UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. ____________

RONNIE MAURICE STEWART

GLASSIE MAE KASEY

LAKIN BRANHAM

SHANNA BALLINGER

DAVE KOBERSMITH

WILLIAM BENNETT

SHAWNA NICOLE McCOMAS

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KATELYN ALLEN

AMANDA SPEARS

DAVID ROODE

SHEILA MARLENE PENNEY

QUENTON RADFORD

on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

ERIC HARGAN
ACTING SECRETARY
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
in his official capacity
200 Independence Avenue, S.W.,
Washington, DC 20201

SEEMA VERMA
ADMINISTRATOR
CENTERS FOR MEDICARE AND MEDICAID SERVICES
in her official capacity
7500 Security Boulevard
Balti

DEMETRIOS L. KOUZOUKAS
PRINCIPAL DEPUTY ADMINISTRATOR
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BRIAN NEALE
DIRECTOR
CENTER FOR MEDICAID AND CHIP
SERVICES
in his

Medicaid in Kentucky, including by requiring Medicaid enrollees to work in order to receive health insurance and by imposing new and substantial premiums and restrictions. By the State's own estimate, Kentucky HEALTH would reduce Medicaid enrollment over a five-year period by over 95,000 adults and reduce payments for health care for low income Kentuckians by approximately $2.4 billion. The Kentucky HEALTH application was subject to state and federal public comment in 2016 and 2017, and the Center for Medicaid Services ("CMS") received over 3,000 comments.

6. On January 11, 2018, after the comment period closed on the Kentucky HEALTH application, the Director of CMS announced a new approach to Medicaid waivers. Reversing decades of agency guidance, and consistent with the Director's own expressed view of the need to "fundamentally transform Medicaid," Defendants issued a letter to State Medicaid Directors announcing CMS's intention to, for the first time, approve waiver applications containing work requirements and outlining "guidelines" for states to consider in submitting such applications.

7. The very next day—January 12, 2018—without seeking or permitting comments on the radical expansion of the Medicaid waiver authority, the Defendants granted the Kentucky HEALTH application, asserting that this grant and Kentucky's imposition of work requirements are consistent with CMS's newly-minted approach set out in its letter to State Medicaid Directors.

8. The Secretary's issuance of the letter to State Medicaid Directors and approval of Kentucky's request sharply deviate from the congressionally-established requirements of the Medicaid program and vastly exceed any lawful exercise of the Secretary's limited waiver authority. This change will harm Kentuckians across the state—housekeepers and custodians, ministers and morticians, car repairmen, retired workers, students, church administrators, bank tellers, caregivers, and musicians—who need a range of health services, including check-ups, diabetes treatment, mental health services, blood pressure monitoring and treatment, and vision

and dental care. The letter and approval of Kentucky's application authorized attempts to re-write the Medicaid Act, and the use of the statute's waiver authority to "transform" Medicaid is an abuse of that authority. The Defendants' actions here thus violate both the Administrative Procedure Act and the Constitution, and they cannot survive.

JURISDICTION AND VENUE

9. This is a class action for declaratory and injunctive relief for violation of the Administrative Procedure Act, the Social Security Act, and the United States Constitution.

10. The Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331 and 1361 and 5 U.S.C. §§ 702-705. This action and the remedies it seeks are further authorized by 28 U.S.C. §§ 1651, 2201, and 2202, and Federal Rule of Civil Procedure 65.

11. Venue is proper under 28 U.S.C. § 1391(b)(2) and (e).

PARTIES

12. Plaintiff Ronnie Maurice Stewart is a 62-year-old man who lives in Lexington, Fayette County, Kentucky. Mr. Stewart is enrolled in the Kentucky Medicaid program.

13. Plaintiff GlassieMae Kasey is a 59-year-old woman who lives in Louisville, Jefferson County, Kentucky. Ms. Kasey is enrolled in the Kentucky Medicaid program.

14. Plaintiff Lakin Branham is a 20-year-old woman who lives in Dwale, Floyd County, Kentucky with her grandparents. Ms. Branham is enrolled in the Kentucky Medicaid program.

15. Plaintiff Shanna Ballinger is a 27-year-old woman who lives in Radcliff, Hardin County, Kentucky with her husband and two sons. Mrs. Ballinger is enrolled in the Kentucky Medicaid program.

16. Plaintiff Dave Kobersmith is a 57-year-

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31. Defendant HHS is a federal agency with responsibility for, among other things, overseeing implementation of the Medicaid Act.

