IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, WISCONSIN, ALABAMA, ARKANSAS, ARIZONA, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, PAUL LePAGE, Governor of Maine, Governor Phil Bryant of the State of MISSISSIPPI, MISSOURI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WEST VIRGINIA, NEILL HURLEY and JOHN NANTZ,

Plaintiffs,

v.

UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX AZAR, in his Official Capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, UNITED STATES INTERNAL REVENUE SERVICE, and DAVID J. KAUTTER, in his Official Capacity as Acting COMMISSIONER OF INTERNAL REVENUE,

Defendants.

Civil Action No. 4:18-cv-00167-O

CALIFORNIA, CONNECTICUT, DISTRICT OF COLUMBIA, DELAWARE, HAWAII, ILLINOIS, KENTUCKY, MASSACHUSETTS, MINNESOTA by and through its Department of Commerce, NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, VIRGINIA and WASHINGTON,

Intervenors-Defendants.

DECLARATION OF BENJAMIN BARNES IN SUPPORT OF INTERVENORS-DEFENDANTS' OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION

I, Benjamin Barnes declare:

1. I am the Secretary of the Connecticut Office of Policy and Management. In that role, I report directly to the Governor and oversee budget and policy development and implementation for the State of Connecticut, including health policy issues. The facts stated herein are of my own personal knowledge and knowledge I have gained from information provided by the Departments of Public Health and Social Services, the Office of Health Strategy and Access Health CT.

2. The Connecticut Office of Policy and Management (OPM) functions as the Governor's staff agency and plays a central role in state government, providing the information and analysis used to formulate public policy for the state and assisting state agencies and municipalities in implementing policy decisions on the Governor's behalf. OPM prepares the Governor's budget proposal and implements and monitors the execution of the budget as adopted by the General Assembly. Through intra-agency and inter-agency efforts, OPM strengthens and improves the delivery of services to the citizens of Connecticut, and increases the efficiency and effectiveness of state government through integrated processes and system improvements.

This declaration is submitted in support of the Intervenors-Defendants' Opposition to Application for Preliminary Injunction. Based on my knowledge and experience, dismantling the Affordable Care Act would cause severe harm to the State of Connecticut, to its residents and to its economy. In addition to loss of benefits and services and federal investments to support Connecticut's healthcare system, dismantling or suspending implementation of the Affordable Care Act would cause harm and increased costs from the dismantling of the state's administrative structure and apparatus, created in compliance with, and to work in conjunction with, the Affordable Care Act " Connecticut projects costs of at least $3.2 million to change eligibility and issue notices, including the cost of system changes. While the cost of mailings to notify impacted individuals is projected to cost approximately $600,000, the cost to design, develop and implement the necessary system changes is projected to cost a minimum of $2.6 million. These figures do not

include state staff costs nor the potential cost of evaluating impacted individuals to determine eligibility for alternative coverage prior to termination.

3. The Affordable Care Act directs billions of dollars directly to Connecticut.

- Connecticut sought and received extensive new federal resources under the Affordable Care Act (ACA). Specifically, Connecticut has received $5.9 billion via Medicaid expansion ($1.2 billion as an early adopter beginning April 2010 and $4.7 billion from January 2014 through December 2017); $73.1 million through the Community First Choice Option; $51.5 million in enhanced reimbursement related to the Money Follows the Person Demonstration (from October 2011, when the demonstration was extended (and expanded) under the ACA, through December 2017); $29.0 million through the Prevention and Public Health Fund and $19.8 million through other public health grants-in-aid that were awarded to Connecticut state agencies; $77.5 million through the Balancing Incentive Program; $11.3 million in enhanced reimbursement related to the behavioral health, health homes; and $21.8 million in enhanced reimbursement for the Children's Health Insurance Program (CHIP).
- The ACA also enabled Connecticut's Medicaid agency, the Department of Social Services, to partner with the state-based health insurance exchange, Access Health CT, to launch a shared / integrated eligibility system that encompasses HUSKY Health (Medicaid / CHIP) and private qualified health plans offered through the Exchange. This has created a common entry point for all individuals seeking health insurance, has automated many aspects of eligibility verification and has improved the integrity and timeliness of the eligibility process. Efficient and comprehensive documentation of eligibility is an essential feature of ensuring appropriate access to the range of available insurance coverage options.
- In addition to the $48.8 million provided through the Prevention and Public Health Fund (PPHF) and other public health grants-in-aid awarded to state agencies, other

