Receipt number AUSFCC-6515658

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MEDICAL HEALTH INSURING CORPORATION OF OHIO	)	
Plaintiff,	)	CASE NO. 20-1377 C
v.	)	
THE UNITED STATES OF AMERICA	)	
Defendant.	)	**COMPLAINT**

Plaintiff Medical Health Insuring Corporation of Ohio ("Plaintiff" or "MHICO") brings this action seeking damages and other relief for violations of Section 1342 of the Patient Protection and Affordable Care Act ("Section 1342") against Defendant, the United States of America ("Defendant," "United States," or "Federal Government"), and alleges as follows:

INTRODUCTION

1. MHICO brings this action to recover money damages owed by Defendant for calendar years 2014, 2015, and 2016 ("CY 2014," "CY 2015," and "CY 2016") for violations of the mandatory risk corridor payment obligations Defendant owes to MHICO as prescribed in Section 1342 of the Patient Protection and Affordable Care Act, Pub. L. No.111-148, 124 Stat. 119 ("ACA"), and its implementing federal regulations.

2. The ACA involved significant reforms and restructuring of the health insurance market nationwide. The ACA sought to create access to affordable health insurance options for previously uninsured Americans by creating a new health insurance market. Under these new markets, individuals are provided financial assistance to purchase "Qualified Health Plans" or "QHPs" on the "Health Benefit Exchanges" or "Marketplaces." Additionally, other market

reforms implemented under the ACA prohibited health insurers from denying coverage or setting premiums based on health status or medical history.

3. As insurers had no prior experience with the newly created Exchanges, they faced significant financial uncertainty in setting premium rates for QHPs. Insurers offering QHPs had little to no information about who would enroll in these new plans, the extent of enrollees' health care needs and resulting claims costs, and no meaningful way to assess whether the premiums they set would cover the risk for these newly insured individuals and populations.

4. To address this uncertainty and encourage health insurers to offer QHPs on the Exchanges, Section 1342 of the ACA established a "Risk Corridors Program." The Risk Corridors Program was designed to help issuers of QHPs avoid any short-term financial challenges caused by the difficulty in setting premium rates for a population about which the insurers lacked information.

5. Under the Risk Corridors Program, the QHP issuer and the federal government each shared in the risk associated with the uncertainty in offering plans in the Marketplaces for each of the years the program was in effect: CY 2014, CY 2015 and CY 2016. If the costs incurred by a QHP issuer in any one of these years were less than the target amount of expected premiums collected by a certain percentage threshold the QHP issuer was required make a payment to the Federal Government. If allowable expenses of the QHP exceeded the expected premium target amount, however, Congress required the Federal Government to make risk corridor payments to the QHP issuer, under a formula prescribed in Section 1342.

6. MHICO is a health insurer located in Cleveland, Ohio and provides health insurance and other health plan coverage to individuals and employers in Ohio. In CY 2014, CY 2015, and CY 2016, MHICO offered QHPs in the federally facilitated Ohio Marketplace, in

both the individual and small group Exchanges. MHICO offered and priced these plans with the understanding and knowledge that some of the risk and uncertainty it took on in offering QHPs would be mitigated through the Risk Corridors Program.

7. In CY 2014, CY 2015, and CY 2016, MHICO was entitled to receive Risk Corridors Program payments from the Federal Government for some of the QHPs it offered. These payments totaled $4,977,524.49 for CY 2014, $4,279,010.69 for CY 2015, and $13,342,648.57 for CY 2016. The Federal Government paid, or claims to have paid, only a small fraction of these amounts, failing to fully make these Risk Corridors Program payments to MHICO for each of these years as required by law.

8. MHICO seeks to recover damages from the United States of at least $21,765,674.91 for its failure to meet its statutorily mandated payment obligations to MHICO.

9. MHICO's claims against the United States in this Complaint raise the same legal issues and are subject to the United States Supreme Court's holding *in Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020).

