

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all
others similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-MMS
(Judge Sweeney)

**PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S
MOTION FOR RELIEF REGARDING CLAIMS RECONCILIATION PROCESS**

Plaintiff Common Ground Healthcare Cooperative (“CGHC” or “Plaintiff”) respectfully requests that the Court enter an Order requiring the Government to grant an extension to June 7, 2019 to submit CSR claims data to any member of the CSR Class who requests one. This would effectively provide members of the CSR Class 64 days to complete the data submission process (four days more than were provided last year) to account for the fact that detailed information about the process was provided to QHP Issuers later than in previous years. Plaintiff conferred with counsel for the Government, who stated that they oppose this motion.

In the March 5, 2019 Joint Status Report, the Government stated that “the Government’s usual practice is to collect actual CSR claims data from issuers from April through May of the year following the end of a benefit year.” Joint Status Report, Dkt. 53, at 10. The Government stated that for last year’s reconciliation process, the data submission window opened on April 2, 2018, and closed on June 1, 2018. *Id.* According to the Government, “CMS was proposing to follow its usual CSR reconciliation process” for the upcoming reconciliation process. *Id.* at 9. In that Joint Status Report, the Government also offered an expedited schedule for Class members, with the data submission window closing on April 29, 2019. *Id.* at 11.

On the evening of April 3, 2019, Class counsel received the first detailed information from the Government regarding the reconciliation process for 2018 CSR data and 2017 CSR restatements.¹ This document announced for the first time the date that the online submission portal would be opened (the next day, April 4, 2019), and announced a new date for the window to close (May 3, 2019). After discussing this proposed process with members of the CSR Class, Class counsel understands from many Class members that submitting CSR data by May 3, 2019 is not feasible for some QHP Issuers, despite their best efforts. Every year, QHP Issuers expend significant amounts of their own resources to prepare and submit data to HHS for claims reconciliation, which often requires hiring outside vendors to assist with preparing the claims data for submission. Other QHP Issuers divert internal resources to handle the submission in-house. The costs to prepare and submit CSR data can easily run into the tens of thousands of dollars, and even up to \$100,000, depending on the entity. The realities of the work required to prepare and submit this data are simply that some Class members will require additional time akin to the schedule offered in previous years.

In response to these concerns from Class members, Class counsel requested that the Government leave the online portal open for submissions until early June 2019, as was the

¹ During an April 5, 2019 meet and confer call, counsel for the Government suggested that Class counsel should have raised this issue earlier. However, Class counsel contacted counsel for the Government twice during the week of March 25, 2019 requesting additional information about the claims submission process and received no response. On Monday, April 1, 2019, Class counsel and counsel for the Government exchanged email correspondence regarding additional information Class counsel sought, which the attorneys at the Department of Justice stated they would need to obtain from HHS. On April 3, 2019, Class counsel received additional information from the Government and was notified for the first time of the dates for the claims submission window. On April 4, 2019, Class counsel contacted attorneys at the Department of Justice to notify them that some Class members needed additional time to complete the reconciliation process and sought a submission window more in line with what HHS provided in prior years. The parties had a meet and confer call regarding this issue on April 5, 2019, but were unable to reach a resolution.

practice in prior years. However, during an April 5, 2019 meet and confer call, attorneys at the Department of Justice stated that they were informed by HHS that the submissions window had already been established and could not be adjusted. The attorneys at the Department of Justice also stated that they had been told by HHS that time extensions would be granted in accordance with past practice in previous years. However, counsel for the Government was unable to represent that HHS would in fact grant an extension to June 7, 2019 to all members of the CSR Class who needed additional time beyond the May 3, 2019 date.²

Some members of the CSR Class may be able to meet the May 3, 2019 date for submissions, but others certainly will not. This year, HHS is opening the online portal for Class member CSR data submission for 29 days (April 4, 2019 through May 3, 2019). Last year, the online submission portal was open for 60 days (April 2, 2018 through June 1, 2018). Cutting in half the timeline for submissions now that the Government is involved in litigation with QHP Issuers related to the non-payment of CSR amounts is unjust. And relying on HHS to determine whether to grant an extension to any particular QHP Issuer is no solution in a case where the Government is motivated to make it as difficult as possible for Class members owed amounts by order of this Court to make a claim establishing those amounts. This litigation exists because the

² Following the April 5 meet and confer call, the Government informed Class counsel as follows: “HHS informs us that if any issuer in the class timely requests an extension of the litigant submission period, HHS will grant the request, so long as no extension goes beyond the close of submissions for non-litigants, which we understand will be May 31.” However, this representation does not resolve the issue. **First**, while Class counsel believes most Class members will be able to submit data by May 31, 2019, some Class members will need more time. Class counsel is seeking a deadline that serves the interests of all Class members. **Second**, an extension to May 31, 2019 still only provides 57 days to submit CSR data, as compared to the 60 days provided last year. Given the fact that HHS provided almost no information about this year’s process until April 3, 2019, and the fact that it was only in March 2019 that QHP Issuers received confirmation that this year’s reconciliation process would actually be occurring, QHP Issuers need *more* time than last year, not *less*.

Government refused to pay CSR amounts, despite having an obligation to do so pursuant to a money-mandating statute. To shorten the submission window and decline to guarantee that extensions will be granted will make it very burdensome for many members of the CSR Class to submit the data necessary to collect on their CSR claims—amounts this Court has already determined the Government had an obligation to pay. In that instance, rather than proceed by orderly fashion outside of this Court, the Government will force aggrieved parties to make their submissions in unwieldy Court filings, which is inefficient and unnecessary.

HHS should not be permitted to manipulate this process to discourage members of the CSR Class from completing this burdensome and costly CSR data submission by shortening the deadline. If it is not HHS' intent to limit the number of Class members who are able to reconcile their 2018 CSR data, HHS should have no concerns with granting extensions to the Class members who need one according to a schedule similar to that used last year. However, Class members should have some assurance on this point, rather than relying on the determination of the Government (*i.e.*, the opposing party in this ongoing litigation related to non-payment of claims) regarding whether to grant an extension.

THEREFORE, Plaintiff respectfully requests that the Court enter an order requiring the Government to grant an extension through June 7, 2019 to any member of the CSR Class who requests one. This would effectively provide members of the CSR Class 64 days to complete the data submission process (four days more than were provided last year) to account for the fact that detailed information about the process was provided to QHP Issuers later than in previous years.

Dated: April 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 10, 2019, a copy of the foregoing Plaintiff's Motion for Relief Regarding Claims Reconciliation Process was served via the Court's CM/ECF system on Defendant's counsel.

/s/ Stephen Swedlow
Stephen Swedlow