

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MAINE COMMUNITY HEALTH)	
OPTIONS)	
)	
Plaintiff,)	
)	
v.)	No. 16-967C
)	Judge Merow
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

THE UNITED STATES' MOTION TO STAY

The United States of America (“United States”) respectfully moves the Court to stay this action pending disposition of several earlier-filed cases raising identical subject matter. Plaintiff Maine Community Health Options (“CHO”) opposes the requested stay.¹

I. Background

On August 9, 2016, CHO filed this action seeking approximately \$22 million in money damages under Section 1342 of the Patient Protection and Affordable Care Act (“ACA”), 42 U.S.C. § 18062, and 45 C.F.R. § 153.510(b). Compl. ¶ 17 [Dkt. No. 1]. On September 14, 2016, at the United States’ request, the Court granted an extension of time for the United States to respond to the Complaint [Dkt. No. 7]. The United States’ response is currently due on Monday, November 28, 2016.

Ten other cases in this Court are currently seeking relief under identical and related legal theories to those asserted by CHO, including three cases filed last week. *See Health Republic Ins.*

¹ Counsel for CHO has also informed the United States that CHO intends to move for summary judgment shortly.

Co. v. United States, No. 16-259C (Sweeney, J.); *First Priority Life Insurance Co. v. United States*, No. 16-587 (Wolski, J.); *Blue Cross and Blue Shield of North Carolina v. United States*, No. 16-651C (Griggsby, J.); *Moda Health Plan, Inc. v. United States*, No. 16-649C (Wheeler, J.); *Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 16-744C (Lettow, J.); *New Mexico Health Connections v. United States*, No. 16-1199C (Bruggink, J.); *BCBSM, Inc. v. United States*, No. 16-1253C (Wheeler, J.); *Blue Cross of Idaho Health Service, Inc. v. United States*, No. 16-1384C (Lettow, J.); *Minuteman Health Inc. v. United States*, No. 16-1418 (Griggsby, J.); *Montana Health CO-OP v. United States*, No. 16-1427 (Wolski, J.). The cases involve several technically-detailed provisions of the ACA and raise significant jurisdictional issues as well as complex issues of appropriations law. *See, e.g.*, Compl. ¶¶ 4, 5, 7, 11, 33-37. The undersigned counsel represents the United States in each of these cases, which implicate a total of \$2.5 billion in federal funding for the 2014 benefit year and potentially comparable amounts for the 2015 and 2016 benefit years.²

Dispositive motions have been filed and are pending in five of the earlier-filed cases referenced above. In *Health Republic*, dispositive motions have been fully-briefed and a motion to certify a class has been filed. In *Land of Lincoln*, briefing is nearly complete on cross-motions on an administrative record and a hearing on those motions is presently scheduled for November 7. Dispositive motions, including motions to dismiss and at least one cross-motion for summary judgment, also have been filed in *Moda*, *First Priority Life Insurance*, and *Blue Cross Blue Shield of North Carolina*. Several *amicus* filings also have been submitted.

The activity in these five first-filed cases has consumed substantial resources of the United States since their filing earlier this year. The importance and complexity of the issues and the amount of public funds at stake would necessitate a similar dedication of resources to this case.

² The undersigned counsel also represents the United States in *Gerhart v. Health & Human Servs.*, No. 16-cv-00151 (S.D. Iowa), a case raising overlapping issues.

II. A Stay Is Proper and Will Conserve Substantial Resources

The United States proposes to stay further activity in this case pending resolution of the presently pending dispositive motions in the earlier-filed cases. The outcome of those motions, while not binding on this Court, will potentially clarify and refine the issues in this case. Indeed, because the legal issue presented by this case is identical to the issues raised in the first-filed cases, the further development of those cases (whether in this Court or on appeal) is likely to inform or even determine CHO's ultimate ability to recover. A stay therefore will conserve judicial resources and the resources of both parties by avoiding briefing of issues already pending before five different judges of this Court. The United States proposes that, if a stay is granted, the parties will submit status reports every 45 days (or at another appropriate interval acceptable to the Court) in order to closely monitor the continued utility of the stay. New Mexico Health Connections and Minuteman Health have each agreed to a stay, and Judge Bruggink issued an order staying *New Mexico Health Connections* last week.

Like New Mexico Health Connections and Minuteman Health, CHO is a Consumer Operated and Oriented Plan ("CO-OP") issuer established as a member-oriented non-profit under section 1322 of the ACA. Compl. ¶¶ 4, 23. The United States understands that CHO opposes the requested stay primarily because it purportedly lacks significant reserves and needs the money it seeks through its claims for its business operations and continued solvency. The United States is sensitive to these circumstances. However, because of the importance of the issues presented in these cases and the likelihood that each party will consider its full rights to judicial review, the United States believes that the requested stay is not likely to materially affect the timing of any recovery that may be obtained by CHO. By contrast, a stay will reduce the necessity for CHO, the Court, and the United States to expend substantial resources on issues ably being handled in other

cases. In addition, the Court and the parties will benefit from the amplification of the issues through the disposition of the earlier filed cases. For these reasons, the United States requests that the Court grant this motion and stay this case pending further development of the first-filed cases referenced above.

In addition, the United States notes that its response to the Complaint is presently due on November 28, the day after the Thanksgiving holiday weekend. November 28 is also the deadline for the United States to oppose a cross-motion for summary judgment filed this week in the *Moda* case. In light of the Thanksgiving holiday and the significant resources that would need to be dedicated to this matter, if the Court does not grant the requested stay, the United States respectfully requests that the Court further extend the United States' time to respond to the Complaint until January 15, 2017.

Respectfully submitted,

Dated: October 31, 2016

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
Civil Division

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Serena M. Orloff
SERENA M. ORLOFF
CHARLES E. CANTER
TERRANCE A. MEBANE
FRANCES M. MCLAUGHLIN
U.S. Department of Justice
Civil Division, Commercial Litigation Branch
Phone (202) 616-3619
Fax (202) 514-9163
Serena.M.Orloff@usdoj.gov
Attorneys for the United States of America

CERTIFICATE OF SERVICE

I certify that on October 31, 2016, a copy of the attached Motion to Stay was served via the Court's CM/ECF system on Plaintiff's counsel, Stephen McBrady.

/s/ Serena Orloff

Serena M. Orloff
U.S. Department of Justice