10. In *Maine Community Health Options*, the Supreme Court held that the Risk Corridors Program "created a government obligation to pay insurers the full amount set out in § 1342's [statutory] formula." *Id.* at 1319-20. The Supreme Court further held that Section 1342's obligation to pay is "neither contingent on nor limited by the availability of appropriations or other funds" and had not been repealed by Congress through later appropriations bills. *Id.* at 1323. Finally, the Supreme Court found that this Court has jurisdiction under the Tucker Act to award monetary damages against the United States based on the "money-mandating" nature of the "shall pay" statutory obligation in Section 1342. *Id.* at 1327-31.

11. The Supreme Court's decision in *Maine Community Health Options* is dispositive

of the legal issues in this case, and consistent with that decision, MHICO is entitled to an award of damages against the United States for its failure to make its obligated Risk Corridors Program payments to MHICO.

12. This Court has jurisdiction over this action and venue is proper in this Court pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1), because Plaintiff bring claims for damages over $10,000 against the United States founded upon the Federal Government's violations of a money-mandating Act of Congress (Section 1342 of the ACA) and a money-mandating regulation of an executive department (45 C.F.R. § 153.510).

13. The actions and/or decisions of the Department of Health and Human Services ("HHS") and the Centers for Medicare & Medicaid Services ("CMS") at issue in this lawsuit were conducted on behalf of the Defendant United States within the District of Columbia and are ripe for adjudication as the Federal Government has refused to make full payment of the amounts owed to MHICO.

PARTIES

14. Plaintiff MHICO is an Ohio-based health insurance company with its principal place of business in Cleveland, Ohio. MHICO provides medical insurance plans, including QHPs, to individuals and employers within the State of Ohio.

15. Defendant is The United States of America. HHS and CMS are agencies of the Defendant United States of America.

FACTUAL ALLEGATIONS

Congress Enacts Health Insurance Marketplace Reform through the ACA

16. In 2010, Congress enacted the ACA, Public Law 111-148, 124 Stat. 119.

17. The ACA aimed to increase the number of individuals covered by health

insurance and decrease the cost of health care in the U.S. The ACA eliminated certain coverage restrictions and limitations for health insurance plans offered after its enactment. Heath insurers are now prohibited from denying coverage to individuals with pre-existing conditions and some health plans must meet other requirements such as network adequacy and essential health benefits coverage.

18. Specifically, "each health insurance issuer that offers health insurance coverage in the individual or group market in a State must accept every employer and individual in the State that applies for such coverage." 42 U.S.C. § 300gg–1(a). Further, insurers cannot tie or base premiums to a particular applicant's health. *Id.* at § 300gg(a).

19. On January 1, 2014, individuals and small businesses became eligible to purchase private health insurance through competitive statewide marketplaces called Affordable Insurance Exchanges, Health Benefit Exchanges, Exchanges, or Marketplaces. Section 1311 of the ACA established the framework for the Marketplaces. *See* 42 U.S.C. § 18031. States were able to either create and operate their own Marketplaces or allow their Exchanges to be operated through the federally facilitated Exchange.

20. MHICO offered QHPs to individuals and small employers on the Ohio federally facilitated Marketplace ("FFM") in CY 2014, CY 2015, and FY 2016.

Premium Stabilization through the Risk Corridors Program

21. Recognizing that insurers would face risk and uncertainty in offering plans on the FFM's due to their limited ability to price premiums with no historic information or experience on claims and expenses for such plans, the ACA created several premium stabilization programs to help ensure that premiums would remain affordable and that individuals would not be priced out of purchasing coverage due to the uncertainty facing insurers in setting rates.

22. One of these premium stabilization programs—and the one at issue in this Compliant—was the temporary, three year Risk Corridors Program provided for in Section 1342 of the ACA, which ran from the beginning of CY 2014 through the end of CY 2016.

23. The Risk Corridors Program, along with the other premium stabilization programs (a three-year reinsurance program and an ongoing risk adjustment program for high-risk populations) were designed by Congress to provide assurance to health insurers that they would not bear the risk and uncertainty of the new Marketplaces alone and ensure that insurers would not overcompensate for this risk by setting premiums at unaffordable rates.

24. MHICO relied on the financial protections offered by the Risk Corridors Program and other premium stabilization programs in deciding to offer QHPs on the Marketplace, and, in taking on significant financial risk, MHICO acted with the knowledge and understanding that these payments were mandatory obligations and commitments of the United States government.