Connecticut organizations were direct beneficiaries of ACA-funded initiatives to help address the health care needs of vulnerable populations, such as federally qualified health centers, school based health centers, hospitals, and universities. Furthermore, since 100% of funding for the Preventive Health and Health Services Block Grant (PHHSBG) comes from the Prevention and Public Health Fund, if the ACA is repealed and funding for the block grant is eliminated, the following programs would be greatly impacted: asthma management education, cancer prevention, cardiovascular disease prevention, childhood lead poisoning surveillance, diabetes education and self-management classes, smoking cessation, injury prevention, suicide prevention, and rape crisis programs. PHHSBG funds also support the state's emergency medical services, public health surveillance and evaluation efforts, and national and local public health accreditation initiatives. Since 2014, Connecticut has received a total of $9.0 million in PHHSBG funding.

4. The Affordable Care Act increased access to affordable coverage.

- Overall, the number of individuals with insurance has significantly increased. Based on data from the U.S. Census Bureau, the percentage of people in Connecticut without health insurance decreased from 9.4% in 2013 to 4.9% in 2016. The percentage of uninsured adults between 18 and 64 years of age decreased from 14.8% in 2011 to 8.2% in 2016. Connecticut has historically had a high percentage of children with health coverage and saw similar improvements in the rate of insured children, although exact numbers are not readily available.
- The ACA expanded coverage through two key mechanisms: Medicaid expansion for those individuals with the lowest incomes, and federal health subsidies which allowed individuals with moderate incomes to purchase coverage in new health insurance exchanges.
- Medicaid is an important source of healthcare coverage and has resulted in significant coverage gains, as well as reductions in the uninsured rate, both among

the low-income population and within other vulnerable populations. As a result of Medicaid expansion, approximately 240,000 people have coverage which enabled them to access a Medicaid benefit – HUSKY D, our Medicaid expansion group, which increased from 44,753 in April 2010, when Connecticut became an early adopter, to 99,103 in December 2013. With the increase in income eligibility to 138% of the federal poverty level, enrollment has grown to approximately 240,000.

  - Research shows that coverage: gives people more financial security from the catastrophic costs of a serious health condition; tends to improve mental health; and enables earlier diagnosis and more effective self-management of conditions such as diabetes.

- Pursuant to the ACA, the Exchange serves the residents of the State of Connecticut by offering enrollees in qualified health plans financial assistance through advance payments of the premium tax credit (APTCs) to help pay health insurance premiums, and cost-sharing reductions (CSRs) that reduce the amount of out-of-pocket costs that eligible consumers are required to pay for health care expenses during the year.
- The Exchange is one of the important reforms created by the ACA, allowing individuals and small employers to access health insurance plans in a setting where they can compare various options, and also apply for and receive financial assistance to help pay for their coverage. In Connecticut, an average of 85,000 individuals per year receive federally subsidized coverage because of the ACA.
- The ACA created robust consumer protections to help ensure individuals can access the healthcare system. Through Connecticut's Exchange, over 14,000 individuals under age 26 receive health insurance coverage on their parent's plan – a benefit offered under the ACA. Connecticut does not have statewide estimates for how many individuals under age 26 receive coverage under parent-held policies, but given the rate of coverage under parental plans for the 85,000 Access Health CT

recipients (slightly over 16%), one could assume tens of thousands more each year receive coverage under parent-held policies.

