

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
FRANKFORT**

COMMONWEALTH OF KENTUCKY, )  
*ex rel.* MATTHEW G. BEVIN, GOVERNOR, )

SCOTT W. BRINKMAN, in his official )  
capacity as Acting Secretary of the CABINET )  
FOR HEALTH AND FAMILY SERVICES, )

STEPHEN P. MILLER, in his official capacity )  
as Commissioner of the DEPARTMENT )  
FOR MEDICAID SERVICES, )

Plaintiffs, )

v. )

RONNIE MAURICE STEWART, GLASSIE )  
MAE KASEY, LAKIN BRANHAM, SHANNA )  
BALLINGER, DAVE KOBERSMITH, )  
WILLIAM BENNETT, SHAWNA NICOLE )  
MCCOMAS, ALEXA HATCHER, MICHAEL )  
WOODS, SARA WOODS, KIMBERLY )  
WITHERS, KATELYN ALLEN, AMANDA )  
SPEARS, DAVID ROODE, SHEILA )  
MARLENE PENNEY, and QUENTON )  
RADFORD, )

Defendants. )

THE KENTUCKY HOSPITAL )  
ASSOCIATION, )

Intervening Plaintiff. )

Civil Action No. 3:18-00008-GFVT

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**INTERVENING COMPLAINT**

Intervening Plaintiff, the Kentucky Hospital Association (the “KHA”), for its Intervening  
Complaint states as follows:

## INTRODUCTION

1. Sixteen individuals, all of whom are Kentucky residents, have brought a putative class-action lawsuit in the United States District Court for the District of Columbia (the “D.C. Action”), claiming that the Commonwealth of Kentucky’s Section 1115 Medicaid waiver, known as Kentucky HEALTH, violates the Social Security Act, the Administrative Procedures Act, and the United States Constitution. Although the Commonwealth of Kentucky (“the Commonwealth”) developed Kentucky HEALTH, applied for its approval by the federal government, is currently planning for its implementation, and will be the entity enforcing it, those sixteen individuals did not sue the Commonwealth or its agencies or officials in the D.C. Action.

2. On February 19, 2018, the Commonwealth, through Governor Matt Bevin, Secretary Scott Brinkman, and Commissioner Stephen Miller filed a complaint (“the Commonwealth’s Complaint”) against the same named parties who instituted the D.C. Action seeking a judicial declaration that Kentucky HEALTH is consistent with the Social Security Act, the Administrative Procedure Act, and the United States Constitution (the “Kentucky Action”).

3. The KHA is Kentucky’s non-profit state association of hospitals, related health care organizations, and integrated health care systems, and is dedicated to sustaining and improving the health status of Kentucky citizens. As health care providers, KHA members have a direct and substantial interest in the outcome of this litigation and will suffer an injury in fact if the Court denies the declaratory relief requested. Accordingly, the KHA intervenes in order to seek the same relief as the Commonwealth, but for reasons specific to health care providers who provide the services covered by Kentucky HEALTH.

JURISDICTION AND VENUE

4. The Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1331 as it arises under the Constitution and laws of the United States. This declaratory judgment action is further authorized by 28 U.S.C. §§ 2201 and 2202.

5. The Court has personal jurisdiction over the Defendants because all of them reside in Kentucky.

6. Venue is appropriate in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action, namely the thousands of hours that the Commonwealth and its agencies spent developing Kentucky HEALTH, occurred in Frankfort, Kentucky. In addition, the implementation of Kentucky HEALTH is currently in Frankfort, Kentucky. Venue also is appropriate under 28 U.S.C. § 1391(b)(1).

7. Under Local Rule 3.2(a)(2)(A), the Frankfort Division of the Eastern District of Kentucky is the appropriate division for this action because a substantial part of the events giving rise to this action occurred in Frankfort, Kentucky, where Kentucky HEALTH was developed and is being implemented.

PARTIES

8. The KHA is a non-profit association organized under the laws of the Commonwealth of Kentucky, with a principal place of business at 2501 Nelson Miller Pkwy. # 200, Louisville, Kentucky 40223.

9. The KHA members include every hospital and health system in Kentucky. The KHA represents the entities who will deliver the health services covered by Kentucky HEALTH to Medicaid beneficiaries. Accordingly, KHA members have a substantial legal interest in the outcome of this litigation, and they will suffer an injury in fact if the Court does not grant the declaratory relief sought in this Intervening Complaint and the Commonwealth's Complaint.

