

2. Defendants are the United States of America, the United States Internal Revenue Service (“IRS” or “Service”), and David J. Kautter, in his official capacity as Acting Commissioner of the Internal Revenue Service.

3. The Service is a bureau of the Department of the Treasury, under the direction of the Acting Commissioner of Internal Revenue, David J. Kautter, and is responsible for collecting taxes, administering the Internal Revenue Code, and overseeing various aspects of the Affordable Care Act, including the laws challenged here. *See generally* 26 U.S.C. § 7803 *et. seq.*; 26 C.F.R. § 57.1 *et. seq.*; *see* IRS, Affordable Care Act Tax Provisions, <https://www.irs.gov/affordable-care-act/affordable-care-act-tax-provisions>.

4. Any injunctive relief requested herein must be imposed upon both the IRS and the Commissioner for Plaintiffs to obtain full relief.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this suit concerns the legality of the regulations that function to apply the HIPF in the Patient Protection and Affordable Care Act on Plaintiffs. The Court also has jurisdiction to compel the Commissioner of Internal Revenue to perform their duties pursuant to 28 U.S.C. § 1361.

6. Plaintiffs’ claims for declaratory and injunctive relief are authorized by 5 U.S.C. § 706, 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of the Court. Though Plaintiffs seek to restrain the collection of a portion of the 2018 HIPF, which is treated as an excise tax by the IRS, *South Carolina v. Regan*, 465 U.S. 367 (1984), ensures that the Anti-Injunction Act (“AIA”), 26 U.S.C. § 7421, does not preclude the Court from exercising jurisdiction over this matter because Plaintiffs have no adequate, alternative judicial remedy through which to contest the imposition of 2018 HIPF liability. As the Supreme Court recognized, “Congress intended the [AIA] to

bar a suit only in situations in which Congress had provided the aggrieved party with an alternative legal avenue by which to contest the legality of a particular tax.” *Regan*, 465 U.S. at 373. Moreover, “Congress did not intend the [AIA] to apply where an aggrieved party would be required to depend on the mere possibility of persuading a third party to assert [its] claims.” *Id.* at 381.

7. Venue is proper under 28 U.S.C. § 1391 because the United States, an agency, and an officer in his official capacity are Defendants; and a substantial part of the events giving rise to the Plaintiffs’ claims occurred in this District. Further, a plaintiff “resides” in this district, a “substantial part of the events [] giving rise to the claim occurred” in this district, and “no real property is involved.” *Id.* § 1391(e)(1).

III. BACKGROUND FACTS

A. The Affordable Care Act and Health Insurance Provider Fee.

8. In 2010, Congress enacted a sweeping new regulatory framework for the nation’s healthcare system by passing the Patient Protection and Affordable Care Act, Pub. L. No. 111–48, 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111–52, 124 Stat. 1029, collectively and commonly referred to as the “Affordable Care Act.” *See Patient Protection and Affordable Care Act*, Pub. L. No. 111–48, 124 Stat. 119–1025 (Mar. 23, 2010) (hereinafter, collectively, “the Affordable Care Act” or “the ACA”). President Obama signed the Patient Protection and Affordable Care Act (H.R. 3590, 111th Cong.), and the Health Care and Education Reconciliation Act (H.R. 4872, 111th Cong.) into law in March 2010.

9. Among other things, the ACA requires health insurance providers who are “covered entities” to pay a Health Insurance Providers Fee (HIPF) to the IRS. *See ACA* § 9010. Covered entities must pay a portion of the HIPF proportionate to each entity’s share of net premiums for the previous calendar year. *See id.*

10. The ACA specifically excludes “any governmental entity” (and thus Plaintiffs) from paying the HIPF. ACA § 9010(c)(2)(B) (2010); *see* 26 C.F.R. § 57.2(b)(2)(ii)(B).

B. Calculating and Assessing the Health Insurance Provider Fee.

11. Per the ACA, the IRS began collecting the HIPF in 2014. Each year, the IRS collects a predetermined amount. 26 C.F.R. § 57.4(a)(3).