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39. A state's Medicaid plan must describe its program and affirm its commitment to comply with the requirements imposed by the Medicaid Act (listed at 42 U.S.C. § 1396 et seq.) and its associated regulations.

40. State and federal governments share responsibility for funding Medicaid. Section 1396b of the Medicaid Act requires the Secretary to pay each participating state the federal share (which is based on the state's relative per capita income) of "the total amount expended . . . as medical assistance under the State plan." Id. §§ 1396b(a)(1), 1396d(b).

B. Medicaid Eligibility and Coverage Requirements

41. Using household income and other specific criteria, the Medicaid Act delineates who is eligible to receive Medicaid coverage. Id. § 1396a(a)(10)(A), (C). The Act contains required coverage groups as well as options for states to extend Medicaid to additional population groups. Id.

42. States participating in Medicaid must provide medical assistance to individuals who meet the eligibility standards applicable to required coverage groups (so called "mandatory populations"). Id. § 1396a(a)(10)(A)(i).

43. To be eligible for federal Medicaid funding, states must cover, and may not exclude from Medicaid, individuals who: (1) are part of a mandatory population group; (2) meet the minimum financial eligibility criteria applicable to that population group; (3) are residents of the state in which they apply; and (4) are U.S. citizens or certain qualified immigrants. Id. §§ 1396a(a)(10)(A), 1396a(b)(2), (3); 8 U.S.C. §§ 1611, 1641.

44. The mandatory Medicaid population groups include children; parents and certain other relatives (who are not elderly, blind, or disabled); pregnant women; the elderly, blind, or

49. States that choose to cover the expansion population submit state plan amendments electing to provide this coverage. To date, 31 states, including Kentucky, and the District of Columbia have approved state plans covering the expansion population.

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people who apply are served and get coverage. States must determine eligibility and provide medical assistance to all eligible individuals with “reasonable promptness.” Social Security Amendments of 1965, Pub. L. No. 89-97, § 1902(a)(8), 79 Stat. 286, 344 (codified at 42 U.S.C. § 1396a(a)(8)); 42 C.F.R. § 435.912(c)(3) (requiring states to determine eligibility within 90 days for individuals who apply on the basis of disability and 45 days for all other individuals).

56. In addition, the Medicaid Act requires states to provide retroactive coverage to individuals who have been determined eligible to ensure that low-income individuals can obtain timely care and avoid incurring medical debts. Social Security Amendments of 1965, Pub. L. No. 89-97, § 1905(a), 79 Stat. 286, 351 (codified at 42 U.S.C. §§

58. The Medicaid Act sets forth mandatory services that participating states must include intheir Medicaid programs and optional services that participating states may include in their Medicaid programs. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d(a).

59. States must ensure that Medicaid enrollees have necessary transportation, often referred to as non-emergency medical transportation ("NEMT"), to and from Medicaid services. See 42 U.S.C. § 1396a(a)(4); 42 C.F.R. § 431.53.

60. The Medicaid Act also establishes the states' options for imposing premiums and cost sharing on enrollees. To ensure affordability, the Act permits states to impose premiums and cost sharing only in limited circumstances.

61. Congress amended the Medicaid Act in 1982 to remove the substantive premium and cost sharing provisions from 42 U.S.C. § 1396a, amend them, and place them in a new pr

64. Section 1396o-1, which Congress passed in 2006 to give states additional flexibility to impose premiums and cost sharing on enrollees, likewise prohibits a state from imposing any

emergency services provider who can provide the services without cost sharing; and provide a referral to coordinate scheduling with that alternate provider. § 1396o-1(e)(1)(B).

69. The Secretary's authority to waive the limits on deductions, cost sharing, or similar charges is tightly circumscribed and applies only to a project that:

> (1) will test a unique and previously untested use of copayments,
>
> (2) is limited to a period of not more than two years,
>
> (3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,
>
> (4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and
>
> (5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

Id. § 1396o(f)(1)-(5).

C.

75. The Secretary must follow certain procedural requirements before he may approve a Section 1115 project. *Id.* § 1315(d); 42 C.F.R. §§ 431.400-431.416. In particular, after receiving a complete application from a state (following a state-level public comment period), the Secretary must provide a 30-day public notice and comment period. 42 U.S.C. § 1315(d); 42 C.F.R. § 431.416.

76. The Secretary does not have the authority to waive compliance with other federal laws, such as the United States Constitution, the Americans with Disabilities Act, or other federal statutes.

