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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

STATE OF WASHINGTON, Plaintiff, v. ALEX M. AZAR II, in his official capacity as Secretary of the United States Department of Health and Human Services; and UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, Defendants.	NO. 2:19-cv-00183-SAB DECLARATION OF BILL MOSS IN SUPPORT OF STATE OF WASHINGTON'S MOTION FOR PRELIMINARY INJUNCTION NOTED FOR: July 17, 2019 With Oral Argument at 1:30 p.m.

I, Bill Moss, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary to the State of Washington, Department of Social and Health Services (DSHS), Aging and Long-Term Support Administration (ALTSA). I was appointed the Assistant Secretary of ALTSA by the Secretary of the Department of Social and Health Services in February of

2013 and serve at the pleasure of Governor Jay Inslee. The Assistant Secretary is a member of the Department's Secretary's Cabinet. My duties as the Assistant Secretary of ALTSA include supervising the ALTSA divisions in administering and overseeing state programs for long-term services and supports that serve our state's aging population and adults with disabilities.

2. Over the past two decades, I have provided leadership in a number of positions within DSHS and ALTSA, which include Director of the Home and Community Services Division, Office Chief for Home and Community Programs, and Assistant Regional Administrator for Home and Community Services. In 2017, Governor Jay Inslee appointed me to hold the interim seat as the Acting Secretary for DSHS. I participate on a number of state and national boards and workgroups, including the Training Partnership, which delivers innovative training for long-term care workers in Washington; as Vice Chair for the Health Benefits Trust Board, which provides advisory oversight of affordable benefits for long-term care workers; as Chair of the State of Washington's Dementia Action Collaborative Working Group; Health Care Apprenticeship Program Board (HCAP), and as a previous board member on the National Association of State Units on Aging and Disabilities (NASUAD) (Region X Regional Representative).

3. DSHS provides Washington residents assistance with employment, food, cash and medical care, long-term care for adults, rehabilitation services for

youth, support and vocational rehabilitation for individuals with disabilities, and psychiatric care for adults and children. These services are provided through seven different administrations. Each administration contributes to DSHS's mission to Transform Lives. Those administrations are the Aging and Long-term Support Administration (ALTSA), the Behavioral Health Administration (BHA), the Developmental Disabilities Administration (DDA), the Economic Services Administration (ESA), the Rehabilitation Administration (RHA), the Financial Services Administration (FSA), and the Services and Enterprise Support Administration (SESA). The estimated total amount of DSHS funding at risk is for State Fiscal Year 2020 is $2,529,082,000 and for State Fiscal Year 2021 is $2,765,114,000.

4. ALTSA is comprised of the Office of the Assistant Secretary, the Office of Communication, Government and External Relations, the Office of Deaf and Hard of Hearing Residential Care Services Division, Management Services Division, Home and Community Services Division, and the Adult Protective Services Division. More than 2,450 staff work for the administration at the state headquarters in Olympia and in regional offices throughout the state. ALTSA also contracts with the thirteen statewide Area Agencies on Aging that provide in-home services to individuals sixty years of age and older and clients with disabilities that meet the nursing facility level of care criteria, and their families.

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5. In addition to the programs and services provided through ALTSA, DDA provides services to approximately 34,000 Washingtonians. DDA provides services and supports to eligible individuals with developmental and intellectual disabilities, administering programs designed to assist individuals and their families to obtain services in their homes and communities. DDA also provides services in Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) and State Operated Nursing Facilities that offer 24-hour housing support and training in daily living skills for clients with disabilities.

6. DSHS is tied together by a single mission: to transform lives. Each administration within DSHS has a refined focus on this mission. The development of vision and core value statements within DSHS administrations took place years ago in an effort to unify the Department under one mission. As a result, each administration's mission is aligned with the overall mission of DSHS.

7. Individually we have the following missions:

a. ALTSA: To transform lives by promoting choice, independence and safety through innovative services. ALTSA's vision is to support seniors and people with disabilities to live with good health, independence, dignity, and to have control over the decisions that affect their lives. Our core values include: collaboration, respect, accountability, compassion, honesty and

integrity, pursuit of excellence, open communication, diversity and inclusion and commitment to service.

b. DDA: To transform lives by providing support and fostering partnerships that empower people to live the lives they want.

