

**IN THE UNITED STATES COURT
OF FEDERAL CLAIMS**

HIGHMARK, INC, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 20-1686 C
Judge Kaplan

UNOPPOSED MOTION FOR PARTIAL LIFT OF STAY

Plaintiffs move for a partial lift of the stay in this matter for the limited purpose of allowing Plaintiffs to file an amended complaint asserting claims for the cost-sharing reduction (“CSR”) amounts owed to Plaintiffs for CY 2020 and 2021. The Government does not oppose this request.

Since October 12, 2017, the Government has failed to honor its mandatory statutory obligation under Sections 1402 and 1412 to make CSR payments to qualified health plan issuers (“QHPs”), including Plaintiffs. Thus, QHPs like Plaintiffs continue to accrue damages resulting from the Government’s termination of CSR payments so long as QHPs continue to provide mandatory CSR discounts to certain ACA customers through participation on the ACA exchanges.

Liability for the Government’s statutory obligation to make all required CSR payments was decided in favor of QHPs like Plaintiffs in *Sanford Health Plan v. United States*, 969 F.3d 1370 (Fed. Cir. 2020). There, the Federal Circuit, relying on the U.S. Supreme Court’s decision on ACA risk corridors in *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020), held that the ACA’s “cost-sharing-reduction reimbursement provision imposes an unambiguous obligation on the government to pay money and that the obligation is enforceable

through a damages action in the Court of Federal Claims under the Tucker Act.” *Sanford Health Plan*, 969 F.3d at 1372.

In July, 2021, shortly after the U.S. Supreme Court denied the petition for writ of certiorari (No. 20-1162) and the Government’s conditional cross-petition (No. 20-1432) in *Maine Community Health Options v. United States*, which sought review of the Federal Circuit’s CSR decision in *Community Health Choice, Inc. v. United States*, Nos. 2019-1633, -2102, 2020 WL 4723757 (Fed. Cir. Aug. 14, 2020), the parties began discussions regarding next steps in this litigation. Several different attorneys, collectively representing a large number of plaintiff QHPs—including the Plaintiffs here—participated in discussions with Defendant regarding potential resolution of the remaining damages and mitigation issues in the pending CSR matters, including this action, through settlement. The parties are continuing those discussions; however, QHPs like Plaintiffs continue to accrue damages for each year that the Government fails to make the required CSR payments.

Here, Plaintiffs continue to participate on the ACA exchanges and offer CSR discounts to eligible ACA customers, but Plaintiffs’ Complaint only includes claims for the CSR damages owed through CY 2019. ECF No. 1. Accordingly, Plaintiffs respectfully request (and the Government does not oppose) the Court to partially lift the current stay for the limited purpose of allowing Plaintiffs to amend and update their Complaint to include claims for damages resulting from the Government’s failure to honor its statutory obligation to make CSR payments in CY 2020 and 2021. Other than permitting Plaintiffs to file this amended complaint, this case should remain stayed so that the parties can continue their efforts to resolve the remaining damages and mitigation issues in this CSR case without further litigation.

Counsel for Plaintiffs conferred with counsel for the Government regarding this motion, and counsel for the Government stated that the Government does not oppose Plaintiffs' requested relief.

August 22, 2022

Respectfully submitted,

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