10. As health care providers who deliver the health care services covered by Kentucky HEALTH, the KHA's members have standing to sue Defendants in their own right and have a real and substantial interest in this declaratory judgment litigation. However, the claims asserted and the declaratory relief requested do not require participation of such members in this lawsuit.

11. This lawsuit is germane to the KHA's mission and purpose of developing and implementing health policies that enhance its members' ability to deliver health care services to their communities, and to promote improvements to health care delivery in Kentucky.

12. Matthew G. Bevin, who brought the Kentucky Action in his official capacity on behalf of the Commonwealth of Kentucky, is the Governor of Kentucky. Governor Bevin's office is located in Franklin County, Kentucky, at 700 Capital Avenue, Suite 100, Frankfort, Kentucky 40601.

13. Scott W. Brinkman, who brought the Kentucky Action in his official capacity, is the Acting Secretary of the Cabinet for Health and Family Services. The Cabinet for Health and Family Services is the executive branch administrative agency that oversees Kentucky's Medicaid program. Secretary Brinkman's office is located in Franklin County, Kentucky, at 275 East Main Street, Frankfort, Kentucky 40621.

14. Stephen P. Miller, who brought the Kentucky Action in his official capacity, is the Commissioner of the Department for Medicaid Services within the Cabinet for Health and Family Services. The Department for Medicaid Services administers Kentucky's Medicaid program, including the ongoing implementation of Kentucky HEALTH. Commissioner Miller's office is located in Franklin County, Kentucky, at 275 East Main Street, Frankfort, Kentucky 40621.

15. Ronnie Maurice Stewart is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky action. Although Mr. Stewart has brought suit in Washington, D.C., he resides at 1700 Jennifer Road, Apartment 25, Lexington, Kentucky 40505.

16. Glassie Mae Kasey is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Kasey has brought suit in Washington, D.C., she resides at 5414 Robinwood Road, Louisville, Kentucky 40218.

17. Lakin Branham is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Branham has brought suit in Washington, D.C., she resides at 29 Tie Yard Drive, Dwale, Kentucky 41621.

18. Shanna Ballinger is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Ballinger has brought suit in Washington, D.C., she resides at 1451 West Lincoln Trail Boulevard, Apartment 127, Radcliff, Kentucky 40160.

19. Dave Kobersmith is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Mr. Kobersmith has brought suit in Washington, D.C., he resides at 105 Leslie Drive, Berea, Kentucky 40403.

20. William Bennett is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Mr. Bennett has brought suit in Washington, D.C., he resides at 425 Race Street, Lexington, Kentucky 40508.

21. Shawna Nicole McComas is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. McComas has brought suit in Washington, D.C., she resides at 1053 Winburn Drive, Apartment 23, Lexington, Kentucky 40511.

22. Alexa Hatcher is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Hatcher has brought suit in Washington, D.C., she resides at 1875 Bill Dedmon Road, Bowling Green, Kentucky 42101.

23. Michael Woods is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Mr. Woods has brought suit in Washington, D.C., he resides at 11692 Main Street, Apartment 2, Martin, Kentucky 41649.

24. Sara Woods is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Woods has brought suit in Washington, D.C., she resides at 11692 Main Street, Apartment 2, Martin, Kentucky 41649.

25. Kimberly Withers is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Withers has brought suit in Washington, D.C., she resides at 2220 Devonport Drive, Apartment 138, Lexington, Kentucky 40504.

26. Katelyn Allen is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Allen has brought suit in Washington, D.C., she resides at 12 West Adams Lane, Lot 26, Salyersville, Kentucky 41465.

27. Amanda Spears is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Spears has brought suit in Washington, D.C., she resides at 1070 Jackson Road, Park Hill, Kentucky 41011.

28. David Roode is one of the named plaintiffs in the D.C. Action, and a named defendant in the Kentucky Action. Although Mr. Roode has brought suit in Washington, D.C., he resides at 331 Montclair Avenue, Ludlow, Kentucky 41016.

29. Sheila Marlene Penney is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Ms. Penney has brought suit in Washington, D.C., she resides at 5410 West Catherine Street, Apartment A, Louisville, Kentucky 40203.