12. For 2014, the IRS collected \$8,000,000,000 for the HIPF. In 2015, the IRS collected \$11,300,000,000 for the HIPF. In 2016, the IRS collected \$11,300,000,000 for the HIPF.

13. For 2017, Congress enacted, and the President signed into law a one-year moratorium on the HIPF. *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, Div. P, Title II, § 201, 129 Stat. 2242, 3037–38 (2015).

14. Another moratorium was enacted by Congress, and signed into law by the President, on the HIPF for 2019. *See* H.R. 195, Division D – Suspension of Certain Health-Related Taxes, § 4003 (Jan. 22, 2018).

15. However, there is no moratorium on the HIPF for 2018. For 2018, the IRS is charged with collecting \$14,300,000,000 for the HIPF. 26 C.F.R. § 57.4(a)(3).

16. The timelines associated with the 2018 HIPF are as follows:

- a. “Covered entities” filed Form 8963 with the IRS by Tax Day, April 17, 2018. *See* IRS, *Affordable Care Act Provision 9010 – Health Insurance Providers Fee*, <https://www.irs.gov/businesses/corporations/affordable-care-act-provision-9010>.
- b. The IRS mailed notices of its preliminary HIPF calculations on or before June 15, 2018. *See* *Health Ins. Providers Fee; Procedural & Admin. Guidance*, Notice 2013-76 (IRS ANN), 2013-51 I.R.B. 769, 2013 WL 6182798.

- c. Challenges to the preliminary fee calculations were remitted in writing to the IRS on or before July 16, 2018. *Id.*
- d. The IRS mailed notices of its final HIPF calculations on or before August 31, 2018. *Id.*
- e. HIPF payments are due on or before September 30, 2018. *Id.*; IRS, *Affordable Care Act Provision 9010 – Health Insurance Providers Fee*, <https://www.irs.gov/businesses/corporations/affordable-care-act-provision-9010>.

C. Medicaid, CHIP, and Managed Care.

17. Congress created Medicaid in 1965. *See* Social Security Amendments Act of 1965, Pub. L. 89–97, 79 Stat. 286 (1965). The Medicaid program provides healthcare to individuals with insufficient income and resources. *See generally* 42 U.S.C. §§ 1396–1396w. All Plaintiffs participate in Medicaid.

18. Congress created the Children’s Health Insurance Program (“CHIP”) in 1997. *See* Balanced Budget Act of 1997, Pub. L. 105–33, Title IV, Subtitle J, 111 Stat. 251 (Aug. 5, 1997). CHIP covers children in families who have too much income to qualify for Medicaid, but cannot afford to buy private insurance, and provides basic primary health care services to children, as well as other medically necessary services, including dental care. *See generally* 42 U.S.C. § 1397aa *et. seq.* All Plaintiffs participate in CHIP.

19. Plaintiffs provide a substantial portion of their Medicaid and CHIP services through managed care organizations (“MCO”). By so doing, Plaintiffs save hundreds of millions of dollars. *Texas v. United States*, 300 F. Supp. 3d 810, 823 (N.D. Tex. 2018).

20. In 1981, Congress determined that MCO capitation rates (insurance premiums) regarding Medicaid and CHIP must be “actuarially sound.” 42 U.S.C. § 1396b(m)(2)(A)(iii) (1981).

21. HHS interpreted the meaning of “actuarially sound” through the Certification Rule. *See* 42 C.F.R. § 438.6(c)(i)(A)–(C) (2002). The Certification Rule is now codified at 42 C.F.R. §§ 438.2–438.4.

D. Significance of Related Litigation.

22. The Parties to this matter are also involved in a related lawsuit. *See generally, Texas v. United States*, No. 7:15-cv-00151-O, 300 F. Supp. 3d 810 (N.D. Tex. 2018). The focus of that litigation regarded the Certification Rule, which the court declared unlawful. *Id.* at 850.

