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12  
13 **UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

14 COUNTY OF SANTA CLARA, TRUST  
15 WOMEN SEATTLE, LOS ANGELES LGBT  
16 CENTER, WHITMAN-WALKER CLINIC,  
17 INC. d/b/a WHITMAN-WALKER HEALTH,  
18 BRADBURY-SULLIVAN LGBT  
19 COMMUNITY CENTER, CENTER ON  
20 HALSTED, HARTFORD GYN CENTER,  
21 MAZZONI CENTER, MEDICAL STUDENTS  
22 FOR CHOICE, AGLP: THE ASSOCIATION  
23 OF LGBTQ+ PSYCHIATRISTS, AMERICAN  
24 ASSOCIATION OF PHYSICIANS FOR  
25 HUMAN RIGHTS d/b/a GLMA: HEALTH  
26 PROFESSIONALS ADVANCING LGBTQ  
27 EQUALITY, COLLEEN MCNICHOLAS,  
28 ROBERT BOLAN, WARD CARPENTER,  
SARAH HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES and ALEX M. AZAR, II,  
in his official capacity as SECRETARY OF  
HEALTH AND HUMAN SERVICES,

Defendants.

Case No. 5:19-cv-2916

**DECLARATION OF HECTOR  
VARGAS, EXECUTIVE DIRECTOR OF  
GLMA: HEALTH PROFESSIONALS  
ADVANCING LGBTQ EQUALITY, IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

1 I, Hector Vargas, declare as follows:

2 1. American Association of Physicians for Human Rights, Inc., d/b/a GLMA: Health  
3 Professionals Advancing LGBTQ Equality, (“GLMA”) is a 501(c)(3) non-profit organization based  
4 in Washington, D.C., and incorporated in California. GLMA’s mission is to ensure health equity  
5 for lesbian, gay, bisexual, transgender, queer (LGBTQ) and all sexual- and gender- minority (SGM)  
6 individuals, and equality for LGBTQ/SGM health professionals in their work and learning  
7 environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse  
8 multidisciplinary membership to inform and drive advocacy, education, and research. GLMA  
9 (formerly known as the Gay & Lesbian Medical Association) was founded in 1981 and its initial  
10 mission focused on responding with policy advocacy and public-health research to the growing  
11 medical crisis that would become the HIV/AIDS epidemic. Since then, GLMA’s mission has  
12 broadened to address the full range of health concerns and issues affecting LGBTQ people,  
13 including ensuring that sound science and research inform health policy and practices for the  
14 LGBTQ community.  
15

16  
17 2. GLMA represents the interests of tens of thousands of LGBTQ health professionals, as  
18 well as millions of LGBTQ patients and families. GLMA’s membership includes approximately  
19 1,000 member physicians, nurses, advanced practice nurses, physician assistants, researchers and  
20 academics, behavioral health specialists, health profession students and other health professionals.  
21 GLMA’s members reside and work across the United States and in several other countries. Their  
22 practices represent the major healthcare disciplines and a wide range of health specialties, including  
23 internal medicine, family practice, psychiatry, pediatrics, obstetrics/gynecology, emergency  
24 medicine, neurology and infectious diseases.  
25

26 3. I am the Executive Director of GLMA: Health Professionals Advancing LGBTQ  
27 Equality. I received my Bachelor of Arts degree in political science and Spanish in 1989 and law  
28

1 degree in 1993 from the University of Georgia. I served on the Health Disparities Subcommittee of  
2 the Advisory Committee to the Director of the US Centers for Disease Control and Prevention  
3 (CDC) and served for four years on President Obama's Advisory Commission on Asian Americans  
4 and Pacific Islanders. I have more than 20 years of LGBTQ and civil rights advocacy experience,  
5 including on staff with Lambda Legal, the National LGBTQ Task Force and the American Bar  
6 Association's Section of Civil Rights and Social Justice. I am submitting this Declaration in support  
7 of Plaintiffs' motion for preliminary injunction to prevent the Denial-of-Care Rule from taking  
8 effect.  
9