The Risk Corridors Program Methodology and Payment Obligations

25. Section 1342 of the ACA required the HHS Secretary to establish a Risk Corridors Program that provided for the sharing in gains or losses occurring during CY 2014 through CY 2016 between the Federal Government and health plans offered in the individual and small group markets. *See* 42 U.S.C. § 18062.

26. Health insurers that agreed to offer QHPs were required by Section 1342(a) to participate in the Risk Corridors Program:

> (a) IN GENERAL.—The Secretary ***shall*** establish and administer a program of risk corridors for calendar years 2014, 2015, and 2016 under which a qualified health plan offered in the individual or small group market shall participate in a payment adjustment system based on the ratio of the allowable costs of the plan to the plan's aggregate premiums. Such program ***shall*** be based on the program for regional participating provider organizations under part D of title XVIII of the Social Security Act.

27. With knowledge of and reliance upon the commitments and obligations of the

United States government under the Risk Corridors Program, MHICO agreed to issue QHPs, and it entered into Qualified Health Plan Certification Agreements with CMS for all the QHPs it issued.

28. Sections 1342(b)(1) and (2) of the ACA, established the payment methodology and formula to determine the amounts of risk sharing payments either owed to QHP issuers by the Federal Government to cover losses by QHP issuers or payments owed to the Federal Government for gains by QHP issuers.

29. Section 1342(b) states:

> **(b) Payment methodology**
>
> **(1) Payments out**
>
> The Secretary shall provide under the program established under subsection (a) that if—
>
> (A) a participating plan's allowable costs for any plan year are more than 103 percent but not more than 108 percent of the target amount, the Secretary shall pay to the plan an amount equal to 50 percent of the target amount in excess of 103 percent of the target amount; and
>
> (B) a participating plan's allowable costs for any plan year are more than 108 percent of the target amount, the Secretary shall pay to the plan an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of allowable costs in excess of 108 percent of the target amount.
>
> **(2) Payments in**
>
> The Secretary shall provide under the program established under subsection (a) that if—
>
> (A) a participating plan's allowable costs for any plan year are less than 97 percent but not less than 92 percent of the target amount, the plan shall pay to the Secretary an amount equal to 50 percent of the excess of 97 percent of the target amount over the allowable costs; and

> (B) a participating plan's allowable costs for any plan year are less than 92 percent of the target amount, the plan shall pay to the Secretary an amount equal to the sum of 2.5 percent of the target amount plus 80 percent of the excess of 92 percent of the target amount over the allowable costs.

42 .S.C. § 18062(b).

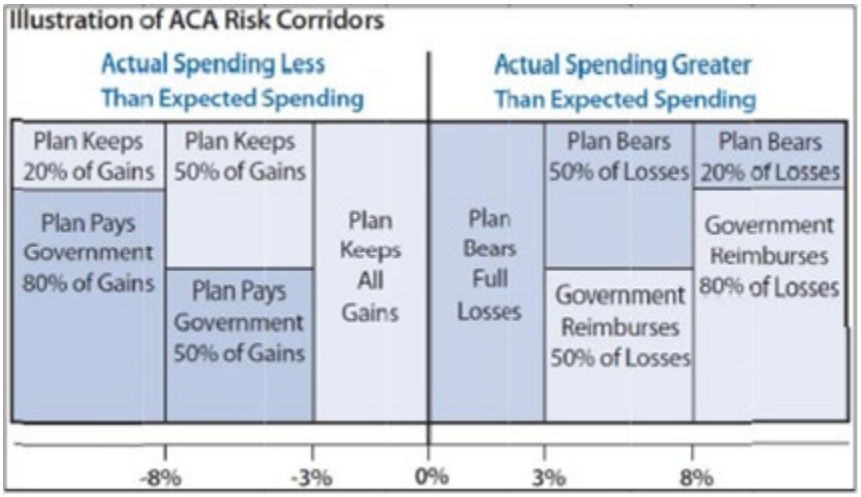
30. The terms "allowable costs" and "target amount" as used in the Risk Corridors Program are defined by the ACA statute. *Id.* § 1342(c). Section 1342(c) defines allowable costs as "an amount equal to the total costs (other than administrative costs) of the plan in providing benefits covered by the plan." Section 1342(c) defines target amount as "an amount equal to the total premiums.

