

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES;
ALEX M. AZAR, in his official capacity as
the Secretary of the United States
Department of Health and Human Services,

Defendants.

NO. 2:20-cv-01105

DECLARATION OF
DAVID REED

I, David Reed, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I am over the age of 18, have personal knowledge of the facts and circumstances set forth in this Declaration, and am competent to testify in this matter.

2. I am a Section Manager for the Washington Health Care Authority and am responsible for oversight of Adult Behavioral Health Services and managing statewide implementation of the Involuntary Treatment Act and related crisis service activities.

3. I am familiar with the rule of the Department of Health and Human Services entitled “Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority,” 85 Fed. Reg. 37160-248 (the “Final Rule”), which was published in the Federal Register on June 19, 2020. I understand that the Final Rule provides that the prohibition of discrimination “on the basis of sex” in Section 1557 of the Affordable Care Act does not include discrimination based on pregnancy termination, sexual orientation, or transgender status or gender identity, and that the previous rule did specifically prohibit discrimination based on transgender status or gender identity and sex stereotyping.

4. I have been asked to evaluate how the Final Rule will impact the finances of the Washington State Healthcare Authority.

5. I understand the Washington State Office of the Insurance Commissioner has explained that approximately 1,583,681 Washingtonians receive healthcare coverage through a group healthcare plan funded by an employer under the Employee Retirement Income and Security Act of 1974, or a plan that is part of the Federal Employees Health Benefits Program, and so the healthcare coverage plans of these Washingtonians will not be prevented from discrimination in healthcare on the basis of pregnancy termination, sexual orientation, and transgender status or gender identity. Declaration of Mike Kreidler, ¶ 14.

6. I further understand that the Washington State Department of Health (DOH) estimates that, as a result of this, between 5,271 and 16,266 transgender Washingtonians will lose healthcare coverage for transgender healthcare services such as hormone therapies and surgical gender transition procedures. Declaration of Michele Roberts, ¶ 15.

7. I also understand that DOH further estimates that this loss of healthcare coverage will result in between 670 to 2,069 new cases of moderate to severe depression every year if the new Final Rule takes effect, as well as delays and postponement of necessary medical care, increased incidence of violence against transgender individuals, and increased substance abuse among this population. *Id.* at ¶¶ 16-19, 21. DOH also estimates greater rates

1 of suicidality, including between 527 to 1,627 more attempted suicides by transgender persons
2 over the next several decades. *Id.* at 22.

3 8. Understanding that DOH estimates greater incidence of mental health crisis
4 among transgender individuals in Washington as a result of the Final Rule, I have evaluated
5 the expected impact of this on Washington State funds from the provision of mental health
6 and crisis stabilization care.

7 9. Washington State contracts for urgent mental health and crisis stabilization
8 care through regional Administrative Service Organizations (ASOs) that contract directly with
9 social service provider organizations. These provider organizations include community
10 behavioral health treatment centers, crisis care facilities, and evaluation and treatment
11 centers which can provide involuntary treatment, throughout the State. ASOs are funded
12 through general fund state dollars, mental health block grant funds and substance abuse block
13 grant funds. In those cases in which a contracted ASO crisis provider serves a Medicaid
14 enrollee, the ASO is expected to bill the appropriate Medicaid plan to cover the Medicaid
15 eligible services. While the funds that are provided for these services through the ASOs may
16 in some cases be reimbursable as Medicaid expenditures, in many cases are not, and end up
17 being incurred directly and only by Washington State.

18 10. In evaluating data from prior years of service to individuals in crisis in
19 Washington State, we estimate that an individual who suffers moderate or severe depression is
20 likely to experience, on average, three crisis episodes per year, each comprising four distinct
21 crisis services, for a total average of 12 hours of crisis services per year.

22 11. Of these individuals receiving crisis services, we estimate that approximately
23 4% (between 27 and 83 people) of them will require or be able to access crisis stabilization
24 services, with an average of 4 days per stay at \$538.09 per day. This will be between
25 approximately \$15,743.43 and \$44,661.47 per year of new costs if the Final Rule takes effect.
26

1 12. We also know that 2% of the general population had mental health evaluations
2 under the Involuntary Treatment Act, which is a Washington law that allows anyone over the
3 age of 13 who does not agree to mental health treatment to be evaluated for involuntary
4 commitment to an inpatient mental health treatment center. We would assume that a higher
5 proportion of the transgender individuals who suffer depression as a result of lost healthcare
6 coverage for transgender services would require such evaluation, at the rate of 50%.
7 Therefore, we expect between 335 and 1,035 Involuntary Treatment Act evaluations, at a cost
8 of \$538.40, for a total of between \$180,364 and \$557,244 in new costs of this kind if the Final
9 Rule takes effect.

10 13. Generally, of the individuals who are evaluated, an average of 45% of those
11 evaluated are detained and provided with involuntary inpatient psychiatric services. We
12 expect the increased incidence of Involuntary Treatment Act evaluations for transgender
13 individuals in crisis as a result of lost healthcare coverage for transgender healthcare services
14 would result in between 151 and 466 detentions. These initial detentions average five days at
15 an Evaluation and Treatment Center or a community hospital, at an average cost of \$861 per
16 day or \$4,305 total. Of the number of individuals detained, a percentage will not be stabilized
17 during the initial detention and require a 14 day commitment. The statewide historical average
18 is that 40% of detained individuals will require 14 day commitment orders, with an average
19 bed day cost of \$861 and a total of \$12,054. In addition to the foregoing costs, we therefore
20 also expect approximately between \$650,000 and \$2,006,130 in annual Involuntary Treatment
21 Act mental health crisis detention costs and an additional \$728,061 to \$2,246,865 in
22 commitment costs if the Final Rule takes effect.

23 14. All of the foregoing costs are estimated on the increased incidence of moderate
24 to severe depression, and do not include additional costs for the crisis care services for
25 individuals who require them because they have suffered a crisis because of substance abuse
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1 or being a victim of violence, the incidence of which DOH also estimates to increase as a
2 result of the Final Rule. *Id.* at ¶¶ 16-19, 21.

3 I declare under penalty of perjury under the laws of the United States and the State of
4 Washington that the foregoing is true and accurate.

5 DATED this 13th day of July, 2020, in Olympia, Washington.

6 David Reed
7 DAVID REED