23. The Court’s prior ruling declared the Certification Rule unlawful because the Certification Rule delegated legislative power to a private entity—the Actuarial Standards Board (“ASB”)—to discern what did and did not qualify as actuarially sound. *See id.* at 844.

24. In response to this delegation of power, the ASB enacted Actuarial Standard of Practice Number 49 (“ASOP 49”). ACTUARIAL STANDARDS BOARD, *Actuarial Standard of Practice No. 49: Medicaid Managed Care Capitation Rate Development and Certification* (Mar. 2015), http://www.actuarialstandardsboard.org/wp-content/uploads/2015/03/asop049_179.pdf. ASOP 49 forbids actuaries from certifying any Medicaid contract with an MCO *unless* the contract *requires* the sovereign to pay the HIPF to the MCO. ASOP 49 § 3.2.12(d). In other words, ASOP 49 removed from actuaries any discretion as to how to treat the HIPF.

25. The Court’s ruling that the Certification Rule is unlawful removes ASOP 49 as a legal requirement and its mandate that the HIPF be added to a capitation rate for the rate to be actuarially sound under 42 U.S.C. § 1396b(m)(2)(A)(iii). Thus, in the wake of the Court’s ruling, actuaries once again have discretion to discern actuarial soundness using general principles of actuarial analysis and do not have their hands unnecessarily forced by ASOP 49.

26. Following the removal of ASOP 49 as a legal requirement, actuaries for Plaintiffs assessed the impact of the 2018 HIPF upon their respective jurisdictions' contracts with MCOs for Medicaid and CHIP. In sum, given the nature and size of the 2018 HIPF, when it comes to the 2018 HIPF liability, Congress's admonition of "actuarial sound[ness]," *see* 42 U.S.C. § 1396b(m)(2)(A)(iii), and the general principles of actuarial soundness, nonetheless require that the 2018 HIPF still be added to the negotiated capitation rates of Plaintiffs' Medicaid and CHIP contracts.

27. Therefore, the HIPF, which operates as a unique and significant federal premium tax, has no chance of masquerading as just another cost of doing business that is able to lose itself within an MCO's cost structure.

28. Specifically, Plaintiffs are collectively required to pay a portion of the \$14.3 billion to cover the HIPF added to their Medicaid and CHIP managed care contracts in direct contrast to their statutory exemption from the HIPF. Unlike negotiable terms in the managed care contracts, the HIPF must be included in the capitation rates Plaintiffs pay to the MCOs or they will lose their federal funding for Medicaid and CHIP.

29. In order to prevent the unlawful payment of hundreds of millions of dollars in taxpayer money, and to ensure that Plaintiffs are not left without a remedy, Plaintiffs file this lawsuit seeking declaratory and injunctive relief.

30. Because Congress is clear that Plaintiffs are exempt from HIPF liability, federal agencies and regulations may not operate or function in a manner that works to impose HIPF liability upon Plaintiffs.

E. Facts Regarding the 2018 HIPF and this Matter.

31. For the 2018 HIPF, the IRS is to assess and collect a total of \$14,300,000,000 from "covered entities." 26 C.F.R. § 57.4(a)(3). Plaintiffs do not quarrel with the amount that the IRS is to collect. Thus, this action seeks to neither change nor lower the HIPF amount that the IRS is to collect for fee year 2018 (based

on premiums from Jan. 1, 2017 through Dec. 31, 2017). As per Congress, the IRS should collect \$14,300,000,000 in 2018 for the HIPF.

32. However, the IRS unlawfully calculated the distribution of liability for the \$14,300,000,000 HIPF for 2018. It did this by using in its calculations and assessment of liability the premiums (capitation rates) of Plaintiffs' MCOs for Medicaid and CHIP.

33. The IRS regulations, and its current methods for calculating the ratio-based distribution of this predetermined liability, produce an unlawful result by levying it, in part, upon the MCOs that provide Medicaid and CHIP for Plaintiffs. This levy then requires Plaintiffs, who are exempt from HIPF liability, to reimburse the MCOs for the HIPF in order to meet Congress's standard of "actuarial sound[ness]" for Medicaid and CHIP contracts with MCOs. *See* 42 U.S.C. § 1396b(m)(2)(A)(iii).

