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Attorney General Clare E. Connors Seeks Preliminary Injunction Against the Trump Administration to Stop Health Care Discrimination

HONOLULU – Attorney General Clare E. Connors, joined a coalition of 23 cities, states, and municipalities, led by New York Attorney General Letitia James, in a motion filed today to seek a preliminary injunction to stop the Trump Administration's Department of Health and Human Services (HHS) from adopting a Final Rule that would expand the ability of businesses and individuals to refuse to provide necessary health care on the basis of businesses' or employees' "religious beliefs or moral convictions." The motion is supported by declarations from 48 leading public health professionals from states across the country. The same coalition of 23 cities and states, filed a lawsuit against HHS in May 2019 to challenge this discriminatory rule.

"This rule authorizes the refusal of healthcare based on who someone is and what they believe," said Hawaii Attorney General Connors. "It sets a divisive and illegal precedent and would have a devastating effect on the delivery of medical services to the people of Hawaii."

The preliminary injunction seeks to stop the Final Rule from taking effect in July 2019, arguing that it would undermine the delivery of health care by giving a wide range of health care institutions and individuals a right to refuse care, based on the health provider's own personal views. The Rule drastically expands the types of providers eligible to make such refusals; ranging from ambulance drivers to emergency room doctors to receptionists to customer service representatives at insurance companies. The Rule makes this right absolute and categorical, and no matter what reasonable steps a health provider or employer makes to accommodate the views of an objecting individual, if that individual rejects a proposed accommodation, a provider or employer is left with no recourse.

Under the Final Rule, a hospital could not inquire, prior to hiring a nurse, if (s)he objected to administering a measles vaccination—even if this was a core function of their job in the middle of an outbreak of the disease. Or an emergency room doctor could refuse to assist a woman who arrived with a ruptured ectopic pregnancy, even if the woman's life was in jeopardy.

The lawsuit filed by the coalition further alleges that the risk of noncompliance is the termination of billions of dollars in federal health care funding. If HHS determines, in its sole discretion, that states or localities have failed to comply with the Final Rule – through their own actions or the actions of thousands of sub-contractors relied upon to deliver health services – the federal government could terminate funding to those states and localities, to the price tag of hundreds of billions of dollars. States and localities rely upon those funds for countless programs to promote the public health of their residents, including Medicaid, the Children's Health Insurance Program, HIV/AIDS and STD prevention and education, and substance abuse and mental health treatment.

The lawsuit argues that this drastic expansion of refusal rights, and the draconian threat of termination of federal funds, violates the federal Administrative Procedures Act and the Spending Clause and separation of powers principles in the U.S. Constitution.

In addition to New York, the preliminary injunction was filed by the City of New York, Colorado, Connecticut, Delaware, the District of Columbia, Hawai'i, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Wisconsin, the City of Chicago, and Cook County, Illinois.

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