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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff,

vs.

ALEX M. AZAR II, et al.,
Defendants.

STATE OF CALIFORNIA, by and through
ATTORNEY GENERAL XAVIER BECERRA,
Plaintiff,

vs.

ALEX M. AZAR, et al.,
Defendants.

COUNTY OF SANTA CLARA et al,
Plaintiffs,

vs.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, et al.,
Defendants.

No. C 19-02405 WHA
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**DECLARATION OF HECTOR
VARGAS, EXECUTIVE DIRECTOR
OF GLMA: HEALTH
PROFESSIONALS ADVANCING
LGBTQ EQUALITY, IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF THEIR OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

Date: October 30, 2019
Time: 8:00 AM
Courtroom: 12
Judge: Hon. William H. Alsup
Action Filed: 5/2/2019

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

23 3. I am the Executive Director of GLMA: Health Professionals Advancing LGBTQ
24 Equality. I received my bachelor of arts degree in political science and Spanish in 1989 and law
25 degree in 1993 from the University of Georgia. I served on the Health Disparities Subcommittee of
26 the Advisory Committee to the Director of the US Centers for Disease Control and Prevention
27 (CDC) and served for four years on President Obama’s Advisory Commission on Asian Americans
28 and Pacific Islanders. I have more than 20 years of LGBTQ and civil rights advocacy experience,

1 including on staff with Lambda Legal, the National LGBTQ Task Force and the American Bar
2 Association's Section of Civil Rights and Social Justice. I submit this declaration in support of
3 Plaintiffs' Motion for Summary Judgment and in support of their opposition to Defendants' Motion
4 to Dismiss or, in the alternative, for Summary Judgment.

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

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

25 6. Among GLMA's strategic commitments is its ongoing collaboration with professional
26 accreditation bodies, such as The Joint Commission, on the development, implementation, and
27 enforcement of sexual-orientation and gender-identity nondiscrimination policies as well as
28 cultural-competency standards of care for treatment of LGBTQ patients. GLMA worked with the

1 Joint Commission and continues to work with similar professional bodies and health professional
2 associations on standards, guidelines, and policies that address LGBTQ health, protecting
3 individual patient health and public health in general.

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

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

25 9. In order for a healthcare organization to participate in and receive federal payment from
26 Medicare or Medicaid programs, the organization must meet certain requirements, including a
27 certification of compliance with health and safety requirements, which is achieved based on a
28 survey conducted either by a state agency on behalf of the federal government or by a federally-

1 recognized national accrediting organization. Accreditation surveys include standards that
2 healthcare organizations not discriminate based on sex, sexual orientation, or gender identity in the
3 provision of services and in employment. A healthcare organization that discriminates on these
4 bases in the provision of patient care or in employment, or that otherwise deviates from medical,
5 professional and ethical standards of care is vulnerable to loss of accreditation. The Denial-of-Care
6 Rule conflicts with these requirements.

7 10. If not enjoined, the Denial-of-Care Rule will cause nationwide harm to GLMA
8 members, LGBTQ patients whose interests GLMA also represents, and the patients who GLMA
9 members treat. The Denial-of-Care Rule creates a safe haven for discrimination and prevents
10 GLMA from achieving its goals with professional accreditation bodies because the Rule intimidates
11 such bodies from holding healthcare providers accountable for discrimination against LGBTQ
12 people and denials of care when the discriminatory conduct is justified on the basis of religious or
13 moral beliefs. The Denial-of-Care Rule would prevent agencies, to the extent allowed by law, from
14 recognizing the loss of accreditation of a healthcare organization due to a specified anti-LGBTQ
15 belief. The Rule, in turn, invites such facilities to discriminate against LGBTQ employees and
16 patients without concern about the impact such discrimination will have on the organization's
17 ability to continue receiving federal funding. The Rule, therefore, frustrates GLMA's mission of
18 achieving and enforcing accreditation standards relating to nondiscrimination on the basis of sex,
19 sexual orientation, and gender identity, and cultural-competency standards of care for treatment of
20 LGBTQ patients. GLMA even works with medical organizations, like the American Academy of
21 Dermatology, to create nondiscrimination policies and ensure their members understand and adhere
22 to such standards. The Denial-of-Care Rule turns on its head all of the work that GLMA has
23 accomplished in this arena.

24 11. Some members of GLMA are employed by religiously-affiliated healthcare
25 organizations (for example, hospitals, hospices, or ambulatory care centers) that receive federal
26 funds. These healthcare providers also treat LGBTQ patients. The Denial-of-Care Rule encourages
27 religiously-affiliated healthcare employers to discriminate against employees who are GLMA
28 members for adhering to and enforcing their medical and ethical obligations to treat all patients in

1 a nondiscriminatory manner, including providing all medically-necessary care that is in patients'
2 best interests. The Rule impinges on and conflicts with GLMA members' ethical and medical
3 standards of care that healthcare providers are charged to uphold and harms the patients that they
4 serve.

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

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

- 17 a. "I see patients nearly every day who have been treated poorly by providers
18 with moral and religious objection. Patients with HIV who have been told
19 that they somehow deserved this for not adhering to God's law. Patients who
20 are transgender who have been told that 'we don't treat your kind here'. The
21 psychological and physical damage is pervasive."
- 22 b. "[Some providers in my clinic] do not wish to have contact with transgender
23 patients, mumbling religious incompatibilities when asked why. These
24 people have made our transgender patients feel very uncomfortable and
25 unwelcome at times, making them potentially more hesitant to use the health
26 services they may need."
- 27 c. "The impact on my patients who were directly denied care was both
28 psychological and physical. With regard to their mental wellbeing they

1 clearly felt marginalized and disrespected. With regard to their physical
2 wellbeing, they experienced delay in care, and in some cases disruption of
3 their routine medication dosing or diagnostic assessment.”

4 14. Based on what patients have told GLMA members about their history and fear of
5 discriminatory treatment, it is clear that the Rule will cause LGBTQ patients to attempt to hide their
6 LGBTQ identities when seeking healthcare services, especially from religiously-affiliated
7 healthcare organizations, in order to avoid such discrimination. When patients are unwilling to
8 disclose their sexual orientation and/or gender identity to healthcare providers out of fear of
9 discrimination and being refused treatment, their mental and physical health is critically
10 compromised.

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

1 emergency medical assistance, they will not know where to go to ensure that they will receive
2 nondiscriminatory, proper healthcare services. GLMA will need to be a resource for these patients.

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

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

28

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct to the best of my knowledge.

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4 Executed on September 5, 2019, in Washington, D.C..

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Hector Vargas
Executive Director