31. Through this risk corridors payment methodology, QHP issuers such as MHICO keep all gains and bear all losses that they experience within three percent of their target amount for a calendar year. For example, a QHP that had a target amount of $10 million in a given calendar year would not pay a risk corridors charge or receive a risk corridors payment if its allowable costs ranged between $9.7 million and $10.3 million for that calendar year. If the allowable costs of the QHP were less than $9.7 million, the issuer would be responsible for paying to the Federal Government a portion of these gains. If the allowable costs exceeded $10.3 million, the Federal Government would be responsible for making a risk corridors payment to the issuer.

32. HHS and CMS provided specific examples of risk corridors payment and charge calculations beyond the three percent threshold, which illustrated the Risk Corridors Program payments the Federal Government must pay under different allowable cost, target amount, and gain and loss scenarios. *See* 76 FR 41929, 41943 (July 15, 2011).

33. The American Academy of Actuaries provided an approximate illustration of the

risk corridors payment methodology—except for the charge or payment of 2.5 percent of the target amount for gains and losses greater than eight percent—as follows:



34. Congress has not amended Section 1342 since enactment of the ACA.

35. Congress has not repealed Section 1342.

36. The Risk Corridors Program payment methodology set forth in Section 1342 of the ACA remains in effect and is a statutory obligation set forth in the United States Code.

37. Congress has never imposed any financial limits or restraints on the Federal Government's mandatory risk corridor payments to issuers of QHPs in either Section 1342 or any other section of the ACA.

38. Congress has never limited or restricted HHS's obligation to make full risk corridor payments through appropriations, restrictions on the use of funds, or otherwise in Section 1342 or anywhere else in the ACA.

39. HHS and CMS remain obligated under the mandatory statutory requirements of Section 1342 to pay 100% of the risk corridor payments due to issuers of QHPs for CY 2014, CY 2015, and CY 2016.

Regulatory Implementation of the Risk Corridors Program

40. On March 23, 2012, HHS promulgated final regulations implementing the Risk Corridors Program. 77 Fed. Reg. 17,220 (codified at 45 C.F.R. Part153). The final rules require QHP issuers to "adhere to the requirements set by HHS in [§§ 153.500–.530] and in the annual HHS notice of payment and benefit parameters," and provides that "Qualified Health Plan issuers will receive payment from HHS" in amounts consistent with the statutory provisions of Section 1342(b)(1). 45 C.F.R. § 153.510.

41. In its regulations, HHS adopted a risk corridors payment methodology that is mathematically identical to the statutory formulation in Section 1342 of the ACA, using the identical thresholds and risk-sharing levels specified in the statute.

42. On March 11, 2013, HHS published another final rule that, in part, included notice of benefit and payment parameters, to enable the insurers to establish their rates for 2014, the first year of the Exchanges. 78 Fed. Reg. 15,410 (Mar. 11, 2013). In the preamble to this rule, HHS stated: "The risk corridors program is not statutorily required to be budget neutral. Regardless of the balance of payments and receipts, HHS will remit payments as required under section 1342 of the Affordable Care Act." *Id.* at 15,473.

43. CMS also established the requirement that risk corridors payments be made to QHP issuers regardless of whether the risk corridor payments owed to issuers exceed the collections from QHPs plans making risk corridor payments to the Federal Government. In response to "concerns that risk corridors collections may not be sufficient to fully fund risk corridors payments" to the QHPs, CMS stated that"[i]n the unlikely event of a shortfall . . . HHS recognizes that the Affordable Care Act requires the Secretary to make full payments to issuers." *See* 79 Fed. Reg. 30260 (2014).

