

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION
CASE NO. 3:18-cv-00008-GFVT**

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.)

KENTUCKY ASSOCIATION OF HEALTH)
PLANS, INC.)

Intervening Plaintiff.)

INTERVENING COMPLAINT

Intervening Plaintiff, Kentucky Association of Health Plan, Inc., a Kentucky non-profit corporation (“KAHP”), 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 Procedure Act, and the United States Constitution. Although the Commonwealth of Kentucky (the “Commonwealth”) developed Kentucky HEALTH, is currently implementing it, and will be the one enforcing it, those 16 individuals opted not to sue the Commonwealth or any of 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”) (Docket Number 1) 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 KAHP is a trade association with member organizations which will suffer injury in fact if the Court denies the declaratory relief requested, and intervenes in order to seek such relief.

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 occurring 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. KAHP is a non-profit organization organized under the laws of the Commonwealth of Kentucky, with a principal place of business at 3500 National City Tower, 101 South Fifth Street, Louisville, Kentucky 40202.

9. KAHP's members include health plans operating within the Commonwealth which must implement the requirements of Kentucky HEALTH, and have been preparing to comply with such requirements since the program was announced.

10. Accordingly, KAHP represents members which will suffer an injury in fact if the Court will not grant the declaratory relief sought in this Intervening Complaint and the Commonwealth's Complaint.

11. Such members have standing to sue Defendants in their own right, and have a real and substantial interest in this litigation. However, the claims asserted and the declaratory relief requested do not require participation of such members in this lawsuit.

12. This lawsuit is germane to KAHP's mission and purpose of advocating for the interests of its members by addressing financial and legal obstacles before they adversely affect its members.

13. 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.

14. 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.

15. 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.

16. Ronnie Maurice Stewart is one of the named plaintiffs in the D.C. Action, and 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.

17. Glassie Mae Kasey is one of the named plaintiffs in the D.C. Action, and 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.

18. Lakin Branham is one of the named plaintiffs in the D.C. Action, and 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.

19. Shanna Ballinger is one of the named plaintiffs in the D.C. Action, and 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.

20. Dave Kobersmith is one of the named plaintiffs in the D.C. Action, and 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.

21. William Bennett is one of the named plaintiffs in the D.C. Action, and 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.

22. Shawna Nicole McComas is one of the named plaintiffs in the D.C. Action, and 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.

23. Alexa Hatcher is one of the named plaintiffs in the D.C. Action, and 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.

24. Michael Woods is one of the named plaintiffs in the D.C. Action, and 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.

25. Sara Woods is one of the named plaintiffs in the D.C. Action, and 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.

26. Kimberly Withers is one of the named plaintiffs in the D.C. Action, and a named defendant in the Kentucky Action. Although Ms. Withers has brought suit in Washington, D.C., she resides at 2220 Devonport Drive, Apartment I38, Lexington, Kentucky 40504.

27. Katelyn Allen is one of the named plaintiffs in the D.C. Action, and 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.

28. Amanda Spears is one of the named plaintiffs in the D.C. Action, and 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.

29. 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.

30. Sheila Marlene Penney is one of the named plaintiffs in the D.C. Action, and 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.

31. Quenton Radford is one of the named plaintiffs in the D.C. Action, and 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

32. KAHP adopts and incorporates by reference paragraphs 26 through 66 of the Commonwealth's Complaint.

33. KAHP's members have invested significant amounts of time and money into the preparation for Kentucky HEALTH's requirements and implementation timeline. Should the legal and regulatory requirements of Kentucky Health be repealed, this time and money would be lost.

COUNT I

34. KAHP incorporates by reference Paragraphs 1 through 33 of this Intervening Complaint.

35. 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.

36. 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 KAHP regarding whether Kentucky HEALTH violates the Social Security Act and the Administrative Procedure Act.

37. KAHP 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.

38. KAHP 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

39. KAHP incorporates by reference Paragraphs 1 through 38 of this Intervening Complaint.

40. 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.

41. 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 KAHP 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.

42. KAHP 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

43. KAHP incorporates by reference Paragraphs 1 through 42 of this Intervening Complaint.

44. 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.

45. 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 KAHP 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.

46. KAHP 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, KAHP 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 they 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/ Brent R. Baughman

Brent R. Baughman

Kyle W. Miller

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COUNSEL FOR INTERVENING PLAINTIFF,
KENTUCKY ASSOCIATION OF HEALTH
PLANS, INC.

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing was filed this ____ day of March, 2018, using the Court's ECF system and will be served on the following:

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