

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE)
COMPANY,)
)
Plaintiff,) No. 16-259C
)
v.) Judge Sweeney
)
UNITED STATES OF AMERICA,)
)
Defendant.)

THE UNITED STATES' ANSWER

The United States hereby submit its Answer to the Complaint, Docket No. 1.

The allegations contained in Plaintiff's unnumbered, introductory paragraph constitute conclusions of law and characterizations of the Complaint, to which no answer is required. The United States responds to the numbered paragraphs of the Complaint as follows:

1. Admits that the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, were enacted in March 2010. The remainder of this paragraph contains characterizations of the cited statutes, to which no response is required.
2. The first, second and third sentences of this paragraph contain only conclusions of law and characterizations of the ACA, to which no response is required. The United States lacks information or knowledge sufficient to admit or deny the allegations in the fourth sentence.
3. This paragraph contains conclusions of law and characterizations of the ACA, to which no response is required.

4. The first two sentences of this paragraph contain only conclusions of law and characterizations of the ACA, to which no response is required. The third sentence of this paragraph contains only a characterization of this action, to which no response is required.

5. This paragraph contains conclusions of law and characterizations of the ACA, to which no response is required. Footnote 1 contains only a characterization of the Complaint, to which no response is required.

6. The first sentence contains only characterizations of the ACA, to which no response is required. The United States lacks information or knowledge sufficient to admit or deny the allegations in the second sentence. The third sentence contains only characterizations of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny the allegations. The fourth sentence contains only characterizations of the ACA, to which no response is required. The fifth sentence contains only characterizations of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny the allegations. The United States lacks information or knowledge sufficient to admit or deny the allegations in the sixth sentence.

7. This paragraph contains conclusions of law and characterizations of the ACA and an implementing regulation, to which no response is required.

8. This paragraph contains conclusions of law and characterizations of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny the allegations.

9. This paragraph contains conclusions of law and characterizations of the Consolidated and Further Continuing Appropriations Act of 2015 (Pub. L. No. 113-235) (“2015

Spending Bill") and the Consolidated Appropriations Act, 2016 (Pub. L. No. 114-113) ("2016 Spending Bill"), to which no response is required.

10. The first sentence of this paragraph contains only a conclusion of law, to which no response is required. The United States lacks information or knowledge sufficient to admit or deny the allegations in the second sentence. The United States admits, in response to the third sentence, that, on October 1, 2015, HHS announced that collections under the program for the 2014 benefit year were expected to total \$362 million, while payments calculated totaled \$2.87 billion. The fourth sentence of this paragraph contains only a characterization of the 2015 Spending Bill, to which no response is required. The United States admits, in response to the fifth sentence, that on November 18, 2016, HHS announced issuer-level risk corridors payments and charges calculated for the 2015 benefit year (in the aggregate, collections/charges for the 2015 benefit year were expected to total approximately \$95 million while payments calculated totaled approximately \$5.9 billion); otherwise, this sentence contains only a characterization of the 2016 Spending Bill, to which no response is required.

11. The United States lacks information or knowledge sufficient to admit or deny the allegations in this paragraph; otherwise, this paragraph contains conclusions of law, to which no response is required.

12. The United States lacks information or knowledge sufficient to admit or deny the allegations in this paragraph.

13. The first and fifth sentences of this paragraph contain only a characterization of this action, to which no response is required. The second and third sentences of this paragraph contain only characterizations of the ACA, to which no response is required. The fourth sentence of this paragraph contains only conclusions of law, to which no response is required.

14. This paragraph contains only conclusions of law, to which no response is required.

15. This paragraph contains only conclusions of law, to which no response is required.

16. Admits the first two sentences of this paragraph. As to the third sentence of this paragraph, admits that Plaintiff provided health insurance to its insureds until December 31, 2015; the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegation as to when Plaintiff learned the Government would pay 12.6 percent of the amounts calculated for 2014 benefit year risk corridors payments. As to the fourth sentence, admits that the Centers for Medicare & Medicaid Services ("CMS") calculated risk corridors payments for Plaintiff for benefit year 2014 at \$7,884,886.15. As to the fifth sentence, admits that CMS calculated risk corridors payments for Plaintiff for benefit year 2015 at \$13,000,493.30. As to the sixth sentence of this paragraph, admits that CMS published the calculated risk corridors payments for all issuers for the 2015 benefit year on November 18, 2016, *available at:*

www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2015-RC-Issuer-level-Report-11-18-16-FINAL-v2.pdf.