77. For example, the Fair Labor Standards Act ("FLSA") requires that all individuals, including individuals receiving public benefits, be compensated at least the minimum wage in exchange for hours worked. *See* 29 U.S.C. § 206(a)(1)(C); Dep't of Labor, *How Workplace Laws Apply to Welfare Recipients* at 2 (1997), http://nclej.org/wp-content/uploads/2015/11/LaborProtectionsAndWelfareReform.pdf. Notably, the Supplemental Nutrition Assistance Program ("SNAP") and Temporary Assistance for Needy Families ("TANF") statutes specifically refer to work requirements and further describe how the benefits interact with the FLSA minimum wage protections. *See* 7 U.S.C. § 2029(a)(1) (SNAP); 42 U.S.C. § 607 (TANF). In contrast, there is no such reference or description in the Medicaid Act. And, according to the Department of Labor, medical assistance, unlike SNAP and TANF cash benefits, may not be substituted for a wage.

Bevin (Jan. 12, 2018) (the "Approval"), attached as Exhibit C to this Complaint. The following population groups will be included in Kentucky HEALTH: the Medicaid expansion population; parents and caretaker relatives (who were covered prior to expansion); individuals receiving transitional medical assistance; pregnant women; and former foster care youth.

98. The State's fee-for-service payment schedules are already available to enrollees and the public, as are the per-member, per-month payment rates Kentucky Medicaid pays participating managed care organizations ("MCOs"). Thus, on information and belief, the monthly account statement will detail the payments that the MCOs make to each network provider for the non-preventive services utilized by the enrollee the previous month.

99. In addition, all Kentucky HEALTH enrollees will have a My Rewards account to pay for care and services that Medicaid will no longer cover for these enrollees. Individuals accrue money in the rewards account by engaging in certain "healthy behaviors," completing certain work-related activities (above those required to maintain Medicaid coverage), and not seeking care in the emergency room. Ex. C, Approval STCs at 24.

100. In its application, Kentucky listed how much money enrollees can earn for completing various activities. For example, enrollees can earn: $25 for completing a health risk assessment (one per year); $10 for receiving certain preventive services ($40 maximum per year); $50 for attending certain disease management courses; $25 for completing a job skills training course ($50 maximum per year); $10 per month for completing job search activities; $10 for participating in community service (maximum $50 per year); and $20 for avoiding inappropriate use of the emergency room (one per year). Ex. B, Application at 29.

101. Kentucky HEALTH will not cover certain services for individuals in the expansion population (who are not "medically frail") that were previously covered, including vision services, dental services, and over-the-counter medications. *Id.* at 22-23. Individuals enrolled in Medicaid through the expansion will use the rewards account to pay for these services. In additi

(1) make up the hours missed in the prior month; or (2) take a health or financial literacy course approved by the state. Id. at 34.

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115. According to the State, the purpose of the premium requirement is to discourage "Medicaid dependency by preparing individuals for the costs associated with commercial or Marketplace coverage." Id. at 32.

116. All enrollees must pay a premium unless they are pregnant, a former foster care youth, or "medically frail." Id. at 25.

117. The Secretary has approved Kentucky to set the premium amounts up to 4% of household income. For example, a one-person household with income at 133% of FPL ($16,146) could have a $53 per month premium. Individuals with no or very low income will be required to pay a minimum premium of $1 per month. Id. at 28.

118. The Secretary has authorized the State to vary the amount of the premium (up or down) based on household income, length of time enrolled in Kentucky HEALTH, and/or other grounds "consistent with how premium requirements vary in the commercial insurance market in Kentucky." Id. at 28.

119. In its application, Kentucky set the premium amount to vary as follows: $1 per month when the enrollee's household income is 0-25% of FPL; $4 per month, when 26-50% of FPL; $8 per month, when 51-100% of FPL; and $15 per month, when 101-133% FPL during the first and second year of enrollment. Ex. B, Application at 31. For individuals with household income over 100% of FPL, Kentucky set the premium to increase to: $22.50 per month in year three, $30 per month in year four, and $37.50 per month in year five. Id. at 32. As noted, CMS's approval letter authorizes Kentucky to further adjust premium amounts without obtaining additional CMS approval.

120. If all household members who are subject to the premium requirement are enrolled in the same MCO, the premiums will be charged on a per-household basis. Ex. C, Approval STCs at 28.

121. If household members are enrolled in different MCOs, the premiums will be assessed on a per-person basis, meaning the total premium amount could be greater than 4% of household income.

money from their rewards accounts. In addition, during the next six months, they will be subject to cost sharing (as detailed in the state plan) in lieu of premiums and will not have access to their rewards accounts. Id. at 16, 29-30. Individuals face the same consequences when they do not pay a subsequent premium. Id. at 29-30.

