

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CARE NETWORK OF MICHIGAN, and BLUE CROSS BLUE SHIELD OF MICHIGAN MUTUAL INSURANCE COMPANY,)	
)	
Plaintiffs,)	Case No. 20-1000
)	(Senior Judge Horn)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

UNNOPOSED MOTION TO STAY COST SHARING REDUCTION COUNTS

Pursuant to Rule 7 of the United States Court of Federal Claims, defendant, the United States, respectfully requests that the Court stay proceedings in this case on the cost sharing reduction (CSR) counts of the First Amended Complaint (Counts III and IV) pending the resolution of the petitions for rehearing *en banc* concerning the Federal Circuit’s decisions in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364 (Fed. Cir. 2020), and *Common Ground Healthcare Co-Op v. United States*, No. 2020-1286 (Fed. Cir. Sept. 30, 2020) (order entering judgment consistent with *Community Health Choice*) (collectively, the *CSR Appeals*). Counsel for plaintiffs has represented that plaintiffs do not oppose our requested relief.

There is good cause for the requested relief. Plaintiffs filed this suit on August 11, 2020 seeking damages under the risk corridors and CSR programs.¹ The United States’ response to the complaint is currently due on October 13, 2020.² On August 14, 2020, in the *CSR Appeals*,

¹ Plaintiffs filed a slightly amended complaint on August 26, 2020 that sought the same relief.

² With respect to the risk corridors counts (Counts I and II), the parties intend to submit, by October 13, 2020, a stipulation for entry of partial judgment, which will resolve these counts.

the Federal Circuit panel affirmed in part and reversed and remanded in part, rulings from this Court concerning the Government's obligations under the CSR program. Thereafter, both plaintiff-appellees in the *Community Health Choice* appeal filed petitions for rehearing *en banc* on September 28, 2020.³ On October 2, 2020, the Federal Circuit directed the United States to respond to those petitions by October 16, 2020. Additionally, on October 2, 2020, the plaintiff-appellee in *Common Ground*, filed an *en banc* petition on behalf of itself and a class of more than 100 insurers seeking to recover CSR costs from the United States.

How the Federal Circuit resolves these petitions will directly impact future proceedings in this matter concerning plaintiffs' CSR claims, and therefore awaiting such resolution will preserve the time and resources of both this Court and the parties. *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)). Chief Judge Sweeney stayed proceedings related to the 2019 CSR class in *Common Ground*, in light of the recently filed petitions for rehearing. *See Order, Common Ground v. United States*, No. 17-877 (Oct. 2, 2020) (ECF No. 121).

Accordingly, the United States respectfully requests that the Court enter an order staying proceedings regarding plaintiffs' CSR claims (Counts III and IV) until the Federal Circuit resolves the petitions for rehearing in the *CSR Appeals*, with the parties to submit to a joint status report within 14 days after a decision on those petitions, proposing next steps in this litigation.

³ One of the plaintiff-appellees filed a combined petition for *en banc* and panel rehearing.

Respectfully submitted,

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