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12 **UNITED STATES DISTRICT COURT**
13 **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,

Plaintiffs,

vs.

24
25 U.S. DEPARTMENT OF HEALTH AND
26 HUMAN SERVICES and ALEX M. AZAR, II,
27 in his official capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendants.

No. 19-cv-2916 NC

**DECLARATION OF TONI TULLYS,
M.P.A., DIRECTOR OF COUNTY OF
SANTA CLARA BEHAVIORAL
HEALTH SERVICES DEPARTMENT,
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

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I, TONI TULLYS, MPA, declare as follows

1. I am a resident of the State of California. I submit this declaration in support of the County of Santa Clara’s (“County”), and its co-plaintiffs’, Motion for Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I am the Director of the County’s Behavioral Health Services Department (“BHSD”), which is part of the County’s broader Health System. I have held this position from December 2014 to the present. In this role, I provide leadership on behavioral health issues for all of Santa Clara County and oversee approximately 822 BHSD employees, full-time and part-time, who provide a wide array of services to safeguard and promote the health of the community. I also oversee over \$500 million in behavioral health services delivered by County staff and contracted providers.

3. Prior to becoming the Director of Behavioral Health Services for the County, I was the Deputy Director of the Alameda County Behavioral Health Care Services Department. I have worked in various administrative and patient care capacities in public and private health care organizations for more than 30 years. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

4. The Behavioral Health Services Department’s mission is “[t]o assist individuals in our community affected by mental illness and serious emotional disturbance to achieve their hopes, dreams and quality of life goals. To accomplish this, services must be delivered in the least restrictive, non-stigmatizing, most accessible environment within a coordinated system of community and self-care, respectful of a person’s family and loved ones, language, culture, ethnicity, gender and sexual identity.”

5. BHSD is dedicated to improving the health and well-being of Santa Clara County residents and provides an array of behavioral health services to approximately 35,000 people annually. BHSD provides preventative mental health and substance use care and also serves individuals with mental health issues, serious mental illness, and substance use disorders. These services have been developed for every age group, from newborns to the elderly. BHSD provides treatment services to a wide range of residents including Medi-Cal beneficiaries, patients with a

1 sliding-fee option based on their ability to pay, and a small number of commercially insured
2 patients that receive mild to moderate services.

3 6. BHSD provides prevention and treatment services for all persons struggling with
4 substance use and mental health challenges, including at-risk youth, young adults, and families.
5 For example, it provides individual counseling, group counseling, and case management services,
6 which may include connecting youth to medical care, legal resources, transportation, job training,
7 psychiatric services, and housing resources. Within BHSD, a dedicated Substance Use Treatment
8 Services division provides prevention programs to children and youth and treatment services to
9 persons struggling with substance abuse through services such as withdrawal management,
10 outpatient treatment, recovery services, residential treatment, recovery residences, Medication-
11 Assisted Treatment (MAT), perinatal services, and residential treatment services to assist County
12 residents who struggle with substance abuse.

13 7. The County provides emergency psychiatric services at Santa Clara Valley
14 Medical Center's Emergency Psychiatric Services (EPS) facility, the only 24-hour locked
15 psychiatric emergency room in Santa Clara County. Nearly all patients at this facility are on
16 involuntary psychiatric holds. In addition, BHSD operates Mental Health Urgent Care a walk-in
17 crisis clinic with a psychiatrist on duty seven days a week for those seeking voluntary services.
18 BHSD also provides post hospital services for patients who were served by the County's 48-bed
19 acute inpatient psychiatric unit, and BHSD contracts with three additional community hospitals
20 for inpatient mental health treatment.

21 8. Federal funding, either direct or indirect, from the U.S. Department of Health and
22 Human Services is a major component of the budget for BHSD. Funding streams to BHSD,
23 many of which flow through the State of California, include but are not limited to Medi-Cal and
24 Medicare payments and several sources of funding from the Substance Abuse and Mental Health
25 Administration, among many others. In total, in a typical fiscal year such as FY 2017-18, BHSD
26 received approximately \$112 million in federal funds, revenue that is a significant portion of the
27 overall budget, which had overall gross expenditures of approximately \$498 million. Without
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1 those funds, the County Behavioral Health Services Department would have to dramatically
2 reduce services even while the need for mental health services is growing in Santa Clara County
3 and the County is planning to expand services provided through BHSD. The impact of any loss in
4 federal funding would not be limited to services traditionally funded by federal dollars. A
5 withdrawal of federal funding for the County would require a countywide realignment of funding
6 and priorities, and money that is currently allocated from the County's General Fund to support
7 programs that do not receive federal funding could be diverted to address the loss of federal
8 funding.

9 9. The County Behavioral Health Services Department has a policy related to
10 religious and moral objections to certain patient care, attached as **Exhibit A**. That policy requires
11 BHSD staff and staff of all contracted service providers to inform BHSD prior to beginning work
12 for BHSD, and annually thereafter, if there are certain services the provider does not offer due to
13 religious or moral objections. BHSD will then inform beneficiaries and provide access to care
14 through different providers.

15 10. BHSD's providers are expected to be competent to provide care for any patient
16 and must not discriminate on the basis of health status or need for health care services, race,
17 color, national origin, sex, gender, sexual orientation, gender identity, or disability. BHSD's
18 providers also must offer culturally and linguistically competent, high-quality services to socially
19 disadvantaged and ethnically diverse groups.