126. To end the lockout or penalty period early, enrollees must: (1) demonstrate that one of the narrow "good cause" exceptions apply; or (2) pay all past-due premiums owed, pay the premium for the month of re-enrollment, and complete a financial or health literacy course. Id. at 29, 31.

127. Although former foster care youth and "medically frail" individuals are exempt from the premium requirement, if they do not pay the premium, they will nonetheless be penalized by having their rewards accounts suspended for six months. Id. at 30. Unlike the population groups subject to the premium requirement, they do not need to pay past-due premiums to end the penalty period early.

Cost Sharing for Non-Emergency Use of the Emergency Department

128. As explained above, the Medicaid Act allows but limits the ability of a state to impose cost sharing on Medicaid beneficiaries. For non-emergency u

as testing a previously untested use of copayments, lasting no more than two years, and using a methodologically sound hypothesis, with control groups.

129. Under Kentucky HEALTH, the State will deduct $20 from an enrollee's My Rewards account for an inappropriate emergency room visit, thus reducing funds in that account that are available to pay for the enrollee's medically necessary vision and dental care and non-prescription drugs. The charge will increase to $50 for the second visit and $75 for additional visits. Ex. B, Application at 30.

130. The Kentucky HEALTH assessment for inappropriate use of the emergency room is a deduction, copay, or similar charge under 42 U.S.C. §§ 1396o and 1396o-1.

131. According to the State, the goal of the policy is to discourage inappropriate emergency room use. *Id.*

132. The Kentucky HEALTH program does not meet any of the preconditions set out in 42 U.S.C. § 1396o(f).

133. The Defendants approved the Kentucky HEALTH policy without requiring the State to meet any of the requirements of 42 U.S.C. § 1396o(f).

<u>Lockout Penalty for Not Meeting Administrative Requirements</u>

134. Consistent with federal Medicaid law, the State will determine the Medicaid

135. However, in a dramatic departure from federal law, Kentucky will impose a lockout penalty on individuals (other than those who are pregnant, former foster care youth, or "medically frail") who have not re

> in the case of any individual who has been determined to be eligible for medical assistance . . . such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application . . . for such assistance if such individual was . . . eligible for such assistance at the time such care and services were furnished.

42 U.S.C. § 1396a(a)(34). To similar effect, Section 1396d(a) defines “medical assistance” to include coverage for services received by eligible individuals during the three

who are pregnant, former foster care youth, aged 19 or 20, or "medically frail" individuals. Ex. C, Approval STCs at 22.

146. According to the State, the purpose of eliminating NEMT is to offer Kentucky HEALTH enrollees "a commercial health insurance market experience." Ex. B, Application at 5.

F. Action Taken by the Defendants to Allow Work Requirements and Approve the Kentucky HEALTH Program

147. Prior to 2017, CMS's website stated that the purpose of Section 1115 waivers is to "demonstrate and evaluate policy approaches such as

- Expanding eligibility to individuals who are not otherwise Medicaid or CHIP eligible;
- Providing services not typically covered by Medicaid; or
- Using innovative service delivery systems that improve care, increase efficiency, and reduce costs."

Medicaid.gov, About Section 1115 Demonstrations, https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html (last visited September 5, 2017). The "general criteria" for CMS to use when assessing waiver applications looked at whether the demonstration would:

1. increase and strengthen overall coverage of low-income individuals in the state;
2. increase access to, stabilize, and strengthen providers and provider networks available to serve Medicaid and low-income populations in the state;
3. improve health outcomes for Medicaid and other low-income populations in the state; or
4. increase the efficiency and quality of care for Medicaid and other low-income populations through initiatives to transform service delivery networks.

Id.

148. Prior to 2017, CMS recognized that work requirements do "not support the objectives of the [Medicaid] program" and "could undermine access to care." Letter from Andrew M. Slavitt, Acting Administrator, Ctrs. For Medicare & Medicaid Servs., HHS to Thomas Betlach,

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164. In granting the waiver, CMS imposed a variety of terms and conditions on Kentucky's program. Ex. C, Approval STCs. Several of those terms and conditions require that Kentucky abide by the requirements set out in CMS's Dear State Medicaid Director letter. See, e.g., id. ¶ 44 (exempting from work requirement beneficiaries diagnosed with an acute medical condition); id. ¶

167. By approving Kentucky HEALTH, the Secretary has permitted Kentucky to eliminate critical Medicaid services for Plaintiffs enrolled in the program.