5. The ACA has had positive economic benefits on states.

- Studies have shown that states expanding Medicaid under the ACA have realized budget savings, revenue gains, and overall economic growth.
- Based on an analysis prepared by the Milken Institute School of Public Health at the George Washington University, repealing two key elements of the ACA (federal premium tax credits and federal payments to states for expansion of Medicaid eligibility for low-income adults) would result in the loss in 2019 of approximately 35,900 jobs across many industries in Connecticut and would result in the loss of the following over a five-year period (from 2019 through 2023):
    - $12.5 billion in federal funds;
    - $39.1 billion in business output;
    - $23.3 billion in gross state product; and
    - $748 million in state and local taxes.

6. The ACA expanded programs in Medicaid to provide States with increased opportunities to increase access to home and community-based services.

- The ACA authorized the extension of and additional federal funding for the highly successful Money Follows the Person (MFP) demonstration grant; MFP has supported nearly 5,000 individuals with disabilities and older adults in moving from nursing facilities to their setting of choice, at lower cost and with greater opportunity for community engagement;
- The ACA established the Community First Choice (CFC) State Plan Option, encouraging states to provide home and community-based attendant services and supports to individuals who would otherwise require institutional level of care under the Medicaid State Plan, by providing a State Plan option that enabled states to

provide payment for self-directed personal care attendants and other services without needing to apply for a waiver and which provided additional programmatic flexibility beyond that authorized under waivers; under the ACA, CFC also provides a 6 percentage point increase in federal matching payments for these services; CFC has enabled thousands of people at risk of nursing home placement to hire personal care attendants, providing flexible, personalized in-home supports;

- The ACA appropriated funding for the Balancing Incentive Program (BIP), which provided an enhanced match rate of 2% for non-institutional long-term services and supports to states that commit to increasing access to community-based long-term services and supports; in total, Connecticut received over $77 million in BIP funding, which was reinvested in home and community-based long-term services and supports; and
- The ACA expanded the permissible eligibility limits and scope of services under the section 1915(i) Home and Community-Based Services State Plan Option (which was an optional State Plan service initially established by the Deficit Reduction Act of 2005).

These programs have all helped Connecticut in its efforts to continue to shift the balance of long-term services and supports spending for Medicaid members from institutional settings to home and community-based care.

7. The ACA has allowed States to test and implement reforms to healthcare delivery systems that support State policy priorities of increasing efficiency and quality of care.

- Since 2013, Connecticut has received $2.8 million for a planning grant and a commitment of $45 million through 2020 for the State Innovation Model (SIM) Test grant from the Center for Medicare and Medicaid Innovation (CMMI) to develop and implement a model for healthcare delivery supported by value-based payment methodologies tied to the totality of care delivered to at least 80% of our population within five years, supporting the triple aim of better health while eliminating health

disparities, improving healthcare quality and experience, and reducing growth in healthcare costs. This initiative has brought private and public payers, including Medicaid, together to implement a value-based care delivery and payment approach that has focused upon alignment with the Medicare Accountable Care Organization (ACO) strategy, development of common quality measures, and use of shared savings and other payment mechanisms. In addition, Connecticut Medicaid has implemented a pay-for-performance primary care medical home initiative that serves almost half of all members, and has built on this by layering on additional features of care coordination and a shared savings feature.

  - Implementing value-based care delivery reforms and payment strategies has enabled new person-centered strategies that have better coordinated services and supports for high need, high cost individuals and allowed Medicaid to tie outcomes and care experience to payment.

