

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD)
OF NEBRASKA,)
)
and)
)
HAWAI'I MEDICAL SERVICE ASSOCIATION)
)
)
Plaintiffs,)
on behalf of themselves and all)
others similarly situated,)
)
)
v.)
)
THE UNITED STATES OF AMERICA,)
)
)
Defendant.)

Case No. 18-491 C
Judge Damich

**STIPULATION FOR ENTRY OF RULE 54(B) JUDGMENT
ON COUNT I OF COMPLAINT AND DISMISSAL OF
COUNTS II AND III OF COMPLAINT**

To resolve the claims of Plaintiff Hawai'i Medical Service Association ("HMSA"), and to permit the entry of final judgment on one of those claims pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims, it is stipulated between HMSA and Defendant United States of America (the "United States"):¹

1. Section 1342 (42 U.S.C. § 18062) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119 *et seq.* (the "ACA"), created the risk corridors program, while section 1343 (42 U.S.C. § 18063) of the ACA created the risk adjustment program.
2. On April 3, 2018, Plaintiffs HMSA and Blue Cross and Blue Shield of Nebraska filed the Complaint (ECF No. 1) in this Court. In the Complaint, HMSA seeks damages under

¹ To avoid any doubt, this stipulation does not resolve or permit entry of final judgment on the claims asserted by Plaintiff Blue Cross and Blue Shield of Nebraska or any claims asserted by the unnamed and uncertified class members.

section 1342 of the ACA for benefit years 2015 and 2016. In that regard, the Complaint asserts two counts (Counts I and II), each raising a separate theory for damages arising under section 1342 of the ACA. As to HMSCA, the Complaint also asserts one count (Count III) seeking damages under section 1343 of the ACA for benefit years 2014 and 2015.

3. On June 12, 2018, the Court entered an order that stayed this case. ECF No. 10.

4. On April 27, 2020, the Supreme Court held that section 1342 “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. HMSCA and the United States agree that *Maine Community Health Options* entitles HMSCA to payment under section 1342 for benefit years 2015 and 2016 in the amount of \$33,883,433.52 (the “Stipulated Amount”) and that this payment resolves entirely the Complaint for all counts in which HMSCA seeks damages arising under section 1342 of the ACA.

6. Accordingly, the HMSCA and the United States jointly request that the Court enter judgment in favor of HMSCA in the amount of \$33,883,433.52 (risk corridors benefit years 2015 and 2016) on Count I of the Complaint.

7. HMSCA and the United States further request that, as to HMSCA, the Court dismiss Count II of the Complaint (risk corridor claim asserted under separate theory) *with* prejudice and Count III of the Complaint (risk adjustment claim asserted under section 1343 of the ACA) *without* prejudice.

8. With all counts asserted by HMSCA resolved according to this Stipulation, the Parties agree that there is no just reason to delay the entry of judgment in favor of HMSCA on Count

I under Rule 54(b) of the Rules of the United States Court of Federal Claims.

9. Upon entry of judgment in the Stipulated Amount, HMSCA (HIOS No. 18350) and any and all HMSCA'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 HMSCA (HIOS No. 18350) and any and all of HMSCA'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 or related to Section 1342 of the ACA.

Dated: August 4, 2020

Respectfully submitted,

MICHAEL D. GRANSTON
Deputy Assistant Attorney General
Civil Division

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Frances M. McLaughlin
FRANCES M. MCLAUGHLIN
United States Department of Justice
Civil Division, Commercial Litigation Branch
Telephone: (202) 307-0487
Fax: (202) 307-0494
Email: Frances.McLaughlin@usdoj.gov

Attorneys for the United States of America

/s/ Adam P. Feinberg

ADAM P. FEINBERG
MILLER & CHEVALIER CHARTERED
900 Sixteenth Street, N.W.
Washington, D.C. 20006-2901
Telephone: (202) 626-5800
Fax: (202) 626-5801
Email: afeinberg@milchev.com

Attorney for Plaintiff Hawai'i Medical Service Association

Of Counsel:

ANTHONY F. SHELLEY
MILLER & CHEVALIER CHARTERED
900 Sixteenth Street, N.W.
Washington, D.C. 20006-2901
Telephone: (202) 626-5800
Fax: (202) 626-5801
Email: ashelley@milchev.com