

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH CARE SERVICE CORPORATION, an Illinois Mutual Legal Reserve Company, doing business as BLUE CROSS BLUE SHIELD OF ILLINOIS, BLUE CROSS BLUE SHIELD OF MONTANA, BLUE CROSS BLUE SHIELD OF NEW MEXICO, BLUE CROSS BLUE SHIELD OF OKLAHOMA, and BLUE CROSS BLUE SHIELD OF TEXAS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 1:20-cv-00259-CFL

Hon. Charles Lettow

STIPULATION OF ENTRY OF FINAL JUDGMENT

To finally resolve the claims of Plaintiff Health Care Service Corporation (“HCSC”), against the Defendant United States, and to permit the entry of final judgment on Plaintiff’s claims, it is hereby stipulated and agreed between the Parties:

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs to expand access to affordable health insurance coverage.
2. Section 1342 (42 U.S.C. § 18062) of the ACA created the risk corridors program.
3. On March 6, 2020, HCSC filed a Complaint in this Court seeking damages under the risk corridors program, ACA section 1342, for benefit years 2014, 2015, and 2016. The

Complaint asserts four counts, each asserting a separate theory for damages arising under the risk corridors program.

4. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently-enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

5. The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles HCSC to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014, 2015, and 2016 in the total amount of \$1,953,853,891.60 (“Stipulated Damages Amount”). The Parties further agree that receipt by HCSC of this full payment will resolve entirely the Complaint in this case.

6. Accordingly, the Parties jointly request that the Court enter final judgment in favor of HCSC and award total damages in the amount of \$1,953,853,891.60 on Count I of the Complaint.

7. Upon the Court’s entry of final judgment as requested above, the Parties further jointly request that the Court dismiss Counts II, III, and IV of the Complaint with prejudice.

8. Upon entry of final judgment and receipt of full payment by HCSC of the Stipulated Damages Amount above, HCSC, including its plans in Illinois (Blue Cross Blue Shield of Illinois; HIOS no. 36096), Montana (Blue Cross Blue Shield of Montana; HIOS no. 30751), New Mexico (Blue Cross Blue Shield of New Mexico; HIOS no. 75605), Oklahoma (Blue Cross Blue Shield of Oklahoma; HIOS no. 87571), and Texas (Blue Cross Blue Shield of

Texas; HIOS no. 33602), and any and all of the Plaintiff's affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that HCSC, including its plans in Illinois (Blue Cross Blue Shield of Illinois; HIOS no. 36096), Montana (Blue Cross Blue Shield of Montana; HIOS no. 30751), New Mexico (Blue Cross Blue Shield of New Mexico; HIOS no. 75605), Oklahoma (Blue Cross Blue Shield of Oklahoma; HIOS no. 87571), and Texas (Blue Cross Blue Shield of Texas; HIOS no. 33602), and any and all of the Plaintiff's affiliated entities, has asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under Section 1342 of the ACA.

Dated: June 29, 2020

JOSEPH H. HUNT
Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Marc S. Sacks
MARC S. SACKS
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 307-1104
Fax (202) 514-9163
marcus.s.sacks@usdoj.gov

ATTORNEYS FOR
THE UNITED STATES

Respectfully submitted,

By: /s/ K. Lee Blalack II

K. Lee Blalack II
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
lblalack@omm.com

Of Counsel:

Jennifer Sokoler
Shane A. Hunt
O'MELVENY & MYERS LLP
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
Facsimile: (212) 326-2164
jsokoler@omm.com
shunt@omm.com

ATTORNEYS FOR PLAINTIFF
HEALTH CARE SERVICE
CORPORATION