Under Connecticut's Medicaid program, the ACA has:

- Permitted coverage of new services that are of great benefit to Medicaid beneficiaries – just one example is coverage of tobacco cessation services (counseling, treatment and medications)
  - This is a well-targeted service because many sources estimate that far more Medicaid beneficiaries smoke than is typical of the general population, and smoking-related conditions are ubiquitous and expensive to manage
- Provided new family planning services for eligible individuals
  - Family planning services support good reproductive health and help reduce unintended pregnancies, which in turn promotes better long-term health, completion of education and improved outcomes of subsequent pregnancies
- Enabled Connecticut to implement a behavioral health, health home effort under section 1945 of the Social Security Act whereby providers integrate and coordinate all primary, acute, behavioral health, and long-term services and supports to treat the

whole person. In addition to the increased programmatic options provided to health homes under the ACA, Connecticut also received federal reimbursement of 90% on behavioral health, health home expenditures during the first eight calendar quarters after the health home was established.

  - Health homes are enabling local mental health authorities and their affiliates to integrate behavioral health, primary care and community-based supports for people with Serious and Persistent Mental Illness (SPMI)

- Fully funded primary care provider rate increases in calendar years 2013 and 2014. These increases, though continued on a somewhat more limited basis in Connecticut, have dramatically increased participation of primary care practitioners in Medicaid from 1,622 in January 2012 to 3,598 in December 2017
  - Access to primary care is a key aspect of Medicaid reform and an essential means of reducing use of the emergency department, as well as effective management of chronic conditions.
- Broadened the scope of the preventive services benefit category in section 1905(a)(13)(C) of the Social Security Act to include services recommended by a physician or other licensed practitioner of the healing arts (previously, this benefit category was limited only to services actually provided by physicians and other licensed practitioners). The increased scope of this benefit category is crucial to enable appropriate coverage of services that are most effectively provided by a variety of practitioners and in a variety of settings (especially in home and community-based settings), particularly relevant for services that address behavioral health, substance use disorder, and/or developmental conditions.
  - This increased programmatic flexibility under this broadened Medicaid State Plan benefit category has enabled Connecticut to add coverage for Autism Spectrum Disorder services and is a key component of Connecticut's updated coverage of Early Intervention Services pursuant to Early and Periodic

Screening, Diagnostic and Treatment (EPSDT) services. Both of these services are primarily provided in the home and other community-based settings and permit broader access to early intervention services which are critical for school and social success and, to the degree feasible, ultimately independent living and integration within the community as adults.

- Established various optional State Plan services, demonstrations, and other flexibility that Connecticut is reviewing for potential future adoption. For example, Connecticut may elect to establish one or more additional health homes in the future and/or may establish coverage for one or more additional types of services under the ACA-broadened preventive services Medicaid State Plan benefit category.

In addition, the ACA strengthened overall public health with many initiatives, including:

- Establishing a nationwide program for national and state background checks on direct patient access employees of long-term care facilities – 42,658 background checks completed since October 1, 2015, helping to ensure a safe workforce.
- Requiring nursing facilities to: (1) report information regarding members of the governing body of the facility, promoting transparency of governance to Connecticut's nursing facility residents, their families and/or other responsible parties; (2) implement and strictly enforce a compliance and ethics program, thereby fostering compliance with regulations and a culture of program integrity; (3) establish standards for Quality Assurance and Performance Improvement programs and codify best practices, improving quality of care and service delivery; (4) electronically submit staffing information to help ensure adequate staffing is in place to deliver quality care and services; and (5) provide written notification at least 60 days in advance of a closure to allow residents adequate time to successfully relocate to another facility or a home or community-based setting.
- Developing consumer-oriented websites, providing useful information to consumers when accessing care, posting deficiency statements, violation letters, and facility

plans of corrections, and standardizing a complaint process for consumers to report quality of care or other issues.

- Requiring that nurse aide training programs include dementia management training and patient abuse prevention training, thus enhancing the skill set of the workforce.