44. CMS also indicated that payments owed to QHP issuers would be paid on a

timeline consistent with the deadline by which payments owed by QHPs to the Federal Government must be paid. CMS imposed a 30-day deadline for QHP issuers that owed payments under the program to make those payments to the Federal Government. 45 C.F.R. § 153.510(d). Accordingly, based on CMS' statement that "QHP issuers who are owed these amounts will want prompt payment, and payment deadlines should be the same for HHS and QHP issuers," 77 FR 17219, 17238 (Mar. 23, 2012). QHP issuers like MHICO expected to receive payments owed to them under the Risk Corridors Program within 30 days after the amounts due were calculated and released by CMS.

45. Nothing in the regulations issued by CMS and HHS in 45 C.F.R. Part 153 limited or otherwise restricted the Federal Government's mandatory obligation to make risk corridor payments based on the receipt of appropriations or risk corridor gain shares from profitable QHPs.

Federal Government Announces it Will not Make Full Risk Corridor Payments to QHP Issuers

46. Despite the clear statutory and regulatory mandate that the Federal Government make risk corridor payments to QHP issuers when QHPs exceeded their target amounts by more than 3%, HHS announced on April 11, 2014 that it would not honor this obligation. In a non-binding, sub-regulatory bulletin, HHS informed issuers that the Risk Corridors Program would not be treated as "budget neutral" and would be paid on a pro rata basis. *See* CMS, Risk Corridors and Budget Neutrality (Apr. 11, 2014). According to HHS, "if risk corridors collections for a particular year are insufficient to make full risk corridors payments for that year, risk corridors payments for the year will be reduced pro rata to the extent of any shortfall." *Id.*

47. In 2014, the Risk Corridors Program faced a deficit of around $2.5 billion. QHPs that had allowable expenses less than their target amounts owed the Federal Government $362 million and QHPs that exceeded their target amounts were owed $2.87 billion. *See* CMS, Risk

Corridors Payment Proration Rate for 2014 (Oct. 1, 2015).

48. CMS announced that due to this shortfall, it would only pay QHP issuers entitled to receive risk corridor payments a prorated amount of 12.6% ($362 million divided by $2.87 billion) of the total amounts owed to them under the statutory and regulatory mandated Risk Corridors Program formula.

49. The Risk Corridors Program also ran a deficit in 2015 of approximately $5.5 billion. *See* CMS, Risk Corridors Payments for 2015 (Sept. 9, 2016).

50. Once again, in 2015, the Federal Government refused to make the required risk corridor payments to QHP issuers. Instead, it announced that all collections from QHPs that had costs below their target amounts would be "used towards remaining 2014 benefit year risk corridors payments, and no funds will be available at this time for 2015 benefit year risk corridors payments." *Id.* This position was confirmed by HHS on November 18, 2016 in a statement "confirming that all 2015 benefit year risk corridors collections will be used to pay a portion of balances on 2014 benefit year risk corridors payments." *See* Risk Corridors Payment and Charge Amounts for the 2015 Benefit Year (Nov. 18, 2016).

51. Predictably, 2016 followed the same pattern. The Risk Corridors Program ran a deficit of about $3.95 billion. *See* CMS, Risk Corridors Payment and Charge Amounts for the 2016 Benefit Year (2017).

52. In response, HHS announced that it would continue the same policy as it had for 2015. "Because 2015 benefit year collections were insufficient to pay 2014 benefit year payment balances in full, HHS will use 2016 benefit year risk corridors collections to make additional payments toward 2014 benefit year payment balances." *Id.* As such, no risk corridor payments were made for amounts owed to QHPs issuers based on CY 2015 or CY2016 target amounts.

53. The Federal Government's policy of prorating risk corridor payments and its failure to make full payment of the amounts owed to QHP issuers is contrary to both the statutory requirements of Section 1342 (mandating that the Federal Government "shall pay" the risk corridor payment amounts owed) and the regulatory requirements issued by HHS. 78 Fed. Reg. 15,473 (2013) ("Regardless of the balance of payments and receipts, HHS will remit payments as required under Section 1342 of the Affordable Care Act.").

