

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

| | | |
|-------------------------------|---|--------------------------|
| _____ |) | |
| AETNA HEALTH, INC., |) | |
| et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Case No. 20-905C |
| v. |) | |
| |) | Senior Judge Loren Smith |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| _____ |) | |

JOINT STATUS REPORT AND MOTION TO CONTINUE STAY

Pursuant to the Court’s July 26, 2021 Order (ECF No. 11), the parties respectfully submit this joint status report. The Order continued the stay in these proceedings, and directed the parties to file a joint status report proposing further proceedings by September 20, 2021.

In July, 2021, shortly after the U.S. Supreme Court denied the petition for writ of certiorari (No. 20-1162) and the Government’s conditional cross-petition (No. 20-1432) in *Maine Community Health Options v. United States*, which sought review of the Federal Circuit’s CSR decision in *Community Health Choice, Inc. v. United States*, Nos. 2019-1633, -2102, 2020 WL 4723757 (Fed. Cir. Aug. 14, 2020), the parties began discussions regarding the next steps in this litigation. Several different attorneys, collectively representing a large number of plaintiff health plans—including the plaintiff here—have engaged Government counsel in initial talks regarding potential avenues for resolving the CSR matters.

The parties’ resolution efforts are continuing at this time, and the parties respectfully request that the stay of this matter continue for an additional 45 days, at which time a joint status

report will be filed. At present, plaintiffs' counsel are continuing efforts to develop a proposal to share with the Government to collectively resolve the damages and mitigation issues in the CSR cases without further litigation or to streamline resolution of these cases. Plaintiffs' counsel expects to share a proposal and methodology to resolve the damages and mitigation issues in these cases with the Government within 45 days. Thereafter, the Government's counsel must consult with and obtain approval from its decision makers and stakeholders and will provide a substantive response to Plaintiffs' counsel's proposal and methodology.

Good cause exists for the Court to continue the stay of this case. The parties are working together to determine whether they may efficiently resolve this matter without further litigation or can at least streamline the cases. The complexity of the CSR cases and the number of interested stakeholders, necessitates that the parties be afforded additional time for these efforts. The parties therefore jointly propose that they file a status report by November 4, 2021, in which the parties will update the Court on the status of these efforts.

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

BRIAN M. BOYNTON
Acting Assistant Attorney General

MARTIN F. HOCKEY, JR.
Acting Director

s/ Claudia Burke
CLAUDIA BURKE
Assistant Director

s/ Albert S. Iarossi
ALBERT S. IAROSSO
Trial Attorney
Civil Division
U.S. Department of Justice
P.O. Box 480

OF COUNSEL:

Daniel Wolff
Charles Baek

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Counsel for Plaintiffs

Ben Franklin Station

Washington, D.C. 20044

Telephone: (202) 616-3755

Email: Albert.S.Iarossi@usdoj.gov

OF COUNSEL:

CHRISTOPHER J. CARNEY
Senior Litigation Counsel

ERIC E. LAUFGABEN
Senior Trial Counsel

Counsel for Defendant

September 20, 2021