

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

	)	
SANFORD HEALTH PLAN,	)	
	)	
Plaintiff,	)	
	)	Case No. 20-746
v.	)	Judge Kaplan
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

JOINT MOTION TO STAY

Pursuant to Rule 7 of the United States Court of Federal Claims, plaintiff, Sanford Health Plan, and defendant, the United States, respectfully submit this joint motion to stay this case for 60 days, to and including October 23, 2020, at which point the parties propose to submit a joint status report proposing further proceedings. Good cause exists to grant the requested relief.

BACKGROUND

This case is one of approximately two dozen cases, including a class action involving more than 100 insurer plaintiffs, seeking payment of cost sharing reduction (CSRs) under Section 1402 of the Affordable Care Act (ACA). Indeed, two of those cases were filed by the plaintiff here: *Sanford Health Plan v. United States*, No. 18-136 (Fed. Cl.) (*Sanford I*) (seeking CSRs for benefit year 2017); and *Sanford Health Plan v. United States*, No. 19-569 (Fed. Cl.) (*Sanford II*) (seeking CSRs for benefit year 2018).

After this Court entered judgment in plaintiff’s favor in *Sanford I*, that case was appealed to the United States Court of Appeals for the Federal Circuit, and consolidated for oral argument before the same merits panel with three other CSR appeals: *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018), *appeal docketed*, No. 19-1302 (Fed. Cir. 2018) (*Montana Health*

*Co-Op*); *Community Health Choice, Inc. v. United States*, 141 Fed. Cl. 744 (2019), *appeal docketed*, No. 19-1633 (Fed. Cir. 2019) (*Community Health Choice*); and *Maine Community Health Options v. United States*, 143 Fed. Cl. 381 (2019), *appeal docketed*, No. 19-2102 (Fed. Cir. 2019) (*Maine*, and with *Sanford I*, *Montana Health Co-op*, and *Community Health Choice*, the Consolidated CSR Appeals). In the interim, this Court stayed all remaining CSR suits, including *Sanford II*, pending a decision in the Consolidated CSR Appeals. Plaintiff also filed this suit (*Sanford III*), seeking CSR payments for benefit years 2019-2020.

On August 14, 2020, the Federal Circuit issued decisions in *Sanford I* and *Community Health Choice*. In *Sanford I*, which concerned only 2017 CSR claims, the Federal Circuit held that the Tucker Act provides a remedy for the Government's failure to make the CSR payments required under the ACA. The Court ruled that the Supreme Court's recent risk-corridors decision, *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020), addressing a different payment-obligation provision of the ACA, "makes clear that the cost-sharing-reduction reimbursement provision imposes an unambiguous obligation on the government to pay money and that the obligation is enforceable through a damages action in the Court of Federal Claims under the Tucker Act." *Sanford I*, 2020 WL 4723703, \*1.

In the second decision, *Community Health Choice, Inc. v. United States*, No. 2019-1633, 2020 WL 4723757 (Fed. Cir. Aug. 14, 2020), the Federal Circuit followed its ruling in *Sanford* with respect to liability and proceeded to address the quantum of damages. The Court concluded that the Government is not entitled to a reduction in damages with respect to CSRs not paid in 2017; however, with respect to 2018, "the Claims Court must reduce the insurers' damages by the amount of additional premium tax credit payments that each insurer received as a result of the government's termination of cost-sharing reduction payments." *Community Health Choice*,

*Inc.*, 2020 WL 4723757, \*1. The Court remanded *Community Health Choice* and its companion case, *Maine*, to the Court of Federal Claims for further proceedings related to the calculation of the offset.

### DISCUSSION

Although the Federal Circuit has issued rulings in the Consolidated CSR Appeals, it has not yet issued mandates in those appeals. Because any party to the Consolidated CSR Appeals may file a petition for rehearing and/or rehearing *en banc*, Fed. Cir. R. 35, 40, or a petition for a writ of *certiorari*, there may be further proceedings in those appeals that will impact all 23 of the cases raising CSR claims, including this one.

In order to conserve judicial and party resources, the parties respectfully request that the Court stay this case for 60 days, to and including October 23, 2020, at which point the parties will submit a joint status report proposing further proceedings. A 60-day stay will provide the Court and the parties with clarity about the posture of the Consolidated CSR Appeals and their impact on this case. *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)). Indeed, absent a stay in this case and in the other pending cases raising CSR claims, the Court will be forced to devote substantial resources to coordinating damages proceedings in nearly two dozen pending cases, when the underlying issues controlling those proceedings still may be subject to further review.

CONCLUSION

For these reasons, the parties jointly respectfully request that the Court stay this case for 60 days, to and including October 23, 2020, at which point the parties will submit a joint status report proposing further proceedings.

Respectfully submitted,

s/Stephen McBrady  
Stephen McBrady  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004  
Telephone: (202) 624-2500  
Facsimile: (202) 628-5116  
SMcBrady@crowell.com

Attorneys for Plaintiff

ETHAN P. DAVIS  
Acting Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.  
Director

CHRISTOPHER J. CARNEY  
Senior Litigation Counsel

s/Claudia Burke by Christopher J. Carney  
CLAUDIA BURKE  
Assistant Director

s/Eric E. Laufgraben  
ERIC E. LAUFGRABEN  
Senior Trial Counsel  
ALBERT S. IAROSI  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, DC 20044  
Telephone: (202) 353-7995  
Facsimile: (202) 353-0461  
Email: Eric.E.Laufgraben@usdoj.gov

Attorneys for Defendant

August 24, 2020