

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD)
OF NEBRASKA,)
)
and)
)
HAWAII 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 JUDGMENT ON COUNT I OF COMPLAINT
AND DISMISSAL OF COUNTS II AND III OF COMPLAINT**

To resolve the claims of Plaintiff Blue Cross and Blue Shield of Nebraska (“BCBS-NE”),¹ BCBS-NE and Defendant United States of America (the “United States”) hereby stipulate as follows:

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 BCBS-NE and HMSA filed the Complaint in this Court. *See* ECF No. 1. In the Complaint, BCBS-NE asserts two counts (Counts I and II) seeking

¹ The claims asserted by the other Plaintiff, Hawai’i Medical Service Association (“HMSA”), were resolved pursuant to an earlier stipulation and dismissal. *See* ECF No. 22. The entry of judgment and dismissal pursuant to this stipulation would resolve all claims remaining in this case.

damages under section 1342 of the ACA for benefit years 2014, 2015, and 2016, and one count (Count III) seeking damages under section 1343 of the ACA for benefit year 2015.

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

Risk Corridor Claims: Counts I and II

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. BCBS-NE and the United States agree that *Maine Community Health Options* entitles BCBS-NE to payment under section 1342 for benefit years 2014, 2015, and 2016 in the amount of \$62,951,659.55 (the “Stipulated Amount”) and that this payment resolves entirely the Complaint for all counts in which BCBS-NE seeks damages arising under section 1342 of the ACA.

6. BCBS-NE and the United States therefore jointly request that the Court enter judgment in favor of BCBS-NE in the amount of \$62,951,659.55 (risk corridors benefit years 2014, 2015, and 2016) on Count I of the Complaint. BCBS-NE and the United States further request that, as to BCBS-NE, the Court dismiss Count II of the Complaint (risk corridor claim asserted under separate theory) with prejudice.

Risk Adjustment Claim: Count III

7. On October 2, 2020, the United States and Doug Ommen, the Liquidator of CoOpportunity Health, Inc. (“CoOpportunity”), entered a stipulation for entry of judgment and the court entered judgment resolving all claims asserted by CoOpportunity in *Ommen v. United States*,

Case No. 1:17-cv-957C (Ct. Fed. Cl.). As part of that resolution, the United States will recover all risk adjustment charges owed by CoOportunity under section 1343 of the ACA.

8. Upon collection of the United States' risk adjustment recovery in *Ommen*, the Centers for Medicare & Medicaid Services ("CMS"), a component of the U.S. Department of Health and Human Services, will be able to pay all amounts currently calculated and remaining due to BCBS-NE under the risk adjustment program for the 2015 benefit year, an amount totaling \$2,887,975.62 ("Risk Adjustment Payment"). The Risk Adjustment Payment will be made to BCBS-NE by CMS in the ordinary course following the United States' collection of CoOportunity's risk adjustment charges for the 2015 benefit year.

9. BCBS-NE and the United States agree that BCBS-NE's receipt of the Risk Adjustment Payment will resolve entirely Count III of the Complaint, in which BCBS-NE seeks damages arising under section 1343 of the ACA.

10. BCBS-NE and the United States therefore jointly request that the Court dismiss Count III of the Complaint with prejudice (but without prejudice to any rights, claims, or causes of action BCBS-NE has if CMS fails to make at least 94% of the Risk Adjustment Payment by October 1, 2021).

* * *

11. Upon entry of judgment in the Stipulated Amount, BCBS-NE (HIOS No. 29678) and any and all of BCBS-NE'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 BCBS-NE (HIOS No. 29678) and any and all of BCBS-NE's affiliated entities, has asserted, could have asserted, or may assert in the future against the United States and its agencies, instrumentalities, officers, agents,

employees, and servants, arising under Section 1342 of the ACA.

12. Upon BCBS-NE's receipt of the Risk Adjustment Payment, BCBS-NE (HIOS No. 29678) and any and all of BCBS-NE'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 BCBS-NE (HIOS No. 29678) and any and all of BCBS-NE's affiliated entities, has asserted, could have asserted, or may assert in the future against the United States and its agencies, instrumentalities, officers, agents, employees, and servants, arising under Section 1343 of the ACA for benefit year 2015.

Dated: October 22, 2020

Respectfully submitted,

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