

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMUNITY HEALTH)	
CHOICE, INC.,)	
)	No. 18-05 C
Plaintiff,)	(Chief Judge Sweeney)
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s February 15, 2019 Opinion and Order, see ECF No. 28, plaintiff, Community Health Choice, Inc. (CHC), and defendant, the United States, respectfully submit the following joint status report. For the following reasons, the parties jointly request that this Court enter judgment pursuant to Rule 54(b) of the Rules of the Court of Federal Claims (RCFC), as soon as reasonably possible.

In the February 15 Opinion and Order, the Court granted CHC’s motion for summary judgment on Counts IV and VI of the amended complaint, and granted the Government’s motion to dismiss Count V. The Court directed that:

By no later than Thursday, February 28, 2019¹, the parties shall file a joint status report indicating the amount due to plaintiff for its unpaid cost-sharing reduction reimbursements, taking care to separately indicate the amount due for 2017 and the amount due for 2018. If the parties are unable to provide the amount due for 2018, they shall (1) suggest a deadline for providing the court with that information and (2) indicate whether an RCFC 54(b) judgment limited to the cost-sharing reduction claim for 2017 would be appropriate. If the parties are able to provide the amount due for 2018, the court will direct the entry of judgment on plaintiff’s cost-sharing reduction claim for 2017 and 2018 pursuant to RCFC 54(b).

¹ By order dated February 28, 2019, the Court extended the parties’ deadline until March 5, 2019.

I. 2017 CSR Payments

The parties have conferred and agree that the 2017 CSR reconciliation process undertaken by the Centers for Medicare & Medicaid Services (CMS) demonstrates the difference between (1) advanced CSR payments the Government made to CHC during 2017 and (2) the actual CSR payments CHC made on behalf of insureds that year is \$11,174,299.10. Thus, pursuant to the Court's ruling and without waiver of the Government's right to challenge that ruling on appeal, the parties stipulate that, based upon plaintiff's actual reconciled 2017 CSR data, the remaining 2017 CSR payment amount due from the Government to CHC is \$11,174,299.10.

II. 2018 CSR Payments

A. Plaintiff's Position Regarding 2018 CSR Payments

CHC has proposed a methodology for estimating its 2018 CSR amounts based upon its 2017 costs. CHC has determined its 2017 CSR average per-member-per-month costs for its eligible plans and multiplied that amount by its 2018-member months to arrive at an estimated 2018 CSR amount of \$60,386,972.26. CHC views this as a conservative estimate of its actual 2018 CSR amount but is willing to stipulate to this amount in order to resolve this issue expeditiously. By agreeing to this amount, CHC does not waive and expressly reserves its right to make all other arguments for liability and damages, including all arguments against points that may be raised by the Government such as whether any premium increases in 2018 could properly relieve in whole or part the Government's statutory and/or contractual obligations to make CSR payments in full.

B. Government's Position Regarding 2018 CSR Payments

With respect to 2018 CSR payments, the Government does not yet possess actual 2018 CSR data from CHC—or any issuers—upon which it can calculate 2018 CSR amounts. The Government's usual practice is to collect actual CSR data from issuers from April through May of the year following the end of a benefit year (meaning after December 31st) and to report reconciled CSR amounts to issuers in June of the year following the benefit year. For example, the schedule for reconciling 2017 CSR data and 2016 CSR restatements was as follows:²

<u>Timing</u>	<u>Activity</u>
March 29, 2018	Final Instructional Manual and Specifications Guide published on CMS website.
March 29, 2018	Final technical specifications and attestation forms published.
April-May 2018	Webinars and training for all issuers.
April 2, 2018	Data submission window opened for benefit year 2017 reconciliation and 2016 restatements.
June 1, 2018	Data submission window closed for benefit year 2017 reconciliation and 2016 restatements.
June 29, 2018	CMS notified issuers of the reconciled amounts due from the issuers to CMS.

CMS plans to open the data submission window to accept issuers' benefit year 2018 CSR data in early-April 2019. Assuming that issuers make timely data submissions (by April 29, 2019), CMS expects to be able to notify such parties of their benefit year 2018 reconciled amounts in early-May 2019. These numbers would reflect actual CSR payments made by such issuers in 2018 and not estimated advance CSR payments CMS calculated for benefit year 2018.

² See <https://go.usa.gov/xEddk>.

However, CHC has proposed a methodology for estimating its 2018 CSR amounts based upon its 2017 costs. CHC has determined its 2017 CSR average per-member-per-month costs for its eligible plans and multiplied that amount by its 2018 member months to arrive at an estimated 2018 CSR amount of \$60,386,972.26. Although the most precise method to determine CHC's 2018 CSR amount would be to use the 2018 reconciliation process, the Government will stipulate to CHC's 2018 CSR calculation in this case, subject to the following, important caveats.

First, while the Government stipulates to and waives any right to dispute CHC's 2018 CSR amount, the Government does not waive and expressly reserves its right to make all other arguments against liability and damages, including the argument that any 2018 damages should be reduced by the amount that CHC received as a result of 2018 premium increases made in anticipation of the absence of CSR payments.

Second, the Government is only willing—and has only received the necessary approvals—to stipulate to CHC's 2018 CSR amount and calculation methodology in CHC's case. The Court's February 15, 2019 ruling in this matter addressed significant legal issues that have arisen and will continue to arise in the various CSR matters pending before this Court, including: the Government's statutory obligation to make CSR payments in the absence of a congressional appropriation; the extent to which any damages in the CSR matters should be reduced to the extent issuers raised premiums to compensate for the absence of CSR payments; and, whether the Government entered into an implied-in-fact contract with issuers with respect to CSR payments. Thus, this case reflects an ideal vehicle by which the United States Court of Appeals for the Federal Circuit can address these recurring legal issues.

III. Parties' Stipulation Concerning The Entry Of Judgment

Accordingly, in light of the Court's February 15, 2019 Opinion and Order, and for the above-stated reasons, the parties hereby stipulate that the Court should enter a partial final judgment in accordance with RCFC 54(b)³ for \$71,561,271.36. While the parties stipulate to and waive any right to dispute this amount, this stipulation is made without prejudice to the parties' rights to make all other arguments relating to liability and damages, including the arguments described above in Sections II.A. and II.B.

³ The risk-corridors counts of plaintiff's complaint (Counts I-III) have been stayed pending resolution of certain issuers' petitions for *certiorari* to appeal the Federal Circuit's decision in *Moda Health Plan, Inc. v. United States*, 892 F.3d 1311 (Fed. Cir. 2018).

Respectfully submitted,

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