

In the United States Court of Federal Claims

No. 17-877C
(Filed: October 2, 2020)

COMMON GROUND HEALTHCARE *
COOPERATIVE, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

In the above-captioned case, the court has certified two classes of insurers seeking to recover cost-sharing reduction payments that the government has not made: one for the 2017 and 2018 benefit years and one for the 2019 benefit year. With respect to the 2017/2018 cost-sharing reduction class, the court issued a decision on February 15, 2019, judgment was entered on October 22, 2019, and defendant filed a notice of appeal on December 16, 2019. Thereafter, the court certified the 2019 cost-sharing reduction class, and then on July 15, 2020, approved plaintiff’s proposed class action notice plan. Pursuant to that plan, class counsel was required to distribute notice of the class action to potential class members by August 4, 2020, potential class members were to return their opt-in forms by October 5, 2020, and class counsel was to certify final membership in the class by November 4, 2020. Proceedings on the merits of the class’s claims are stayed.

On October 1, 2020, plaintiff filed an unopposed motion to enlarge the 2019 cost-sharing reduction class opt-in deadline until the final resolution of three cost-sharing reduction cases currently on appeal before the United States Court of Appeals for the Federal Circuit (“Federal Circuit”): Community Health Choice, Inc. v. United States, No. 2019-1633; Maine Community Health Options v. United States, No. 2019-2102; and Common Ground Healthcare Cooperative v. United States, No. 2020-1286. As plaintiff explains, on August 14, 2020, the Federal Circuit ruled that insurers were entitled to recover unpaid cost-sharing reduction amounts, but that those amounts should be reduced to account for the insurers’ receipt of increased premium tax credit payments. The plaintiffs in Community Health Choice, Inc. and Maine Community Health Options timely filed petitions for rehearing and rehearing en banc, and plaintiff represents that it intends to file a rehearing petition in its appeal “this week.” Plaintiff further observes that regardless of the outcome of those petitions, it expects that one or more petitions for a writ of certiorari will be filed with the United States Supreme Court.

Given the uncertainty regarding whether the government will ultimately be held liable for unpaid cost-sharing reduction amounts and whether any recoveries by insurers would be reduced or eliminated by increases in the amounts the insurers received for the premium tax credits, plaintiff requests that the opt-in period for the 2019 cost-sharing reduction class be extended until the cost-sharing reduction appeals have been finally resolved. Plaintiff represents that defendant does not oppose its motion.

The court concurs that there is good cause for extending the opt-in deadline for the 2019 cost-sharing reduction class. In addition, based on the information supplied in plaintiff's motion, the court finds that proceedings on the merits of that class's claims should remain stayed until the cost-sharing reduction appeals have been resolved. Accordingly, the court **GRANTS** plaintiff's unopposed motion and **DIRECTS** the following:

- The deadline for potential class members to return their opt-in forms is **STAYED** pending final resolution of the cost-sharing reduction appeals, and the deadline for plaintiff to certify final membership in the class is **VACATED**.
- The deadline set forth in the court's September 14, 2020 order for the parties to file a joint status report regarding further proceedings for the 2019 cost-sharing reduction class is **VACATED**, and the stay of proceedings on the merits of that class's claims is **CONTINUED** pending final resolution of the cost-sharing reduction appeals.
- **Within thirty days of the judgments in the three cost-sharing reduction cases identified above becoming final and nonappealable**, the parties shall file a joint status report that includes the following information: (1) the effect of the final judgment on the merits of the claims asserted by the 2019 cost-sharing reduction class; (2) if appropriate, proposed deadlines for the submission of opt-in forms and the certification of final class membership; and (3) if appropriate, a proposed schedule for further proceedings on the merits of the class's claims.¹

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Chief Judge

¹ Presumably, the three appeals will be finally resolved at the same time. If not, the parties may wait to file their joint status report until thirty days after judgment becomes final and nonappealable in all three identified cases.