

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

|                                   |   |                     |
|-----------------------------------|---|---------------------|
| BLUE CROSS OF CALIFORNIA, HMO     | ) |                     |
| COLORADO, INC., dba HMO NEVADA,   | ) |                     |
| ROCKY MOUNTAIN HOSPITAL AND       | ) |                     |
| MEDICAL SERVICE, INC., dba ANTHEM | ) |                     |
| BLUE CROSS AND BLUE SHIELD,       | ) |                     |
| ANTHEM HEALTH PLANS, INC., BLUE   | ) |                     |
| CROSS BLUE SHIELD HEALTHCARE      | ) |                     |
| PLAN OF GEORGIA, INC., ANTHEM     | ) |                     |
| INSURANCE COMPANIES, INC.,        | ) |                     |
| ANTHEM HEALTH PLANS OF KY, INC.,  | ) |                     |
| HEALTHY ALLIANCE LIFE COMPANY,    | ) |                     |
| EMPIRE HEALTHCHOICE               | ) |                     |
| HMO, INC., COMMUNITY INSURANCE    | ) | No. 19-1770C        |
| COMPANY, and                      | ) | Judge David A. Tapp |
| COMPCARE HEALTH SERVICES          | ) |                     |
| INSURANCE COMPANY,                | ) |                     |
|                                   | ) |                     |
| Plaintiffs,                       | ) |                     |
|                                   | ) |                     |
| v.                                | ) |                     |
|                                   | ) |                     |
| THE UNITED STATES OF AMERICA,     | ) |                     |
|                                   | ) |                     |
| Defendant.                        | ) |                     |
|                                   | ) |                     |

**STIPULATION FOR ENTRY OF FINAL JUDGMENT**

To finally resolve the claims of Blue Cross of California; HMO Colorado, Inc., dba HMO Nevada; Rocky Mountain Hospital and Medical Service, Inc., dba Anthem Blue Cross and Blue Shield; Anthem Health Plans, Inc.; Blue Cross Blue Shield Healthcare Plan of Georgia, Inc.; Anthem Insurance Companies, Inc.; Anthem Health Plans of KY, Inc.; Healthy Alliance Life Company; Empire HealthChoice HMO, Inc.; Community Insurance Company; and Compcare Health Services Insurance Company (collectively “Plaintiffs” or “Anthem”), against the United

States, and to permit the entry of final judgment on Plaintiffs' claims, it is hereby stipulated and agreed between the Parties:

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the "ACA") created several interrelated programs to expand access to affordable health insurance coverage.
2. Section 1342 (42 U.S.C. § 18062) of the ACA created the risk corridors program.
3. On November 18, 2019, Anthem filed a Complaint in this Court seeking risk corridors damages under section 1342 of the ACA for benefit years 2014, 2015 and 2016. The Complaint asserts two counts, each asserting a separate theory for damages arising under section 1342 of the ACA.
4. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA "created an obligation neither contingent on nor limited by the availability of appropriations or other funds," that the obligation was not affected by subsequently-enacted legislation, and that the "petitioners may seek to collect payment through a damages action in the Court of Federal Claims." *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).
5. The Parties agree that the Supreme Court's decision in *Maine Community Health Options* entitles Anthem to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014, 2015, and 2016 in the total amount of \$ 107,014,330.76 ("Stipulated Damages Amount"). The Parties further agree that receipt of this full payment will resolve entirely the Complaint in this case.
6. Accordingly, the Parties jointly request that the Court enter final judgment in favor of Anthem in the total damages amount of \$107,014,330.76 on Count I of the Complaint.

7. Upon the Court's entry of final judgment as requested above, the Parties further jointly request that the Court dismiss Count II of the Complaint with prejudice.

8. Upon entry of final judgment and receipt of full payment by Anthem of the Stipulated Damages Amount above, Blue Cross of California (HIOS no. 27603); HMO Colorado, Inc., dba HMO Nevada, including its plans in Colorado (HIOS no. 76680) and Nevada (HIOS no. 60156 ); Rocky Mountain Hospital and Medical Service, Inc., dba Anthem Blue Cross and Blue Shield, including its plans in Colorado (HIOS no. 87269) and Nevada (HIOS no. 33670); Anthem Health Plans, Inc. (HIOS no. 86545); Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. (HIOS no. 49046); Anthem Insurance Companies, Inc. (HIOS no. 17575); Anthem Health Plans of KY, Inc. (HIOS no. 36239); Healthy Alliance Life Company (HIOS no. 32753); Empire HealthChoice HMO, Inc. (HIOS no. 80519); Community Insurance Company (HIOS no. 29276); and CompCare Health Services Insurance Company (HIOS no. 79475), and any and all of the Plaintiffs' affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Blue Cross of California (HIOS no. 27603); HMO Colorado, Inc., dba HMO Nevada, including its plans in Colorado (HIOS no. 76680) and Nevada (HIOS no. 60156 ); Rocky Mountain Hospital and Medical Service, Inc., dba Anthem Blue Cross and Blue Shield, including its plans in Colorado (HIOS no. 87269) and Nevada (HIOS no. 33670); Anthem Health Plans, Inc. (HIOS no. 86545); Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. (HIOS no. 49046); Anthem Insurance Companies, Inc. (HIOS no. 17575); Anthem Health Plans of KY, Inc. (HIOS no. 36239); Healthy Alliance Life Company (HIOS no. 32753); Empire HealthChoice HMO, Inc. (HIOS no. 80519); Community Insurance Company (HIOS no. 29276); and CompCare Health Services Insurance Company (HIOS no. 79475), and any and all of the

Plaintiffs' affiliated entities, has asserted, could have asserted, or may assert in the future against the United States its agencies, instrumentalities, officers, agents, employees, and servants, arising under Section 1342 of the ACA.

Dated: June 26, 2020

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

RUTH A. HARVEY  
Director  
Commercial Litigation Branch

KIRK T. MANHARDT  
Deputy Director

/s/ Marc S. Sacks  
MARC S. SACKS  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
P.O. Box 875  
Ben Franklin Station  
Washington D.C. 20044  
Tel. (202) 307-1104  
Fax (202) 514-9163  
marcus.s.sacks@usdoj.gov

ATTORNEYS FOR  
THE UNITED STATES

s/ Lawrence S. Sher  
Lawrence S. Sher (D.C. Bar No. 430469)  
**REED SMITH LLP**  
1301 K Street NW  
Suite 1000-East Tower  
Washington, DC 20005  
Telephone: 202.414.9200  
Facsimile: 202.414.9299  
Email: lsher@reedsmith.com

*Of Counsel:*

Dan J. Hofmeister, Jr. (IL Bar No. 6204299)  
**REED SMITH LLP**

10 South Wacker Drive  
Chicago, IL 60606  
Telephone: 312.207.1000  
Facsimile: 312.207.6400  
Email:dhofmeister@reedsmith.com

Conor M. Shaffer (PA Bar No. 314474)  
**REED SMITH LLP**  
Reed Smith Centre  
225 Fifth Avenue, Suite 1200  
Pittsburgh, PA 15222  
Telephone: 412.288.3131  
Facsimile: 412.288.3063  
Email:cshaffer@reedsmith.com

*Counsel for Plaintiffs*