17. Admits that, on November 18, 2016, HHS announced that it would pay additional risk corridors amounts toward 2014 benefit year payment requests based on collections for benefit year 2015; otherwise, this paragraph contains conclusions of law, characterizations of the ACA and unspecified "CMS rules," to which no response is required.

18. Admits that risk corridors collections from issuers for the 2015 benefit year were less than the amounts calculated for risk corridors payments to issuers for the 2015 benefit year;

otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

19. As to the first sentence of this paragraph, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. As to the second sentence of this paragraph, admits that Plaintiff did not offer qualified health plans on any exchange for benefit year 2016; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. Admits Plaintiff has named the United States as Defendant; otherwise, the third sentence of this paragraph contains only a characterization of Plaintiff's lawsuit, to which no response is required.

20. This paragraph contains only characterizations of the ACA, to which no response is required.

21. This paragraph contains conclusions of law and characterizations of the ACA, the best evidence of which is section 1342, and to which no response is required.

22. Admits, for the first sentence, that HHS promulgated rules and regulations implementing the risk corridors program, including regulations codified in the Code of Federal Regulations. The second and third sentences of this paragraph contain only characterizations of HHS regulations, the best evidence of which are 45 C.F.R. §§ 153.500 and 153.510, and to which no response is required.

23. This paragraph contains conclusions of law and a characterization of HHS regulations, the best evidence of which are 45 C.F.R. §§ 153.510 and 153.530, and to which no response is required.

24. The first and second sentences of this paragraph contain conclusions of law and characterizations of the ACA and HHS regulations, the best evidence of which are section 1342

of the ACA and 45 C.F.R. § 153.510, and to which no response is required. The third sentence of this paragraph contains only a characterization of a chart alleged to come from the American Academy of Actuaries, the best evidence of which is the chart itself, and to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

25. This paragraph contains only a quotation from an alleged uncited statement of an unnamed "set of actuaries," to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

26. The first three sentences of this paragraph contain only characterizations of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. The United States lacks information or knowledge sufficient to admit or deny the allegations in the fourth sentence of this paragraph.

27. The first, second, third, fourth, sixth, and seventh sentences of this paragraph contain only conclusions of law or characterizations of the ACA, to which no response is required. The United States lacks information or knowledge sufficient to admit or deny the allegations in the fifth sentence of this paragraph.

28. Admits, for the first sentence, that certain insurers offered qualified health plans on the ACA Exchanges; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. Admits, for the second sentence, that the first benefit year for the ACA exchanges was 2014. The third and fourth sentences of this paragraph contain only characterizations of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

29. The United States lacks information or knowledge sufficient to admit or deny the allegations in the first sentence of this paragraph. Admits, for the second sentence, that the Supreme Court of the United States has issued rulings involving the ACA in at least two cases; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. The United States lacks information or knowledge sufficient to admit or deny the allegations in the third sentence of this paragraph. Admits, for the fourth sentence, that the risk corridors program created under section 1342 of the ACA was "based on" the Medicare Part D program enacted under President George W. Bush; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. The fifth and sixth sentences of this paragraph contain only conclusions of law and a characterization of the ACA, to which no response is required.

30. The first sentence of this paragraph contains only conclusions of law and a characterization of the ACA, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. As to the second sentence of this paragraph, admits that CMS stated in early 2014 that it would implement the risk corridors program in a "budget-neutral manner" and that those statements are the best evidence of their contents; otherwise, this sentence contains only conclusions of law and a characterization of the ACA, to which no response is required.

31. This paragraph contains only characterizations of agency rulemaking documents, the best evidence of which are the HHS Notice of Benefit and Payment Parameters for 2015, Final Rule, 79 Fed. Reg. 13,744 (Mar. 11, 2014), and Exchange and Insurance Market Standards for 2015 and Beyond, Proposed Rule, 79 Fed. Reg. 15,808 (Mar. 21, 2014), and to which no response is required.

32. This paragraph contains only characterizations of an agency document dated April 11, 2014, the best evidence of which is the document itself, *available at*: <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf>, and to which no response is required.

33. This paragraph contains only a characterization of agency documents, the best evidence of which are the documents themselves, and to which no response is required; otherwise, this paragraph contains only conclusions of law and a characterization of the ACA, to which no response is required.

