

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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UNITED STATES HOUSE OF REPRESENTATIVES,  
*Plaintiff-Appellee,*

v.

THOMAS E. PRICE, M.D., in his official capacity as Secretary of Health and Human Services; U.S. Department of Health and Human Services; STEVEN T. MNUCHIN, in his official capacity as Secretary of the Treasury; U.S. Department of the Treasury,  
*Defendants-Appellants.*

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On Appeal from the United States District Court  
for the District of Columbia, No. 1:14-cv-01967  
Honorable Rosemary M. Collyer

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**DECLARATION OF PAM MACEWAN  
IN SUPPORT OF THE STATES' MOTION TO INTERVENE**

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I, Pam MacEwan, am over the age of 18 years of age, competent to testify to the matters below, and declare based upon personal knowledge:

1. I am the chief executive officer of the Washington Health Benefit Exchange (WAHBE or the Exchange). I have held this position since 2015, before which I was chief of staff. I have 24 years of experience in the healthcare management.
2. WAHBE is Washington State's health insurance exchange, or insurance marketplace. WAHBE was established in 2011 under the Patient Protection and Affordable Care Act (ACA) and state legislation, Wash. Rev. Code 43.71. WAHBE is a self-sustaining, public-private partnership governed by an 11-member bipartisan board. WAHBE serves more than 1.7 million Medicaid and commercial insurance customers through its website, [www.wahealthplanfinder.org](http://www.wahealthplanfinder.org).
3. The ACA contains provisions designed to make health insurance coverage more affordable. These include the individual advanced premium tax credits, and cost sharing reduction (CSR) payments made by the federal government to health insurance carriers in the exchange markets. When passed through to the provider, the CSR payments lower the cost-sharing for qualified health plan enrollees under 250 percent of the federal poverty

level. The CSR also increases the actuarial value of silver-level qualified health plans offered through the exchanges. The actuarial value refers to the percentage of medical costs covered by carriers.

4. WAHBE enrollment data for 2016 show that nearly 70,000 qualified health plan enrollees received an annual average CSR of \$928 per enrollee, worth almost \$65 million. Attach. A.
5. As explained below, the uncertainty about whether CSR payments will continue to be paid to carriers will have a negative impact on Washington consumers, carriers and the sustainability of WAHBE.
6. Washington's average premium increases have been relatively low, 13 percent, for plans offered inside the Exchange. Should CSR payments cease, carriers will likely cover the loss through premium increases which could be up to 20 percent, based on sources that we typically rely on such as the Kaiser Family Foundation. Qualified health plan enrollment in Washington State has steadily increased from 140,000 in 2014 to 204,000 in 2017. This positive trend may reverse, however, as plans become unaffordable and consumers drop coverage, particularly for those not receiving CSRs or premium tax credits, which currently represent 40 percent of the Exchange's enrollment.

7. The impact on carriers is also substantial. Carriers in this state are currently making business decisions about whether or not to participate in our state's insurance market. For 2018 plans, carriers must file their products and pricing information with the Office of the Insurance Commissioner by June 7, 2017. The lack of certainty about CSR payments could cause some carriers to withdraw from the market. For example, on May 1, 2017, Molina Healthcare of Washington, Inc. sent a letter to Mike Kreidler, Washington State Insurance Commissioner, stating that if CSRs are not funded Molina will have to assess its ability to remain a carrier in the Washington Exchange. *See Declaration of Myron Bradford "Mike" Kreidler, Insurance Commissioner for the State of Washington, In Support of the States' Motion to Intervene, at ¶ 32 and Ex. A.*
8. Between 2016 and 2017, Washington saw a reduction from 13 to nine carriers offering qualified health plans, along with a reduction in plan offerings. Two statewide insurers withdrew from Washington State entirely. Two other statewide insurers reduced the number of counties where they offer plans in 2017. The loss of more carriers in 2018 will reduce competition and consumer choice.

9. The current uncertainty about CSRs threatens WAHBE's sustainability. Any loss of enrollees will lower WAHBE's revenues because WAHBE's operations are mostly financed through fees paid by carriers. Federal and state law authorize user fees on carriers that offer plans on the Exchange. 45 C.F.R. §§ 155.160, 156.50; Wash. Rev. Code 43.71.080, 48.14.020(2)(b), 48.14.0201(5)(b). Carriers are taxed two percent on the value of premiums paid, and also charged a flat per-member per-month assessment for enrollees on the Exchange. These premium taxes and assessments are deposited in the state treasurer's health benefit exchange account. Wash. Rev. Code 43.71.060(2).
10. For state fiscal year 2017 (July 2016 to June 2017), expected WAHBE revenues related to qualified health plan premiums and assessments are \$29.7 million, and projected revenues for state fiscal year 2018 (July 2018 to June 2019) are \$32.3 million. A 20 percent reduction in qualified health plan enrollment would decrease state fiscal year 2018 revenues by \$6.5 million, while a 40 percent reduction in enrollment would decrease revenues by \$13 million. Some enrollment decline due to the loss of CSR funding can safely be predicted, even if the exact amount cannot precisely calculated. *Any* decline in enrollment will reduce WAHBE revenue.

11. An additional impact of the loss of CSR funding is the need for more state general fund dollars to support Medicaid. WAHBE administers enrollment in the state Medicaid program through its on-line portal, [www.wahealthplanfinder.org](http://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, also impacts 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 must replace those funds to support WAHBE's costs for enrolling Medicaid applicants through the on-line "healthplanfinder".

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

DATED this 9<sup>th</sup> day of May 2017, at Olympia, Washington.



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PAM MACEWAN

