

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HARVARD PILGRIM HEALTH CARE, INC.,))	
HPHC INSURANCE COMPANY, INC., AND))	
HARVARD PILGRIM HEALTH CARE OF))	
NEW ENGLAND, INC.,))	
)	Case No. 18-1820C
Plaintiffs,))	Senior Judge Loren Smith
)	
v.))	
)	
THE UNITED STATES,))	
)	
Defendant.))	

JOINT STIPULATION FOR ENTRY OF PARTIAL FINAL JUDGMENT

To resolve the pre-2018 cost-sharing reduction payment claims of plaintiffs Harvard Pilgrim Health Care, Inc., HPHC Insurance Company, Inc., and Harvard Pilgrim Health Care of New England, Inc., and to permit the entry of partial final judgment on those claims, plaintiffs and the United States (collectively, the Parties) stipulate as follows:

1. Section 1402 of the Patient Protection and Affordable Care Act (ACA) established the cost-sharing reduction (CSR) program to lower the cost of health coverage offered for eligible insureds. 42 U.S.C. § 18071.
2. On August 14, 2020, the U.S. Court of Appeals for the Federal Circuit determined that “the government violated its obligation to make cost-sharing reduction payments [to insurers] under section 1402; ‘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 [Claims Court] under the Tucker Act.’” *Cnty. Health Choice, Inc. v. United States*, 970 F.3d 1364, 1371 (Fed. Cir. 2020) (quoting *Sanford Health Plan v. United States*, 969 F.3d 1370, 1373 (Fed. Cir. 2020)). The Federal Circuit further

determined that there was “no basis for a 2017 damages offset.” *Id.* at 1372. The Supreme Court denied further review of these rulings.

3. On November 27, 2018, plaintiffs filed the complaint in this Court (ECF No. 1) seeking damages for unpaid CSR payments through December 31, 2017. The complaint asserts two counts, each seeking the same CSR payments through December 31, 2017. On April 19, 2019, plaintiffs filed an amended complaint that also sought damages for unpaid CSR payments for 2018 (*i.e.*, through December 31, 2018). ECF No. 11-1.

4. The Parties agree that the Federal Circuit’s rulings in *Community Health Choice* and *Sanford* entitle plaintiffs to payment under section 1402 of the ACA in the amount of \$1,159,917.59 (the Stipulated Amount) for unpaid CSR payments through December 31, 2017.

5. Accordingly, the Parties jointly request that the Court enter partial final judgment in favor of plaintiffs in the amount of \$1,159,917.59 on Count I of the complaint, with respect to pre-2018 CSR claims, with each party to bear its own costs, attorney fees, and expenses.

6. The Parties further request that the Court dismiss Count II of the complaint with prejudice with regard to any CSR payment claims prior to January 1, 2018.

7. Upon entry of judgment in the Stipulated Amount, plaintiffs (HIOS Nos. 96667, 59025, and 36046) and any and all of their affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, relating to unpaid CSR payments through December 31, 2017.

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Respectfully submitted,

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