Congress Refuses to Appropriate Funds for Risk Corridors Program

54. Despite this budget shortfall in the Risk Corridors Program and the Federal Government's obligation to make the risk corridor payments, Congress expressly refused to appropriate any monies to make the required payments. On December 16, 2014, Congress passed the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, stating:

> SEC. 227. None of the funds made available by this Act from the Federal Hospital Insurance Trust Fund or the Federal Supplemental Medical Insurance Trust Fund, or transferred from other accounts funded by this Act to the "Centers for Medicare and Medicaid Services—Program Management" account, may be used for payments under section 1342(b)(1) of Public Law 111–148 (relating to risk corridors).

55. This same appropriations rider prohibiting CMS from using its trust funds or other accounts to make the risk corridor payments was included in the appropriations bills covering CY 2015 and CY 2016. *See* Pub. L. 114-113, § 225, 129 Stat. 2624, and May 2017, *see* Pub. L. 115-31, § 223, 131 Stat. 543

56. At no time, however, did Congress repeal or amend Section 1342 to require budget neutrality or limit the mandatory nature of the Risk Corridors Program.

The Supreme Court Holds that the Federal Government is Required to Make Full and Complete Payment of Amounts Owed Under the Risk Corridors Program

57. The allegations in this Complaint are governed by and in accordance with the United States Supreme Court's holding in *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (Apr. 27, 2020). In *Maine Community Health,* the Supreme Court held and conclusively determined that issuers of QHPs who suffered losses as a result allowable expenses in excess of their target amounts have an absolute right to payment under Section 1342 and are entitled to an award of damages from this Court for the full unpaid amount. Definitively, the Supreme Court held "that §1342 of the [ACA] established a money-mandating obligation, that Congress did not repeal this obligation, and that petitioners may sue the Government for damages in the Court of Federal Claims." *Id* at 1315.

58. *Maine Community Health* involved health insurance companies who, like MHICO, issued QHPs through the ACA Exchanges. These plans exceeded their target amounts and were entitled to payments under the Risk Corridors Program. The Federal Government failed to make the full risk corridor payments to the plaintiffs in *Maine Community Health* and they brought suit in the Court of Federal Claims for damages under the Tucker Act, 28 U.S.C. § 1491.

59. The Supreme Court found in favor of the *Maine Community Health* insurance company plaintiffs and held that Section 1342 creates an obligation for the Federal Government to pay QHP issuers the full amounts owed under the formula set forth in Section 1342. 140 S. Ct. at 1319. According to the Supreme Court, "[n]othing in §1342 requires the Risk Corridors program to be budget neutral," and Section 1342 means what it says: "The Government 'shall pay' the sum that §1342 prescribes." *Id.* at 1321.

60. The Supreme Court also held that the Federal Government's obligation under Section 1342 to make the risk corridor payments was not contingent upon the availability of appropriations or other funds, and Congress did not impliedly repeal Section 1342's payment

obligation through its appropriation riders. *Id.* at 1323-1325.

61. Finally, the Supreme Court made it clear that QHP issuers may seek damages for unpaid Risk Corridors Program payments under the Tucker Act from the Federal Government in this Court. *Id.* at 1327.

MHICO Issued QHPs Certified by CMS that are Owed Payments Under the Risk Corridors Program.

62. In light of the Supreme Court's holding in *Maine Community Health*, to bring a claim for damages in accordance with the Tucker Act for repayment of Risk Corridors Program payments owed to it under Section 1342 of the ACA, MHICO must simply establish that it issued QHPs within the meaning of ACA and that those QHPs were entitled to receive payments under Section 1342. MHICO meets these requirements.

63. After enactment of the ACA, MHICO agreed to offer and sell QHPs—in accordance with the terms and requirements set forth in the ACA, its implementing regulations, and HHS and CMS policies and guidance—on the FFM in Ohio. MHICO made the decision to offer QHPs in reliance upon and with knowledge of the Risk Corridors Program and the payment obligations of Section 1342.

64. In states with federally facilitated Exchanges, such as Ohio, QHPs must be certified by CMS for compliance with ACA requirements prior to being offered on the Exchange.