F. Operative Law.

34. In the wake of the Court's ruling declaring the Certification Rule unlawful, *Texas*, 300 F. Supp. 3d 810, what remains is the plain text of Congress. According to Congress, federal monies for Medicaid and CHIP services administered by an MCO shall not flow to Plaintiffs unless payments made by Plaintiffs to MCOs under Medicaid and CHIP contracts "are made on an actuarially sound basis." *See* 42 U.S.C. § 1396b(m)(2)(A)(iii). In other words, notwithstanding the unlawfulness of the Certification Rule, and its delegation of legislative power to a private entity, the general Congressional requirement of "actuarial soundness" remains. *Id.*

35. But Congress subsequently admonished in the ACA that Plaintiffs are exempt from HIPF liability. *Texas*, 300 F. Supp. 3d at 821 (citing ACA § 9010(c)(2)(B) (2010); 26 C.F.R. § 57.2(b)(2)(ii)(B)).

36. Because Plaintiffs are exempt from HIPF liability, *Texas*, 300 F. Supp. 3d at 821 (citing ACA § 9010(c)(2)(B) (2010); 26 C.F.R. § 57.2(b)(2)(ii)(B)),

and their Medicaid and CHIP contracts with MCOs must be “actuarially sound,” 42 U.S.C. § 1396b(m)(2)(A)(iii), then the way to honor both of these Congressional requirements is for the IRS to *not* include Plaintiffs’ Medicaid and CHIP capitation rates in distributing the \$14,300,000,000 HIPF liability for 2018. In other words, if Plaintiffs’ Medicaid and CHIP MCO capitation rates are not included in the IRS’s calculations, then Plaintiffs maintain their exemption from HIPF liability and can establish “actuarially sound” contracts with their Medicaid and CHIP MCOs.

G. IRS Action and Inaction.

37. On or before April 17, 2018, all Medicaid and CHIP MCOs for Plaintiffs filed a completed Form 8963 with the IRS. As per IRS regulations, the MCOs reported *all* net premiums, even those that may be exempt from HIPF liability. 26 C.F.R. § 57.3. Per its regulations, the IRS assumes responsibility for excluding from its calculations premiums that should not result in HIPF liability. 26 C.F.R. § 57.4.

38. On or before June 15, 2018, all MCOs for Plaintiffs received a Letter 5066C, which is the IRS’s notice of its preliminary calculations of the 2018 HIPF liability. The IRS did not exclude from its calculations premiums for Medicaid and CHIP for Plaintiffs.

39. Following the notice of the IRS’s preliminary calculations of the 2018 HIPF liability, Plaintiffs wrote to the IRS to contest its calculations of the 2018 HIPF liability. Plaintiffs explained their exemption from HIPF liability in the ACA, provided a copy of the Court’s March 5, 2018 Order in the related litigation, and identified with specificity the premiums that should be removed from the IRS’s calculations because “Congress expressly exempted the states from paying the HIPF.” *Texas*, 300 F. Supp. 3d at 821. Regarding Texas, for example, the IRS erroneously included in its calculations and distribution of HIPF liability \$11,794,848,747.00 in Medicaid and CHIP premiums.

40. To date, Plaintiffs have received no substantive response to their protest.

41. Upon information and belief, some of Plaintiffs' MCOs also wrote to the IRS to contest its calculations of the 2018 HIPF liability. The IRS contested these corrections coming from the MCOs and demanded that they reinstate and refile their original Form 8963.

42. On or about August 31, 2018, Plaintiffs' Medicaid and CHIP MCOs began receiving from the IRS their final calculations for their 2018 HIPF liability via Letter 5067C. None of the final calculations for Plaintiffs' Medicaid and CHIP MCOs were adjusted to remove from consideration premiums for Medicaid and CHIP for Plaintiffs. Nor did the IRS provide any form of substantive response or explanation as to why none of the final calculations for Plaintiffs' Medicaid and CHIP MCOs were adjusted to remove from consideration premiums for Medicaid and CHIP for Plaintiffs.

