

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD)	
OF NEBRASKA,)	
)	
and)	
)	
HAWAI'I MEDICAL SERVICE ASSOCIATION)	
)	
Plaintiffs,)	
on behalf of themselves and all)	
others similarly situated,)	
)	Case No. 18-491 C
v.)	Judge Damich
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court's May 27, 2020 Order (Dkt. 16), the parties respectfully submit this additional Joint Status Report and ask that the stay in this case be lifted.

On June 12, 2018, the Court stayed this case pending final decisions in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994. Dkt. 10. The Court directed the parties to file a joint status report within thirty days after a final decision in *Land of Lincoln* and *Moda*. Dkt. 10. On June 14, 2018, the Federal Circuit decided *Land of Lincoln* and *Moda*, No. 17-1224, Dkt. 166-1; No. 17-1994, Dkt. 87-1, and on November 6, 2018, denied plaintiff-insurers' petitions for en banc consideration, No. 17-1224, No. 17-1994, Dkt. 148. Before the United States Supreme Court, *Land of Lincoln* and *Moda* were consolidated for review with *Maine Community Health Options v. United States* and *Blue Cross Blue Shield of North Carolina v. United States*.

On April 27, 2020, the Supreme Court issued its decision in *Maine Community Health*

Options v. United States, No. 18-1023, 590 U.S. --- (2020). The Supreme Court held that the risk corridors statute, section 1342 of the Patient Protection and Affordable Care Act (“ACA”), “created an obligation neither contingent on nor limited by the availability of appropriations or other funds.” Slip Op. at 16. The Court also determined that the obligation was not affected by subsequently enacted legislation and held that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Id.* at 30. Along with the three other similar risk corridors cases, the Court reversed the judgments of the Federal Circuit and remanded the cases to that court for further proceedings consistent with the opinion.

In the meantime, the Court has kept the stay of this case in place as the parties discussed how to proceed. *See* Order, Dkt. 16 (May 27, 2020). The parties now agree that the stay should be lifted so this litigation can progress. The Court’s previous Order stated that the “Court will set the Defendant’s response time, if necessary, after [this] joint status report is filed.” *Id.* Defendant proposes that the Court set 60 days from now as Defendant’s deadline for responding to the complaint. Plaintiffs propose that such deadline be substantially less than 60 days from now.

Dated: July 13, 2020

Respectfully submitted,

MICHAEL GRANSTON
Deputy Assistant Attorney General
Civil Division

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Frances M. McLaughlin
FRANCES M. MCLAUGHLIN
TERRANCE A. MEBANE
United States Department of Justice
Civil Division, Commercial Litigation Branch
Telephone: (202) 307-0487
Facsimile: (202) 307-0494
Frances.McLaughlin@usdoj.gov

Attorneys for the United States of America

/s/ Adam P. Feinberg
ADAM P. FEINBERG
Miller & Chevalier Chartered
900 16th St., NW
Washington, DC 20006
afeinberg@milchev.com
Telephone: (202) 626-6087
Facsimile: (202) 626-5801
afeinberg@milchev.com

Attorneys for the Plaintiffs