168. By approving Kentucky HEALTH, the Secretary has permitted Kentucky to exclude retroactive coverage for necessary health services received in the three months prior to the date of application. If a Plaintiff loses coverage and then reapplies, the Plaintiff will not have retroactive coverage for health services received during the gap in coverage.

169. By approving Kentucky HEALTH, the Secretary has permitted Kentucky to impose cost sharing on Plaintiffs if they need to seek care in an emergency department and their condition is determined not to require urgent medical attention. The cost sharing amount will increase with each subsequent visit.

170. Continuous and adequate health insurance coverage is fundamental for each Plaintiff's ability to work.

171. The Secretary's action approving Kentucky HEALTH will cause harm to Plaintiffs. Specifically:

172. Plaintiff Ronnie Maurice Stewart is a 62-year-old man who lives alone in Lexington, Fayette County, Kentucky. He has adult children who do not live with him.

173. Mr. Stewart is a college graduate who worked in mental health clinics in North Carolina for many years. He was laid off in his fifties and could not find work. Mr. Stewart moved to Kentucky in 2014 when he was offered a job in Bowling Green. After losing that job, Mr. Stewart was homeless for about six months, until he got a job as a medical assistant at the University of Kentucky Hospital.

174. Mr. Stewart retired at age 62 because he could not be on his feet all day anymore.

premium, but it will mean that he cannot pay for other necessary expenses such as food and rent. If he is unable to pay premiums after 60 days, Mr. Stewart will be required to pay copayments for

the family health center location in Louisville. She has subsequently renewed her coverage over the phone.

188. Ms. Kasey has a number of medical conditions for which she receives treatment covered through Medicaid. These include diabetes; calluses on and numbness in her feet, hands, and right arm; arthritis in her hands; chronic pain in her calf muscles and upper legs; high blood pressure; high cholesterol; urinary problems; chronic chest congestion; and leg, foot, and back pain. She had kidney stones twice in the last year.

189. With Medicaid coverage, Ms. Kasey is able to go to a primary care doctor for check-ups, as well as specialists, including a cardiologist, an oncologist, a hand doctor, and a podiatrist. She saw a surgeon for removal of kidney stones. She has received medications and medication management through these physicians. Without Medicaid, it will be difficult for Ms. Kasey to work.

190. Under the Kentucky HEALTH waiver, Ms. Kasey will be required to complete qualifying work or training equal to 80 hours per month. If she in unable to comply with the work requirements, she will be terminated from Medicaid.

191. Under the Kentucky HEALTH waiver, Ms. Kasey will be required to pay a monthly premium of up to 4% of her income. Premium payments are a significant concern for her. Any premium amount could be difficult or impossible to pay when it comes due during a given month. If she is unable to pay the premiums after 60 days, Ms. Kasey will be required to pay copayments for certain services, money will be taken from her My Rewards account, and the account will be suspended (meaning she will not be able to use funds in the account or accrue funds to the account). For the same reasons she may not be able to pay the premium amounts, she may also be unable to pay the cost sharing amounts.

192. Ms. Kasey has been to the emergency room once in the past year for a severe headache.

193. Ms. Kasey has needed vision care, including eyeglasses, since childhood. Her visits with eye care professionals have previously been covered through Kentucky's Medicaid program. These services will now be paid for out of her My Rewards account, but only if Ms. Kasey has earned rewards, and only if the account is not suspended.

194. Ms. Kasey has experienced dental problems, including the loss of seven teeth as a result of diabetes. These problems will require dental treatment, including urgent dent These services will now be paid out of her My Rewards account, but only if Ms. Kasey has earned rewards, and only if the account is not suspended.

195. Because Ms. Kasey does not own or have access to a motor vehicle, she travels to her health care appointments by bus. This r.3 Td cn or hag r.3 Td cn orea r.3 Mseak(n or)3(h10(y)20(eb

199. Ms. Branham is in a separate tax household with a current income of $0 per month.

be required to report any fluctuation of income within ten days, which might be difficult since Mr. Ballinger's hours vary every week. They would lose their Medicaid and be locked out of the program if they do not timely report an increase in income that would affect their eligibility.

211. Because Mrs. Ballinger does not currently have income, the Ballingers have a household income of roughly $2,517 per month and $30,206 per year—roughly 120% of FPL for a family of four ($25,100).

212. Mrs. Ballinger estimates that she and her family spend approximately $3,341 on various family living expenses each month, including rent, utilities, car payments, credit card payments, child care, food, school expenses, diapers, and other miscellaneous household items. This amount fluctuates from month to month.

