

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION FOR COMMUNITY
AFFILIATED PLANS, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TREASURY, et al.,

Defendants.

Civil Action No. 18-cv-2133

DECLARATION OF KENNETH JANDA

I, Kenneth Janda, hereby declare as follows:

1. I have personal knowledge of the following facts, and if called as a witness I could and would testify competently as to their truth.

2. I am the President and Chief Executive Officer of Community Health Choice, Inc. (Community). In that capacity, I am familiar with the full scope of Community's operations. I have held this position since 2009, and have worked at Community since 2008.

3. Community is a local, not-for-profit provider of health insurance coverage. Community's mission is to improve the health and well-being of under-served residents of Southeast Texas by opening doors to coordinate, high-quality, affordable health care and health-related social services.

4. Community was created in 1997 by the Harris County Hospital District as a separate, not-for-profit organization. Community serves Medicaid and Children's Health

Insurance Program (CHIP) recipients, and has also offered ACA-compliant plans on the federally facilitated health insurance marketplace (the Marketplace) since 2014.

5. Community offers 7 Marketplace plans for 2018: 2 Bronze plans, 3 Silver plans, and 2 Gold plans. An eighth plan (a Lean Silver plan) will be offered in 2019.

6. Community currently serves approximately 110,000 members through its Marketplace plans. This is in addition to approximately 290,000 Medicaid/CHIP members, and approximately 7,000 State of Texas employees served through an HMO option.

7. The consolidated financials of Community Health Choice, Inc., and Community Health Choice Texas, Inc.—two separate entities operated by common management and board of directors—reflect approximately \$1.5 billion in revenue in 2017; projected revenue for 2018 is \$1.7 billion.

8. Community is a safety net health plan, focused on serving low-income populations. We believe most of our members were previously uninsured, many have pre-existing conditions, and few can afford large deductibles. Short-Term, Limited Duration Insurance (STLDI) products are not reasonable alternatives for the vast majority of Community members.

9. Many Community members lack sophisticated knowledge of health insurance products; for example many do not appreciate the risks involved in buying a Bronze plan when eligible for cost-sharing reductions under a Silver plan. Many also lack the understanding to appreciate the risks of STLDI plans with medical underwriting, high deductibles, and significant limits on covered services.

10. Approximately 30,000–40,000 of Community's Marketplace members are eligible for limited or no subsidies. These individuals are therefore vulnerable to being lured into purchasing STLDI plans with lower monthly premiums but potentially devastating coverage limits

and high deductibles. We also worry that 10,000 or more of Community's highly subsidized members may be confused by a low-cost STLDI plan, and therefore may make a switch despite their eligibility for subsidies under their current Marketplace plans.

11. Community therefore estimates a loss of as many as 10,000 current Marketplace members if the STLDI Rule goes into effect. This corresponds to a loss of \$50 million to \$100 million in revenue, depending on the age and premium of those who leave.

12. We expect that this exodus of (primarily younger and healthier) members will likely result in a sicker risk pool, which will require us to add a 5–10% morbidity adjustment to our rates each year for 3–5 years. The resulting long-term increase of 20–50% will cause significant harm to those who remain insured. Because Community primarily serves low-income individuals, we expect that some of our members will be unable to afford the increase in premiums, and will be forced to drop their coverage.

13. In addition, the availability of STLDI plans marketed as lower-cost alternatives to ACA-compliant Marketplace plans will harm Community's ability to enroll new members from the approximately 2 million uninsured Texans.

14. Community submitted its applications for its 2019 Marketplace plans to be certified as Qualified Health Plans by the Centers for Medicare and Medicaid Services (CMS) prior to the June 20, 2018 deadline set by CMS. As such, we could not fully anticipate that the STLDI Rule (which was promulgated on August 3, 2018, with an effective date of October 2, 2018) would allow formerly illegal STLDI plans to compete for customers in the open enrollment period for 2019, which runs from November 1, 2018 to December 15, 2018.

15. Agents and brokers have assisted in connecting Community with approximately 40% of its members. We believe that agents and brokers may receive higher commissions for

STLDI plans than for Marketplace plans. We also believe that agents and brokers are preparing to show STLDI products to our members during the upcoming open enrollment period.

16. Community is an affiliate of the Harris Health System, the provider of last resort in the Houston area, and closely collaborates with all other safety net providers including the Federally Qualified Health Centers in the Houston area. Because STLDI plans are not required to provide minimum essential coverage, and have historically engaged in frequent rescissions of coverage, an increase in STLDI enrollment will result in an increase of uncompensated care for these providers—that is, care that is provided but for which the provider is not reimbursed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on September 20, 2018, at 4:19 pm.



Kenneth Janda