43. Each Letter 5067C sent to Plaintiffs' Medicaid and CHIP MCOs demanded payment of the assessed HIPF liability no later than September 30, 2018.

H. IRS Action and Inaction Irreparably Injures Plaintiffs.

44. As long as Part 57, as currently constituted, remains in place, and without exempting Plaintiffs' MCOs' Medicaid and CHIP contracts, liability for the HIPF will be unlawfully imposed upon Plaintiffs through Medicaid and CHIP contracts that are subject to the actuarial soundness requirement of 42 U.S.C. § 1396b(m)(2)(A)(iii). For the HIPF liability for 2018, this is evidenced by the IRS's calculations, actions, and inactions as chronicled in the prior paragraphs.

45. Notwithstanding the unlawfulness of the Certification Rule, *see Texas*, 300 F. Supp. 3d 810 (Certification Rule is now codified at 42 C.F.R. §§ 438.2–438.4), the actuarial soundness requirement of 42 U.S.C. § 1396b(m)(2)(A)(iii) has caused Plaintiffs' actuaries, employing their best judgment and discretion, to conclude that

actuarial soundness in 2018 can only result from a full, dollar-for-dollar imposition upon Plaintiffs of any 2018 HIPF liability upon their Medicaid or CHIP MCOs.

46. Because Plaintiffs are required to pay the 2018 HIPF, dollar-for-dollar through their managed care contracts, all in contravention of Plaintiffs' exemption from HIPF liability under the ACA, Plaintiffs are entitled to a temporary restraining order and preliminary injunction against the IRS, the Acting Commissioner, and federal officials tasked with calculating and collecting the 2018 HIPF. Specifically, the IRS, the Acting Commissioner, and federal officials tasked with calculating and collecting the 2018 HIPF should be enjoined from collecting the 2018 HIPF for fee year 2018 from Plaintiffs' Medicaid and CHIP MCOs. This injunction will prevent Plaintiffs from being required to pay any assessed portion of the 2018 HIPF.

47. Without this injunction, Plaintiffs suffer the risk of irreparable injury and the imposition of an unwarranted liability without access to a judicial remedy because Plaintiffs are not taxpayers for purposes of seeking a refund, and Defendants refuse to make provision for Plaintiffs to seek a refund for unlawfully assessed 2018 HIPF liability. *See* 26 C.F.R. § 57.9.

48. As a result, immediate judicial and injunctive relief is the only legal avenue by which Plaintiffs can contest the legality of the liability for the 2018 HIPF that Defendants now seek to impose on Plaintiffs.

IV. CLAIMS FOR RELIEF

COUNT I

Declaratory and Injunctive Relief Under 5 U.S.C. § 706 or 28 U.S.C. §§ 2201 and 2202 that the IRS's Regulations Regarding the Distribution of HIPF Liability Violate the ACA.

49. Plaintiffs incorporate the allegations contained in paragraphs 1 through 48 as if fully set forth herein.

50. The Administrative Procedure Act requires this Court to hold unlawful and set aside any agency action that is "(A) arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)–(C).

51. The IRS promulgated regulations regarding the HIPF. *See* 26 C.F.R. Part 57. The regulations do not comply with the ACA by failing to properly account for and address Plaintiffs’ exemption from HIPF liability.

52. Among other things, in as much as section 57.4 addresses certain exemptions, it fails to properly address Plaintiffs’ exemption from the HIPF, or otherwise exempt premiums received by covered entities for Medicaid and CHIP services. *See* 26 C.F.R. § 57.4.

53. Section 57.6 does not provide for the correction of the errors complained of herein, or otherwise provide for Plaintiffs to participate in the error correction process. *See* 26 C.F.R. § 57.6.

54. Section 57.9 does not provide for Plaintiffs to be able to make a refund claim, even where Plaintiffs are, as they are here, saddled with the ultimate liability and responsibility for the HIPF. *See* 26 C.F.R. § 57.9.

