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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  
ASSOCIATION OF PHYSICIANS FOR  
HUMAN RIGHTS d/b/a GLMA: HEALTH  
PROFESSIONALS ADVANCING LGBTQ  
EQUALITY, COLLEEN MCNICHOLAS,  
ROBERT BOLAN, WARD CARPENTER,  
SARAH HENN, and RANDY PUMPHREY,

24 Plaintiffs,

25 vs.

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

28 Defendants.

Case No. 5:19-cv-2916

**DECLARATION OF RANDY  
PUMPHREY, D.MIN., LPC, BCC,  
SENIOR DIRECTOR OF  
BEHAVIORAL HEALTH, WHITMAN-  
WALKER HEALTH, IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

1 I, Randy Pumphrey, declare as follows:

2 1. I am the Senior Director of Behavioral Health at Whitman-Walker Clinic, Inc., d/b/a  
3 Whitman-Walker Health (Whitman-Walker). After earning a B.S. in American Studies, I received  
4 Masters of Divinity and Doctor of Ministry degrees from Wesley Theological Seminary. I initially  
5 worked as a Board Certified Chaplain at St. Elizabeth's Hospital (which became the Commission  
6 on Mental Health Services for the District of Columbia and the Psychiatric Institute of  
7 Washington), and subsequently received my Professional Counselor Licensure in 1997. I have  
8 worked in mental-health and substance-use-disorder treatment since 1984, initially as an intern at  
9 Washington Hospital Center, then with St. Elizabeth's Hospital. In 1998 I became the Clinical  
10 Director of the Lambda Center, a joint partnership between the Psychiatric Institute of Washington  
11 and Whitman-Walker Clinic. I joined Whitman-Walker's staff in 2007 as the Manager of Mental  
12 Health Services, and became Senior Director of Behavioral Health in 2015. In addition to  
13 managing Whitman-Walker's behavioral-health services, I maintain a panel of patients for whom  
14 I provide direct care.

15 2. I am submitting this Declaration in support of Plaintiffs' motion for preliminary  
16 injunction to prevent the Denial-of-Care Rule from taking effect.

17 3. As the Senior Director of Behavioral Health, I oversee Whitman-Walker's robust  
18 portfolio of mental-health services, and substance-use-disorder-treatment services. Our mental-  
19 health services include individual and group psychotherapy, psychiatry, and peer counseling. For  
20 individuals struggling with substance misuse, we offer individual and group counseling and  
21 support, and Medically-Assisted Treatment (MAT). In 2018, we provided mental-health or  
22 substance-use-disorder-treatment services to 2,342 patients. Our psychiatrists, psychologists,  
23 licensed psychotherapists, and trained peer counselors have a special mission to the lesbian, gay,  
24 bisexual and transgender (LGBT) community, and also to individuals living with HIV and their  
25 families and caregivers.

26 4. Many if not most of the individuals in our very diverse behavioral-health-patient  
27 population face considerable stigma and discrimination—as people living with HIV, as sexual or  
28 gender minority people, as people of color—and many of them struggle with internalized stigma

1 and with acute or lower-level but persistent trauma. Many of them have experienced difficulty in  
2 finding therapists or other mental-health or substance-use-disorder professionals who are  
3 understanding and welcoming of their sexual orientation, gender identity, or struggles with HIV.  
4 We frequently receive phone calls and other inquiries from people seeking non-discriminatory,  
5 welcoming assistance with their substance use, depression, anxiety, or other challenges. Many of  
6 these individuals have suffered from traumatizing encounters with hostile or disapproving  
7 healthcare professionals.