8. The ACA resulted in better quality and more accessible, affordable healthcare for consumers.

- The ACA not only improves access to healthcare for the uninsured, it ensures better healthcare coverage for immunizations for those with existing insurance coverage by requiring that insurance plans cover all recommended vaccines outside of the patient's insurance deductible.
- The ACA helped meet the increasing needs of Connecticut's most vulnerable populations by increasing National Health Service Corps funding for scholarships and loan repayment, more than doubling the primary, dental, and mental health clinicians working in Connecticut's Health Professional Shortage Areas.
- The PPHF allowed 16 health systems, between 2014 and 2018, to improve their capacity to identify patients with poorly controlled diabetes and hypertension, resulting in improved care for up to 164,118 individuals in Connecticut (and also improved their awareness of prediabetes, identifying 33, 081 patients with prediabetes)
- ACA funding supported an expansion in the capacity of the CT Quitline. Between July 1, 2013 and June 30, 2017, an additional 500 Quitline callers stopped their tobacco use, resulting in an estimated $4 million in averted future medical and non-medical costs related to tobacco use.
- Between 2011 and 2018, over 6,830 youth ages 13-19 have participated in the ACA-funded Personal Responsibility Education Program (PREP) program, which provides education on abstinence and contraception in order to prevent pregnancy and sexually transmitted infections. The delivery of evidence-based, comprehensive

PREP prevention education to at-risk youth has contributed to a significant decline in the birth rates for teens ages 15-19. The Connecticut teen birth rate dropped from 18.8 per 1,000 births in 2012 to 14.9 per 1,000 births in 2014.

- ACA PHHSBG funding allowed community-based public health providers to address existing service gaps in their communities. These providers reported measurable improvements in health outcomes, access to services, and reductions in health risk behaviors as a result of their programmatic interventions, such as:
    - Reduction in children under 6 years of age with confirmed blood lead levels at or above the CDC reference value of (5µg/dL) from 3.1% in 2012 to 2.7% in 2016
    - Reduction in the percent of youth (high school) who currently smoke cigarettes from 14% in 2011 to 5.6% in 2015
    - Increases in estimated influenza vaccination coverage levels for adults (18-64 years of age) from 34.4% in 2012 to 43.6% in 2016
    - Increases in estimated HPV vaccination coverage for female adolescents 13-17 years of age meeting the CDC guidelines from 43.6% in 2012 to 56.9% in 2016
    - Increases in estimated HPV vaccination coverage for male adolescents 13-17 years of age meeting the CDC guidelines from 8.5% in 2012 to 41.5% in 2016
    - Reduction in number of newly diagnosed cases of HIV from 351 in 2011 to 269 in 2016
    - Reduction in rate of chlamydia incidence among youth 15-19 years of age from 1,973 per 100,000 in 2011 to 1,289 per 100,000 in 2016
    - Increases in estimated vaccine coverage levels for Advisory Committee on Immunization Practices recommended vaccines among children 19-35 months of age from 57.9% in 2010 to 75.7% in 2016.

- Prevention and Public Health Fund dollars have been utilized to maintain high childhood immunization coverage levels, track vaccination coverage and contain disease outbreaks. If this funding were eliminated, it could adversely affect Connecticut's vaccination rates, resulting in disease outbreaks of vaccine preventable diseases. Of note, newborn babies would be at increased risk, particularly from hepatitis B, influenza and pertussis. Additionally, the state would experience a loss of funding for critical technology to sustain the state's immunization information system.
- In addition, ACA funding has strengthened the state's capacity to address infectious disease outbreaks through the use of molecular fingerprinting tools, resulting in more timely identification and treatment of impacted individuals. These funds have also supported the state's capacity to address hospital-acquired infections and drug-resistant infections.

All of the foregoing benefits of the Affordable Care Act would be removed if the Plaintiffs' motion for preliminary injunction were granted. It would then be a policy decision for the next administration and/or legislature as to whether some of these programs are retained at state expense.

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

Executed on June 5, 2018, in Hartford, Connecticut.

Benjamin Barnes
Secretary
Connecticut Office of Policy and Management

Subscribed and sworn to before me
this 5th day of June, 2018

Signature of Notary Public
Date Commission Expires
Eleanor M. Michael
Printed Name of Notary Public

ELEANOR M. MICHAEL
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2018