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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **THE STATE OF CALIFORNIA; THE**  
 12 **STATE OF CONNECTICUT; THE STATE**  
 13 **OF DELAWARE; THE DISTRICT OF**  
 14 **COLUMBIA; THE STATE OF ILLINOIS;**  
 15 **THE STATE OF IOWA; THE**  
 16 **COMMONWEALTH OF KENTUCKY;**  
 17 **THE STATE OF MARYLAND; THE**  
 18 **COMMONWEALTH OF**  
 19 **MASSACHUSETTS; THE STATE OF**  
 20 **MINNESOTA; THE STATE OF NEW**  
 21 **MEXICO; THE STATE OF NEW YORK;**  
 22 **THE STATE OF NORTH CAROLINA; THE**  
 23 **STATE OF OREGON; THE**  
 24 **COMMONWEALTH OF PENNSYLVANIA;**  
 25 **THE STATE OF RHODE ISLAND; THE**  
 26 **STATE OF VERMONT; THE**  
 27 **COMMONWEALTH OF VIRGINIA; and**  
 28 **THE STATE OF WASHINGTON,**

Plaintiffs,

v.

29 **DONALD J. TRUMP, President of the United**  
 30 **States; ERIC D. HARGAN, Acting Secretary**  
 31 **of the United States Department of Health**  
 32 **and Human Services; UNITED STATES**  
 33 **DEPARTMENT OF HEALTH AND**  
 34 **HUMAN SERVICES; STEVEN T.**  
 35 **MNUCHIN, Secretary of the United States**  
 36 **Department of the Treasury; UNITED**  
 37 **STATES DEPARTMENT OF THE**  
 38 **TREASURY; and DOES 1-20,**

Defendants.

Case No. 3:17-cv-05895-KAW

**DECLARATION OF ANN KEMPSKI,**  
**EXECUTIVE DIRECTOR OF THE**  
**DELAWARE HEALTH CARE**  
**COMMISSION ISO PLAINTIFFS’**  
**APPLICATION FOR A TEMPORARY**  
**RESTRAINING ORDER AND ORDER**  
**TO SHOW CAUSE WHY A**  
**PRELIMINARY INJUNCTION SHOULD**  
**NOT ISSUE**



**NANCY H. FAN, MD, CHAIR  
ANN KEMPSKI,  
EXECUTIVE DIRECTOR**

**STATE OF DELAWARE  
DELAWARE HEALTH CARE COMMISSION**  
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EDMONDO J. ROBINSON, MD  
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KARA ODOM WALKER, MD, MPH, MSHS**

October 16, 2017

I, Ann Kempfski, declare:

1. I have served as the Executive Director of the Delaware Health Care Commission (DHCC) since September 2017, and have worked in the health policy field for over twenty years. The facts stated herein are of my own personal knowledge and I could and would testify competently to them.
2. The State of Delaware participates in the insurance Marketplace created by the Affordable Care Act (The Patient Protection and Affordable Care Act of 2010) through the federal-state marketplace partnership model (State Partnership Model), where eligible Delaware residents can shop and enroll in health plans at [www.healthcare.gov](http://www.healthcare.gov). Under the State Partnership Model, the State of Delaware retains responsibility for plan management, consumer assistance, and enrollment outreach. The DHCC has served since 2012 as the state agency that coordinates the activities of consumer assistance and outreach, and sets standards for Qualified Health Plans (QHPs) offered to eligible Delawareans at [www.healthcare.gov](http://www.healthcare.gov).
3. In my role, I coordinate activities with the Delaware Department of Insurance and community-based organizations to promote the availability of health insurance coverage to all Delawareans regardless of pre-existing conditions, and the availability of assistance for consumers in determining their eligibility for Marketplace enrollment, in selecting Qualified Health Plans (QHPs), and in determining eligibility for financial assistance in the form of federal Advanced Premium Tax Credits (APTCs) and Cost-Sharing Reduction Payments (CSRs) as authorized in the Affordable Care Act.
4. Cost-sharing Reduction Payments (CSRs), which have been paid by the federal government since 2014, reduce the deductibles and other out-of-pocket costs for eligible Marketplace enrollees based on their income, enabling them to access more affordable health care services. In 2016, almost 43% of all Delawareans who enrolled in health insurance coverage through the Marketplace—28,256 Delawareans—qualified for Cost-sharing Reduction Payments (CSRs). These payments lowered the total out-of-pocket costs of 12,147 low and modest-income Delawareans by approximately \$13.7 million. The reduction of out-of-pocket costs for these 12,147 Delawareans averaged approximately \$1,134 per person, protecting them from large medical bills that often lead to medical debt and even bankruptcy.
5. Since the beginning of the Presidential Administration in January 2017, the federal commitment to continue payment of Cost-Sharing Reduction Payments (CSRs) has been unclear, and payments have been made on a month-to-month basis as the Administration and Congress failed