20 11. BHSD has a process for either patients or providers to voice concerns about their
21 ability to continue in the treatment relationship, as building trust between the provider and patient
22 is essential to the success of mental health treatment. When a provider is unable or unwilling to
23 continue providing care for a patient, BHSD requires the provider to work with BHSD, which
24 may include working directly with a new provider, to ensure continuity of care for the patient.
25 That transition effort may also include following up with the patient to ensure they have
26 scheduled necessary appointments and otherwise are receiving the treatments and services they
27 need. Without timely notice of a refusal to provide care for religious or moral reasons and a
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1 smooth transition to another provider, patients may not receive necessary and timely treatment,
2 which could harm the patients and their communities and lead to additional healthcare needs and
3 associated costs.

4 12. In my capacity as Director of Behavioral Health Services, I reviewed and am
5 familiar with the model text for the “Notice of Rights under Federal Conscience and Anti-
6 Discrimination Laws” from the Final Rule published by the U.S. Department of Health and
7 Human Services, “Protecting Statutory Conscience Rights in Health Care; Delegations of
8 Authority.”

9 13. Many of the clinics operated by and contracting with BHSD are physically small
10 places where notices for employees would be in plain view of patients as well. The model text
11 may give patients the impression that providers are able to object in the moment to providing care
12 based on their conscience, religious beliefs, or moral convictions—potentially deterring patients
13 from sharing sensitive information that is critical to their care. For example, to receive
14 appropriate care, patients who are seeking mental health care may need to disclose to their
15 provider sensitive information such as their medical history or plans to seek treatments such as
16 abortion, sterilization, assisted suicide, or gender-affirming care. But the model notice may give
17 the client an impression that revealing such information is unwelcome or even risky.

18 14. Given the vital importance in mental health care of trust between patients and
19 providers, a notice such as this model text would unacceptably interfere with the patient-provider
20 relationship, interrupting the continuum of care that the Behavioral Health Services Department is
21 required to provide, interfering with the functioning of BHSD, and undermining BHSD’s
22 mission.

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

25 Dated: June 9, 2019

26 Respectfully submitted,

27 
28 TONI TULLYS, M.P.A.

EXHIBIT A



Policy & Procedure Number: BHSD # 2100

<input checked="" type="checkbox"/>	BHSD County Staff
<input checked="" type="checkbox"/>	Contract Providers
<input checked="" type="checkbox"/>	Specialty Mental Health
<input checked="" type="checkbox"/>	Specialty Substance Use Treatment Services

Title: LIMITATION ON MORAL OR RELIGIOUS GROUNDS

Approved/Issue Date:	Behavioral Health Services Director:	
Last Review/Revision Date:	Next Review Date:	Inactive Date:

REFERENCE:

- 42 CFR § 438.10 (e), (g). Information Requirements.
- 42 CFR § 438.52. Choice of MCO's, PIHPs, PAHPs, PCCMs and PCCM entities.
- 42 CFR § 438.100 (b). Enrollee Rights.
- 42 CFR § 438.102 (a)-(b). Provider-enrollee Communications.

POLICY:

Providers will not be required to deliver, reimburse for, or offer coverage of a counseling or referral service if the provider objects to the service on moral or religious grounds. Beneficiaries will know which providers have objections based on religious or moral grounds prior to referral or change.

DEFINITIONS:

Beneficiary. A Medi-Cal recipient who is currently receiving services from BHSD or a BHSD contracted provider.

Provider. A person or entity who is licensed, certified, or otherwise recognized or authorized under state law governing the healing arts to provide specialty mental health services and who meets the standards for participation in the Medi-Cal program as described in California Code of Regulations, title 9, Division 1, Chapters 10 or 11 and in Division 3, Subdivision 1 of Title 22, beginning with Section 50000. Provider includes but is not limited to licensed mental health professionals, clinics, hospital outpatient departments, certified day treatment facilities, certified residential treatment facilities, skilled nursing facilities, psychiatric health facilities, general acute care hospitals, and acute psychiatric hospitals. The MHP is a provider when direct services are provided to beneficiaries by employees of the Mental Health Plan.



Policy & Procedure Number: BHSD # 2100

<input checked="" type="checkbox"/>	BHSD County Staff
<input checked="" type="checkbox"/>	Contract Providers
<input checked="" type="checkbox"/>	Specialty Mental Health
<input checked="" type="checkbox"/>	Specialty Substance Use Treatment Services

Title: LIMITATION ON MORAL OR RELIGIOUS GROUNDS

<u>PROCEDURE</u>	
Responsible Party	Action Required
Enrollees and Potential Enrollees	May contact the state to request information on how and where to obtain such services if BHSD chooses not to furnish the services because of moral or religious objections.
BHSD	<ol style="list-style-type: none"> 1. Reimburses for counseling and referral services based on moral or religious grounds. 2. Notifies beneficiaries about providers that may not provide services based on moral or religious grounds at least 30 days prior to the effective date of the change. 3. Notifies enrollees at least 30 days in advance of BHSD implementing any new policy to discontinue the provision and reimbursement of counseling or referral services based on moral or religious grounds. 4. Furnishes the state with information on services it does not cover based on moral or religious grounds whenever it adopts this type of policy.
Providers	<ol style="list-style-type: none"> 1. Prior to entering into a contract, providers will submit documentation to the BHSD about any services they do not cover because of moral or religious objections. 2. Providers will submit information to beneficiaries about any services they do not cover because of moral or religious objections. 3. Submit updates to BHSD annually or when there is a change in the services not covered due to moral or religious grounds.
Attachments:	