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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**
MEXICO; THE STATE OF NEW YORK;
THE STATE OF NORTH CAROLINA; THE
STATE OF OREGON; THE
COMMONWEALTH OF PENNSYLVANIA;
THE STATE OF RHODE ISLAND; THE
STATE OF VERMONT; THE
COMMONWEALTH OF VIRGINIA; and
THE STATE OF WASHINGTON,

21 Plaintiffs,

22 v.

23 **DONALD J. TRUMP, President of the United**
24 **States; ERIC D. HARGAN, Acting Secretary**
25 **of the United States Department of Health**
26 **and Human Services; UNITED STATES**
27 **DEPARTMENT OF HEALTH AND**
HUMAN SERVICES; STEVEN T.
MNUCHIN, Secretary of the United States
Department of the Treasury; UNITED
STATES DEPARTMENT OF THE
TREASURY; and DOES 1-20,

28 Defendants.

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

DECLARATION OF ANNE MCLEOD,
SENIOR VICE PRESIDENT,
CALIFORNIA HOSPITAL
ASSOCIATION, ISO PLAINTIFFS’
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE

1 I, Anne McLeod, declare:

2 1. I am the Senior Vice President, Health Policy and Innovation, with the California
3 Hospital Association (CHA). I have served at CHA in this, and similar positions, for more than
4 10 years. In my role, I provide leadership for developing policy objectives that support the
5 implementation of health care reforms and the transformation of health care in the future. I have
6 worked on health policy and financing issues in support of former state governor's health care
7 reform efforts, including the implementation of provisions of the Affordable Care Act, such as
8 development and design of health insurance coverage products offered by Covered California, the
9 state's health insurance exchange.

10 2. Cost-sharing reductions (CSR's) are subsidies that make health care coverage more
11 affordable for qualifying consumers. CSR's are used to reduce out-of-pocket costs including
12 copayments, coinsurance, deductibles and out-of-pocket maximums. Eligible consumers that
13 purchase a silver-level plan will automatically receive these CSR's through an enhanced silver
14 plan. About 1.4 million Californians purchase their health coverage through Covered California.
15 Health insurers receive cost-sharing reductions for over half of Covered California's plan
16 enrollees. Covered California, the state's health insurance exchange, established a surcharge to
17 Silver-tier products in the absence of federal CSRs. The surcharge equals an average increase of
18 12.4 percent but varies by health plan and ranges from 8 percent to 27 percent. The surcharge is
19 currently in place for 2018 only.

20 3. Consumers that benefit from CSR's are income-eligible individuals or families that
21 rely on hospitals for the care they need when they need it. In working with hospitals and Covered
22 California, I know that a report of the hospital care provided to enrollees, including those
23 benefiting from CSR's, for a specific period, includes: 65,000 emergency room visits; 5,000
24 babies delivered; 500 infants being treated in a neonatal intensive care unit; more than 10,000
25 cancer treatments; 700 joint replacements; 3,800 broken bones fixed; and, nearly 100 transplants
26 performed.

27 4. Advanced premium tax credits are federal subsidies that help eligible individuals and
28 families pay for premiums for insurance purchased through Covered California. To be eligible,

1 household income must be between 100 and 400 percent of the federal poverty level (FPL) for the
2 family size. The amount of the premium tax credit is based on a sliding scale, with greater credit
3 amounts available to those with lower incomes. There are more than 1.2 million subsidized
4 Covered California members. In a statement by Covered California on October 12, 2017, it was
5 reported that 78 percent of consumers who receive federal subsidies will not see a change in what
6 they pay for insurance because their subsidy amount will be greater than or equal to the cost of
7 the surcharge for the loss of CSRs. However, 22 percent – or 264,000 individuals – will see
8 increases in the form of higher premiums.

9 5. Although many Californian’s purchasing health care coverage through Covered
10 California will be protected from increasing premiums in 2018, the announcement made by the
11 federal government to end CSRs will likely cause confusion and concern. Having to rely on
12 premium tax credits to offset the surcharge could be risky for many because if the estimate of the
13 advanced premium tax credit is wrong, individuals and families will be forced to repay those
14 amounts. This becomes difficult to manage when families have varying levels of income
15 throughout the year or their earnings end up exceeding 400 percent of the FPL because of an
16 unanticipated change in income. The uncertainty may weigh into the decision to pay the higher
17 health insurance premium or drop coverage all together. In addition, the current surcharge is in
18 place for 2018 only and there is no long-term plan to stabilize the market, which will lead to
19 health plans exiting the Covered California market. The health insurance market will begin to
20 experience confusion, concerns of stability, increasing fears over affordability, and other issues
21 that will have an impact of the number of uninsured individuals.

22 6. Increased premiums for lower-income working families will mean that many cannot
23 afford to stay covered under their health insurance plan. California moved its uninsured rate
24 down to a low of 9 percent down from 17 percent. Families that drop their coverage will become
25 uninsured, driving up the state’s uninsured rate and the overall cost of providing care to all
26 Californians. Having health care coverage helps individuals get the appropriate care when
27 needed, including preventive services and primary care. Getting the proper level of treatment in a
28 timely manner helps reduce health care costs for everyone. If coverage is dropped, payments to

1 providers like hospitals and physicians will decline. When that happens, services also decline or
2 may become unavailable – and that will impact all Californians. Further, when kids and families
3 receive necessary preventive care they have better attendance in school and their parents are
4 better able to work.

5 7. California hospitals have worked hard to reduce costs through delivery system
6 reform, care coordination and clinical efficiencies. These innovations mean patients often
7 recover quicker and can return to work and home sooner. Lower utilization results in lower costs.
8 When individuals and families don't have health care coverage, they also lose access to care.
9 Providers don't get paid to treat uninsured individuals. When patients can't be seen by a primary
10 care doctor, they often turn to hospital emergency rooms as a last resort. As a result of the
11 discontinuance of the CSRs, hundreds of thousands of Californians may drop their health
12 insurance coverage. More uninsured individuals will seek care in hospital emergency rooms – the
13 most expensive place to be treated. Preserving emergency rooms for those truly needing
14 emergency care ensures life-saving treatment is there when needed for everyone.

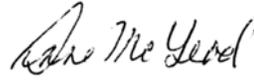
15 8. Caring for patients in the appropriate setting can lower costs and improve patient
16 well-being. Sometimes the hospital is not the appropriate level of care for patients. But when a
17 patient is uninsured, other providers such as nursing home, rehabilitative services or other post-
18 acute care settings are not willing to accept hospital patients unless there is a form of payment
19 guaranteed. This means the uninsured can stay in the hospital longer than what is needed,
20 increasing costs for the entire health care system. Patients recover quicker when they receive
21 timely and appropriate care in the appropriate setting. And, the proper level of treatment is often
22 less costly.

23 9. The loss of CSR's will result in an increase in the number of Californians without
24 health care coverage. Higher uninsured rates increase the cost of health care for all Californians.
25 Uninsured individuals and families are often forced to seek care in the most expensive or
26 inappropriate settings. Higher uncompensated costs will result in a loss of access and services for
27 every Californian.
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on October 17, 2017, in Sacramento, California.

Dated: October 17, 2017



Anne McLeod