8         5. All Whitman-Walker employees, and all volunteers who serve as peer counselors or  
9 otherwise are involved in any way with our behavioral-health services, are asked to commit to our  
10 mission, which is to be welcoming to and understanding of every patient, regardless of sexual  
11 orientation, gender identity, race or ethnicity, income or educational background, or life experience.  
12 We welcome staff and volunteers from a wide range of religious, spiritual, cultural, and  
13 philosophical perspectives, but patient needs must always be paramount. The message of the  
14 Denial-of-Care Rule, that the personal beliefs or feelings of a provider or other healthcare staff  
15 member can justify refusal to participate in any aspect of their job or of the care of any patient,  
16 threatens to substantially harm patients who already are vulnerable to stigma and discrimination.  
17 The message that healthcare staff members' personal preferences or beliefs take priority over  
18 patient needs also violates fundamental professional ethical standards that apply to all licensed  
19 therapists, psychologists, psychiatrists, and substance-use-disorder-treatment professionals,  
20 including myself.

21         6. Behavioral-health treatment assumes, and requires, trust between the patient and  
22 provider, and full and frank disclosure by the patient of all potentially relevant information about  
23 their life, including their sexual orientation, sexual and affectional experiences, and gender identity.  
24 I, and the providers that I supervise at Whitman-Walker, frequently work with patients who have  
25 concealed some or all aspects of their sexual and affectional orientation or history, or gender  
26 identity, from non-Whitman-Walker therapists or other behavioral health providers, often to the  
27 patients' harm. The Denial-of-Care Rule will very likely discourage LGBT people and others  
28 needing treatment from fully disclosing relevant information to their therapists or counselors, or to

1 those helping them with substance-use issues, which will likely increase their distress and undercut  
2 the effectiveness of their treatment.

3         7. For persons with a minority, traditionally stigmatized sexual orientation—such as gay,  
4 lesbian, or bisexual—or whose gender identity is transgender or gender-nonconforming, competent  
5 mental-health services, or services for treatment of substance-use disorders, require an accepting—  
6 indeed, an affirming—attitude towards their sexual orientation or gender identity by their provider.  
7 Discriminatory behavior, statements, or attitudes expressed by a provider are a tremendous barrier  
8 to effective care. It is critical that a patient feel empowered and supported in fully disclosing their  
9 sexuality and gender identity to their counselor, therapist, psychologist, or psychiatrist. Without a  
10 trusting patient-provider relationship and full disclosure of all possibly relevant feelings and facts  
11 by the patient, effective treatment is unlikely to be possible. This is critical for good medical care  
12 as well. In my work with patients as a behavioral-healthcare provider, I have counseled patients  
13 about the importance of full disclosure of their sexuality and gender identity to their doctor and  
14 other medical personnel.

15         8. Even before the Denial-of-Care Rule was proposed or issued, I and the providers and  
16 other behavioral-health staff that I supervise at Whitman-Walker have learned from patients about  
17 many incidents of discrimination or mistreatment in other behavioral-health settings that were  
18 motivated by the personal beliefs of providers or other staff. For instance:

19             a. A transgender teenager was hospitalized after a suicide attempt. Hospital  
20 staff refused to address the teenager by the young person's preferred  
21 pronouns and gender throughout the teenager's hospital stay. This was  
22 experienced by the teenager as disapproval and contempt for the young  
23 person's gender identity. This discrimination exacerbated the teenager's  
24 acutely fragile state when the teenager was so desperately in need of  
25 healthcare providers' support and healthcare services that were free of  
26 judgment.

27             b. A facility that specializes in inpatient mental health and substance-use-  
28 disorder treatment, and which has explicit non-discrimination policies,

1                   nonetheless has significant trouble from nurses on weekend shifts (when the  
2                   facility uses pool nurses rather than regular employees), who express strong  
3                   disapproval of LGBT patients based on their religious beliefs or cultural  
4                   upbringing. Despite the facility's non-discrimination policies, LGBT  
5                   patients encounter hostility, expressions of disapproval, and lack of  
6                   responsiveness to their needs or requests from these nurses. For patients  
7                   hospitalized for mental or substance-use disorders, these experiences can  
8                   activate their disorders.