8. Like other administrations within DSHS, DDA convened workgroups of DDA leaders representing a breadth of program areas, vetted drafts through varied stakeholder groups, and published a vision statement and set of core values tailored to reflect DDA's commitment to the clients and families we support. DDA's vision is to:

a. Supporting individuals to live in, contribute to, and participate in their communities;

b. Continually improving supports to families of both children and adults;

c. Individualizing supports that will empower individuals with developmental disabilities to realize their greatest potential;

d. Building support plans based on the needs and the strengths of the individual and the family; and

e. Engaging individuals, families, local service providers, communities, governmental partners and other stakeholders to continually improve our system of supports.

DDA's Core Values are:

a. Respect gained through positive recognition of the importance of all individuals;

b. Person-Centered Planning to support each person to reach their full potential;

c. Partnerships between DDA and clients, families and providers in order to develop and sustain supports and services that are needed and desired;

d. Community Participation by empowering individuals with developmental disabilities to be part of the workforce contributing members of society.

ALTSA and DDA Provide Critical Home- and Community-Based Services to Washingtonians in Need

9. ALTSA and DDA support clients through Medicaid state plan services, including the 1915k Community First Choice option, Private Duty Nursing, 1915c, and 1115 waivers.

10. The majority of ALTSA's home and community-based services are funded partially or entirely by HHS, including Medicaid State Plan and Medicaid waiver services, and the Older Americans Act. The range of residential care options funded at least in part by HHS includes nursing homes, which provide 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board and laundry; assisted living

facilities, which are facilities in a community setting where staff assume responsibility for the safety and well-being of an adult; and adult family homes, which are regular neighborhood homes where staff assume responsibility for the safety and well-being of an adult. Services also include in-home personal and nursing care and adult day care, which is a supervised nonresidential program that includes services appropriate for adults with medical or disabling conditions. Individuals attending may receive assistance with personal care, counseling, general therapeutic/recreational activities, general health monitoring and nutritious meals.

11. Services that may be offered in the above settings or in the community include information and assistance, environmental modifications, nutrition services, legal services, family caregiver supports, wellness/prevention, specialized medical equipment and supplies, community choice guides, supported employment, supported housing, elder abuse prevention and long-term care ombudsman services.

12. Area Agencies on Aging work with local communities and tribal nations to develop and prioritize a menu of additional services that meet the needs of individuals in their area. These may include transportation, adult day care, minor home repairs, foot care, and many more services unique to the needs in the local area.

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13. DDA services include in-home, residential, employment and facility-based services such as personal care services, respite care, alternative living services, companion home services, skills acquisition training, personal emergency response, nurse delegation, nursing services, nursing assessment, community transition services from institutional care, ICF/IID, children's behavior support services, community protection services, adult day care, attendant care, child care for foster children, child development services, chore services, information and education, medical and dental services, overnight planned respite services, psychological counseling, recreational counseling, community guide, environmental adaptations, occupational therapy, physical therapy, positive behavior support and consultation, risk assessment, psychiatric services, speech, hearing, and language services, staff and family consultation and training services, transportation and wellness education.

The Final Rule Jeopardizes Every Person Served by DSHS

14. Based on my review of Protecting Statutory Conscience Rights in Health Care Delegations of Authority, published in the Federal Register on May 21, 2019 (Final Rule), the Final Rule will have significant impacts on DSHS.

15. The Final Rule creates a categorical right by providers to refuse to provide information or services to which they have a religious or moral objection. This would include a provider's objection to an individual's socioeconomic

status, race, color, gender/gender identity, sexual orientation, religion, national origin, language spoken, political preference, etc. The Final Rule does not specifically identify which religious values are protected and puts all people in Washington at grave risk as it will decrease access to providers.