10 4. The Denial-of-Care Rule fosters greater discrimination against LGBTQ patients, who  
11 already experience widespread discrimination in obtaining healthcare and suffer significant health  
12 disparities in comparison to the general population. Research documents the history of this  
13 discrimination and the negative health outcomes that result. The majority of LGBTQ patients and  
14 patients living with HIV report having experienced providers refusing to touch them or using  
15 excessive precautions, providers using harsh or abusive language, providers being physically rough  
16 or abusive, and/or providers shaming LGBTQ patients and blaming these patients for their health  
17 status. A large percentage of transgender patients report having negative experiences related to their  
18 gender identity when seeking medical care, including being exposed to verbal harassment or  
19 refusals of care.  
20

21 5. LGBTQ patients face significant health disparities—higher risk factors for poor  
22 physical and mental health, higher rates of HIV, decreased access to appropriate health insurance,  
23 insufficient access to preventative medicine, and higher risk of poor treatment by healthcare  
24 providers. Denials of care by healthcare providers asserting religious objections have been  
25 detrimental to the health of LGBTQ patients. LGBTQ patients are vulnerable in other ways as  
26 well, including higher rates of poverty and limited access to LGBTQ-specific services, that present  
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1 significant logistical and economic challenges to obtaining adequate healthcare. These harms are  
2 exacerbated by the Denial-of-Care Rule. The Rule will result in greater discrimination against  
3 LGBTQ patients and result in increased denials of services based not only on the medical services  
4 that patients seek, but on the patients' LGBTQ identities.

5  
6 6. Among GLMA's strategic commitments is its ongoing collaboration with professional  
7 accreditation bodies, such as The Joint Commission, on the development, implementation, and  
8 enforcement of sexual-orientation and gender-identity nondiscrimination policies as well as  
9 cultural-competency standards of care for treatment of LGBTQ patients. GLMA worked with the  
10 Joint Commission and continues to work with similar professional bodies and health professional  
11 associations on standards, guidelines, and policies that address LGBTQ health, protecting  
12 individual patient health and public health in general.

13  
14 7. The Denial-of-Care Rule presents a direct conflict with nondiscrimination standards  
15 adopted by The Joint Commission and all major health professional associations, who have  
16 recognized the need to ensure LGBTQ patients are treated with respect and without bias or  
17 discrimination in hospitals, clinics, and other healthcare settings. Many of these efforts were  
18 prompted at least in part by GLMA's efforts through the years. For example, GLMA  
19 representatives, in coordination with other LGBTQ health experts, participated in the development  
20 and implementation of the hospital-accreditation nondiscrimination standards and guidelines  
21 developed by The Joint Commission to protect and ensure quality care for LGBTQ patients.

22  
23 8. Similarly, GLMA has worked with the American Medical Association, among other  
24 health professional associations, over the last 15 years to ensure AMA policies prevent  
25 discrimination against LGBTQ patients and recognize the specific health needs of the LGBTQ  
26 community. All the leading health professional associations—including the AMA, American  
27 Osteopathic Association, American Academy of PAs, American Nurses Association, American  
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1 Academy of Nursing, American College of Physicians, American College of Obstetricians and  
2 Gynecologists, American Psychiatric Association, American Academy of Pediatricians, American  
3 Academy of Family Physicians, American Public Health Association, American Psychological  
4 Association, National Association of Social Workers, and many more—have adopted policies  
5 articulating that healthcare providers should not discriminate in providing care for patients and  
6 clients because of their sexual orientation or gender identity. By allowing discrimination against  
7 patients on the grounds of moral and religious freedom, the proposed rule obviates the ethical and  
8 medical standards of care that healthcare professionals are charged to uphold.

