

# EXHIBIT A

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

Andrea Young, et al.,	)	
	)	
Plaintiff,	)	No. 1:19-cv-03526-JEB
	)	
	)	
v.	)	
	)	
	)	
Alex M. Azar, et el.,	)	
	)	
Defendants.	)	

**DECLARATION OF ROBERT GORDON IN SUPPORT OF THE INTERVENOR'S  
EXPEDITED MOTION FOR PARTIAL SUMMARY JUDGMENT**

1. My name is Robert Gordon. I am the Director of the Michigan Department of Health and Human Services (“MDHHS” or “the Department”). I am filing this declaration in support of the Intervenor’s Expedited Motion for Partial Summary Judgment on the issue of whether MDHHS is authorized to continue implementation of the community engagement requirements included in the Healthy Michigan Section 1115 demonstration project, in light of the D.C. Circuit’s decision in *Gresham v. Azar*, No. 19-5094.

2. The Healthy Michigan Plan (“HMP”) is a demonstration project approved under Section 1115 of the Social Security Act. It was first approved on December 30, 2013. On December 21, 2018, the Centers for Medicare & Medicaid Services (“CMS”) approved a five-year extension of HMP, for the period from January 1, 2019 to December 31, 2023.

3. The Plaintiffs in this action are challenging several features of the HMP, some of which were approved as part of the 2018 extension, and some of which have been part of HMP since its inception.

4. One challenged feature is the “community engagement requirements,” described in paragraphs 28-34 of the Special Terms and Conditions (“STCs”) for the HMP Extension.

5. MDHHS was required to seek a waiver to implement the community engagement requirements by state law. Mich. Pub. Act No. 208, § 107b (June 22, 2018). The law is specific as to the number of hours of activity to be required, the reporting deadlines, the exemptions, and qualifying activities. *Id.* § 107b(1)(a)-(f). State law also requires MDHHS to “implement” the community engagement requirements “after the waiver is approved” but “no later than January 1, 2020.” § 107b(2). Finally, the law provides that “[t]he department shall not withdraw, terminate, or amend any waiver submitted under this section without the express approval of the legislature in the form of a bill enacted by law.” § 107b(11).

6. As set forth in paragraph 24 of the STCs for the HMP extension, “[b]eginning no sooner than January 1, 2020, the state will implement a community engagement requirement as a condition of eligibility for adult beneficiaries in HMP who are not otherwise subject to an exemption[.]”

7. As further described in STCs, the community engagement program requires certain adult enrollees, not otherwise exempt, to demonstrate that they have been employed or otherwise engaged in specified community activities for 80 hours for at least 9 out of 12 months. STC ¶ 31 and 32.

8. The program went into effect on January 1, 2020, which means that individuals who do not meet the 80-hour requirement in January, February, or March of this year will be subject to disenrollment and must serve a penalty period of at least one month.

9. Non-exempt individuals must report qualifying activities by the last day of the following month. Thus, by April 30, 2020, MDHHS will be aware of those enrollees who have

not demonstrated compliance with the 80-hour monthly requirement for three months, and will need to take steps to notify them that they will be disenrolled. Disenrollment will be as of the end of May 2020.

10. On March 10, 2020, MDHHS plans to send a new notice to all individuals who did not comply by the end of February with the reporting requirements for January. The notice will state that these individuals will lose their Medicaid coverage if they do not report for February and March. The notices are designed to cause alarm and motivate action. Based on current data, subject to revision, more than 80,000 people will receive these notices solely for noncompliance in the month of January.

11. Despite our ongoing efforts to communicate with beneficiaries, and based on experience with similar requirements in Arkansas, MDHHS estimates that more than 100,000 individuals will lose Medicaid coverage for at least one month in 2020 for failure to comply with the community engagement requirements.

12. MDHHS is currently spending substantial time, effort, and money so that Medicaid beneficiaries report their work hours and do not lose coverage. For example, MDHHS has initiated an ongoing reminder campaign with regular text messaging and outbound calls to beneficiaries; has initiated repeated mailings to hundreds of thousands of beneficiaries; and continues to operate a call center with full time customer service representatives whose sole responsibility is to assist individuals in complying with the community engagement requirements and meeting their reporting requirements. MDHHS is also maintaining an online reporting portal, with system enhancements that are continually developed and deployed. The Department is also engaged in ongoing efforts to secure rapid feedback on communications from beneficiaries and community

partners. These efforts significantly constrain the Department's ability to address other needs of the Medicaid program and its beneficiaries.

13. MDHHS will abide by any decision of this Court with respect to whether the Secretary's approval of the community engagement requirements was valid and will not proceed with implementation of community engagements if approval of that feature was invalid, unless such a decision is later overturned.

14. MDHHS does not believe invalidation of the Secretary's approval of the community engagement requirements should affect health coverage under the HMP, and is concerned that invalidation of the approval of the extension as a whole threatens the coverage mechanism for over 650,000 Michigan Medicaid enrollees.

I make this declaration under penalty of perjury.



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Robert Gordon, Director  
Michigan Department of Health and Human Services

February 24, 2020