16. The lack of direction in the Final Rule increases the likelihood of harm or death since it permits a personal objection at the time of service, including the front door to any service. This jeopardizes every person served by the Washington DSHS. As an example, without advance documentation of an individual employee's objection to a service, a denial at the time of service puts those we serve at extreme risk of losing essential services without access to alternatives. This also creates an environment where front door staff may refuse access when skilled providers are not aware that services are being denied by their practice.

17. Washington and the nation are in the midst of a massive long-term care services and healthcare workforce shortage. Seventy percent of Washingtonians over age sixty-five will need long-term services and supports in their lifetime. By 2035, the number of individuals age seventy-five and older will increase by approximately 150%.[1]

18. The Final Rule allows providers to deny service to individuals at their moral or religious discretion. As a result, facilities that are already

[1] Source: DSHS Research and Data Analysis.

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short-staffed will experience an increased strain when employees choose not to care for an individual. This presents safety concerns for understaffed teams that are unable to adequately care for patients, especially in emergency situations. Conflict between staff may occur when providers deny service during busy times when staff are already feeling overworked. These additional pressures will lead to a higher turnover rate, perpetuating the shortage of long-term care and healthcare workers. This could also result in health and safety risks for clients.

19. There simply are not enough workers to fill this gap. Allowing providers to refuse services to individuals based on a personal objection greatly reduces the overall pool of available providers to serve everyone in need.

20. The lack of providers negatively impacts our healthcare system as a whole. When providers refuse necessary services to individuals that help them maintain their health, individuals are left to seek costly care through emergency room visits. This creates an overflow in our hospitals and turns our emergency rooms into care facilities. The overflow creates an increased risk for staff and takes away necessary professionals from tending to other emergency patients. Increased emergency room visits results in a detrimental financial burden to individuals, families and taxpayers to cover costly care. Family caregivers and persons in need of care may also feel forced to seek treatment through alternate systems that will lack the regulatory oversight necessary for safe care.

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21. Washington has many rural regions that lack a variety of providers. If there are only a few providers in the area and some are refusing services, this reduces an individual's choice of provider, which is in violation of the federal regulation 431.51, requiring states to offer free choice of providers for Medicaid home- and community-based services. According to CMS regulations, states must ensure participants are afforded "choice among settings, and regarding services and supports and who provides them." When the only local provider refuses service as a result of a personal objection, individuals in that area will not be served, creating increased health disparities between our communities. It is more than just a slight inconvenience for people—it is depriving them of critical, lifesaving services and supports needed to maintain their health and well-being.

22. Trust is the cornerstone of the provider-client relationship. People should not have to worry if they will get the best quality care because of a provider's personal beliefs.

The Final Rule Puts Range of Long-Term Care Options at Risk

23. I have reviewed our funding sources to determine where we receive funds. Total funding from HHS (and potentially Department of Education and/or Department of Labor) for the next two years are:

State Fiscal Year 2020	$2,529,082,000
State Fiscal Year 2021	$2,765,114,000

24. HHS funding is used to support over 100,000 individuals living in Washington State to offer a wide range of services and supports to promote choice so that individuals may remain independent in the community settings of their choice to the greatest extent possible. While some of the funding is used for direct service (such as the Developmental Disabilities Administration's Residential Habilitation Centers and state psychiatric hospitals), most funding goes to contracted service providers for direct care services and to local Area Agencies on Aging. Contracted service providers include nursing homes, adult family homes, assisted living facilities, individual providers, private duty nurses and nurse delegation providers. The local Area Agencies on Aging receive funds to provide case management, plan and administer Older Americans Act programs (such as meal delivery), and contract with home care agencies. HHS funding is also issued to Tribal Nations for administration of tribal health programs. A small portion of funds are paid directly to clients for reimbursement for goods and services through the New Freedom program.