213. Under the Kentucky HEALTH waiver, Mrs. Ballinger will be required to pay a monthly premium of up to 4% of household income for Medicaid coverage. The premiums are a significant concern. Her family's household income, with the exception of Mrs. Ballinger's

with the help of physicians, including her cardiologist and her primary care physician. Medicaid covers her treatment.

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220. Without Medicaid coverage, the cost of Mrs. Ballinger's medications alone would exceed $1,200 per month. With all of the medical crises their family has had, Mrs. Ballinger believes that the family would be homeless if not for Medicaid.

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226. Mr. Kobersmith and his wife signed up for Medicaid in 2014. Before enrolling in Kentucky's Medicaid program, Mr. Kobersmith paid for a high-deductible, catastrophic coverage health insurance plan. Since he essentially had to pay all health-related costs out-of-pocket under that plan, he regularly avoided seeking health care.

227. Their children were enrolled in KCHIP in 2011, but are now on Medicaid.

228. Medicaid has enabled the Kobersmith family to get preventive care services. Mr. and Mrs. Kobersmith both get an annual check-up and go to the dentist twice a year. Mr. Kobersmith sees a urologist several times a year and a chiropractor once a month for back issues. Mr. Kobersmith has two crowns and will need another tooth crowned. Mr. and Mrs. Kobersmith and their younger son all wear glasses. Their children get well-child check-ups and dental and vision check-ups. Having affordable health care through Medicaid has allowed Mr. and Mrs. Kobersmith to focus on home schooling and spending more quality time with their children.

229. Mr. Kobersmith will be subject to work requirements under the Kentucky HEALTH waiver. Currently, he works 20 hours a week steadily. If his income and working hours change, he could risk being locked out of Medicaid. The Kobersmiths are concerned that they could lose Medicaid coverage if they are unable to file required reports, including reports about changes in their total household income.

230. Under the Kentucky HEALTH waiver, the Kobersmiths will be required to pay a monthly premium of up to 4% of household income for Medicaid coverage. Because Mr. Kobersmith's income has decreased to $22,539, paying the premium will be harder. If he is unable to pay a premium within 60 days, the Kobersmiths will be locked out of coverage.

231. The only way that Kentucky HEALTH will pay for vision and dental services for the Kobersmiths is through their My Rewards account. If the Kobersmiths lose money from their

My Rewards account due to a non-emergency emergency room visit, they may be unable to obtain necessary vision and dental care.

232. Plaintiff William Bennett is a 47-year-old divorced man who lives in Lexington, Fayette County, Kentucky. He has a 21-year-old son, who splits his time between Mr. Bennett and his ex-wife. His son has ADHD and is unable to work. He also has two younger children, aged 13 and 14, who are in foster care. Mr. Bennett pays $250 each month in child support for all three children.

233. Mr. Bennett completed a one-year embalming school program at Mid-America College in Indiana. He also has a two-year degree in ministry from Liberty University in Lynchburg Virginia.

234. Mr. Bennett has two part-time jobs. He is the director and mortician at Hawkins-Taylor Funeral Home in Lexington, Kentucky. He is also a minister at West Bend Missionary Baptist Church in Clay City, Kentucky. His income varies widely from $100 to $1,000 per month, depending on the number of funerals. He volunteers five to eight hours per week at the New Life Day Center in Lexington.

235. Even if Mr. Bennett made an average of $500 per month, he would have an annual income of $6,000—49% of FPL for a family of one ($12,140).

236. Mr. Bennett estimates that his regular expenses are approximately $540 per month, including rent, food, student loans, and child support. In addition, he pays a $2 copayment for some of his medications.

237. Mr. Bennett has been covered through Kentucky's Medicaid program for about two years. He was able to enroll in Kentucky's Medicaid program with the help of an in-person assister. He is uncomfortable using a computer and prefers to work with someone face-to-face

significant concern for him. He does not believe he can manage a premium set at 4% of his income ($20). If Mr. Bennett is unable to pay the premiums for 60 days, he will be required to pay copayments for certain services, his My Rewards account will be suspended, and money will be taken from the account.

244. Mr. Bennett has a wisdom tooth that needs to be extracted. His My Rewards account is unlikely to be able to fund the dental and vision care he needs.

245. Plaintiff Shawna Nicole McComas is a 34-year-old woman who lives in Lexington, Fayette County, Kentucky with her husband and four children, ages 16, 13, 9, and 4. Mrs. McComas is currently enrolled in the Kentucky Medicaid program.