55. These preceding paragraphs are some examples of how Part 57 is legally insufficient and not intended to be exhaustive. At bottom, Part 57 conflicts with the ACA.

COUNT II

Declaratory and Injunctive Relief Under 5 U.S.C. § 706 or 28 U.S.C. §§ 2201 and 2202 that the Application of the IRS’s Regulations to the Distribution of the 2018 HIPF Liability Violates the ACA by Unlawfully Functioning to Impose the Health Insurance Provider Fee on Plaintiffs.

56. Plaintiffs incorporate the allegations contained in paragraphs 1 through 55 as if fully set forth herein.

57. The Administrative Procedure Act requires this Court to hold unlawful and set aside any agency action that is “(A) arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)–(C).

58. The IRS promulgated regulations regarding the HIPF. *See* 26 C.F.R. Part 57. To the extent that the implementation or enforcement of any part or all of these regulations results in 2018 HIPF liability upon Plaintiffs, the application those regulations are arbitrary, capricious, an abuse of discretion, 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.

59. Additionally, to the extent that IRS regulations function or operate to impose the HIPF upon Plaintiffs, said imposition is an unconstitutional tax on Plaintiffs in violation of the Tenth Amendment of the United States Constitution and the doctrine of intergovernmental tax immunity.

COUNT III

Declaratory and Injunctive Relief Under 5 U.S.C. § 706 or 28 U.S.C. §§ 2201 and 2202 that Defendants Have Unlawfully Withheld and Unreasonably Delayed Agency Action to Remedy Both the Deficiencies in the IRS’s Regulations and the Application of the IRS’s Regulations to the Distribution of the 2018 HIPF Liability.

60. Plaintiffs incorporate the allegations contained in paragraphs 1 through 59 as if fully set forth herein.

61. The Administrative Procedure Act requires this Court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

62. As demonstrated herein, Defendants have not sought to remedy the deficiencies in its regulations regarding the HIPF. *See* 26 C.F.R. Part 57. This agency action, both unlawfully withheld and unreasonably delayed, is compelled by the text of the ACA and the clear inconsistencies of Part 57 with the ACA. This agency action is unreasonably delayed, especially in light of the related litigation and the Court’s ruling thereon on March 5, 2018. *See Texas*, 300 F. Supp. 3d 810.

63. Defendants have failed to make any effort to appropriately harmonize and implement Congress's actuarial soundness requirement, 42 U.S.C. § 1396b(m)(2)(A)(iii), with Plaintiffs' exemption from HIPF liability, ACA § 9010(c)(2)(B) (2010). "The justification for the *in pari materia* canon is that Congress should be assumed to have legislated with reference to the other provision." *Little v. Shell Expl. & Prod. Co.*, 690 F.3d 282, 289 (5th Cir. 2012). Reading the two provisions *in pari materia* demands that MCO premiums for Plaintiffs' Medicaid and CHIP services be exempted from Defendants' calculations and distribution of the HIPF liability such that Plaintiffs can maintain their exemption from HIPF liability while simultaneously engaging in Medicaid and CHIP contracts with MCOs that are actuarially sound.

64. Moreover, in the last several years, Defendants have issued multiple notices and decisions, as well as amended regulations, regarding the HIPF, none of which have sought to address, much less discuss, Plaintiffs' exemption from the HIPF. For example, in Health Insurance Providers Fee, 83 FR 8173-01 (Feb. 26, 2018), Defendants addressed the definition of a "covered entity" and exemptions from the HIPF, but failed to address Plaintiffs.

65. Defendants also failed to properly assess the distribution of the liability for the 2018 HIPF and exempt from its calculations MCO premiums for Medicaid and CHIP programs for Plaintiffs.

66. Defendants also failed to respond in any regard to the timely petitions of Plaintiffs to remedy their initial calculations regarding the distribution of the liability for the 2018 HIPF, and to properly exempt from its calculations MCO premiums for Medicaid and CHIP programs for Plaintiffs.