30. Quenton Radford is one of the named plaintiffs in the D.C. Action, and is a named defendant in the Kentucky Action. Although Mr. Radford has brought suit in Washington, D.C., he resides at 2501 Montgomery Avenue, Ashland, Kentucky 41101.

#### BACKGROUND

31. The KHA adopts and incorporates by reference paragraphs 26 through 66 of the Commonwealth's Complaint.

32. Because the KHA's members will be providing the health care services covered by Kentucky HEALTH, they will play a substantial role in the implementation of Kentucky HEALTH, and invalidation of Kentucky HEALTH will have a significant and direct impact on KHA members.

COUNT I

33. The KHA incorporates by reference Paragraphs 1 through 32 of this Intervening Complaint.

34. The named Kentucky residents who brought the D.C. Action have alleged that Kentucky HEALTH violates the Social Security Act and the Administrative Procedure Act.

35. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the KHA regarding whether Kentucky HEALTH violates the Social Security Act and the Administrative Procedure Act.

36. The KHA seeks a declaration that Kentucky HEALTH does not violate the Social Security Act and the Administrative Procedure Act and is within the scope of the HHS Secretary's Section 1115 waiver authority.

37. The KHA seeks a declaration that Kentucky HEALTH, as a whole and through its constituent parts, is within the HHS Secretary's Section 1115 waiver authority.

COUNT II

38. The KHA incorporates by reference Paragraphs 1 through 37 of this Intervening Complaint.

39. The named Kentucky residents who brought the D.C. Action have alleged that the approval of Kentucky HEALTH otherwise violates the Medicaid Act, was arbitrary and capricious and an abuse of discretion, and ran counter to the evidence in the record.

40. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the KHA about whether the

approval of Kentucky HEALTH otherwise violates the Medicaid Act, was arbitrary and capricious and an abuse of discretion, and ran counter to the evidence in the record.

41. The KHA seeks a declaration that the HHS Secretary's approval of Kentucky HEALTH otherwise complied with the Medicaid Act, was not arbitrary or capricious, was not an abuse of discretion, and was supported by the evidence in the record.

### COUNT III

42. The KHA incorporates by reference Paragraphs 1 through 41 of this Intervening Complaint.

43. The named Kentucky residents who brought the D.C. Action have alleged that the approval of Kentucky HEALTH violates the Take Care Clause of the United States Constitution.

44. An actual case or controversy exists between the named Kentucky residents who brought the D.C. Action, who are the Defendants in this action, and the KHA about whether a claim that the Take Care Clause of the United States Constitution has been violated is justiciable and, in the alternative, whether the approval of Kentucky HEALTH violates the Take Care Clause.

45. The KHA seeks a declaration that any claim by the Defendants under the Take Care Clause of the United States Constitution is not justiciable and, in the alternative, a declaration that the HHS Secretary's approval of Kentucky HEALTH does not violate the Take Care Clause.

### **DEMAND FOR RELIEF**

WHEREFORE, the KHA demands as follows:

1. A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, does not violate the Social Security Act or the Administrative Procedure Act;

2. A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, was within the HHS Secretary's Section 1115 waiver authority;

3. A declaration that the HHS Secretary's approval of Kentucky HEALTH, and all of its contested provisions, does not otherwise violate the Medicaid Act, was not arbitrary or capricious, was not an abuse of discretion, and was supported by the evidence in the record;

4. A declaration that any claim by the Defendants under the Take Care Clause of the United States Constitution is not justiciable and, in the alternative, a declaration that the HHS Secretary's approval of Kentucky HEALTH does not violate the Take Care Clause; and

5. Any and all relief to which the Intervening Plaintiff may be entitled.

Respectfully submitted,

/s/ Wesley R. Butler

Wesley R. Butler

Holly R. Iaccarino

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COUNSEL FOR PROPOSED  
INTERVENOR, THE KENTUCKY  
HOSPITAL ASSOCIATION

### **CERTIFICATE OF SERVICE**

I certify that on March 22, 2018, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

Hon. M. Stephen Pitt

Hon. S. Chad Meredith

Hon. Matthew F. Kuhn

**Office of the Governor**

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PLANS, INC.

The undersigned further certifies that on March 22, 2018, a true and accurate copy of the foregoing was served, via U.S. Mail, upon the following:

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