**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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| HUMANA INC., Plaintiff, v. THE UNITED STATES OF AMERICA, Defendant. | Case No. 17-1664C<br>Judge Nancy B. Firestone |

**PLAINTIFF'S NOTICE OF POSITION REGARDING DEFENDANT'S MOTION TO STAY PROCEEDINGS**

Plaintiff Humana Inc. ("Humana") respectfully notices for the record its position on the United States' motion to stay this case pending a decision by the Federal Circuit in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, or *Moda Health Plan, Inc. v. United States*, No. 17-1994. Def.'s Mot. Stay, ECF No. 6. In light of the Court's order granting the stay, Humana submits this notice of its position to provide the Court the benefit of both parties' positions on this matter.

The following facts are pertinent to this notice:

1. Prior to filing its motion, the United States sought Humana's consent to stay this case. Humana informed the United States that it intended to move for summary judgment and would not consent to a stay.

2. Subsequently, the United States requested that the Court stay this case. Although the United States' motion noted that 30 risk corridors have been stayed, it omitted (1) that the vast majority of those 30 cases were stayed by consent of the parties,[1] and (2) that

[1] *See, e.g.*, Order, *EmblemHealth, Inc. v. United States*, No. 17-703 (Wheeler, J.) (Fed. Cl. July

Humana did not consent to the requested stay in this case.

3. The Court has denied the United States' requests to stay seven other risk corridors cases where the stay request was opposed.[2]

4. Most recently, in *Nancy G. Atkins v. United States*, No. 17-906C (Kaplan, J.), the Court denied the United States' request for a stay, stating that "[h]aving carefully considered [the] parties' positions . . . a stay is unwarranted here." *Atkins* Stay Denial at 2.

Against this backdrop, Humana intended to oppose the United States' motion because (1) that motion seeks an indefinite stay[3]; (2) the United States has not identified a "pressing need" for its indefinite stay; (3) the balance of interests weighs against a stay; and (4) this Court's paramount obligation to timely exercise jurisdiction weighs in favor of denying the requested stay. *See, e.g.*, *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997). Humana respectfully requests that the Court permit Humana to provide additional briefing on its position.

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26, 2017), ECF No. 7.

[2] *See* Order, *Nancy G. Atkins v. United States*, No. 17-906C (Kaplan, J.) (Fed. Cl. Sept. 11, 2017), ECF No. 11 ("*Atkins* Stay Denial"); Procedural Order, *Molina Healthcare of Cal., Inc., et al. v. United States*, No. 17-97C (Wheeler, J.) (Fed. Cl. Mar. 24, 2017), ECF No. 10; Order, *Health Net, Inc. v. United States*, No. 16-1722C (Wolski, J.) (Fed. Cl. Mar. 2, 2017), ECF No. 8 ("*Health Net* Stay Denial"); Order, *HPHC Ins. Co., Inc. v. United States*, No. 17-87C (Griggsby, J.) (Fed. Cl. Feb. 21, 2017), ECF No. 8; Order, *Montana Health CO-OP v. United States*, No. 16-1427C (Wolski, J.) (Fed. Cl. Dec. 14, 2016), ECF No. 16 ("*Montana I* Stay Denial"); Opinion and Order, *Moda Health Plan, Inc. v. United States*, No. 16-649C (Wheeler, J.) (Fed. Cl. Nov. 28, 2016), ECF No. 12; Order, *Maine Cmty. Health Options v. United States*, No. 16-967C (Merow, J.) (Fed. Cl. Dec. 2, 2016), ECF No. 16.

[3] *See Montana I* Stay Denial (denying stay where "the government has failed to show the 'pressing need' required for such an indefinite stay"); *Health Net* Stay Denial (treating the United States' stay request pending resolution of a related case as indefinite by requiring a showing of "pressing need"); *see also Consolidation Coal Co. v. United States*, 102 Fed. Cl. 489, 493 (2011) (request to delay litigation until another case was decided is a request for an indefinite stay).

Dated: November 28, 2017

Respectfully submitted,

*/s/ Stephen McBrady*

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**CERTIFICATE OF SERVICE**

I certify that on November 28, 2017, a copy of the forgoing was filed electronically using the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be served on Defendant's Counsel, Marc S. Sacks, via the Court's ECF system.

*/s/ Stephen McBrady*
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