to resolve related litigation or enact legislation to authorize Cost-sharing Reduction payments (CSRs) on a long term basis. Month-to-month decisions about paying Cost-Sharing Reduction Payments (CSRs) created uncertainty, compounded by statements from the President and Administration officials, resulting in higher insurance rates filed by insurance carriers for the Marketplace in 2018 and contributing to the decision by some insurance carriers to withdraw from the Marketplace in 2018. Delaware experienced such withdraw for the 2018 Marketplace, leaving Delaware with one remaining carrier for 2018.

6. On October 12, the Administration announced its decision to terminate federal Cost-sharing Reduction Payments (CSRs), effective immediately. This decision, coming less than one month before the Marketplace open enrollment period for 2018, will be highly disruptive to the 2018 Marketplace. It is likely to create confusion among consumers, poses economic harm to Delaware consumers in the individual Marketplace, and jeopardizes the availability of affordable health insurance in 2018 and beyond. The decision by the Administration to terminate Cost-sharing Reduction Payments (CSRs) will result in carriers who participate in the Delaware Marketplace in 2017 receiving three months less than expected federal Cost-Sharing Reduction Payments (CSRs), and no federal Cost-Sharing Reduction (CSR) payments for the upcoming 2018 Marketplace on behalf of Delaware consumers.
7. According to both the National Association of Insurance Commissioners (NAIC) and the Congressional Budget Office (CBO), the termination of Cost-Sharing Reduction Payments (CSRs) will result in double-digit rate increases in the individual Marketplace. Insurance carriers may request rate increases over and above the rates they agreed to for 2018, further harming consumers who need coverage in the individual Marketplace. Moreover, the one remaining carrier participating in the 2018 Delaware Marketplace could decide to withdraw on the eve of the 2018 open enrollment period, which begins on November 1, 2017. The withdrawal of the remaining Marketplace-participating carrier would create a crisis for Delaware consumers who have no other available health insurance options.
8. The abrupt termination of Cost-Sharing Reduction Payments (CSRs) may also result in fewer consumers enrolling in the Delaware Marketplace in 2018, and could cause delays in loading accurate rate and plan information on [www.healthcare.gov](http://www.healthcare.gov) or other disruptions in enrollment. If such consumers become uninsured or enroll in Medicaid, additional pressure will be placed on the State's budget, and the uncompensated care burden could increase for Delaware hospitals and other health care providers. Younger, healthier consumers are most likely to abandon their efforts to enroll, and this will put further upward pressure on rates for all consumers. Furthermore, the abrupt decision to end federal Cost-Sharing Reduction Payments (CSRs) will undermine efforts by the Delaware Insurance Commissioner to negotiate with additional carriers to participate in Delaware's relatively small individual market, leaving Delawareans with fewer choices and a less competitive insurance market.

Signed,



Ann Kempfski

Executive Director,

Delaware Health Care Commission