9  
10 9. In order for a healthcare organization to participate in and receive federal payment from  
11 Medicare or Medicaid programs, the organization must meet certain requirements, including a  
12 certification of compliance with health and safety requirements, which is achieved based on a  
13 survey conducted either by a state agency on behalf of the federal government or by a federally-  
14 recognized national accrediting organization. Accreditation surveys include standards that  
15 healthcare organizations not discriminate based on sex, sexual orientation, or gender identity in the  
16 provision of services and in employment. A healthcare organization that discriminates on these  
17 bases in the provision of patient care or in employment, or that otherwise deviates from medical,  
18 professional and ethical standards of care is vulnerable to loss of accreditation. The Denial-of-Care  
19 Rule conflicts with these requirements.  
20  
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22 10. If not enjoined, the Denial-of-Care Rule will harm GLMA members, LGBTQ patients  
23 whose interests GLMA also represents, and the patients who GLMA members treat. The Denial-  
24 of-Care Rule creates a safe haven for discrimination and prevents GLMA from achieving its goals  
25 with professional accreditation bodies because the Rule intimidates such bodies from holding  
26 healthcare providers accountable for discrimination against LGBTQ people and denials of care  
27 when the discriminatory conduct is justified on the basis of religious or moral beliefs. The Denial-  
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1 of-Care Rule would prevent agencies, to the extent allowed by law, from recognizing the loss of  
2 accreditation of a healthcare organization due to a specified anti-LGBTQ belief. The Rule, in turn,  
3 invites such facilities to discriminate against LGBTQ employees and patients without concern  
4 about the impact such discrimination will have on the organization's ability to continue receiving  
5 federal funding. The Rule, therefore, frustrates GLMA's mission of achieving and enforcing  
6 accreditation standards relating to nondiscrimination on the basis of sex, sexual orientation, and  
7 gender identity, and cultural-competency standards of care for treatment of LGBTQ patients.  
8 GLMA even works with medical organizations, like the American Academy of Dermatology, to  
9 create nondiscrimination policies and ensure their members understand and adhere to such  
10 standards. The Denial-of-Care Rule turns on its head all of the work that GLMA has accomplished  
11 in this arena.  
12

13  
14 11. Some members of GLMA are employed by religiously-affiliated healthcare  
15 organizations (for example, hospitals, hospices, or ambulatory care centers) that receive federal  
16 funds. These healthcare providers also treat LGBTQ patients. The Denial-of-Care Rule encourages  
17 religiously-affiliated healthcare employers to discriminate against employees who are GLMA  
18 members for adhering to and enforcing their medical and ethical obligations to treat all patients in  
19 a nondiscriminatory manner, including providing all medically-necessary care that is in patients'  
20 best interests. The Rule impinges on and conflicts with GLMA members' ethical and medical  
21 standards of care that healthcare providers are charged to uphold and harms the patients that they  
22 serve.  
23

24 12. The Denial-of-Care Rule invites harassment and discriminatory treatment of GLMA  
25 members in the workforce by fellow employees who claim a right to accommodation for  
26 discriminatory behavior justified by the Rule. GLMA members and their LGBTQ patients are  
27 stigmatized and demeaned by the message, communicated by the Denial-of-Care Rule, that their  
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1 government privileges beliefs that result in the disapproval and disparagement of LGBTQ people  
2 in the healthcare context.

3  
4 13. As an organization of health professionals who serve and care for patients from the  
5 LGBTQ community, GLMA knows that discrimination against LGBTQ individuals in healthcare  
6 access and coverage remains a pervasive problem and that often this discrimination is based in  
7 religious objections. GLMA members have reported numerous instances of discrimination in care  
8 based on religious grounds. GLMA members shared with GLMA the ways religious objections are  
9 used to the detriment of the healthcare of LGBTQ patients, including members who have said:

- 10 a. “I see patients nearly every day who have been treated poorly by providers  
11 with moral and religious objection. Patients with HIV who have been told  
12 that they somehow deserved this for not adhering to God’s law. Patients who  
13 are transgender who have been told that ‘we don’t treat your kind here’. The  
14 psychological and physical damage is pervasive.”
- 15 b. “[Some providers in my clinic] do not wish to have contact with transgender  
16 patients, mumbling religious incompatibilities when asked why. These  
17 people have made our transgender patients feel very uncomfortable and  
18 unwelcome at times, making them potentially more hesitant to use the health  
19 services they may need.”
- 20 c. “The impact on my patients who were directly denied care was both  
21 psychological and physical. With regard to their mental wellbeing they  
22 clearly felt marginalized and disrespected. With regard to their physical  
23 wellbeing, they experienced delay in care, and in some cases disruption of  
24 their routine medication dosing or diagnostic assessment.”  
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1           14. Based on what patients have told GLMA members about their history and fear of  
2 discriminatory treatment, it is clear that the Rule will cause LGBTQ patients to attempt to hide their  
3 LGBTQ identities when seeking healthcare services, especially from religiously-affiliated  
4 healthcare organizations, in order to avoid such discrimination. When patients are unwilling to  
5 disclose their sexual orientation and/or gender identity to healthcare providers out of fear of  
6 discrimination and being refused treatment, their mental and physical health is critically  
7 compromised.