25. If a sub-recipient includes all of our contracted providers, then the following ALTSA sub-recipients would be impacted:

a. 43,000 Individual Providers. Individual providers are home care aides that serve clients in their own homes and are employed by the individual receiving care. They assist with activities of daily living, including bathing, toileting, grooming, and transportation

to medical appointments, walking, standing and more. Individual providers work one-on-one with the client and require a high level of trust.

b. 3,800 licensed and certified facilities, including nursing facilities, adult family homes and assisted living facilities. Nursing facilities provide 24-hour supervision, nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board and laundry. DSHS works with the Centers for Medicare and Medicaid Services to oversee these facilities. Adult family homes are regular neighborhood homes where staff assume responsibility for the safety and wellbeing of their residents. A room, meals, laundry and supervision and varying levels of assistance are provided. These homes can have up to six residents. Assisted living facilities are in a community setting where staff provide housing, meals, laundry, supervision and assistance. These facilities can have seven or more residents.

c. Forty-six home care agencies are contracted with our department and employ home care aides to assist clients in their own homes with daily tasks such as meal preparation, medication reminders,

laundry, light housekeeping, errands, shopping, transportation, and companionship.

d. 456 Care Coordinators. The Health Home Program was created by the federal Affordable Care Act. It allows states to provide Health Home services, including care coordination and comprehensive care management to individuals who are eligible for (a) Medicaid or (b) both Medicare and Medicaid. The purpose of the Health Home program is to improve outcomes, reduce future health care costs, and improve the experience of care. Care Coordinators assist these individuals in coordinating medical care, long-term services and supports, and behavioral health services.

26. If the definition of healthcare is interpreted narrowly, this could apply to DDA state operated service settings and contracted providers who are enrolled or contracted to provide strictly traditional medical services such as nursing, counseling, physical therapy, speech, hearing and regional crisis teams. Examples of state staff with medical credentials include doctors, dentists, psychologists and nurses. Conversely, if the definition of healthcare is interpreted more broadly, as we assume it is, it would apply to the traditional medical services as well as all of the waiver and state plan services administered by the DDA.

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27. All of these providers serve our clients with necessary assistance for daily life. Without these providers and services, individuals would not receive adequate care that would result in increased cases of neglect and self-neglect.

The Final Rule will Impact DSHS's Ability to Dependably Provide Required Medical Services

28. Members of our team at ALTSA are dedicated to finding suitable providers for our clients. The process is challenging and requires careful coordination of what environment will best suit the client, availability, proximity to their home community, and services needed. The ability for providers to deny services to individuals adds an additional element of complexity to the process. Staff will be presented with a smaller pool of providers to choose from. Additionally, staff will need to address denials that prevent individuals from receiving care or that withdraw pre-determined services. These added challenges will slow down the process of matching individuals with services and prevent them from receiving care in a timely manner.

29. This will result in the loss of health care and services for some of our most vulnerable clients. Providers or direct support professionals could be unwilling to provide necessary transportation and coordination for both medical or pharmacy services related to birth control or abortion services.

30. Abortions will take place in unhealthy, unsterile environments without health care, counseling, or other supportive services available. The inability to provide birth control exacerbates the number of abortions attempted

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in unhealthy conditions. It also does not take into account individuals with disabilities who utilize birth control to prevent pregnancies because they are dangerous to their overall health.

The Final Rule Directly Conflicts with Anti-Discrimination Laws and Policies

31. ALTSA and DDA exist for the purpose of helping people to achieve a better quality of life. Being lesbian, gay, bisexual, transgender or queer (LGBTQ) is not a choice, a behavior, or a lifestyle. Rather, it is an integral part of who individuals are at their very core. It is not up to a government entity or its employees or contractors to make philosophical, theological, or political judgments about personal identities. However, we do have a professional, legal, and ethical obligation to put personal opinions or biases aside and provide the very best care to those we serve. Rejecting behaviors toward LGBTQ people can have catastrophic consequences. Those who work in human services must make every effort to ensure safety and acceptance for LGBTQ people.

32. DSHS is committed to identify avenues of opportunity that allow for our department to grow and improve, so that we may professionally and adequately support all persons regardless of who they are or who they love. As such, in an effort to show our acceptance of all persons, ALTSA flies the Pride Flag during the month of June, has worked with the University of Washington on LGBTQ issues such as recommendations on how to collect sexual orientation and gender identity data. We are co-sponsors on conferences targeted for LGBTQ

populations. We changed rules to reflect state-registered domestic partners including our nursing home regulations which now allow these residents to share a room if they desire. We have created an atmosphere where people can be themselves. Our programs and services are open to everyone. The Federal Rule undoes all of this and takes us backwards from the forward progress we have made.