9                   c. A Muslim woman patient who also identifies as Lesbian was hospitalized  
10                  for suicidal ideation based on depression and anxiety from PTSD at an  
11                  inpatient facility. While processing her discharge, a nurse at the facility,  
12                  who identified herself as Christian, stated that she believed that 911 was a  
13                  blessing since it woke up Christians about how bad Muslims are. The client  
14                  reported feeling very exposed and vulnerable and told the nurse that not only  
15                  was she Muslim, but she herself had been the victim of terrorism. The  
16                  encounter with the nurse exacerbated the patient's depression and anxiety.

17                  d. As I previously noted, behavioral health staff that I supervise often receive  
18                  calls or other communications from LGBT persons expressing desperation  
19                  about finding a therapist or substance use professional who will not  
20                  discriminate against them because of their sexual orientation or gender  
21                  identity.

22                  e. Our behavioral-health providers who regularly interview our transgender  
23                  patients to assess their stage of gender transition and readiness for gender-  
24                  affirming surgical procedures, or who provide psychotherapy for these  
25                  patients, report that the large majority of the patients they meet with—as  
26                  many as four out of every five—report incidents of mistreatment or  
27                  discrimination by healthcare providers and staff at hospitals, other clinics,  
28                  doctor's offices, and other facilities.

1           9. These incidents reveal that many healthcare providers and other staff harbor explicit or  
2 implicit biases against LGBT people. Because of legal requirements, healthcare facility non-  
3 discrimination policies, and professional norms, many of them have kept their personal beliefs and  
4 feelings in check. By empowering healthcare staff to think that they have the legal right to act on  
5 their personal beliefs, even at the expense of patient needs, the Denial-of-Care Rule is very likely  
6 to result in many more incidents of discrimination and greater harm to LGBT individuals struggling  
7 with mental health or substance use issues, including the patients whom I treat and whose treatment  
8 I supervise.

9           10. I and Whitman-Walker provide referral services for patients who need specialist care  
10 that we do not provide—including inpatient behavioral healthcare as well as specialist medical care.  
11 We also receive many outside requests for recommendations for LGBT-welcoming, non-  
12 discriminatory therapists and substance-use professionals in the community. The Denial-of-Care  
13 Rule will make it significantly more difficult for us locate and monitor appropriate referrals, and  
14 patients will suffer as a result. Even more concerning, our behavioral-health patients who may  
15 need hospitalization for a mental-health or substance-use crisis, or may need specialist medical  
16 care, will be in greater danger of encountering discrimination at inpatient behavioral health facilities  
17 or when they seek medical care outside Whitman-Walker—which may make their care at Whitman-  
18 Walker more difficult and perhaps less successful.

19           11. Whitman-Walker is a certified healthcare provider under the Medicare program and also  
20 under the District of Columbia's Medicaid program. Healthcare providers with Whitman-Walker,  
21 are credentialed under the Medicare program and also under the District of Columbia's Medicaid  
22 program. Both programs are overseen by HHS's Center for Medicare and Medicaid Services  
23 (CMS). These funds and related benefits account for a significant portion of my work and the  
24 healthcare services that I, and those that I supervise, provide to patients. Without such funding, we  
25 could not provide proper treatment to our patients, especially because a large portion of the  
26 population that we serve relies heavily on Medicaid and Medicare for its healthcare needs. A loss  
27 of Medicare or Medicaid funding as a possible sanction under the Denial-of-Care Rule resulting  
28 from enforcement of Whitman-Walker's nondiscrimination mandate, which applies to all of our

1 healthcare providers and staff, would result in service reductions if not closure of our programs in  
2 their entirety. As a clinician who provides care under these programs, I have a reasonable fear not  
3 only that Whitman-Walker's continued certification under these vital programs might be  
4 endangered, but also that I could individually be sanctioned for enforcing Whitman-Walker's  
5 mission with respect to the providers and other staff that I supervise.

6 I declare under penalty of perjury under the laws of the United States of America that the  
7 foregoing is true and correct.

8 Dated: June 4, 2019

Respectfully submitted,

9  LSC

10 Randy Pumphrey  
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