

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, CITY OF
NEW YORK, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, DISTRICT OF
COLUMBIA, STATE OF HAWAII,
STATE OF ILLINOIS, STATE OF
MARYLAND, COMMONWEALTH
OF MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF
MINNESOTA, STATE OF NEVADA,
STATE OF NEW JERSEY, STATE
OF NEW MEXICO, STATE OF
OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH
OF VIRGINIA, STATE OF
WISCONSIN, CITY OF CHICAGO,
and COOK COUNTY, ILLINOIS,

Plaintiffs,

v.

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

Defendants.

CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF ANDREW C. FORSAITH, J.D.

1. I, Andrew C. Forsaith, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I submit this Declaration in support of the State of Wisconsin's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as HHS Secretary, and the United States of America regarding the recently issued rule entitled "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" ("Final Rule"). I have compiled the information in the statements set forth below through Department of Health Services personnel who have assisted me in gathering this information from our institution. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon the Department of Health Services.

3. I am the Director of the Office of Policy Initiatives and Budget of the State of Wisconsin Department of Health Services. I have been employed in this position since 2014 and with the Department of Health Services since 1995. I have a juris doctorate degree from the University of Wisconsin-Madison and a bachelor's degree in political science from the University of Chicago.

4. In my position, I am responsible for managing the biennial budget development process for the Department of Health Services, monitoring expenditures against budget during the fiscal year, managing the Department's federal application development process, and providing policy and fiscal analysis to the Department's leadership.

5. The Division of Public Health ("DPH") serves the State of Wisconsin by overseeing and administering a wide variety of programs and services that protect the health of its citizens. DPH staff work with local and tribal public health partners, and community groups statewide, on a wide variety of programs and services that protect the health of Wisconsin residents. A few of these programs are: communicable and chronic diseases; health promotion; environmental

health; occupational health; family and community health; emergency medical services (“EMS”); and injury prevention.

6. The Department of Health Services received over \$6.7 billion in federal health care funding from HHS in the 2018 fiscal year.

7. More specific funding figures are as follows. For fiscal year 2019, Wisconsin received \$10,906,650 from the Title V Maternal and Child Health block grant. For fiscal year 2019, Wisconsin received a total of \$30,318,400 in combined federal opioid grant awards. For fiscal year 2019, Wisconsin’s budgeted expenditures for federal Medicaid benefits is \$5,549,940,600.

8. These funds support a variety of important programs. For example, in 2018, Wisconsin received \$11,402,328 in funding from HHS through the Title V Maternal and Child Health Block Grant, along with \$10.3 million in matching State funds. Wisconsin used these funds to support and improve the health of over 463,933 women, infants, and children, including children and youth with special health care needs (“CYSHCN”). Wisconsin has five CYSHCN Regional Centers, which provide local information and referral services to parents and guardians of CYSHCN. In addition, the Maternal & Child Health Block Grant funds the Women’s Health Family Planning Program, which addresses women’s reproductive health and family planning, as well as Maternal, Child and Infant Death Reviews addressing maternal and infant mortality. These block grant funds also provide resources to the Child Psychiatry Consultation Program and Periscope Program addressing child and maternal mental health respectively, and the blood lead screening program, including case management and environmental assessments.

9. As another example, responding to Wisconsin’s opioid crisis is one of our top priorities. Through partnerships with State, tribal, county, and local agencies, our approach to this epidemic empowers communities to prevent misuse, expand access to quality treatment and

recovery services, and reduce death and harm. In Fiscal Year 2018, the Department of Health Services received over \$7 million in funding from HHS to combat the opioid epidemic. That funding helped to improve public health surveillance in the State and to strengthen prevention programming and data infrastructure regarding opioid use disorder (“OUD”) and substance use disorder (“SUD”). The funding also expanded access to evidence-based prevention and treatment for OUD and SUD. Previous funding from the Centers for Disease Control through the Prescription Drug Overdose Prevention for States Program, the Enhanced State Surveillance of Opioid-Involved Morbidity and Mortality, and the Cooperative Agreement for Emergency Response: Public Health Crisis Response – Opioid Epidemic has been critical to establishing Wisconsin’s surveillance system. That system engages the Wisconsin State Coroners and Medical Examiners Association in providing information on violent deaths, enhances the quality and sharing of data among state agencies, strengthens our prescription drug monitoring program, facilitates overdose fatality review teams, links EMS first responders with treatment and recovery support, and promotes education around opioid prescribing in our health systems.

10. Finally, the Medicaid program provides acute, primary, and long-term care services to 1.1 million enrollees, or about 1 of 5 Wisconsin residents. The program serves roughly 776,000 low income children, parents, and childless adults, providing comprehensive primary and acute care services and prescription drug coverage to them through health maintenance organizations and fee-for-service providers. The program also serves approximately 230,000 elderly adults and adults and children with disabilities. The program enrolls thousands of individuals in targeted eligibility categories. Roughly 40% of Wisconsin Medicaid expenditures are for long-term care services in people’s homes, in assisted living facilities, or in nursing homes. The program also provides \$1.3 billion in prescription drug coverage per year.

11. The Final Rule imposes new conditions on the federal funding the Department of Health Services receives from HHS. The Department relies on these funds to ensure access to health programs and services to the citizens of the State of Wisconsin. These funds are essential to the functioning of the Department and all programs and services overseen or administered by the Department.

12. As I understand it, the Final Rule would allow the termination of all federal funding from HHS, if HHS determines that the Department of Health Services, one of its divisions, or one of its subrecipients violated—even once—any aspect of the Final Rule.

13. The termination of all HHS federal funding would be devastating to the mission of the Department of Health Services and DPH. If Wisconsin were to lose this funding, I anticipate that it would not be able to make up the \$6.7 billion shortfall. As a result, a vast number of vital services would need to be cut.

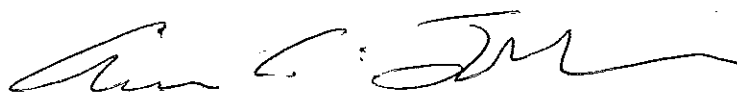
14. If Wisconsin were to lose Title V Maternal and Child Health Block Grant funding, I anticipate that the state would not be able to make up the more than \$11 million shortfall. Instead, services would need to be cut. For example, cuts to the CYSHCN program would likely result in the 245,000 children with special healthcare needs not having access to critical information about local resources and programs to support them and their families. In addition, primary care providers could lose access to child mental health experts that provided over 2,200 consultations in 2018. Wisconsin has the highest African American infant mortality rate in the country and is dedicating both State appropriations and Title V Maternal and Child Health Block Grant funding to this issue. If federal funding were removed, I anticipate this disparity would continue to worsen and more African American babies would die.

15. If Wisconsin were to lose federal opioid prevention funding, I anticipate that the State would not be able to make up the budget shortfall with State funds. As a result, Wisconsin's opioid surveillance and data infrastructure, initiatives to enhance linkages to care between EMS teams and local public health departments, efforts to enhance non-punitive neonatal abstinence screening, and substance use prevention efforts would all face severe cuts, which would negatively affect the health and welfare of Wisconsin residents, especially those suffering from substance-related disorders.

16. If funding were eliminated for Medicaid, I anticipate that the State would not be able to make up the budget shortfall with State funds. Medicaid members would experience a serious reduction, if not an elimination, in access to services, including critical acute care and long-term care services. Health care providers would see an extraordinary increase in uncompensated care for individuals without health coverage.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Executed on this 12 day of June, 2019



Andrew C. Forsaith, J.D.

Director, Office of Policy Initiatives and Budget
Wisconsin Department of Health Services