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10 Ricardo Lara, Shelly Rouillard, and Sonia  
Angell, in their official capacities*

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 SOUTHERN DIVISION  
14

15  
16 **JANE DOE; STEPHEN ALBRIGHT;  
17 AMERICAN KIDNEY FUND, INC.;**  
**and DIALYSIS PATIENT**  
18 **CITIZENS, INC.,**

19 Plaintiffs,

20 v.

21 **XAVIER BECERRA, in his Official  
Capacity as Attorney General of  
22 California; RICARDO LARA in his  
Official Capacity as California  
23 Insurance Commissioner; SHELLY  
ROUILLARD in her official Capacity  
24 as Director of the California  
Department of Managed Health  
25 Care; and SUSAN FANELLI, in her  
Official Capacity as Acting Director  
26 of the California Department of  
Public Health,**

27 Defendants.  
28

8:19-cv-2105-DOC-(ADSx)

**DECLARATION OF DAPHNE  
HUNT IN OPPOSITION TO  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: December 16, 2019  
Time: 8:30 a.m.  
Courtroom: 9D  
Judge: The Honorable David O.  
Carter  
Trial Date: TBD  
Action Filed: 11/1/2019

1 I, Daphne Hunt, declare:

2 1. I am the Deputy Secretary of Legislative Affairs at the California Health  
3 and Human Services Agency (HHS). In that capacity, I coordinate legislative  
4 strategy and positions for HHS and its departments. Additionally, I assist HHS and  
5 its departments with some facets of implementation of legislation.

6 2. HHS has attempted to obtain from the American Kidney Fund  
7 information regarding the patients who receive assistance from AKF and will be  
8 affected by AKF's promised departure from California on January 1, 2020. AKF  
9 has declined to provide that information and remains the only entity that knows  
10 who the affected patients are.

11 3. Attached as Exhibit 1 is a true and correct copy of a letter dated  
12 November 15, 2019, from Secretary Mark A. Ghaly to Ms. LaVarne A. Burton,  
13 President and CEO of AKF, requesting information regarding the patients receiving  
14 assistance.

15 4. Attached as Exhibit 2 is a true and correct copy of a letter dated  
16 November 20, 2019, from Ms. Burton to Secretary Ghaly, responding to Secretary  
17 Ghaly's letter.

18 5. Attached as Exhibit 3 is a true and correct copy of a letter dated  
19 December 4, 2019, from Secretary Ghaly to Ms. Burton forwarding a fact sheet for  
20 distribution to affected patients.

21 6. Attached as Exhibit 4 is a true and correct copy of the fact sheet provided  
22 to AKF by HHS for distribution to affected patients in conjunction with Secretary  
23 Ghaly's December 4 letter. This fact sheet is also publicly available at  
24 [https://www.dmhc.ca.gov/Portals/0/Docs/DO/CoverageOptionsFactSheet&FAQs.p](https://www.dmhc.ca.gov/Portals/0/Docs/DO/CoverageOptionsFactSheet&FAQs.pdf)  
25 [df](https://www.dmhc.ca.gov/Portals/0/Docs/DO/CoverageOptionsFactSheet&FAQs.pdf).

26 I have personal knowledge of the foregoing facts and would so competently  
27 testify if called as a witness to these proceedings.

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 20, 2019, in Sacramento, California.

  
\_\_\_\_\_  
Daphne Hunt  
Deputy Secretary of Legislative  
Affairs

# EXHIBIT 1



# State of California HEALTH AND HUMAN SERVICES AGENCY

**GAVIN NEWSOM**  
GOVERNOR



**MARK A. GHALY MD, MPH**  
SECRETARY

November 15, 2019

Ms. LaVarne A. Burton  
President and Chief Executive Officer  
American Kidney Fund  
11921 Rockville Pike, Suite 300  
Rockville, Maryland 20852



- Aging
- Child Support Services
- Community Services and Development
- Developmental Services
- Emergency Medical Services Authority
- Health Care Services
- Managed Health Care
- Office of Health Information Integrity
- Office of Innovation
- Office of Law Enforcement Support
- Office of Patient Advocate
- Office of Surgeon General
- Office of Systems Integration
- Public Health
- Rehabilitation
- Social Services
- State Hospitals
- Statewide Health Planning and Development

RE: AKF Beneficiaries in California

Dear Ms. Burton:

I'm aware the American Kidney Fund (AKF) plans to cease providing assistance to California patients as soon as the end of this year. California law, including recently enacted Assembly Bill 290, does not require the AKF to leave California. To the extent AKF elects to leave California, I am working to find ways to protect patients from losing their coverage. One such way is for AKF to provide Covered California with contact information for the 3700+ Californians who will be impacted by the AKF's decision to leave California.

