

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)

**REPLY IN SUPPORT OF MOTION TO CERTIFY A 2019 COST-SHARING
REDUCTION CLASS AND PROPOSED ORDER**

In its response brief, the government indicates that it does not oppose certification of a 2019 cost-sharing reduction class nor does it oppose appointment of Quinn Emanuel as class counsel. The government also requested a stay on the merits of the Plaintiff's and the class's 2019 cost-sharing reduction claims until the cost-sharing reduction appeals currently before the Federal Circuit are decided. Plaintiff does not oppose the government's request for a discretionary stay as to only the merits of the 2019 cost-sharing reduction claims. Plaintiff disagrees, however, with the government's suggestion that the court lacks jurisdiction to entertain Plaintiff's 2019 cost-sharing reduction claims because the 2017-2018 CSR claims are on appeal. Notwithstanding the 2017-2018 CSR appeal, the court retains jurisdiction to proceed with respect to the other claims in this case, including Plaintiff's 2016 risk corridors claim and 2019 cost-sharing reduction claim. *See, e.g., Memmer v. United States*, No. 14-135L, 2017 WL 2920032 (Fed. Cl. July 7, 2017) (Sweeney, J.) (holding that the court retained jurisdiction over claim not on appeal). The government provides no reason why the fact that the 2017-2018 and

2019 cost-sharing reduction claims are set forth in the same count of the complaint divests the court of jurisdiction over the 2019 claim, which seeks distinct relief for a different time period, likely on behalf of different class members.

Plaintiff nonetheless agrees to a discretionary stay on the merits of the 2019 cost-sharing reduction claims, but requests that the Court require the parties to submit a joint status report within 15 days of the Federal Circuit's opinion in the cost-sharing reduction cases argued on January 9, 2020. Accordingly, Plaintiff submits the following proposed order for the Court's consideration:¹

1. The court certifies the following cost-sharing reduction class:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds. Excluded from the Class is the Defendant and its members, agencies, divisions, departments, and employees.

2. The cost-sharing reduction class claim is for amounts allegedly owed to the class by the United States pursuant to section 1402 of the Affordable Care Act (42 U.S.C. § 18071) and 45 C.F.R. § 156.430 for the 2019 benefit year.
3. The parties may later move for decertification or move for the class to be divided into subclasses if, as this case develops, the circumstances warrant such a motion.
4. Plaintiff Common Ground Healthcare Cooperative is designated as the class representative.
5. The court grants Plaintiff's motion for the appointment of class counsel and appoints Quinn Emanuel as counsel for the 2019 cost-sharing reduction class. Notwithstanding the appointment of Quinn Emanuel as class counsel, all filings made on behalf of the class shall continue to be signed by the attorney of record for the class representative. See RCFC 83.1(c)(1)-(2) ("A party may have only one attorney of record in a case at any one time All filings must be signed in the attorney of record's name.").
6. Defendant, by no later than Friday, June 26, 2020, shall provide to plaintiff a list of potential

¹ Plaintiff shared the proposed order with the government, which has informed us that it is "not in a position to jointly request" entry of the order.

class members, which shall include all entities that offered qualified health plans under the Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to section 1402 of the Affordable Care Act, but did not receive a “timely and periodic” payment from the government of an amount “equal to the value of the reductions” provided to its insureds. The list shall include the name of the individual or entity that is a potential class member, the current or last known electronic-mail address of the individual or entity (providing the name and electronic-mail address of the person responsible for cost-sharing reduction receivables, if known), and the current or last known mailing address of the individual or entity.

7. If, after June 26, 2020, plaintiff discovers the identity of additional potential class members to whom plaintiff believes that notice should be provided, plaintiff shall promptly inform defendant. Defendant shall have an opportunity to object to any additional potential class members within seven calendar days from the date that plaintiff identified the newly discovered potential class members by forwarding its objections to plaintiff via electronic mail. If the parties are unable to resolve any of defendant’s objections to the newly discovered potential class members, they shall file joint motion setting out in separate sections their respective positions for resolution by the court.
8. Class counsel shall submit to the court a proposed notice plan and opt-in schedule that complies with the requirements of RCFC 23(c)(2)(B) by no later than Wednesday, July 8, 2020.
9. Defendant shall provide Plaintiff with the amount due to each member of the 2019 cost-sharing reduction class as soon as such information is available to Defendant.
10. The court stays proceedings only on the merits of Plaintiff’s 2019 cost-sharing reduction claims pending a decision by the United States Court of Appeals for the Federal Circuit in *Sanford Health Plan v. United States*, No. 19-1290; *Montana Health CO-OP v. United States*, No. 19-1302; *Community Health Choice v. United States*, No. 19-1633; and *Maine Community Health Options v. United States*, No. 19-2102 (“CSR Appeals”).
11. The parties shall file a joint status report within 15 days of the issuance of the Federal Circuit’s decision in the CSR Appeals.

DATED: May 28, 2020

Respectfully submitted,

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s/ Stephen Swedlow

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CERTIFICATE OF SERVICE

I certify that on May 28, 2020, a copy of the attached Reply in Support of Motion to Certify a 2019 Cost-Sharing Reduction Class and Proposed Order was served via the Court's CM/ECF system on all counsel of record.

s/Stephen Swedlow

Stephen Swedlow