

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE)	
COOPERATIVE,)	
)	
Plaintiff,)	No. 17-877C
)	
v.)	
)	Judge Sweeney
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

DEFENDANT’S MOTION FOR AN ENLARGEMENT OF TIME TO RESPOND TO PLAINTIFF’S MOTION FOR CLASS CERTIFICATION AS IT RELATES TO THE COST-SHARING REDUCTION CLASS

Pursuant to Rule 6.1 of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests an enlargement of time of 22 days to respond to plaintiff’s motion for class certification regarding the cost-sharing reduction (CSR) class. The Government’s response to the plaintiff’s motion as it relates to the CSR class is currently due on January 29, 2018. If our motion is granted, the Government’s response would be due February 20, 2018. We previously requested an enlargement of 30 days for this purpose. Counsel for the Government attempted to contact counsel for the plaintiff regarding this request. Though counsel have exchanged messages, we have not yet been informed as to plaintiff’s position on our request for an enlargement.

Our request for additional time to respond to plaintiff’s motion for class certification regarding the CSR class is necessary to allow us to complete our review and analysis of the complex factual and legal issues raised by the motion, and to permit sufficient time to coordinate a response with the Department of Health and Human Services (HHS), and within the Department of Justice.

We previously responded to plaintiff's motion as it pertains to the risk corridors class, and did not object to the certification of that class, and the Court has since certified the risk corridors class. The risk corridors class is similar to the class certified by this Court in *Health Republic Insurance Company v. United States*, No. 16-259C.

However, the CSR class is based on a different statute and presents unique legal issues that the Government is still analyzing and considering. As the Court is aware, the new CSR class was first proposed only in November, when plaintiff amended its complaint to add a new count seeking relief under the CSR statute and regulations. This amended complaint raises the first-ever claim based upon CSRs in this Court, and therefore raises a novel set of legal issues for this Court to adjudicate in the first instance.¹ In turn, any potential class raises significant and new issues that are different from those raised in the risk corridors portion of the case. Because of the significance of this potential class action, and the complex healthcare policy issues it implicates, we must carefully coordinate our position within the Department of Justice and with our client agency, HHS, all which has taken considerable time. We require additional time to finalize the process of obtaining the necessary approvals for our position, and to draft a response reflecting that approved position. This additional time should not cause delay, as the Court has stayed this matter on the merits pending a decision by the United States Court of Appeals for the Federal Circuit in *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224, and/or *Moda Health Plan, Inc. v. United States*, No. 17-1994, while allowing the parties to proceed on matters such as class certification.

¹ On December 28, 2017, Maine Community Health Options filed a complaint (No. 17-2057), which has also been assigned to Judge Sweeney.

For these reasons, we respectfully request that the Court grant our motion for a 22-day enlargement of time until February 20, 2018.

Dated: January 26, 2018

Respectfully submitted,

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