

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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| COMMUNITY HEALTH CHOICE, INC., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 18-05 |
| v. |) | (Judge Davis) |
| |) | |
| THE UNITED STATES, |) | |
| |) | |
| Defendant. |) | |
| |) | |

JOINT STATUS REPORT AND MOTION TO CONTINUE STAY

Pursuant to the Court’s January 23, 2023 Order Staying Case, the parties respectfully submit this Joint Status Report. On January 23, 2023, the Court held a status conference in this and other CSR cases before it. There the parties described their settlement efforts in some detail. The Court encouraged the parties to redouble their efforts and indicated that it was not inclined to extend a stay beyond July 2023. The March 16, 2023 order directed the parties to file a joint status report proposing further proceeding by May 12, 2023.

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 the next steps in this litigation. Several different attorneys, collectively representing a large number of plaintiff health plans—including the plaintiff here—engaged Government counsel in discussions regarding potential resolution of the CSR matters through settlement.

On December 3, 2021, Plaintiffs’ counsel shared a proposal with the Government to

attempt to collectively resolve the damages and mitigation issues in the CSR cases without further litigation or to significantly streamline resolution of the remaining damages/mitigation issues in these cases. On April 28, 2022, the Government responded to Plaintiffs' proposal, and Plaintiffs responded on May 23, 2022. Thereafter, the parties convened by phone multiple times, and the Government produced certain settlement-related data and other and other information to the plaintiffs on July 22, 2022. The parties participated in a settlement-related call on September 1, 2022, and the CSR Plaintiffs followed that call with a letter to the Government on September 15, 2022. The Government has since responded to Plaintiffs by letter dated November 10, 2022, the Plaintiffs responded by letter dated January 10, 2023, and the parties participated in a settlement-related call on February 24, 2023. Since that time, the parties have exchanged additional correspondence seeking to further define the remaining issues and estimate the scope of damages. Counsel for the CSR Plaintiffs presently are working on a combined written response to the Government's most recent position on certain offset and mitigation issues that are material to any potential settlement. Counsel for the CSR Plaintiffs expects to deliver this response letter to counsel for the Government before the end of this month.

On February 24, 2022, the parties filed a Joint Stipulation for Entry of Partial Final Judgment (ECF No. 62) to resolve damages owed through December 31, 2017. On February 28, 2022, the Court granted the Stipulation and directed the Clerk to enter partial final judgment on Count IV of the Amended Complaint in favor of Plaintiff, dismissed Count IV of the Amended Complaint with prejudice as it related to Plaintiff's claim for CSR payments through December 31, 2017, and dismissed Counts V and VI of the Amended Complaint with prejudice (ECF No. 63).

With respect to remaining damages under Count IV after December 31, 2017, the parties' resolution efforts are progressing. The parties have significantly narrowed the issues to be resolved and believe that they are close to a final determination as to whether the methodology they have been discussing can be used. Accordingly, the parties respectfully request that the stay of this matter continue for an additional 60 days, at which time the parties will file a joint status report. Good cause exists for the Court to continue the existing stay of this case. The parties are working together to determine whether they may efficiently resolve this matter without further litigation or can at least streamline the damages and mitigation issues in this case. The parties are aware that this negotiation process has been a long one. But they maintain that the number of stakeholders, and the complexity of a global resolution, necessitate the careful back-and-forth that has thus far made progress on a potential resolution. For this reason, the parties respectfully request that the stay continue—if a resolution is possible, it will conserve judicial resources not only in this proceeding but in the approximately 25 proceedings currently before the Court. The parties therefore jointly propose that they file a status report by July 12, 2023, in which the parties will update the Court on the status of their efforts to resolve this matter.

May 12, 2023

/s/ William L. Roberts

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Respectfully submitted,

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