

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH NET, INC.,)	
)	
Plaintiff,)	
)	No. 16-1722C
v.)	
)	Judge Ryan T. Holte
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

JOINT STATUS REPORT

Pursuant to this Court's May 12, 2020 Order (ECF No. 26) directing the parties to submit a joint status report proposing a schedule for future proceedings in this case, the parties hereby submit this status report with the parties' respective positions.

Plaintiff's Position

Plaintiff maintains its position that the Supreme Court's decision in *Maine Community Health Options et al. v. United States*, No. 18-1023 requires a judgment in favor of Plaintiff in this case, without the need for further proceeding or delay. Plaintiff filed a new Amended Complaint, along with an unopposed motion for leave to file, on May 27, 2020 (ECF No. 27). In the Amended Complaint, Plaintiffs¹ seek \$436,601,425.94 in money damages for benefit years 2014, 2015, and 2016 to which Plaintiffs are entitled under Section 1342 of the ACA.

For these reasons, Plaintiff respectfully request that the Court enter judgment in favor of Plaintiff in the amount of \$436,601,425.94.

¹ The Amended Complaint includes two additional related entities as Plaintiffs—Celtic Group, Inc. and Wellcare Health Plans, Inc.

The United States' Position

Since the Supreme Court issued its decision on April 27, 2020, in *Maine Community Health Options v. United States*, No. 18-1023, 590 U.S. --- (2020), the United States has been reviewing that decision and assessing the next steps in all the risk corridors cases affected by that decision. This review and assessment, both internally at the Department of Justice, and in consultation with the Department of Health and Human Services (“HHS”), is ongoing. We ask the Court to permit the United States 31 additional days, until June 29, 2020, to adopt a proposed process for the efficient and appropriate resolution of this, and every other risk corridors case before the Court.

As the Court is likely aware, risk corridors was a nationwide program involving every health insurance issuer participating on a Patient Protection and Affordable Care Act (“ACA”) Exchange during benefit years 2014, 2015, or 2016. Some of those issuers are represented in the more than 64 individual cases pending before this Court; others are represented in this Court through either of two class actions; and still other issuers have not commenced litigation. The United States believes it would be most appropriate and fair to resolve all issuers’ potential entitlement under section 1342.

The United States has been considering and addressing many complicated, and often interrelated, issues such as the exact amounts paid to issuers under the risk corridors program and any amounts potentially owed to the United States by issuers under other ACA programs. The United States has also been conducting essential due diligence on whether it would be appropriate to raise defenses not previously considered and whether to answer and counterclaim.

In determining the precise amount of risk corridors payments paid to and remaining for each health insurance issuer before this Court, HHS staff requires additional time to review the

record of payments and charges and the history of distributions made to ensure they are complete and accurate. We have compiled a master list of all named plaintiffs in the risk corridors cases and provided that list to HHS to enable the agency to identify and verify issuers who participated on an Exchange in 2014, 2015 and/or 2016 and determine the current amount of risk corridors payments owed to each.² HHS must finish its review before the United States will be in a position to pursue a consensual resolution of an issuer's case, and that review is most efficiently done on a program-wide, rather than piecemeal basis.

Similarly, HHS needs additional time to review and assess those plaintiffs that may have outstanding debts owed to HHS under other ACA programs. In order to determine which issuers have such debts pending, HHS must review its records across ACA programs and distill that information for consideration by government officials with authority to assess liability. Those parties owing debts and the United States should then have an opportunity to confer to seek to resolve those issues, and, as necessary, to prepare and propose a procedure to dispose of outstanding matters.

For all of these reasons, the United States requests that the Court allow the government 31 days, until June 29, 2020, within which to consider its position in these cases and to propose, jointly with the plaintiff to the extent possible, a course to govern proceedings moving forward.³

² We will need to update the list to account for the two plaintiffs added in this case in the Amended Complaint filed on May 27, 2020.

³ The government has made similar requests in the other risk corridors cases and the vast majority of those requests have been granted. *See, e.g., Alliant Health Plans, Inc. v. United States*, No. 16-1491C (Damich, J.) (July 10); *Blue Cross Blue Shield of Kansas City v. United States*, No. 17-95C (Damich, J.) (June 29); *EmblemHealth, Inc. v. United States*, No. 17-703C (June 26) (Wheeler, J.); *Common Ground Healthcare Cooperative v. United States*, No. 17-877C (Sweeney, C.J.) (June 29); *Atkins v. United States*, No. 17-906C (Kaplan, J.) (June 29); *Glause v. United States*, No. 17-1157C (Damich, J.) (June 29); *Health Republic Insurance Co. v. United States*, No. 17-1185C (Sweeney, C.J.) (June 29); *HealthyCT v. United States*, No. 17-1233 (Solomson, J.) (June 29); *Community Health Choice, Inc. v. United States*, 18-5C (Sweeney, C.J.) (June 29); *Oregon Health CO-OP v. United States*, No. 18-94C (Kaplan, J.) (June 29); *Affinity Health Plan, Inc. v. United States*, No. 18-110C (Kaplan, J.) (June 29); *Blue Cross Blue Shield of Arizona, Inc. v. United States*, No. 18-282C (Kaplan, J.) (June 30); *Richardson v. United States*, No. 18-1731 (Solomson) (July 6); *Aetna Health, Inc. v. United States*, No. 19-1338C (Kaplan, J.) (July 13); *Blue Cross*

The additional time requested by the United States is particularly appropriate here, where two new plaintiffs have just been added to this case.

Dated: May 29, 2020

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Respectfully submitted,

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of California, Inc. v. United States, No. 19-1770C (Tapp, J.) (June 29); *Independent Health Benefits Corp. v. United States*, No. 20-163C (Lettow, J.) (June 29); *HealthFirst PHSP, Inc. v. United States*, No. 20-179C (Sweeney, C.J.) (June 29); *Health Care Service Corp. v. United States*, No. 20-259C (Lettow, J.) (June 29); *Blue Cross Blue Shield of Tennessee, Inc. v. United States*, No. 17-348C (Hertling, J.) (June 29); *Scott and White Health Plan. v. United States*, No. 17-1850C (Williams, J.) (June 26).

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