65. The QHPs issued by MHICO were certified for sale on the Exchange in CY 2014, CY 2015, and CY 2016.

66. The Qualified Health Plan Issuer Agreement between MHICO and CMS for CY 2014 is attached as Exhibit 1.

67. The Qualified Health Plan Issuer Agreement between MHICO and CMS for CY 2015 is attached as Exhibit 2.

68. The Qualified Health Plan Issuer Agreement between MHICO and CMS for CY 2016 is attached as Exhibit 3.

69. In accordance with this certification, MHICO began selling QHPs on the Exchange in Ohio on January 1, 2014 with coverage effective as of that date.

70. MHICO provided health care coverage under these certified QHPs in each of CY 2014, CY 2015, and CY 2016 in accordance with applicable federal statutory and regulatory requirements.

71. In each of CY 2014, CY 2015, and CY 2015, MHICO submitted all required data for risk corridor payment calculation by the statutory and regulatory imposed deadlines under 45 C.F.R. 153.530(d).

72. On November 19, 2015, CMS released the "Risk Corridors Payment and Charge Amounts for Benefit Year 2014," which set forth the amount of money CMS determined was either owed by QHP issuers or the Federal Government or that the Federal Government owed to issuers for CY 2014 under the Risk Corridors Program. *See* CMS, Risk Corridors Payment and Charge Amounts for Benefit Year 2014 (Nov. 19, 2015), attached as Exhibit 4.

73. As determined by CMS, for CY 2014, MHICO was owed $4,162,818.87 in risk corridor payments for QHPs issued on the individual Marketplace and $814,705.62 for QHPs issued on small group Marketplace. Of these amounts owed, CMS paid to MHICO only a prorated amount of $525,258.93 and $102,798.47 respectively.

74. For CY 2015, CMS determined that MHICO was owed $4,279,010.69 in risk corridor payments for its individual Marketplace QHPs and no amounts were owed to either MHICO or the Federal Government on its small group QHPs. CMS claims to have made a payment of $165,344.99 to MHICO towards the 2014 Risk Corridors Program amounts due to

MHICO. CMS, Risk Corridors Payment and Charge Amounts for the 2015 Benefit Year (Nov. 18, 2016), attached as Exhibit 5.

75. For CY 2016, CMS calculated that determined that MHICO was owed $13,342,648.57 in risk corridor payments for its individual Marketplace QHPs and MHICO was responsible for paying to the Federal Government $8,758.40 on its small group QHPs. CMS claims to have made a payment of $43,298.40 towards the CY 2014 risk corridor payment amounts due to MHICO. See CMS, Risk Corridors Payment and Charge Amounts for the 2016 Benefit Year (Nov. 15, 2017), attached as Exhibit 6.

76. The Federal Government offset the CY 2016 risk corridor gain sharing obligation of $8,758.40 owed by MHICO in a payment made to MHICO on or about November 21, 2017, thereby satisfying MHICO's risk corridor payment obligation to the Federal Government.

77. In total, over the course of 2014, 2015, and 2016, the Federal Government determined and conceded that it owes MHICO $22,599,183.75 in Risk Corridors Program Payments under Section 1342. Of this total amount due to MHICO, the Federal Government has paid only $833,508.84.[1]

78. In accordance with the holding of the United States Supreme Court in *Maine Community Health Options v. United States*, MHICO is entitled to damages from the United States in the amount of $21,765,674.91 for the unpaid and owing risk corridors payments.

COUNT I

Violation of Statutory and Regulatory Payment Obligations

79. MHICO realleges and incorporates by reference all of the allegations contained in

[1] CMS, in its three Risk Corridor Payment and Charge Amount publications, claims to have paid a total of $836,700.79 to MHICO in risk corridor payment amounts. However, MHICO's records show having only received $833,508.84 from CMS.

the preceding paragraphs as if fully set forth herein.

80. Section 1342(b)(1) of the ACA mandates compensation be paid to MHICO, expressly stating that the Federal Government "shall pay" risk corridor payments to QHPs in accordance with the payment formula set forth in the statute.

81. HHS and CMS's implementing regulation at 45 C.F.R. § 153.510(b) also mandates compensation, expressly stating that the Federal Government "will pay" risk corridor payments to QHPs in accordance with the payment formula set forth in the regulation, which formula is mathematically identical to the formula in Section 1342(b)(1) of the ACA.