67. These preceding paragraphs are some examples of how Defendants unlawfully withheld or unreasonably delayed agency action in this matter and are not intended to be exhaustive.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that 26 C.F.R. Part 57 is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law to the extent that its provisions result in liability to Plaintiffs for the 2018 HIPF.
- B. Declare that Defendants have acted in an arbitrary and capricious manner, abused their discretion, or otherwise not acted in accordance with law by failing and refusing efforts to read *in pari materia* 42 U.S.C. § 1396b(m)(2)(A)(iii) and ACA § 9010(c)(2)(B) (2010).
- C. Declare that provisions of 26 C.F.R. Part 57 are in excess of statutory jurisdiction, authority, or limitations, or short of statutory right to the extent that they result in liability to Plaintiffs for the 2018 HIPF.
- D. Declare that provisions of 26 C.F.R. Part 57 are contrary to constitutional right, power, privilege, or immunity to the extent that its provisions result in liability to Plaintiffs for the 2018 HIPF.
- E. Direct Defendants, for agency action unlawfully withheld and unreasonably delayed, to immediately extend indefinitely the October 1, 2018 payment deadline for 2018 HIPF liability for Plaintiffs' Medicaid and CHIP MCOs in light of Defendants' intent to issue new, amended final fee calculations (Letters 5067C) for 2018 HIPF liability.
- F. Direct Defendants, for agency action unlawfully withheld and unreasonably delayed, to immediately notify Plaintiffs' Medicaid and CHIP MCOs of Defendants' intent to issue new, amended final fee calculations (Letters 5067C) for 2018 HIPF liability to Plaintiffs' Medicaid and CHIP MCOs, which properly exempt from its calculations MCO premiums for Medicaid and CHIP programs for Plaintiffs.

- G. Direct Defendants, for agency action unlawfully withheld and unreasonably delayed, to respond to Plaintiffs' timely protests regarding 2018 HIPF liability and confirm Plaintiffs' exemption from 2018 HIPF liability.
- H. Direct Defendants, for agency action unlawfully withheld and unreasonably delayed, to issue new, amended final fee calculations (Letters 5067C) for 2018 HIPF liability to Plaintiffs' Medicaid and CHIP MCOs which properly exempt from its calculations MCO premiums for Medicaid and CHIP programs for Plaintiffs.
- I. Enjoin Defendants from receiving or collecting, from Plaintiffs' Medicaid and CHIP MCOs, any and all payments, or portions of payments, for the 2018 HIPF that are based, in part or in whole, upon Defendants' calculations for 2018 HIPF liability involving premiums (capitation rates) for Plaintiffs' Medicaid and CHIP services until such time as new, amended final fee calculations (Letters 5067C) for 2018 HIPF liability to Plaintiffs' Medicaid and CHIP MCOs, which properly exempt from the calculations premiums (capitation rates) for Medicaid and CHIP programs for Plaintiffs, are remitted and received by Plaintiffs' Medicaid and CHIP MCOs.
- J. Direct that Defendants deposit into the registry of the Court, in accordance with Rule 67 of the Federal Rules of Civil Procedure and other applicable law, any monies received or collected from Plaintiffs' Medicaid and CHIP MCOs for 2018 HIPF liability that are based, in part or in whole, upon Defendants' calculations for 2018 HIPF liability involving premiums (capitation rates) for Plaintiffs' Medicaid and CHIP services.

- K. Enjoin Defendants from including Plaintiffs' Medicaid and CHIP MCO premiums in the calculation of HIPF liability during the pendency of the case.
- L. Enjoin Defendants from including Plaintiffs' Medicaid and CHIP MCO premiums in the calculation of HIPF liability.
- M. Disgorge Plaintiffs' 2018 HIPF payments, and any payments in future years during the pendency of this lawsuit, collected by Defendants.
- N. Grant such other and further relief as the Court may deem just, proper, and equitable.

Respectfully submitted this 20th day of September, 2018.

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