

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CARE NETWORK OF MICHIGAN,
and BLUE CROSS BLUE SHIELD OF
MICHIGAN MUTUAL INSURANCE
COMPANY,

Plaintiffs,

V.

THE UNITED STATES,

Defendant.

Case No. 20-1000
(Judge Davis)

JOINT STATUS REPORT

Pursuant to this Court’s October 8, 2020 Order (ECF No. 8), the parties submit this joint status report. The October 8 order partially stayed this case pending the resolution of the petitions for rehearing concerning the Federal Circuit’s cost-sharing reduction (CSR) decisions in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364 (Fed. Cir. 2020), and *Common Ground Healthcare Co-Op v. United States*, No. 2020-1286 (Fed. Cir. Sept. 30, 2020) (collectively, the CSR Appeals).

On November 10, 2020, the Federal Circuit denied the petitions for rehearing regarding the *Community Health Choice, Inc.* decision, which involved consolidated appeals. On December 16, 2020, the Federal Circuit denied the petitions for rehearing regarding the *Common Ground Healthcare Co-Op* decision. The period for filing a petition for a writ of *certiorari* from the Supreme Court is currently running. Given the possibility that non-prevailing parties in the CSR Appeals may seek further review from the Supreme Court, the parties believe that it would be in the best interest of both the parties and the Court that this case be stayed until either the Federal Circuit's judgments in the CSR Appeals become final and non-appealable, or the

Supreme Court resolves any petition for a writ of *certiorari* in those cases.

Good cause exists for the Court to continue the stay of this case. On October 12, 2020, the Court directed the entry of judgment pursuant to Rule 54(b) concerning plaintiffs' risk corridors claims pursuant to a joint stipulation for entry of judgment by the parties following the Supreme Court's decision in *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020). Judgment was entered for approximately \$66.5 million on October 13, 2020, and the Judgment Fund has since made payment to the plaintiffs. The remaining counts of plaintiffs' First Amended Complaint (Counts III and IV) both concern plaintiffs' CSR claims, and the Court entered an order staying proceedings relating to those counts on October 8, 2020, pending a resolution by the Federal Circuit of the petitions for rehearing in the CSR Appeals.

How the Supreme Court resolves any *certiorari* petitions that may be filed will directly affect future proceedings in this matter concerning plaintiffs' CSR claims, and therefore awaiting such resolution will preserve the time and resources of both this Court and the parties.

Accordingly, the parties respectfully request that the Court enter an order staying this matter until either the Federal Circuit's judgments in the CSR Appeals become final and non-appealable, or the Supreme Court resolves any petition for a writ of *certiorari* in those cases.

We propose that the parties be ordered to submit to a joint status report proposing further proceedings within 14 days of either event.

Respectfully submitted,

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