34. As to the first sentence of this paragraph, admits that in 2014 there was debate over congressional appropriations and spending; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. The second sentence of this paragraph contains a conclusion of law, to which no response is required. The remaining sentences of this paragraph contain only characterizations of the cited statutory provision and regulation, the best evidence of which are section 1342 of the ACA and 45 C.F.R. § 153.510, and to which no response is required.

35. This paragraph contains only a characterization of a congressional spending law, the best evidence of which is the 2015 Spending Bill, and to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

36. As to the first sentence of this paragraph, admits that the 2015 Spending Bill was enacted on December 16, 2014, insurers generally began providing insurance for benefit year 2014 on January 1, 2014, and insurers generally submitted rates for benefit year 2014 to state regulators for regulatory approval in 2013. As to the second sentence, admits that certain

insurers continued to provide insurance on the exchanges after December 16, 2014; otherwise, this sentence contains only conclusions of law and a characterization of the ACA, to which no response is required; moreover, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

37. This paragraph contains only a characterization of a congressional spending law, the best evidence of which is the 2016 Spending Bill, and to which no response is required.

38. This paragraph contains only a characterization of a congressional spending law, the best evidence of which is the 2016 Spending Bill, and to which no response is required. Footnote 2 contains only a characterization of the Complaint, to which no response is required.

39. This paragraph contains only a characterization of two congressional spending laws, the best evidence of which is the 2015 Spending Bill and the 2016 Spending Bill, and to which no response is required.

40. As to the first sentence, admits that, consistent with 45 C.F.R. § 153.530(d), Plaintiff and certain other insurers submitted the information required by 45 C.F.R. § 153.530 (a)-(c) for benefit year 2014 by July 31, 2015. As to the second sentence, admits that CMS published the calculated risk corridors charges and payments for all issuers for the 2014 benefit year on November 19, 2015, *available at: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RC-Issuer-level-Report.pdf>.*

41. The United States lacks information or knowledge sufficient to admit or deny the allegations in the first sentence of this paragraph; otherwise, this sentence contains only conclusions of law and a characterization of the ACA, to which no response is required. As to the second sentence, admits that, on October 1, 2015, HHS announced that collections under the program for the 2014 benefit year were expected to total \$362 million, while payments

calculated totaled \$2.87 billion. The third and fourth sentences of this paragraph contain only a characterization of a CMS statement, the best evidence of which is the October 1, 2015 statement found at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/RiskCorridorsPaymentProrationRatefor2014.pdf>, and to which no response is required.

42. Admits that CMS announced on October 1, 2015 that it would make risk corridors payments prorated at approximately 12.6 percent, assuming full collection of charges from issuers. Further admits that several issuers of QHPs, including some consumer oriented and oriented plans (“CO-OP”), went out of business after October 1, 2015. Otherwise, this paragraph contains conclusions of law to which no response is required. Moreover, the United States lacks information or knowledge sufficient to admit or deny the remainder of Plaintiff’s allegations in this paragraph.

43. The first three sentences of this paragraph contain a characterization of an unidentified document allegedly issued by the National Association of Insurance Commissioners, to which no response is required; otherwise, those sentences contain conclusions of law to which no response is required; moreover, the United States lacks information or knowledge sufficient to admit or deny the remainder of Plaintiff’s allegations in these sentences. The United States lacks information or knowledge sufficient to admit or deny the allegations in the fourth and fifth sentences of this paragraph.

44. The first sentence of this paragraph contains conclusions of law, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny the remainder of Plaintiff’s allegations in this sentence. As to the second and third sentences of this paragraph, admits that Plaintiff offered QHPs with bronze, silver, gold, and

platinum-level coverage, and that the plans it offered were not the lowest priced plans of the ten issuers offering QHPs on the Oregon insurance exchange for the 2014 benefit year; otherwise, the United States lacks information or knowledge sufficient to admit or deny the remainder of Plaintiff's allegations in these sentences. As to the fourth sentence of this paragraph, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegation.

45. As to the first sentence of this paragraph, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegation. The second sentence of this paragraph contains conclusions of law, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations. As to the third sentence of this paragraph, admits that Plaintiff did not participate in an exchange for the 2016 benefit year; the United States lacks information or knowledge sufficient to admit or deny Plaintiff's other allegations. The fourth sentence contains characterizations of the ACA, to which no response is required.

