

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION**

THE STATE OF CALIFORNIA *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

NO. 4:17-cv-05895

SECOND DECLARATION OF
MYRON B. KREIDLER IN
SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE

I, Myron Bradford "Mike" Kreidler, declare as follows:

1. I am over the age of eighteen years old, have personal knowledge of all facts and matters herein, and am competent to testify to the matters below.

2. I am the elected Insurance Commissioner for the State of Washington. In this position, I regulate the insurance market in Washington State, including health insurance plans offered to Washingtonians through the Washington Health Benefits Exchange (the "Exchange"). I also sit as an ex officio member of the Exchange Board.

3. One of the functions of my office is to review and approve health plans (as that term is defined in Wash. Rev. Code 48.43.005(27)) that are submitted by health carriers (as that term is defined in Wash. Rev. Code 48.43.005(26)) before those plans may be sold in

Washington State. Wash. Rev. Code 48.18.110, 48.44.020, and RCW 48.46.060.

4. The review performed by my office ensures that the forms being used by carriers (the contract between the carrier and its enrollee), and the rates they are charging consumers (also called premiums), are fully compliant with state and federal requirements. Wash. Rev. Code 48.18.110, 48.44.020, and RCW 48.46.060; Wash. Admin. Code 284-43-0140.

5. Each rate proposal submitted by a carrier must be accompanied by detailed data and actuarial analysis that justifies the assumptions that support the proposed rates. My office demands additional data and information as necessary to fully analyze a carrier's rate proposal. Carriers are often required to submit information about the total premium attributable to various factors, such as particular benefit requirements, or plan design changes.

6. When reviewing the rate proposals for the 2018 plan year, my office required all carriers to specifically delineate the amount of the 2018 proposed rates for each plan that was attributed to the potential lack of enforcement of the individual mandate, and the potential lack of payment of cost-sharing reduction ("CSR") reimbursements.

7. Because of uncertainty over the continued payment of CSR reimbursements by the current Administration that was never resolved during the rate review process, my office ultimately directed participating carriers to submit "bracketed" rates for silver plans to be sold on the Exchange in 2018. Each carrier submitted two rates for each silver plan, one that assumed the continuation of CSR reimbursements and another that assumed their termination. The only distinction permitted in these bracketed rates was the lack of CSR reimbursements.

8. In July 2017, my office approved these "bracketed" rates for the 2018 plan year. Carriers were originally instructed to use the lower bracketed rate (which assumed payment of

CSR reimbursements) in communications with consumers, and in preparation for the 2018 plan year, because at that time CSR reimbursements were being made.

9. As an administrative matter, the Exchange was required to load rates approved by my office into the system that interfaces with consumers no later than October 17, 2017. I understand that this is a highly technical process; it does not involve a “flip of the switch.” However, it is also my understanding that rates in the Exchange system can be changed after open enrollment.

10. My office’s priority is to ensure the most affordable health insurance premiums possible for participants in our Exchange consistent with a stable insurance market. I am keenly interested in the outcome of this litigation, since the continuation of CSR payments would result in lower rates for silver plan participants on our Exchange.

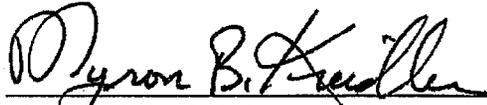
11. On October 12, 2017, the current Administration announced that it was terminating continued payment of CSR reimbursements, effective immediately. Based on this announcement, and the deadline for the Exchange to load rates into their system, on October 16, 2017, I directed carriers in Washington offering silver plans on the Exchange for 2018 to use the higher of the two bracketed rates they submitted.

12. If an injunction were entered requiring the current Administration to continue to make CSR payments as required by the Affordable Care Act, 42 U.S.C. § 18082(a)(3), I would authorize the carriers, consistent with maintaining a stable insurance market, to use the lower bracketed rates. This would allow the Exchange to load the lower premiums into their system, and to make them applicable to consumers during the open enrollment period for the 2018 plan year.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 10 day of October 2017, at Olympia, Washington.


MYRON BRADFORD "MIKE" KREIDLER
Washington State Insurance Commissioner