

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HUMANA, INC.,)	
)	
Plaintiff,)	
)	No. 17-1664C
v.)	
)	Judge Nancy B. Firestone
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

STIPULATION FOR ENTRY OF JUDGMENT

To finally resolve the risk corridors claims of Plaintiff Humana, Inc. (“Humana”), against the United States, and to permit the entry of a consolidated final judgment on those claims in this case, 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 2, 2017, Humana filed the Complaint in this Court seeking damages under Section 1342 of the ACA. The Complaint asserts two risk corridors counts, each asserting a separate theory for damages arising under section 1342 of the ACA.¹

¹ On September 20, 2019, Plaintiff filed a motion to amend its Complaint to include counts for damages under section 1402 of the ACA, the Cost-Sharing Reduction (“CSR”) program. The Court has not ruled on that motion. Accordingly, only Plaintiff’s risk corridors claim is before the Court. Plaintiff and the Government request that the Court consider the Motion to Amend as moot. Plaintiff will file a Complaint relating to its CSR claim in a separate action after judgment is entered in this case.

4. On November 27, 2017, the Court entered an order that stayed this case. ECF No. 7.

5. 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).

6. The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles Humana 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 \$608,886,221.53 (“Stipulated Damages Amount”). The Parties further agree that this payment resolves entirely the Complaint in this case for all risk corridors counts seeking damages under section 1342 of the ACA.

7. Accordingly, the Parties jointly request that the Court enter final judgment in favor of Humana in the total damages amount of \$608,886,221.53 on Count I of the Complaint in this case.

8. Upon the Court’s entry of judgment as requested above, the Parties further jointly request that the Court dismiss Count II of the Complaint in this case with prejudice.

9. Upon entry of final judgment and receipt of full payment by Humana of the Stipulated Damages Amount, Humana (HIOS Nos. 93332, 44965, 74320, 66083, 32673, 15411, 23307, 58288, 44580, 48963, 63141, 68303, 82120, 30613, 46275, 56764, and 35783) and any and all of Humana’s affiliated entities, release the United States, its agencies, instrumentalities,

officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that Humana (HIOS Nos. 93332, 44965, 74320, 66083, 32673, 15411, 23307, 58288, 44580, 48963, 63141, 68303, 82120, 30613, 46275, 56764, and 35783) and any and all of Humana's 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: July 6, 2020

OF COUNSEL:
Daniel Wolff
Skye Mathieson
Charles Baek

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Respectfully submitted,

/s/ Stephen McBrady
Stephen McBrady
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
SMcBrady@crowell.com

Counsel for Humana, Inc.

MICHAEL D. GRANSTON
Deputy Assistant Attorney General²

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Shane Huang
MARC S. SACKS
FRANCES M. MC LAUGHLIN
PHILLIP M. SELIGMAN
TERRANCE A. MEBANE
CHRIS VANDEUSEN
SHANE HUANG
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 616-0341
Fax (202) 514-9163

² Acting Assistant Attorney General Ethan P. Davis is recused from this matter.

shane.huang@usdoj.gov

Attorneys for the United States