

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HARVARD PILGRIM HEALTH CARE, INC.)
HPHC INSURANCE COMPANY, INC., AND)
HARVARD PILGRIM HEALTH CARE OF)
NEW ENGLAND, INC., and TUFTS HEALTH)
PUBLIC PLANS, INC.,)

Plaintiffs,)

v.)

THE UNITED STATES,)

Defendant.)

Case No. 18-1820
Senior Judge Loren Smith

JOINT STIPULATION FOR ENTRY OF PARTIAL FINAL JUDGMENT

To partially resolve the complaint of plaintiff Tufts Health Public Plans, Inc., and to permit the entry of partial final judgment on that complaint, plaintiff and the United States (collectively, the Parties) stipulate as follows:

1. Section 1402 of the Patient Protection and Affordable Care Act (ACA) established the cost-sharing reduction (CSR) program to lower the cost of health coverage offered for eligible insureds. 42 U.S.C. § 18071.
2. On August 14, 2020, the U.S. Court of Appeals for the Federal Circuit determined that “the government violated its obligation to make cost-sharing reduction payments [to insurers] under section 1402; ‘that the 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 [Claims Court] under the Tucker Act.’” *Cnty. Health Choice, Inc. v. United States*, 970 F.3d 1364, 1371 (Fed. Cir. 2020) (quoting *Sanford Health Plan v. United States*, 969 F.3d 1370,

1373 (Fed. Cir. 2020)). The Federal Circuit further determined that there was “no basis for a 2017 damages offset.” *Id.* at 1372. The Supreme Court denied further review of these rulings.

3. On November 27, 2018, plaintiffs Harvard Pilgrim Health Care, Inc., HPHC Insurance Company, Inc., and Harvard Pilgrim Health Care of New England, Inc. filed the Complaint in this Court (ECF No. 1) seeking damages for unpaid CSR payments through December 31, 2017. On April 19, 2019, plaintiffs filed an amended complaint (ECF No. 11) seeking damages for unpaid CSR payments through December 31, 2018. The amended complaint asserts two counts, each seeking the same CSR payments through December 31, 2018. On July 28, 2020, plaintiffs filed a second amended complaint (ECF No. 19) to update the damages numbers.
4. Plaintiff Tufts Health Public Plans, Inc. was a member of the class in *Common Ground Healthcare Cooperative v. United States*, No. 1:17-cv-00877 (Judge Davis). The class action, in part, also seeks damages for unpaid CSR payments through December 31, 2018.
5. On April 10, 2023, upon an unopposed motion to withdraw and transfer, and pursuant to Rule 40.1(b) of the Rules of the United States Court of Federal Claims, plaintiff Tufts Health Public Plans, Inc. was transferred from *Common Ground Healthcare Cooperative* to this case.
6. The Parties agree that the Federal Circuit’s rulings in *Community Health Choice* and *Sanford* entitle Tufts Health Public Plans to payment under section 1402 of the ACA

for unpaid CSR payments through December 31, 2017. The parties had previously calculated that amount to be \$8,370,566.22 (the Stipulated Amount).

7. The Parties further stipulate and agree that Tufts Health Public Plans recently informed the Centers for Medicare & Medicaid Services (CMS) that Tufts Health Public Plans discovered certain CSR filings it had submitted included an amount more than Tufts Health Public Plans was owed in CSR payments for benefit years 2016 and 2017, which resulted in Tufts Health Public Plans receiving excess CSR payments for those benefit years. Both CMS and Tufts Health Public Plans are in the process of determining the exact amounts of such excess CSR payments.
8. For purposes of partially resolving Tufts Health Public Plans' claims in this case, the Parties jointly request that the Court enter partial judgment in favor of plaintiffs in the amount of \$8,370,566.22 on Count I of the amended complaint as it relates to CSR payments through December 31, 2017, with each party to bear its own costs, attorney fees, and expenses. The Parties also agree that this Stipulated Amount shall be reduced by any excess CSR amounts that Tufts Health Public Plans and CMS determine, as described below in Paragraph 11, but this reduction should happen in the ordinary course, and not as part of this litigation.
9. The Parties further request that the Court partially dismiss Count II of the second amended complaint as it relates to plaintiffs' claim for CSR payments through December 31, 2017, with prejudice.
10. Upon entry of judgment in the Stipulated Amount, plaintiff Tufts Health Public Plans, Inc. (HIOS No. 59763) releases 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 they have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, relating to unpaid CSR payments through December 31, 2017.

11. Finally, the Parties also stipulate and agree that the partial final judgment requested here shall not affect Tufts Health Public Plans' rights and obligations to adjust the CSR amounts it received or will receive through this stipulation for benefit years 2016 or 2017, nor function as any release or compromise of the Government's right to seek the return of any excess CSR payments under the ACA or any other applicable statute.

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Respectfully submitted,

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