If AKF provides this information to Covered California, the State can help patients learn about affordable coverage options in an attempt to avoid unnecessarily losing coverage when AKF ends its premium assistance in California. If AKF believes that privacy laws prohibit sharing this information with Covered California, AKF could obtain the affected patients' consent to share their information for the limited purpose of learning about other available coverage sources. However, if the AKF chooses to withhold the identity of the impacted patients, the AKF will simply compound the harm caused by its unnecessary departure.

The State of California believes that preserving the patients' health is paramount, as AKF has stated publicly. Accordingly, I urge AKF to take the simple step of identifying impacted patients to Covered California.

Sincerely,

Mark A. Ghaly, MD, MPH  
Secretary

# EXHIBIT 2



November 20, 2019

Mark A. Ghaly, MD, MPH  
Secretary  
State of California  
Health and Human Services Agency  
1600 Ninth Street, Room 460  
Sacramento, CA 95814

Dear Dr. Ghaly,

Thank you for your letter of November 15, 2019. All of us at the American Kidney Fund share your concern for the Californians affected by Assembly Bill 290 (AB 290). AKF has helped end stage renal disease patients in California for almost 50 years, and until Governor Newsom signed AB 290, we had no intention of withdrawing our health insurance premium assistance program from the state. As we explained to lawmakers many times over the course of the 2019 legislative session, AB 290 puts AKF in an irreconcilable conflict with federal law. AB 290 creates a new set of state rules that conflict with the federal rules, and this conflict, as well as the infringement on AKF's First Amendment rights, is what is forcing AKF to withdraw our program from California. Moreover, AKF's program operates nationwide under federal rules that require AKF to apply the program uniformly to recipients in every state.

We previously tried to work with the state. In fact, on the first day of open enrollment (October 15, 2019), two days after the bill was signed into law, we reached out to the Department of Managed Health Care to see how we might work together to ensure a smooth transition for those Californians affected by AB 290. We did not receive a response to the email we sent (see attached).

We have urged, and continue to urge, the state to develop a plan to help its residents whom AKF can no longer assist. Your letter now suggests that Covered California may be able to help, and we hope this will be the case for some patients. As we understand Covered California, it is not available to Medicare beneficiaries and undocumented persons. Subsidies are also unavailable to those who have health insurance offered by an employer. AKF helps more than 3,700 low-income and largely minority Californians; of this group, nearly 65 percent are on Medicare or an employer plan (or COBRA), and many are undocumented. As a result, many of the patients we assist will likely not be able to enroll in a Covered California plan. These patients need both a primary plan and supplemental coverage to get the health care that they need and to qualify for a transplant list. That is the reason AKF has been assisting them.

We remain in ongoing communication with our California grant recipients and are able to disseminate materials to them very quickly. Because it is not practical or prudent for us to disclose their names and provide contact information, we ask that you provide us whatever information you have about Covered California and we will make every effort to get this information into patients'



Page | 2

hands as quickly as possible so that they can consider all potential options before AB 290's January 1, 2020 effective date.

Sincerely,

A handwritten signature in black ink that reads "LaVarne A. Burton".

LaVarne A. Burton  
President and CEO



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**Subject:** FW: AKF Assistance and CA Patients

**From:** Phillips, Jenny@DMHC <[REDACTED]>  
**Sent:** Friday, October 18, 2019 6:38 PM  
**To:** Melanie Lynn Kahn <[REDACTED]>; Watanabe, Mary@DMHC <[REDACTED]>  
**Cc:** Holly Bode <[REDACTED]>; Scott Sadler <[REDACTED]>  
**Subject:** RE: AKF Assistance and CA Patients

Hi Melanie – I am copying Mary Watanabe on this email. Mary is the DMHC's Chief Deputy Director and will be reaching out.  
Thanks,  
Jenny



**Jenny Mae Phillips J.D., LL.M.**  
Deputy Director Legislative Affairs

Office of the Director  
Department of Managed Health Care  
Phone: (916) 322-5874  
Email: [REDACTED]

**Need Help With Your Health Plan?**  
Call: 1-888-466-2219 | Visit: [HealthHelp.ca.gov](http://HealthHelp.ca.gov)

**From:** Melanie Lynn Kahn <[REDACTED]>  
**Sent:** Tuesday, October 15, 2019 5:53 AM  
**To:** Phillips, Jenny@DMHC <[REDACTED]>  
**Cc:** Holly Bode <[REDACTED]>; Scott Sadler <[REDACTED]>  
**Subject:** RE: AKF Assistance and CA Patients

Hi Jenny,

Thank you for getting back to me so quickly. We want to be as helpful as possible, so just let me know how and what we can do to assist you and your team.