82. MHICO issued QHPs in CY 2014, CY 2015, and CY 2016, and qualified for and is entitled to receive mandated risk corridor payments from the Federal Government.

83. MHICO has complied with all statutory and regulatory conditions, and all other conditions precedent, so as to be entitled to recover the full value of the risk corridor payments identified herein.

84. As permitted by the Tucker Act, 28 U.S.C. §1491, MHICO is entitled under Section 1342(b)(1) of the ACA and 45 C.F.R. § 153.510(b) to recover full and timely mandated risk corridor payments from the Federal Government in the amounts calculated and conceded by CMS to be owed to MHICO.

84. The United States has failed to make full and timely risk corridor payments to MHICO for CY 2014, CY 2015, and CY 2016.

85. The Federal Government's failure to make full and timely risk corridor payments to MHICO constitutes a violation and breach of the United States' mandatory payment obligations under Section 1342(b)(1) of the ACA and 45 C.F.R. § 153.510(b).

86. The Supreme Court's decision in *Maine Community Health Options* is dispositive

of the legal issues in this case as the Federal Government breached the identical statutory risk corridors payment obligations at issue there in this case.

87. As a result of the United States' violation of Section 1342(b)(1) of the ACA and 45 C.F.R. § 153.510(b), MHICO been damaged in the amount of at least $21,765,674.91 together with interest, costs of suit, and such other relief as this Court deems just and proper.

COUNT II

Breach of Implied-in-Fact Contract

88. MHICO realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as if fully set forth herein.

89. MHICO and CMS entered into an implied-in-fact contract requiring CMS to make risk corridors payments to MHICO in the amount specified in Section 1342 and CMS's implementing regulations. MHICO agreed to sell and provide health care coverage to individuals under QHPs in CY 2014, CY 2015, and CY 2016—in accordance with the requirements of the ACA, its implementing regulations, and the Qualified Health Plan Issuer Agreements entered into by MHICO and CMS for each of the years at issue in MHICO offered QHPs on the Exchanges (see Exhibits 1, 2, and 3)—in exchange for, and in reliance upon, certain payments and reimbursements from the Federal Government offered to induce MHICO to issue such QHPs, including the risk corridors payments in the amounts required by Section 1342 and CMS's implementing regulations.

90. The terms of the offer and acceptance were unambiguously specified in the ACA and CMS's implementing regulations.

91. CMS agreed to this implied contract by and through the words and actions of James Kerr, Acting Deputy Director, Operations of CMS; Tony Trenkle, Director and CMS

Chief Information Officer; Kevin Counihan, Director of CCIIO and CEO of the Health Insurance Marketplaces; David J. Nelson, Deputy Chief Operating Office and Chief Information Administrator of CMS; and Todd Lawson, Acting Director, Office of E-health Standards and Services and Acting Senior Official for Privacy of CMS, each of whom had actual authority to bind the Government.

92. MHICO satisfied its contractual obligations by selling and providing QHP coverage to qualifying individuals and small groups in CY 2014, 2015, and 2016.

93. The Government breached its contractual duty to MHICO by paying only $836,700.79 of the total $22,599,183.75 to which MHICO is entitled in risk corridors payments for CY 2014, CY 2015, and CY 2016

94. The failure of Congress to appropriate funds does not defeat the Federal Government's contractual obligations to MHICO. The Federal Government is and was obligated to make full payment to MHICO of its contracted for risk corridors payments and owes at least $21,765,674.91, plus interest and other costs to MHICO.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully asks this Court to enter judgment in its favor and against Defendant and to:

A. Award Plaintiff monetary relief in the amounts to which Plaintiff is entitled under Section 1342 of the Affordable Care Act and 45 C.F.R. § 153.510(b), in the amount of $21,765,674.91;

B. To the extent available, award Plaintiff pre-judgment and post-judgment interest;

C. To the extent available, award Plaintiff costs and attorneys' fees; and

D. Award Plaintiff such other and further relied as this Court may deem necessary and

proper.

Dated: October 13, 2020

Respectfully submitted,

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