9           15. As a result of the Denial-of-Care Rule, GLMA is required to divert its resources to  
10 educate and assist its members and the LGBTQ patients its members serve to defend against the  
11 harms that the Rule causes. GLMA's staff and resources already have been diverted from other  
12 program activities to engage in advocacy, policy analysis, and program-development to address the  
13 ill-effects of the Denial-of-Care Rule. GLMA has worked tirelessly to get medical and other health  
14 associations to express their disapproval of the Denial-of-Care Rule, which has diverted large  
15 amounts of resources away from other proactive projects and outreach efforts that are core to  
16 GLMA's mission. GLMA also spends resources answering GLMA members' inquiries about the  
17 Denial-of-Care Rule given the pervasive concern that the Denial-of-Care Rule contradicts medical  
18 ethical requirements and standards of care. GLMA must spend resources educating its members  
19 and the general healthcare community about GLMA's position on the Denial-of-Care Rule and its  
20 effects on healthcare practices and providers.

23           16. The Denial-of-Care Rule will also adversely impact GLMA and its members by  
24 necessitating the diversion and reallocation of resources to maintain its online list of LGBTQ-  
25 affirming healthcare providers. As a result of the Denial-of-Care Rule, GLMA and its members  
26 expect to see increases in the use of this online service and must consider whether to allocate  
27 additional staff time to support this increase in website traffic. Patients have expressed concern  
28



1 about traveling outside of their home cities for business because if they are ever in need of  
2 emergency medical assistance, they will not know where to go to ensure that they will receive  
3 nondiscriminatory, proper healthcare services. GLMA will need to be a resource for these patients.  
4

5 17. The Denial-of-Care Rule empowers and incites religious-based discrimination against  
6 GLMA members and will contribute to discriminatory and even hostile work environments for  
7 GLMA members, LGBTQ healthcare providers, and LGBTQ-affirming healthcare providers.  
8 GLMA members who insist on treating patients equally and in accordance with medical and ethical  
9 standards of care are likely to be required to shoulder extra burdens as fellow employees decline to  
10 provide certain care. GLMA members also are likely to encounter push-back, hostility, and even  
11 adverse employment actions from their employers or fellow employees for trying to enforce  
12 nondiscrimination policies and provide appropriate care to patients. Because the vast majority of  
13 GLMA members are LGBTQ themselves, seeing LGBTQ patients treated in a discriminatory way  
14 by their colleagues and supported by their employers will have a profound impact on the  
15 environment in which they work, GLMA members will also fear that the discrimination faced by  
16 LGBTQ patients because of the Denial-of-Care Rule will also impact their own employment and  
17 ability to feel safe as LGBTQ employees. GLMA, in turn, sees and will continue seeing an increase  
18 in healthcare providers seeking its assistance with addressing such discrimination. The increased  
19 demand for such services will drain GLMA's resources and hamper other work, especially since  
20 GLMA already has a very limited bandwidth for such services.  
21

22 18. As a membership organization comprising over a thousand LGBTQ health  
23 professionals, GLMA's members receive various forms of federal funding directly and indirectly  
24 via federal programs, including Public Health Service Act funding. GLMA's members may,  
25 therefore, be subject to the restrictions of the Denial-of-Care Rule. Without such funding, certain  
26 GLMA members could not provide proper treatment to their patients or proceed with their medical  
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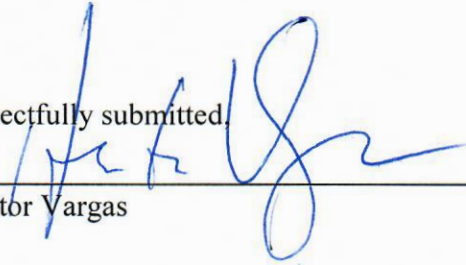
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research programs. GLMA's members, therefore, have a reasonable fear that they could be sanctioned and lose federal funding for the work that they do as a result of nondiscrimination policies, ethical requirements, and standards of care that they enforce in their healthcare practices, which are vital to providing proper care to their patients.

I hereby declare, under penalties of perjury, that the facts stated in this declaration are personally known to me, and that they are true.

Dated: June 5, 2019

Respectfully submitted,



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Hector Vargas