Sincerely,  
Melanie Kahn



**Melanie Lynn Kahn**  
Director of State Policy and Advocacy  
(240) 292-7018  
[Redacted]

11921 Rockville Pike | Suite 300 | Rockville MD 20852  
[www.KidneyFund.org](http://www.KidneyFund.org) | (800) 638-8299 toll-free



*The American Kidney Fund fights kidney disease on all fronts as the nation's leading kidney nonprofit working on behalf of the 37 Americans living with kidney disease, and the millions more at risk. Our unmatched scope of programs support people wherever their fight against kidney disease—from prevention through post-transplant living. For its program effectiveness, stewardship of donated dollar and transparency, AKF holds the highest ratings from the nation's leading charity watchdogs. Learn more at [KidneyFund.org](http://KidneyFund.org).*

*CONFIDENTIALITY NOTICE: This e-mail transmission may contain confidential or legally privileged information that is intended only for the individual or entity named in the e-mail address. If you are not the intended recipient, or if you have received this e-mail in error, please delete the message from your inbox.*

**From:** Phillips, Jenny@DMHC <[Redacted]>  
**Sent:** Monday, October 14, 2019 8:18 PM  
**To:** Melanie Lynn Kahn <[Redacted]>  
**Cc:** Holly Bode <[Redacted]>; Scott Sadler <[Redacted]>  
**Subject:** RE: AKF Assistance and CA Patients

Hi Melanie –  
Thank you for your email – I am following up internally and will get back to you with more information.  
Jenny Phillips



**Jenny Mae Phillips J.D., LL.M.**  
Deputy Director Legislative Affairs

Office of the Director  
Department of Managed Health Care  
Phone: (916) 322-5874  
Email: [Redacted]

**Need Help With Your Health Plan?**  
Call: 1-888-466-2219 | Visit: [HealthHelp.ca.gov](http://HealthHelp.ca.gov)

**From:** Melanie Lynn Kahn <[Redacted]>  
**Sent:** Monday, October 14, 2019 8:04 AM  
**To:** Phillips, Jenny@DMHC <[Redacted]>  
**Cc:** Holly Bode <[Redacted]>; Scott Sadler <[Redacted]>  
**Subject:** AKF Assistance and CA Patients

Hi Jenny,

Thank you again for meeting with us over the past two years about SB 1156 and AB 290. We really appreciated the time you spent with us.

I wanted to touch base with you about the implementation of AB 290. Since we are going to be stopping our assistance to patients beginning on Jan. 1 we wanted to discuss how we might work together to ensure as smooth of a transition as possible for our patients. If you are not the right person to speak to about this would you mind pointing me in the right direction?

All the best,  
Melanie Kahn



**Melanie Lynn Kahn**  
Director of State Policy and Advocacy  
(240) 292-7018  
[REDACTED]

11921 Rockville Pike | Suite 300 | Rockville MD 20852  
[www.kidneyfund.org](http://www.kidneyfund.org) | (800) 638-8299 toll free



*The American Kidney Fund fights kidney disease on all fronts as the nation's leading kidney nonprofit working on behalf of the 37 Americans living with kidney disease, and the millions more at risk. Our unmatched scope of programs support people wherever t their fight against kidney disease—from prevention through post-transplant living. For its program effectiveness, stewardship of donated dollar and transparency, AKF holds the highest ratings from the nation's leading charity watchdogs. Learn more at [KidneyFund.org](http://KidneyFund.org).*

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# EXHIBIT 3

# State of California HEALTH AND HUMAN SERVICES AGENCY

**GAVIN NEWSOM**  
GOVERNOR



December 4, 2019

**MARK A. GHALY MD, MPH**  
SECRETARY

Ms. LaVarne A. Burton  
President and Chief Executive Officer  
American Kidney Fund  
11921 Rockville Pike, Suite 300  
Rockville, Maryland 20852  
[REDACTED]

Aging

Child Support  
Services

Community Services  
and Development

Developmental  
Services

Emergency Medical  
Services Authority

Health Care Services

Managed Health Care

Office of Health Information  
Integrity

Office of Innovation

Office of Law Enforcement  
Support

Office of Patient Advocate

Office of Surgeon General

Office of Systems Integration

Public Health

Rehabilitation

Social Services

State Hospitals

Statewide Health  
Planning and  
Development

RE: AKF Beneficiaries in California

Dear Ms. Burton:

Thank you for your response dated November 20, 2019. I appreciate your willingness to distribute information about available coverage options to current American Kidney Fund beneficiaries in California. Options include, but are not limited to, qualified health plans offered through Covered California. Providing this information will help mitigate the harm that would occur if AKF chooses to leave the state. The enclosed notice in English and Spanish has information for your beneficiaries about coverage options as well as how to get enrollment help.

