

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

THE STATE OF CALIFORNIA; THE STATE OF
CONNECTICUT; THE STATE OF DELAWARE;
THE DISTRICT OF COLUMBIA; THE STATE OF
ILLINOIS; THE STATE OF IOWA; THE
COMMONWEALTH OF KENTUCKY; THE
STATE OF MARYLAND; THE
COMMONWEALTH OF MASSACHUSETTS;
THE STATE OF 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,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States; ERIC D. HARGAN, Acting Secretary of the
United States Department of Health and Human
Services; UNITED STATES 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,

Defendants.

NO. 4:17-cv-05895

DECLARATION OF PAM
MACEWAN

1 I, Pam MacEwan, declare as follows:

2 1. I am over the age of 18 years of age, have personal knowledge of all facts and
3 matters herein, and am competent to testify to the matters below.

4 2. I am the chief executive officer of the Washington Health Benefit Exchange
5 (WAHBE or the Exchange). I have held this position since 2015, before which I was chief of
6 staff. I have 24 years of experience in the healthcare management.

7 3. WAHBE is Washington State's health insurance exchange, or insurance
8 marketplace. WAHBE was established in 2011 under the Patient Protection and Affordable Care
9 Act (ACA) and state legislation, Wash. Rev. Code 43.71. WAHBE is a self-sustaining, public-
10 private partnership governed by an 11-member bipartisan board. WAHBE serves more than 1.7
11 million Medicaid and commercial insurance customers through its website,
12 www.wahealthplanfinder.org.
13

14 4. I am submitting this declaration in support of the State of Washington's request
15 for declaratory and injunctive relief following the federal Administration's action on
16 October 12, 2017 to terminate cost sharing reduction payments.

17 5. The ACA contains provisions designed to make health insurance coverage more
18 affordable. These include the individual advanced premium tax credits, and cost sharing
19 reduction (CSR) payments made by the federal government to health insurance carriers in the
20 exchange markets. The CSR payments lower the cost-sharing for qualified health plan enrollees
21 under 250 percent of the federal poverty level. The CSR also increases the actuarial value of
22 silver-level qualified health plans offered through the exchanges. The actuarial value refers to
23 the percentage of medical costs covered by carriers.
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1 6. WAHBE enrollment data for 2016 show that nearly 70,000 qualified health plan
2 enrollees received an annual average CSR of \$928 per enrollee, worth almost \$65 million.
3 Attach. A.

4 7. As explained below, the uncertainty in 2017 about whether CSR payments will
5 continue to be paid to carriers had a negative impact on Washington consumers, carriers and the
6 sustainability of WAHBE. The Administration's announcement that it will terminate CSR
7 payments effective immediately will directly impact consumer choices during open enrollment,
8 which begins November 1, 2017, and will lead to higher rates, lower enrollment and threaten the
9 sustainability of the Exchange.
10

11 8. Washington's average premium increases have been relatively low, 13 percent,
12 for plans offered inside the Exchange last year. When CSR payments cease, carriers cover the
13 loss through premium increases.
14

15 9. Exchange plans to be offered in plan-year 2018 have been approved by the
16 Insurance Commissioner and were certified by the WAHBE board on September 25, 2017. Silver
17 plan premiums for 2018 will increase inside the Exchange by an average of 24 percent over 2017
18 rates assuming that CSR funding continues.

19 10. Now that federal CSR payments have been terminated, the silver plan premium
20 rates for 2018 will rise even higher. The Washington State Insurance Commissioner has
21 determined that once federal CSR payments to the carriers cease, the silver plan rates in the
22 Exchange may be adjusted to pre-approved, higher rates that take into account the financial
23 impact on carriers. The carriers must still make the CSRs available to enrollees even though the
24 federal government is no longer providing reimbursement. Therefore, without federal CSR
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1 payments, silver plan rates in the Exchange will rise 9 percent to 27 percent above the
2 CSR-funded rates. This represents a net 30 percent to 52 percent increase above 2017 rates.

3 11. Qualified health plan enrollment in Washington State has steadily increased from
4 140,000 in 2014 to 204,000 in 2017. This positive trend will reverse, however, as plans become
5 unaffordable and consumers drop coverage. Silver plan enrollees eligible for subsidies will see
6 their advance premium tax credit increase which may offset some or all of the premium increase
7 resulting from the elimination of the cost-sharing reduction subsidy. Silver plan enrollees who
8 do not receive advanced premium tax credits will not be shielded in any way from the premium
9 increase. As a result, we expect that more consumers will shift to bronze and gold plans, which
10 have a lower and higher actuarial value, respectively. This forces consumers to choose between
11 either more or less coverage than they desire.
12

13 12. WAHBE has approximately 39,000 enrollees in silver plans who are not
14 subsidized. The impact on these enrollees is particularly acute. Because the individual market
15 inside the Exchange and outside the Exchange is treated as one risk pool, rates will rise across
16 the risk pool both inside and outside the Exchange. Analysts at the Kaiser Family Foundation
17 expect unsubsidized consumers to drop to cheaper plans, or drop coverage altogether. Also,
18 healthy people will drop coverage, leading to adverse selection. further rate increases, and
19 insurer exits from the market.
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21 13. The impact on carriers is also substantial. Carriers in this state had to make
22 business decisions about whether or not to participate in an uncertain 2018 individual health
23 insurance market. For 2018, seven issuers will offer 41 qualified health plan products across the
24 state. There are nine issuers offering 98 qualified health plans in 2017. The loss of carriers in
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1 2018 market reduces competition and consumer choice. Nine Washington counties will have
2 only one issuer on the Exchange in 2018. Earlier concerns about no issuers in Grays Harbor and
3 Klickitat counties were resolved only after intervention by the Office of the Insurance
4 Commissioner.

