

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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MONTANA HEALTH CO-OP,	)	
	)	
Plaintiff,	)	
	)	Case No. 20-561
v.	)	
	)	Judge Kaplan
THE UNITED STATES,	)	
	)	
Defendant.	)	
	)	
_____	)	

**JOINT MOTION TO STAY**

Pursuant to Rule 7 of the United States Court of Federal Claims, plaintiff, Montana Health Co-Op and defendant, the United States, respectfully submit this joint motion to stay proceedings in this case pending a decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Sanford Health Plan v. United States*, 139 Fed. Cl. 701 (2018), *appeal docketed*, No. 19-1290 (2018) (*Sanford Health Plan*); *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018), *appeal docketed*, No. 19-1302 (2018) (*Montana Health Co-Op*); *Community Health Choice, Inc. v. United States*, 141 Fed. Cl. 744 (2019), *appeal docketed*, No. 19-1633 (2019) (*Community Health Choice*); and *Maine Cmty. Health Options v. United States*, 143 Fed. Cl. 381 (2019), *appeal docketed*, No. 19-2102.

**BACKGROUND**

The Patient Protection and Affordable Care Act (ACA) established two programs in the same subpart to lower the cost of health coverage offered through the Exchanges. Section 1401 of the ACA authorizes a premium tax credit for eligible taxpayers and funded the program by amending a preexisting permanent appropriation for tax credits. Section 1402 of the ACA

requires insurance issuers to reduce cost sharing (such as deductibles and co-payments) for eligible insureds, and further provides that the Secretary of Health & Human Services (HHS) shall make payments to issuers equal to the value of the cost-sharing reductions issuers provide on behalf of their eligible insureds. In contrast to Section 1401, however, Section 1402 does not appropriate funds for cost-sharing reduction (CSR) payments to issuers.

Montana Health seeks damages for HHS's failure to make CSR payments. In particular, on May 6, 2020, Montana Health filed the complaint in this case, alleging that under Section 1402, it is entitled to recover unpaid CSR payments for the 2019 and 2020 plan years. *See, generally*, ECF No. 1 (Complaint). As plaintiff's Complaint states, "this is the third action of this type brought by Montana Health against the Government. In its first action, *Montana Health Co-Op v. United States*, No. 18-143C, currently on appeal at the Court of Appeals for the Federal Circuit, No. 19-1302 (consolidated with No. 19-1290, companion with No. 19-1633), Montana Health seeks the cost-sharing reductions payments the Government owes it for benefit year 2017. In its second action, *Montana Health Co-Op v. United States*, No. 19-568C, Montana Health seeks the cost-sharing reductions payments the Government owes it for benefit year 2018." *Id.* at 1. Montana Health's second action before this Court is currently stayed. *See Montana Health Co-Op v. United States*, Case No. 19-568, ECF No. 9. The Government's answer or motion to dismiss plaintiff's complaint in this case is currently due on July 6, 2020.

On January 9, 2020, oral argument was held in the consolidated CSR appeals and the companion cases. On May 19, 2020, pursuant to a Federal Circuit order, the parties filed supplemental briefs in the consolidated appeals, addressing the impact of the Supreme Court's decision in *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020). The parties are waiting for a decision by the Federal Circuit in those appeals, and respectfully request

that the Court stay this case pending the Federal Circuit’s resolution of *Sanford and Montana*, and their companion appeals.

This case should be stayed because the cases on appeal at the Federal Circuit will likely resolve many, if not all, of the substantial legal issues underlying this case—namely, whether insurers are entitled to recover CSR payments that Congress declined to fund directly; whether they also possess a private contractual right to CSR payments; and whether any CSR payments must be offset by monies paid by the Government through insurance premium increases. Given that this case presents substantially identical legal issues, it would be appropriate for the Court to exercise its discretion to stay proceedings in this matter pending a decision from the Federal Circuit. A stay will conserve both judicial and party resources. *See UnionBanCal Corp. v. United States*, 93 Fed. Cl. 166, 167 (2010) (“The orderly course of justice and judicial economy is served when granting a stay simplifies the ‘issues, proof, and questions of law which could be expected to result from a stay.’”) (quoting *CMAX, Inc. v. United States*, 300 F.2d 265, 268 (9th Cir. 1962)).

Given the overlapping issues between the CSR cases in this Court and the CSR cases pending in the Federal Circuit, several other judges in this Court have stayed the CSR matters before them. *See Harvard Pilgrim v. United States*, Case No. 18-1820 (Judge Loren Smith), ECF No. 10 (February 28, 2019 order staying case); *Health Alliance Medical Plans, Inc. v. United States*, Case No. 18-334C (Judge Campbell-Smith), ECF No. 22 (March 28, 2019 order staying case); *Health Alliance Medical Plans, Inc. v. United States*, Case No. 20-565C (Judge Campbell-Smith), ECF No. 9 (June 12, 2020 order staying case) *EmblemHealth, Inc. Health Insurance Plan of Greater New York, Inc. et al*, Case No. 19-1164 (Judge Campbell-Smith), ECF No. 6 (October 10, 2019 order staying case); *Guidewell Mutual Holding Corp. et al. v.*

*United States*, Case No. 18-1791, ECF No. 21; *Molina Healthcare of California, Inc. et al. v. United States*, Case No. 18-333, ECF No. 9; *Noridian Health Insurance Co. dba Blue Cross Blue Shield of North Dakota*, Case No. 18-1983, ECF No. 33; *Sanford Health Plan v. United States*, Case No. 19-569, ECF No. 9; *Maine Cmty. Health Options v. United States*, Case No. 20-458, ECF No. 8 (June 12, 2020).

We thus respectfully request that the Court stay this case until the CSR appeals at the Federal Circuit are finally resolved, and propose that the parties submit a status report within 30 days of final disposition of those cases, proposing next steps in this litigation.

Respectfully submitted,

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