Sincerely,

Mark A. Ghaly MD, MPH  
Secretary

# EXHIBIT 4





# COVERAGE OPTIONS

## for American Kidney Fund Grant Recipients

The American Kidney Fund (AKF) has stated it will end its financial assistance to Californians in need on January 1, 2020. *You must act quickly to make sure you continue to have health care coverage.* Here are some options you can explore. Contact the specific programs for more information.

- **COVERED CALIFORNIA:** Low- or moderate-income Californians may be able to get help buying coverage from Covered California through monthly subsidies that lower premium costs.

Visit <http://www.coveredca.com> or call **1-800-300-1506**

- **MEDI-CAL:** Medi-Cal offers free or low-cost health coverage for low-income California residents. Most people with Medi-Cal pay no premium or co-payments.

Visit <https://www.dhcs.ca.gov/> or call **Covered California** at **1-800-300-1506**

- **MEDICARE:** Medicare is the federal program that provides health care coverage for people who are 65 or older or under 65 with a disability, including End Stage Renal Disease (ESRD). Most people with ESRD are enrolled in traditional Medicare, which includes, Part A (inpatient/hospital coverage); Part B (outpatient/medical coverage); and Part D (prescription drug coverage).

Visit <https://www.medicare.gov/> or call **1-800-MEDICARE (1-800-633-4227)**

- **MEDICARE SUPPLEMENTAL:** A Medicare Supplement insurance plan, also known as Medigap, fills in some of the gaps in Medicare Part A and Part B coverage. This includes deductibles, copayments, and coinsurance. Individuals under 65 with ESRD may not be eligible for this type of coverage.

Visit <https://www.medicare.gov/supplements-other-insurance> or call **HICAP** at **1-800-434-0222**

- **MAJOR RISK MEDICAL INSURANCE PROGRAM:** The Major Risk Medical Insurance Program (MRMIP) is for Californians who are unable to obtain coverage in the individual health insurance market because of a pre-existing condition. If you have Medicare solely because of ESRD, you can apply for this program to supplement your Medicare.

Visit <https://www.dhcs.ca.gov/> or call **1-800-289-6574**

## How to get help with your health coverage options

**The California Department of Managed Health Care (DMHC)** provides assistance to all California health care consumers through the DMHC Help Center. The Help Center helps consumers better understand their health care rights, explains health care benefits and resolves health plan issues. Assistance is available in all languages and all services are free. Contact the DMHC Help Center by calling **1-888-466-2219** or visit [www.HealthHelp.ca.gov](http://www.HealthHelp.ca.gov).

**The California Department of Insurance (CDI)** regulates health insurance policies in the state of California. CDI's Consumer Complaint Center helps consumers resolve complaints against their health insurers. Contact the CDI Consumer Complaint Center by calling **1-800-927-4357** or visiting <http://www.insurance.ca.gov/>

**The Health Consumer Alliance (HCA)** offers free assistance by phone or in person to help people who are struggling to get or maintain health coverage and resolve problems with their health plans. If you are concerned about your immigration status, the HCA provides free, confidential consultation and information. Contact the HCA at **1-888-804-3536** or visit <https://healthconsumer.org/>

## More information on Medicare

**The Health Insurance Counseling and Advocacy Program (HICAP)** provides free, confidential one-on-one counseling, education, and assistance to individuals and their families on Medicare, Long-Term Care insurance, other health insurance related issues, and planning ahead for Long-Term Care needs. HICAP also provides legal assistance or legal referrals when dealing with Medicare or Long-Term Care insurance related issues. To find your local HICAP Office, please call **1-800-434-0222** or visit [www.aging.ca.gov/hicap/](http://www.aging.ca.gov/hicap/)

**CERTIFICATE OF SERVICE**

Case Name: Jane Doe, et al v. Xavier Becerra, et al. Case No. 8:19-cv-2105-DOC-(ADSx)

I hereby certify that on December 20, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF DAPHNE HUNT IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 20, 2019, at Los Angeles, California.

Beth L. Gratz  
Declarant

/s/ Beth L. Gratz  
Signature