5 14. The termination of CSR payments threatens WAHBE's sustainability. Any loss
6 of enrollees will lower WAHBE's revenues because WAHBE's operations are mostly financed
7 through fees paid by carriers. Federal and state law authorize user fees on carriers that offer plans
8 on the Exchange. 45 C.F.R. §§ 155.160, 156.50; Wash. Rev. Code 43.71.080, 48.14.020(2)(b),
9 48.14.0201(5)(b). Carriers are taxed two percent on the value of premiums paid, and also charged
10 a flat per-member per-month assessment for enrollees on the Exchange. These premium taxes
11 and assessments are deposited in the state treasurer's health benefit exchange account. Wash.
12 Rev. Code § 43.71.060(2).
13

14 15. For state fiscal year 2017 (July 2016 to June 2017), WAHBE revenues related to
15 qualified health plan premiums and assessments were \$31.3 million, and projected revenues for
16 state fiscal year 2018 (July 2018 to June 2019) are \$ 34.9 million. A 20 percent reduction in
17 qualified health plan enrollment could decrease state fiscal year 2018 revenues by approximately
18 \$7 million, while a 40 percent reduction in enrollment would decrease revenues by \$14 million.
19 With premium increases due to the loss of CSRs, and no offset available through a commensurate
20 tax credit increase, non-subsidized enrollees may not continue to purchase health coverage
21 through the Exchange. Therefore, some enrollment decline due to the loss of CSR funding can
22 safely be predicted, even if the exact amount cannot precisely calculated. *Any* decline in
23 enrollment will reduce WAHBE revenue.
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16. WAHBE administers enrollment in the state Medicaid program through its on-line portal, www.wahealthplanfinder.org. Therefore, the potential effects to Washington's qualified health plan market through the loss of CSR funding, described above, and the ensuing loss of premium tax revenues, may also impact Medicaid financing. Medicaid is a cooperative federal-state program that requires state matching funds to be expended in order to draw down federal funds. In Washington, premium taxes paid by carriers participating in the Exchange are used as state Medicaid match necessary for the receipt of federal Medicaid funds. If premium tax funds are not available as state Medicaid match, state general fund dollars would be needed to replace those funds to support WAHBE's costs for enrolling Medicaid applicants through the shared on-line portal "Washington Healthplanfinder."

17. Finally, the termination of cost sharing payments has imposed a significant administrative burden on WAHBE. There will be increased operational costs to address technical aspects of loading plan new rates administering an on-line marketplace, and will create confusion for consumers just before open enrollment (which begins on November 1, 2017).

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

DATED this 16th day of October, 2017, at Olympia, Washington.

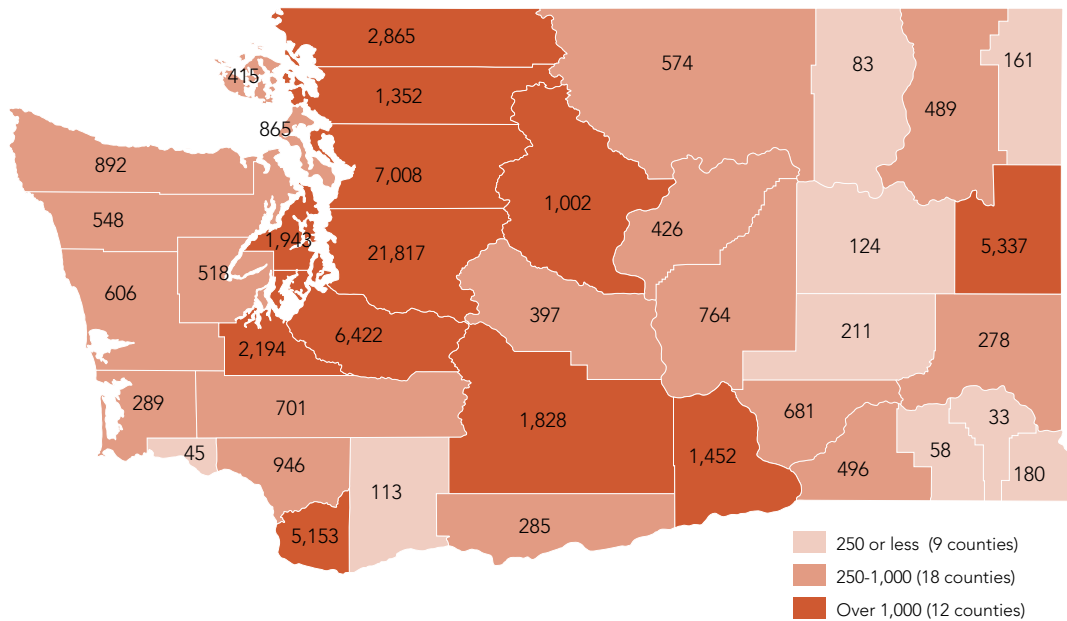


PAM MACEWAN
Chief Executive Officer
Washington Health Benefit Exchange

Attachment A

1 in 4 WASHINGTON

Residents Receiving Cost-Sharing Reductions (CSR) through Washington Healthplanfinder in 2016*



Top 10

KING	21,817
SNOHOMISH.....	7,008
PIERCE.....	6,422
SPOKANE.....	5,337
CLARK.....	5,153
WHATCOM	2,895
THURSTON	2,194
KITSAP	1,943
YAKIMA.....	1,828
BENTON	1,452
TOTAL.....	69,582

*CSRs are federal subsidies lower out-of-pocket costs for low and middle-income Washington Healthplanfinder consumers. Data as of November 2016.

Total Amount of Cost-Sharing Reductions (CSR) in 2016*