46. The first sentence of this paragraph contains only conclusions of law and a characterization of the 2016 Spending Bill, which is the best evidence of its contents, and to which no response is required. As to the second sentence of this paragraph, admits that CMS has indicated it will operate the risk corridors program in a budget-neutral manner over the program's three years and use risk corridors charges collected for the 2015 benefit year to pay issuers risk corridors payments calculated but unpaid for the 2014 benefit year.

47. The United States admits, in response to the first sentence, that on November 18, 2016, HHS announced issuer-level risk corridors payments and charges calculated for the 2015 benefit year (in the aggregate, collections/charges for the 2015 benefit year were expected to total approximately \$95 million while payments calculated totaled approximately \$5.9 billion);

otherwise, the sentence contains conclusions of law, to which no response is required. As to the second, third, and fourth sentences of this paragraph, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

48. This paragraph contains only a characterization of a publication from Standard & Poor's Financial Services, the best evidence of which is the publication itself: Deep Banerjee, Caitlin Weir, and James Sung, "The ACA Risk Corridor Will Not Stabilize the U.S. Health Insurance Marketplace in 2015," *RatingsDirect*, Standard & Poor's Financial Services, November 5, 2015, 2–3, and to which no response is required. Footnote 3 to this paragraph contains only a characterization of the ACA, to which no response is required.

49. The first sentence of this paragraph contains conclusions of law and a characterization of this action, to which no response is required. Admits, for the second sentence, that, on November 18, 2016, HHS announced issuer-level risk corridors payments and charges calculated for the 2015 benefit year (in the aggregate, collections/charges for the 2015 benefit year were expected to total approximately \$95 million while payments calculated totaled approximately \$5.9 billion); otherwise, the sentence contains conclusions of law, to which no response is required. Admits, for the third sentence, that, in November 2016, HHS announced that the total amount of risk corridors collections from insurers for the 2015 benefit year would be applied to outstanding payment requests for the 2014 benefit year, rather than to the total amount requested for the 2015 benefit year; otherwise, the sentence contains conclusions of law, to which no response is required. As to the fourth sentence of this paragraph, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

50. The United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations in the first sentence of this paragraph. The second sentence of this

paragraph contains conclusions of law and a characterization of Plaintiff's lawsuit, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

51. This paragraph contains only a characterization of Plaintiff's lawsuit, to which no response is required.

52. This paragraph contains only conclusions of law, to which no response is required.

53. This paragraph contains only conclusions of law, to which no response is required.

54. This paragraph contains only conclusions of law, to which no response is required.

55. This paragraph contains conclusions of law, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

56. This paragraph contains only conclusions of law, to which no response is required.

57. This paragraph contains only conclusions of law, to which no response is required.

58. This paragraph contains conclusions of law, to which no response is required; otherwise, the United States lacks information or knowledge sufficient to admit or deny Plaintiff's allegations.

59. Defendant incorporates by reference the responses to Paragraphs 1-57 [sic] as if fully set forth herein.

60. This paragraph contains conclusions of law and characterizations of the ACA and HHS regulations, the best evidence of which are section 1342 of the ACA and 45 C.F.R. § 153.510, and to which no response is required.

61. Admits that Plaintiff was a QHP for the 2014 and 2015 benefit years; otherwise, this paragraph contains conclusions of law and characterizations of the ACA and HHS regulations, the best evidence of which are section 1342 of the ACA and 45 C.F.R. § 153.510, and to which no response is required.

62. Denies.

63. Denies.

The remainder of Plaintiff's Complaint is a prayer for relief sought from the Court, to which no response is required.

DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff fails to credit payments made.

Defendant denies that Plaintiff is entitled to the relief requested in the Complaint or to any relief whatsoever.

February 27, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Charles E. Canter
CHARLES E. CANTER
TERRANCE A. MEBANE
L. MISHA PREHEIM
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 875 Ben Franklin Station
Washington, DC 20044-0875
P: 202-616-2236
F: 202-307-0494
charles.canter@usdoj.gov

Attorneys for the United States of America

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 27, 2017, I electronically filed the foregoing THE UNITED STATES' ANSWER with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Charles E. Canter
CHARLES E. CANTER
Commercial Litigation Branch
Civil Division
United States Department of Justice