

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,)	
)	
v.)	Case No. 18-491 C
)	Judge Damich
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**STIPULATION FOR ENTRY OF RULE 54(B) JUDGMENT
ON COUNT I OF COMPLAINT AND DISMISSAL OF
COUNTS II AND III OF COMPLAINT**

To resolve the claims of Plaintiff Hawai'i Medical Service Association ("HMSA"), and to permit the entry of final judgment on one of those claims pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims, it is stipulated between HMSA and Defendant United States of America (the "United States"):¹

1. Section 1342 (42 U.S.C. § 18062) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119 *et seq.* (the "ACA"), created the risk corridors program, while section 1343 (42 U.S.C. § 18063) of the ACA created the risk adjustment program.

2. On April 3, 2018, Plaintiffs HMSA and Blue Cross and Blue Shield of Nebraska filed the Complaint (ECF No. 1) in this Court. In the Complaint, HMSA seeks damages under

¹ To avoid any doubt, this stipulation does not resolve or permit entry of final judgment on the claims asserted by Plaintiff Blue Cross and Blue Shield of Nebraska or any claims asserted by the unnamed and uncertified class members.

section 1342 of the ACA for benefit years 2015 and 2016. In that regard, the Complaint asserts two counts (Counts I and II), each raising a separate theory for damages arising under section 1342 of the ACA. As to HMSA, the Complaint also asserts one count (Count III) seeking damages under section 1343 of the ACA for benefit years 2014 and 2015.

3. On June 12, 2018, the Court entered an order that stayed this case. ECF No. 10.

4. On April 27, 2020, the Supreme Court held that section 1342 “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. HMSA and the United States agree that *Maine Community Health Options* entitles HMSA to payment under section 1342 for benefit years 2015 and 2016 in the amount of \$33,883,433.52 (the “Stipulated Amount”) and that this payment resolves entirely the Complaint for all counts in which HMSA seeks damages arising under section 1342 of the ACA.

6. Accordingly, the HMSA and the United States jointly request that the Court enter judgment in favor of HMSA in the amount of \$33,883,433.52 (risk corridors benefit years 2015 and 2016) on Count I of the Complaint.

7. HMSA and the United States further request that, as to HMSA, the Court dismiss Count II of the Complaint (risk corridor claim asserted under separate theory) *with* prejudice and Count III of the Complaint (risk adjustment claim asserted under section 1343 of the ACA) *without* prejudice.

8. With all counts asserted by HMSA resolved according to this Stipulation, the Parties agree that there is no just reason to delay the entry of judgment in favor of HMSA on Count

I under Rule 54(b) of the Rules of the United States Court of Federal Claims.

9. Upon entry of judgment in the Stipulated Amount, HMSA (HIOS No. 18350) and any and all HMSA's affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that HMSA (HIOS No. 18350) and any and all of HMSA'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 or related to Section 1342 of the ACA.

Dated: August 4, 2020

Respectfully submitted,

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