33. The Federal Rule directly conflicts with Washington state law (Wash. Rev. Code 49.60.030) and DSHS policy which prohibit discrimination on the basis of sexual orientation and gender identity. DSHS Administrative Policy 7.22 goes further to require respect for everyone with whom we interact regardless of difference.

34. Those who identify as LGBTQ are presently at a higher risk for discrimination, prejudice, denial of civil and human rights, harassment, and family rejection. The Final Rule puts this already vulnerable population, prone to hardship and heartache, at further risk. People who are LGBTQ may feel unsafe asking for support, services, or even worse, be denied the assistance and compassion they deserve simply because of who they are. The Final Rule will have dire consequences for our LGBTQ community, particularly as they reach an age where they will, like any person, need supportive services that develop as one ages. We may see our LGBTQ sisters, brothers, friends, family, and neighbors denied support with access to meal preparation and eating,

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transportation to healthcare appointments, a safe and supportive living environment in a community setting of their choice, bathing and dressing assistance, and social and human interaction.

35. The Final Rule is asking this vulnerable group of people to not be themselves while purporting to protect peoples' freedoms. What the Final Rule ultimately does is jeopardize the safety and well-being of people who are LGBTQ—putting them at risk for abuse, neglect and possibly even death if ultimately denied the supports and services they need.

36. In 2008, Washington passed the Death with Dignity Act, which went into effect March 5, 2009. The Act, under the purview of the Department of Health, allows terminally ill adults to end their life with lethal doses of medication prescribed by medical or osteopathic physicians. Individuals self-administer, but the Final Rule likely may cut off the source of the medication. Today, participation by physicians and health care companies in Washington is voluntary; however, this could lessen or deplete the pool of physicians and pharmacies willing to participate. It may also remove the grievance process that allows patients to lodge complaints against a physician who violates the Act and the protections surrounding the individual's life, health and accident insurance. ALTSA has clients who choose to utilize these services, and they will no longer have this choice. Additionally, service providers may have a conflict in

supporting the implementation of care identified in advanced directives, hospice services, or Physician's Orders for Life-Sustaining Treatment (POLSTs).

37. The Final Rule generates an opportunity for providers to not recognize a spouse or significant other as the decision-maker for a person in need of care if they are part of a same sex marriage or partnership with that person. As an organization, ALTSA strives and believes that one's end of life wishes, preferences and healthcare decisions should be accommodated regardless if they are heterosexual or LGBTQ. The strongest and best advocate a person can have is often their spouse or partner, but this Final Rule builds a potential barrier where providers can opt to not recognize a person as a spouse or partner simply because they may be LGBTQ. Additionally, service providers may have a conflict in supporting the implementation of care identified in advanced directives, hospice services, or POLSTs.

38. This will have a devastating impact on the lives of many during a time when we, as a state organization, should be doing our best to ensure a person is supported, comfortable and receiving the highest quality of care possible in a setting without judgement, harassment, or fear.

39. The Final Rule appears to conflict with the Nightingale and Hippocratic Oaths to do no harm and protect patient's safety.

40. DSHS has calculated an estimate of costs for staffing related for ALTSA and DDA combined to implement and comply with the Final Rule, half

for each administration. These costs include program managers, administrative support positions, staffing for additional time spent by case managers, supervisors, residential surveyors, investigators, record keeping and public disclosure, as well as human resources and information technology support for the increased staffing. These costs also include the cost of creating and sending poster and brochures to all employees and subcontractors.