246. Mrs. McComas generally works 40 or more hours per week in a housekeeping position at the University of Kentucky Hospital. She makes roughly $1,200 every two weeks, or $2,400 per month, though this amount varies depending on how many hours she works and whether she has worked overtime hours. Her work hours vary from week to week and month to month.

247. Mrs. McComas's husband, Jeremiah, is unemployed. In September 2017, he secured a job at a restaurant, but he was only able to work one week. He suffers from post traumatic stress disorder, which makes it difficult for him to keep a job.

248. Mrs. McComas estimates that her household income is roughly $2,400 per month, or an annual household income of $28,800, which is 85% of FPL for a family of six ($33,740).

249. Mrs. McComas estimates that her family currently spends roughly $1,200 on various living expenses each month, including rent. This amount fluctuates from month to month.

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276. Under the Kentucky HEALTH waiver, Mr. and Mrs. Woods will be required to pay a monthly premium of up to 4% of their income for Medicaid coverage. If they do not pay their

283. Mrs. Withers has rheumatoid arthritis in her hands, shoulders, hips, and lower spine. She has been told that her disks are slowly shrinking. She is in constant pain when she is standing and has a lot of pain by the end of her work day. Mrs. Withers sees her doctor every two months and has had occupational therapy. She is supposed to be referred to pain management, but that has not happened yet. Mrs. Withers needs eyeglasses but cannot afford them. She and her husband both wear “cheaters.” Mrs. Withers has a broken tooth, and some of her teeth have fallen out. One tooth had to be pulled because of an abscess. Mr. Withers has consistent back pain and curvature of the spine and has to work through the pain.

284. Mrs. Withers and her family signed up for Medicaid in March 2014. She was helped by an in-person assister at the library. She can walk to the library. The welfare office is on the other side of Lexington, and it is difficult for her to get there without a car. When she has had to go there and could not make it, she has had her benefits cut off.

285. Mrs. Withers and her husband will be subject to the Kentucky HEALTH work requirements. Her husband will lose coverage unless he can get a job working 80 hours a month. They will also be subject to various reporting requirements under the Kentucky HEALTH waiver. Mrs. Withers could be locked out of coverage if she is unable to file the required reports, including reports about changes in income that could affect her eligibility for Medicaid.

286. Under the Kentucky HEALTH waiver, Mrs. Withers will be required to pay a monthly premium of up to 4% of household income for Medicaid coverage. It will be difficult for her to pay this every month. If she is not able to pay the premium, she will lose her Medicaid coverage for up to 6 months.

287. Mrs. Withers and her husband both need eyeglasses. Mrs. Withers is losing teeth. The My Rewards account will likely be inadequate to pay for Mr. and Mrs. Withers's vision and dental needs.

288. Plaintiff Katelyn Allen is a 27-year-old woman who lives in Salyersville, Magoffin County, Kentucky. She resides with her husband Gary and their eight- and six-year-old children. Her 18-year-old brother lives with them part-time.

289. Mrs. Allen recently started working at a teller at First Commonwealth Bank in Salyersville. She has previously worked for the State collecting samples for drug testing, in a rubber factory, at another drug lab, at a Dairy Queen, and at a hospital doing patient registration. She also breeds dogs once a year, which earns her about $150. Her gross income is approximately $1,668 per month. Mr. Allen works delivering pizza 20 hours a week and earns minimum wage plus tips. He also has worked in a drug testing lab. His gross income is $728 per month. At their current jobs, the Allens' annual income is $28,752, which is 115% of FPL for a family of four ($25,100).

290. Mrs. Allen estimates that the family's regular expenses are approximately $1,466 per month, including lot rent, utilities, internet, phones, car payment, car insurance, food, and miscellaneous household expenses. They receive SNAP benefits of $400 per month, but still have to pay an additional $200 to $250 per month on food.

291. Mrs. Allen has been covered through Kentucky's Medicaid program since her first pregnancy in 2008. Both of her children have been covered by Medicaid since birth. Mr. Allen enrolled in the Medicaid expansion in 2014. Mrs. Allen renews her coverage through in-office visit every 12 months.

292. Prior to having Medicaid, Mrs. Allen went without medical care due to cost and accumulated debt from obtaining care when absolutely necessary. Because of her current coverage, Mrs. Allen was able to seek emergency care after a car accident in January 2017. She is able to get annual check-ups. Mrs. Allen is healthy and does not have any ongoing medical

disease for 12 years. She has developed multiple chemical sensitivities. An allergy to many of the fillers in her prescriptions has led her to stop taking all prescription medications and to rely on naturopathic medications. The medications and supplements she is taking, including oregano oil, olive leaf, biotagen, vitamin C and vitamin D complex, are not covered by Medicaid.

