

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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SENDERO HEALTH PLANS, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. 17-2048C
)	
THE UNITED STATES,)	Judge Lydia Kay Griggsby
)	
Defendant.)	
)	
)	
)	
)	
_____)	

JOINT STATUS REPORT AND MOTION TO CONTINUE STAY

Pursuant to this Court’s September 11, 2020 Order (ECF No. 28), the parties submit this joint status report. The September 11 order continued the stay in this case pending the Federal Circuit’s decisions in four cases concerning cost-sharing reductions (CSRs): *Sanford Health Plan v. United States*, 139 Fed. Cl. 701 (2018), *appeal docketed*, No. 19-1290 (Fed. Cir. 2018); *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018), *appeal docketed*, No. 19-1302 (Fed. Cir. 2018); *Community Health Choice, Inc. v. United States*, 141 Fed. Cl. 744 (2019), *appeal docketed*, No. 19-1633 (Fed. Cir. 2019); and *Maine Community Health Options v. United States*, 143 Fed. Cl. 381 (2019), *appeal docketed*, No. 19-2102 (Fed. Cir. 2019). On August 14, 2020, the Federal Circuit issued decisions in those CSR appeals, which addressed questions concerning both liability and damages. *See Community Health Choice, Inc. v. United States*, 970 F.3d 1364 (Fed. Cir. 2020) (incorporating the reasoning of *Sanford Health Plan v. United States*, 969 F.3d 1370 (Fed. Cir. 2020)).

The plaintiffs in *Maine Community Health Options* and *Community Health Choice* subsequently filed petitions for rehearing *en banc* regarding the Federal Circuit's damages ruling. On October 2, 2020, the Federal Circuit instructed the United States to file responses to those petitions, which are due today, October 23, 2020.

Accordingly, there may be further proceedings in those appeals that will impact all 25 of the cases pending in this Court that raise CSR claims, including this one. To conserve judicial and party resources, the parties respectfully request that the Court continue the stay of the CSR claims in this case until either the Federal Circuit's judgments in the CSR appeals become final and non-appealable, or the Supreme Court resolves any petition for a writ of certiorari filed in those cases. The parties propose that they file a joint status report proposing further proceedings within 30 days of either event. The proposed stay will provide the Court and the parties with clarity about the CSR appeals and their impact on this and the other 24 cases in this Court that raise CSR claims. *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)).

This Court previously stayed plaintiffs' CSR claims in this case pending a decision by the Federal Circuit in the CSR appeals given that rulings in the CSR appeals would resolve many, if not all, of the substantive legal issues underlying plaintiffs' CSR claims here. *Sendero Health Plans, Inc. v. United States*, No. 17-2048 (Fed. Cl. June 3, 2020), ECF No. 25. The same judicial-economy rationale compels continuing the stay until either the Federal Circuit's judgments in the CSR appeals become final and non-appealable, or the Supreme Court resolves any petition for a writ of certiorari filed in those cases.

CONCLUSION

For these reasons, we respectfully request that the Court stay plaintiffs' CSR claims until either the Federal Circuit's judgments in the CSR appeals become final and non-appealable, or the Supreme Court resolves any petition for a writ of certiorari. The parties propose to file a joint status report within 30 days after either event proposing further proceedings in this case.

October 23, 2020

s/ William L. Roberts

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