State fiscal year 2020	114.4 FTE	$14,574,000
State fiscal year 2021	115.8 FTE	$14,438,000

41. This includes changes to websites, policies and applications for both employees, subcontractors and recipients; Management Bulletins to Area Agencies on Aging; notices to Individual Providers; Provider Letters to all licensed and certified community residential providers; notices to employees; and training of employees, subcontractors and recipients. The cost to print and distribute posters and brochures to external subcontractors and recipients and to employees is estimated to be nearly $80,000 ($78,168.16).

42. DSHS estimates that, to implement the Final Rule in the next twelve months, the cost is $14,574,000 for ALTSA and DDA.

43. Currently, DSHS serves all people regardless of race, sexual orientation or identification or socioeconomic status. Therefore, we do not currently have policies, procedures or personnel in place to document information regarding religious or moral denials made by providers.

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44. The Final Rule will impose an immediate cost on DSHS due to its notice, assurance and certification, record keeping and reporting requirements. This requires us to restructure our system and add additional staff and technology to appropriately manage recordkeeping of denials.

45. Providers denying services to individuals will result in an increased number of cases of abuse and neglect. According to Washington law (Wash. Rev. Code 74.34.020), "abandonment means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care" and "neglect means a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100." Each time a provider refuses service of a vulnerable adult, they are committing abuse or neglect.

46. In 2018, Adult Protective Services investigated more than 60,000 cases of abuse and neglect. Provider denials will cause cases to exponentially grow, causing an increased strain on staff members. As a result, Washingtonians

will suffer from inadequate services in response to abuse and neglect. To meet the increased demand and maintain fair service, we would have to hire additional investigators and social workers, which would create an increased budget strain on the state and its taxpayers.

47. We believe that it is the right of all residents to receive services without discrimination. We have worked diligently to provide services that adequately meet the needs of various populations and help reduce health disparities. Our residents trust that they can and will receive the best care available, regardless of who they are. The Rule undermines this belief and allows for certain populations to easily become marginalized. As a result, our department will see an increased number of discrimination lawsuits. Each lawsuit requires special attention, staff time and results in monetary losses.

48. The following are the types of sub-recipients or "any person, or any entity to whom there is a pass-through of federal financial assistance [through DSHS] from HHS":[2]

a. Over 56,000 people receive Meal Assistance such as home-delivered meals

b. 63,400 Medicaid clients receive services in a variety of settings

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[2]This includes foreign governments, but does not include ultimate beneficiary. Note that there is an exception in certification section 88.4 (c)(4) for tribes.

i. 40,700+ served at home

ii. 12,500 served in adult family homes and assisted living facilities

iii. 600 receive managed care

iv. 9,500 served in nursing homes

c. 600 people receive ODHH case management to obtain needed services through coordination of services, translation of documents, advocacy, and/or the teaching of new abilities and skills

d. Licensing and inspections of long-term care facilities

i. 3,600 licensed adult family home, nursing home, enhanced service facility, and assisted living providers

ii. 70,600 licensed beds in the above facilities

iii. 2,600 annual inspections, surveys and certifications of the above facilities

ALTSA clients are served by a variety of facilities, organizations and individuals that provide a broad menu of services to meet those clients' needs and preferences. This range of services and supports are integral to the department's mission of promoting choice, independence and safety through innovative services with a vision of supporting seniors and people living with disabilities to live with good health, independence, dignity and control over the decisions that

affect their lives. The Final Rule jeopardizes this range of services and supports, which are provided by the following facilities, organizations, and individuals.

1. Area Agencies on Aging (AAAs)–Thirteen Total

49. Area Agencies on Aging are local government organizations designated by the Aging and Long-Term Support Administration to provide a network of in-home and community services, support programs and assistance to older adults, adults with disabilities and family caregivers.

2. Adult Family Homes–3,022 Total/2,662–Adult Family Home Providers with Contracts

50. Adult Family Homes (AFHs) are regular residential homes licensed to care for two to six residents. The homes are private businesses and provide the residents with a room, meals, laundry, supervision, and personal care. The services provided to residents depend on the needs of each individual resident and the skill level of the provider. Some homes are able to provide nursing services or other special care and services.

