

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
SANFORD HEALTH PLAN,)	
)	
Plaintiff,)	
)	Case No. 18-136C
v.)	Judge Elaine D. Kaplan
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT

Pursuant to the Court’s September 6, 2018 Order (Order), *see* ECF No. 16, plaintiff Sanford Health Plan (Plaintiff or Sanford Health) and defendant, the United States, respectfully submit the following joint status report regarding further proceedings in this case.

In the Montana Health cost-sharing reduction (CSR) case, Judge Kaplan ruled that the United States was statutorily obligated to provide Montana Health with CSR payments for the fourth quarter of 2017, and that this obligation was not vitiated by Congress’s failure to appropriate funds for that purpose. Accordingly, Judge Kaplan granted Montana Health summary judgment as to liability, with quantum to be determined at a later date. *See Montana Health Co-op v. United States*, No. 18-143C, 2018 WL 4203938 (Fed. Cl. Sept. 4, 2018). Following that decision, the above-captioned matter was transferred from Senior Judge Firestone to Judge Kaplan. On September 6, 2018 the Court issued an order directing the parties “to file a joint status report on or before October 4, 2018, informing the Court as to whether they believe this case should proceed to a decision on the pending motions or whether it should be stayed pending further proceedings in *Montana Health*.”

The parties have conferred and respectfully submit that the motions in *Sanford Health* are fully briefed and are ready for decision. Argument is unnecessary because the Court heard argument in the *Montana Health* case based upon substantially similar briefing, and the attorneys are the same in both cases. Although the Government believes that it should prevail on the question of liability, were the Court to adopt its ruling from *Montana Health* in the *Sanford* case, the parties agree that no further proceedings would be needed to determine the quantum due to Sanford Health. The United States represents that the Centers for Medicare & Medicaid Services (CMS) has reconciled the amounts it has paid to qualified health plan (QHP) issuers in advance CSR payments for benefit year 2017 against the amount of CSRs each respective issuer paid on behalf of its insureds for benefit year 2017. The United States further represents that had a valid appropriation for CSR payments been available, the amount it would have owed Sanford Health for the fourth quarter of 2017, following reconciliation, is \$360,254.

Sanford Health reserves the right to litigate future claims that may arise from Defendant's failure to make payments under Section 1402 of the Patient Protection and Affordable Care Act, including for benefit years 2018 and 2019. The United States reserve all rights to seek further review of the Court's decision in this case.

Respectfully submitted,

Dated: October 4, 2018

/s/ Stephen McBrady
Stephen McBrady

CROWELL & MORING LLP

1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
SMcBrady@crowell.com

OF COUNSEL:

Daniel Wolff
Xavier Baker
Skye Mathieson
Monica Sterling

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 624-2500

Counsel for Sanford Health Plan

JOSEPH H. HUNT
Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

/s/ Claudia Burke
Claudia Burke
Assistant Director

/s/ Christopher J. Carney
Christopher J. Carney
Senior Litigation Counsel

ALBERT S. IAROSI
ERIC E. LAUFGRABEN
VERONICA N. ONYEMA
Trial Attorneys
United States Department of Justice
Civil Division, Commercial Litigation Branch
Telephone: (202) 305-7597
Facsimile: (202) 307-0494
Christopher.Carney@usdoj.gov

Counsel for the United States of America