% of the federal poverty level, or because they otherwise do not meet Family PACT eligibility criteria) may lose access to publicly funded family planning services.

22. Furthermore, to the extent that loss of Title X funds makes it harder for family planning providers to make their clinical offerings accessible or convenient (for instance due to reductions in clinic hours, or reductions in outreach staff), these changes will likely make it more difficult for their patients to access Family PACT and other Medi-Cal services from these same providers as well.

23. Reductions in access to Title X, Family PACT, and other Medi-Cal services would, in turn, impact California's ability to ensure women have access to comprehensive healthcare services and to protect the State's public health.

24. If, as a result of the Title X Rule, fewer individuals have access to publicly funded contraceptive services, that will cause an increase in unintended pregnancies. State funding for contraceptives is a cost-effective use of public resources. Contraceptives save State money overall by reducing public spending on unintended pregnancies, even when funds pay for long-acting reversible contraceptives (LARCs), which come with a higher up-front cost.

25. Furthermore, the Title X Rule will undermine the impact of DHCS' regulation of publicly funded family planning providers by permitting award of Title X grants to providers who would not otherwise be eligible to provide publicly funded services through California's Family PACT program. It is my understanding that the Title X Rule will permit Title X grants for projects whose participating entities are unwilling or unable to provide, either directly or by referral, the full scope of family planning education, counseling, and medical services required by

Family PACT. It also appears to permit Title X grants for projects whose participating entities may not have the licensed medical personnel with the necessary family planning skills, knowledge, and competency to provide a full range of family planning services. Such providers do not meet the standards that DHCS has set forth for provision of family planning services.[1]

26. If the Title X Rule is implemented, Title X-funded grant recipients may no longer be required to be Family PACT providers. This may reduce provider participation in Family PACT and in turn the likelihood that Title X-funded programs will screen patients for Medi-Cal eligibility, and therefore may interfere with DHCS' mission to provide Californians with access to affordable, integrated, and high-quality health care.

27. If, as a result of implementation of the Title X Rule, individuals' access to Title X-funded contraceptive services is reduced and unintended pregnancies increase, this will likely result in significant increased financial obligations for California, including the Medi-Cal program.

28. Medi-Cal (including Family PACT) is the primary funder for low-income Californians' healthcare services. If Title X patients experience unintended pregnancy as a result of reduced access to contraceptives and other family planning services, many of the costs of unintended pregnancy will be borne by the state. Because federal funds are not used to pay for abortion services, which are covered for all Medi-Cal enrollees, the entire fiscal burden stemming from any increase in abortions due to reduced access to contraception would be borne exclusively by the State.

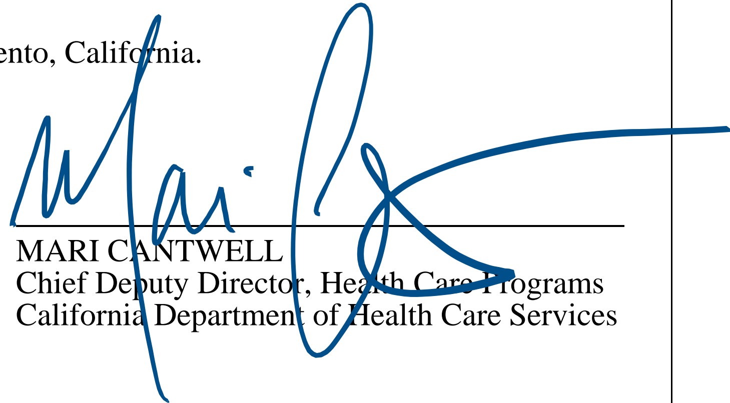
29. Unintended pregnancy is likely to result in relatively higher costs, because shorter inter-pregnancy intervals are more likely to result in premature births, low birth weight infants, and congenital defects, all of which produce considerable costs for California, in addition to the obvious harm to child health. The average medical cost to the State in the first year of life of a premature or low birth weight baby is up to 10 times higher than the cost of a healthy term baby.

[1] These program standards are set forth in DHCS' Family PACT Policies, Procedures and Billing Instructions (PPBI) Manual, available at http://www.familypact.org/Providers/policies-procedures-and-billing-instructions.

30. With no other available public funds for such purposes, California's Medicaid program would likely also bear a portion of the costs associated with any delays in the diagnosis and treatment of STIs or breast or cervical cancer.

31. These harms could be compounded if the U.S. Department of Health and Human Services' recent final rules that allow certain employers to claim a religious or moral objection to providing contraceptive coverage and leave their employees without access to "no cost" contraceptive coverage are implemented. It is my understanding that the federal government suggests that women affected by those final rules should seek out services at Title X clinics. Since more women may visit family planning clinics that receive Title X funding because of the broad exemptions created by those final rules, more women may be screened for Family PACT, and more women may be placed in the Family PACT program. As a result, state dollars may have to be diverted to provide care for this patient population that should instead be receiving contraceptive coverage through their employer-sponsored insurance.

32. Additionally, if, as a result of the Title X Rule, California clinics experience an increase in patients coming from out-of-state in order to obtain comprehensive, confidential reproductive health services, then that will also cause harm to California's healthcare network by increasing demand for services in California, further burdening our healthcare provider network.

1 I declare under penalty of perjury that the foregoing is true and correct and of my own
2 personal knowledge.
3 Executed on March 14, 2019, in Sacramento, California.
4
5

6 MARI CANTWELL
7 Chief Deputy Director, Health Care Programs
California Department of Health Care Services
8
9
10 SA2018101519
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28