

In the United States Court of Federal Claims

No. 18-5C  
(Filed: May 14, 2020)

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## COMMUNITY HEALTH CHOICE, INC., \*

Plaintiff, \*

V. \*

THE UNITED STATES, \*

Defendant. \*

## ORDER

Plaintiff filed the above-captioned case on January 2, 2018, and shortly thereafter filed an amended complaint that included risk corridors claims and cost-sharing reduction claims. On March 7, 2018, the court stayed proceedings in the case pending a decision by the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) in Moda Health Plan, Inc. v. United States and/or Land of Lincoln Mutual Health Insurance Co. v. United States. Then, on July 16, 2018, the court lifted the stay with respect to the cost-sharing reduction claims,<sup>1</sup> continued the stay with respect to the risk corridors claims, and directed the parties to file a joint status report within fifteen days of final, nonappealable judgments in Moda and Land of Lincoln.

In June 2019, the United States Supreme Court (“Supreme Court”) agreed to hear appeals in three risk corridors cases—Moda, Land of Lincoln, and Maine Community Health Options v. United States—and consolidated the cases for briefing and argument. The Supreme Court issued its decision on April 27, 2020, concluding that insurers, pursuant to § 1342 of the Affordable Care Act (“ACA”), have both the right to risk corridors payments and a damages remedy in this court for unpaid amounts. See generally Me. Cnty. Health Options v. United States, 140 S. Ct. 1308 (2020).

In accordance with the court’s June 29, 2018 order, the parties filed a joint status report on May 12, 2020. In short, plaintiff requests that the court allow defendant an additional fifteen days to determine whether it could stipulate to a judgment and, in the absence of a stipulation, that the court lift the stay of proceedings and enter judgment for the class (upon plaintiff’s filing of the appropriate motion). For its part, defendant requests an additional forty-five days to “consider its position” and “propose, jointly with the plaintiffs to the extent possible, a course to

<sup>1</sup> The court ultimately issued a decision and entered judgment on the cost-sharing reduction claims. An appeal of that judgment is currently before the Federal Circuit.

govern proceedings moving forward.” Defendant represents that this additional time is necessary for several reasons: (1) to continue “to review the Supreme Court’s decision”; (2) to ensure that it can resolve the claims of every insurer who participated on an Exchange during 2014, 2015, and 2016 “in a similar manner”; (3) to determine “the precise amount of risk corridors payments paid to and remaining for each” insurer by reviewing “the record of payments and charges and the history of distributions made”; and (4) to determine whether plaintiffs “have outstanding debts owed to [the United States Department of Health and Human Services] under other ACA programs,” provide the opportunity to resolve debt-related issues, and, because it has not yet filed an answer, “consider whether it would be appropriate to raise defenses not previously considered and whether to counterclaim.” Plaintiff rejects defendant’s rationales, remarking that liability is undisputed, that the amount of damages it seeks is derived from the government’s own calculations, that the status of other cases is irrelevant to this case, that the government has never raised the possibility of asserting a defense in this case, and that the existence of a debt is not a defense to its claim for risk corridors payments.

The court has reviewed the parties’ positions and their stated rationales, and finds that it is in the interest of justice to allow defendant an additional forty-five days to consider how it would like to proceed and to work with plaintiff to propose a plan for further proceedings. Defendant shall make every effort to use the forty-five days to confirm the full amount of risk corridor payments due to plaintiff. In addition, in light of the clear holding of the Supreme Court in Maine Community Health Options regarding the government’s liability for unpaid risk corridors payments and the ease of determining the amount of risk corridors payments due to plaintiff, the parties shall be prepared for an expeditious resolution of this case once the forty-five days have passed.

The court **LIFTS** the stay of proceedings. The parties shall file a joint status report proposing a schedule for further proceedings **no later than Monday, June 29, 2020**.

**IT IS SO ORDERED.**

s/ Margaret M. Sweeney  
MARGARET M. SWEENEY  
Chief Judge