302. Nevertheless, Medicaid is absolutely essential to Ms. Spears' health, as she has a primary care doctor and sometimes ends up in the emergency room due to anaphylactic shocks, seizures, or tachycardia episodes.

303.

307. Mr. Roode is self-employed as a classical musician and plays with various symphony orchestras, usually on a contract basis.

308. Because he is a self-employed contractor, Mr. Roode's income varies each month, and he often has to pay his own Medicare and Social Security taxes, in addition to income taxes. His average net income, after business expenses, is $1,000 to $1,200 per month. He generally works 20 to 30 hours per week, although this fluctuates. His wife is also self-employed. Her monthly adjusted gross income after business expenses is $500 or less per month. Mr. Roode's adjusted gross income is about $1,600 per month, which annually amounts to approximately $19,200—117% of FPL for a family of two (ofTJ 8.46 ,1(of)3(b(TJ w)s3 [(H)2(i)-14(x)-10(e)4(s)2(y)20B

313.

with groceries. She estimates she spends an additional $500 per month from her savings to cover monthly household expenses of approximately $1,050.

320. Ms. Penney's total income is $550 per month, and she has an annual household income of $6,600—54% of FPL for a single person ($12,140).

321. Ms. Penney has been covered through Kentucky's Medicaid program for about two years. She was able to enroll in Kentucky's Medicaid program online and by phone.

322. Ms. Penney has not worked since March 2016 due to depression and anxiety. She has had these conditions for 30 years. She also has sleep apnea and allergies.

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This is especially true now, because she is unemployed and has to rely on others to pay some of her expens

14 to 16 hours a day. Mr. Radford's grandmother was granted permanent custody of both Mr. Radford and his 16-year-old brother.

332.

locked out of Medicaid if he is unable to file required reports, including reports about changes in his total household income that would affect eligibility.

338.

357. In addition, Kentucky HEALTH's premium requirements and associated penalties are not an experimental, pilot, or demonstration project, nor are they likely to promote the objectives of the Medicaid Act.

358. In approving the Kentucky HEALTH premium requirements, the Secretary relied on factors which Congress has not intended him to consider, entirely failed to consider several important aspects of the problem, and offered an explanation for his decision that runs counter to the evidence.

359. The Secretary's decision to approve Kentucky HEALTH's premium requirements

363. Kentucky HEALTH's imposition of heightened cost sharing for non-emergency use of the emergency room is not an experimental, pilot, or demonstration project, nor is it likely to promote the objectives of the Medicaid Act.

364. In approving the Kentucky HEALTH heightened cost sharing for non-emergency use of the emergency room, the Secretary relied on factors which Congress has not intended him to consider, entirely failed to consider several important aspects of the problem, and offered an explanation for his decision that runs counter to the evidence.

365. The Secretary's decision to allow Kentucky HEALTH's imposition of heightened cost-sharing for non-emergency use of the emergency room violated the Medicaid Act; was arbitrary and capricious and an abuse of discretion; and ran counter to the evidence in the record.

COUNT FIVE: VIOLATION OF ADMINISTRATIVE PROCEDURE ACT
(LOCKOUT PENALTIES)

366. Plaintiffs repeat and incorporate herein by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

367. The Administrative Procedure Act provides that a reviewing court may "hold unlawful and set aside" agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"; "contrary to constitutional right, power, privilege, or immunity"; "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right"; or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

368. In approving Kentucky HEALTH's imposition of lockout penalties, the Secretary purported to waive the requirements of 42 U.S.C. § 1396a(a)(8), (a)(10), and (a)(52), pursuant to Section 1115.

369. Kentucky HEALTH's imposition of lockout penalties is not an experimental, pilot, or demonstration project, nor is it likely to promote the objectives of the Medicaid Act.

383. In approving the Kentucky HEALTH withdrawal of non-emergency medical transportation benefits from the expansion population, the Secretary relied on factors which

aspects of the problem, and offered an explanation for his decision that runs counter to the evidence.

390. The Secretary's decision to approve the Kentucky HEALTH program exceeded his

397. Under the Constitution, the President lacks the authority to rewrite congressional statutes or to direct federal officers or agencies to effectively amend the statutes he is constitutionally required to execute.

398.

5. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and

6. Grant such other and further relief as may be just and proper.

January 24, 2018

Respectfully submitted,

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