

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 17-877C

Judge Davis

**STIPULATION FOR ENTRY OF PARTIAL JUDGMENT
AS TO THE DISPUTE SUBCLASS**

To resolve the claims of Freelancers Co-Op of New Jersey, Inc. (“Freelancers”), the sole member of the Dispute Subclass, and the defenses of the United States, and to permit entry of final judgment on those claims and defenses, it is stipulated between the parties:

STATUTORY BACKGROUND

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs under which the Parties’ respective claims arise.

2. The ACA created three interrelated risk mitigation programs. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program; section 1342 (42 U.S.C. § 18062) created the risk corridors program; and section 1343 (42 U.S.C. § 18063) created the risk adjustment program. Section 1322 of the ACA (42 U.S.C. § 18042) relates to the Consumer Operated and Oriented Plan program, under which the United States provided start-up and solvency loans to certain insurers. Section 1412 (42 U.S.C. § 18082) authorizes advance

payment of premium tax credits (“APTCs”) to insurers. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”). Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) of the ACA authorize the United States to collect user fees for its operation of the federally-facilitated exchange (“FFE”) and the risk adjustment program.

THE PARTIES’ CLAIMS

3. On June 27, 2017, Common Ground Healthcare Cooperative (“Common Ground”) filed the Complaint in this matter on behalf of itself and others similarly situated, seeking risk corridors payments under section 1342 of the ACA for benefit year 2016. The Complaint alleged a single count for violation of section 1342.

4. On January 8, 2018, the Court certified the following class (the “Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

Docket No. 17. Ultimately, 130 QHP issuers opted into the Class, including Freelancers.

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). The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles the Class members to receive payment from the United States under ACA section 1342 for risk corridors benefit year 2016.

6. On July 23, 2020, this Court divided the class into two subclasses: (1) the Non-Dispute Subclass, which consisted of Class members who have no dispute with the United States; and (2) the Dispute Subclass, which consists of Freelancers, who had a legal dispute with the United States. Docket No. 105. On August 20, 2020, judgment was entered in favor of the Non-Dispute Subclass. Docket No. 112.

DAMAGES

7. The Parties stipulate that the Dispute Subclass is entitled to payment from the United States under section 1342, the risk corridors program, for benefit year 2016 in the amount of \$44,399,653.90.

8. The Parties further stipulate that the United States is entitled to payment from the Dispute Subclass of **APTCs** in the amount of \$2,079,582.11 and \$664,745.23 in interest; that the United States is entitled to payment from the Dispute Subclass of **CSRs** in the amount of \$436,954.88; that the United States is entitled to payment from the Dispute Subclass of **CSR reconciliations** in the amount of \$9,169,938.79 and \$3,502,603.71 in interest; that the United States is entitled to payment from the Dispute Subclass of **FFE user fees** in the amount of \$1,415,889.01 and \$488,175.62; that the United States is entitled to payment from the Dispute Subclass of **risk adjustment user fees** in the amount of \$109,280.40 and \$34,607.10 in interest; and that the United States is entitled to payment from the Dispute Subclass class on the **start-up loan** received from the United States in the amount of \$14,757,250.00.

9. The Parties enter into this stipulation for entry of judgment in favor of the Dispute Subclass in the amount of \$44,399,653.90. The Parties further stipulate that judgment shall be entered in favor of the United States in the amount of \$32,659,026.85. Accordingly, the Parties jointly request that the Court enter judgment in favor of the Dispute Subclass in the amount of

\$44,399,653.90, and judgment in favor of the United States in the amount of \$32,659,026.85. The judgment in favor of the United States shall be paid and satisfied in full through deduction from the amount owed under the judgment to the Dispute Subclass upon submission of the judgment to the Judgment Fund. The net amount payable by the United States to the Dispute Subclass pursuant to this judgment is \$11,740,627.05.

10. Freelancers (HIOS No. 10191), 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 Freelancers, and any and all of Freelancers' affiliated entities, have 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 for benefit year 2016.

11. The United States releases Freelancers (HIOS No. 10191), and any and all of its affiliated entities, receivers, consultants, agents, and servants, from all claims, actions, causes of action, proofs of claim, agreements, promises, damages, judgments, remedies, demands and liabilities, of any nature whatsoever, known or unknown, (collectively, the "claims"), (including interest except as already agreed to herein, and attorney fees, costs, and expenses of every kind and however denominated), that the United States has asserted, could have asserted, or may assert in the future against Freelancers, and any and all of its affiliated entities, arising under sections 1311, 1321, 1343, 1402 or 1412 of the ACA, or related to any start-up loan issued to Freelancers pursuant to section 1322 of the ACA.

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