

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

NANCY G. ATKINS, in her capacity as)
Liquidator of Kentucky Health Cooperative,)
Inc.)
)
Plaintiff,)) No. 17-906C
v.))
THE UNITED STATES,)) Judge Elaine D. Kaplan
)
Defendant.))
_____)

STIPULATION FOR ENTRY OF JUDGMENT

To finally resolve the risk corridors claims of Plaintiff 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 July 6, 2017, Plaintiff 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.
4. On December 1, 2017, the Court entered an order that stayed this case. ECF No. 22.

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 Plaintiff to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015 in the total amount of \$144,865,696.89 (“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 Plaintiff in the total damages amount of \$144,865,696.89 on Count I of the Complaint in this case.

8. 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 Plaintiff of the Stipulated Damages Amount, Kentucky Health Cooperative (HIOS Nos. 77894) and any and all of its 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 Kentucky Health Cooperative (HIOS Nos. 77894) and any and all of its 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 21, 2020

Respectfully submitted,

OF COUNSEL:

James Regan
Daniel Wolff
Charles Baek

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

/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 Plaintiff

MICHAEL D. GRANSTON
Deputy Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Terrance A. Mebane
TERRANCE A. MEBANE
MARC S. SACKS
FRANCES M. MC LAUGHLIN
PHILLIP M. SELIGMAN
L. MISHA PREHEIM
United States Department of Justice
Civil Division, Commercial
Litigation Branch
Telephone: (202) 307-0493
Terrance.A.Mebane@usdoj.gov

Counsel for the United States of America