3. Assisted Living Facilities–545 Total/315 with Contracts, 230 Without Contracts

51. An assisted living facility (ALF), is a community setting licensed by DSHS to care for seven or more residents. The majority are privately-owned businesses. ALFs provide housing, basic services and assume general responsibility for the safety and well-being of the resident. ALFs allow residents

to live an independent lifestyle in a community setting while receiving necessary services from staff.

4. Enhanced Services Facilities–4 Total

52. The Washington State Legislature developed Enhanced Services Facilities (ESF) to provide a community placement option for individuals whose complicated personal care and behavioral challenges do not rise to a level that requires an institutional setting. Rather than extended and unnecessary stays in state psychiatric hospitals, individuals who are not eligible for inpatient psychiatric treatment or who are assessed as discharge-ready can live in an ESF

5. Home Care Agencies–46 Contracted With DSHS

53. Home care agencies provide non-medical services to ill, disabled or vulnerable people with functional limitations, enabling them to maintain their highest level of independence and remain in their homes.

6. Individual Providers–37,000 Total

54. An individual provider is a personal aide who, under an individual provider contract with the department or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the Medicaid state plan, Medicaid waiver programs or similar state-funded in-home care programs.

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7. Nurses–172 Total

55. Our ALTSA nurses work as nurse compliance specialists, field managers, regional administrators, nursing consultants, nursing care consultants, program managers, assistant director and as a director. Our nurses help improve the quality of care provided and assist in ensuring the safety and well-being of clients in long-term care facilities and in their own homes across our state. ALTSA nurses are integral to our work of transforming lives by promoting choice, independence and safety through innovative services.

8. Nursing Homes–215 Total

56. ALTSA licenses nursing facilities in Washington State. A nursing facility (NF), or nursing home, provides 24-hour supervised nursing care, personal care, therapy, nutrition management, organized activities, social services, room, board, and laundry. The majority are privately-owned businesses.

9. Regional Service Centers–8 Total

57. In partnership with the ALTSA, the Office of the Deaf and Hard of Hearing regional service centers provide educational, technical and social support for individuals who are deaf, deaf-blind or experiencing hearing loss.

10. Adult Day Services (Adult Day Care and Adult Day Health)

58. Adult Day Care (ADC) is a supervised nonresidential program. Services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist. Individuals attending may receive assistance with

personal care, counseling on a consultation basis, general therapeutic/recreational activities, general health monitoring and a nutritious meal.

59. Adult Day Health (ADH) is a structured program, lasting at least four hours, that provides skilled nursing and rehabilitative therapy. Skilled nursing or rehabilitative therapy must be provided on each attendance day. Individuals may also receive counseling services, personal care, general therapeutic/recreational activities, and a nutritious meal.

11. ALTSA Staff–Over 2,450 Across the State

60. Staff and contractor resources would be significantly impacted by the Final Rule. The State would need to create a process and system for documenting service denials, which would include both documenting within a client's record and tracking the denials in a centralized location. Training and preparation materials would need to be developed and administered for both staff and contractors.

61. Because contractors would have a new obligation to document their objections to providing service, the State would need to develop and implement policies and procedures to address the new rules. All service and support contracts through the State and local Area Agencies on Aging would need to be amended to include new requirements for reporting refusals of service and other exemptions. This Final Rule would also require additional contract monitoring and investigation to ensure compliance with the new policies and procedures.

62. To track denials centrally, the State would need to invest in the development of an IT system that contractors would use to document service refusals, or develop a paper-based system, which would require the State to enter the data into an internal system. The State would also need personnel and technology to query, track and trend the data.

63. Because providers would not have an obligation to provide referrals to clients to whom they have refused services, the State would need additional capacity to follow up will all clients to whom services were refused to offer counseling and referral. This would be an additional impact on the State.

64. Cost of posting notices about the rule—this is voluntary, but will be used as non-dispositive evidence of compliance: The cost will be $156,000 in the first twelve months, then $16,000 per year thereafter.

DATED this 24 day of June, 2019, at Olympia, Washington.

BILL MOSS

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 24th day of June, 2019, at Seattle, Washington.

s/ Paul Crisalli
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