

**IN THE UNITED STATES COURT  
OF FEDERAL CLAIMS**

BLUE CARE NETWORK OF MICHIGAN,  
and BLUE CROSS BLUE SHIELD OF  
MICHIGAN MUTUAL INSURANCE  
COMPANY,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 20-1000

Judge Davis

JOINT STIPULATION FOR ENTRY OF PARTIAL FINAL JUDGMENT

To partially resolve the complaint of plaintiffs Blue Care Network of Michigan and Blue Cross Blue Shield of Michigan Mutual Insurance Company, and to permit the entry of partial final judgment on that complaint, plaintiffs and the United States (collectively, the Parties) stipulate as follows:

1. The Patient Protection and Affordable Care Act (ACA) created interrelated programs to expand access to affordable health insurance coverage. Section 1342 of the ACA created the risk corridors program. 42 U.S.C. § 18062. Section 1402 of the 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 11, 2020, plaintiffs filed the Complaint in this Court (ECF No. 1) asserting two counts for risk corridors damages (Counts I and II) and two counts for unpaid CSR payments (Counts III and IV). On October 13, 2020, pursuant to a stipulation for entry of partial judgment (ECF No. 9), the Court entered judgment on Count I of plaintiffs' complaint and

dismissed Count II with prejudice (ECF No. 11).

3. 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.

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 \$4,699,036.88 (the Stipulated Amount) for unpaid CSR payments through December 31, 2017.

5. Accordingly, the Parties jointly request that the Court enter partial judgment in favor of plaintiffs in the amount of \$4,699,036.88 on Count III of the Complaint as it relates to CSR payments through December 31, 2017, with each party to bear its own costs, attorney fees, and expenses.

6. The Parties further request that the Court partially dismiss Count III of the amended complaint as it relates to plaintiffs’ claim for CSR payments through December 31, 2017, with prejudice.

7. The Parties further request that the Court dismiss Count IV of the Complaint with prejudice.

8. Upon entry of judgment in the Stipulated Amount, plaintiffs (HIOS Nos. 15560

and 98185) 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.

March 14, 2022

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

PATRICIA M. McCARTHY  
Director

s/ Howard J. Stanislawski  
Howard J. Stanislawski  
SIDLEY AUSTIN LLP  
1501 K Street NW  
Washington, DC 20005  
(202) 736-8000  
hstanislawski@sidley.com

/s Claudia Burke  
CLAUDIA BURKE  
Assistant Director

/s David M. Kerr  
DAVID M. KERR  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 480  
Ben Franklin Station  
Washington, DC 20044  
Telephone: (202) 307-3390  
Email: David.M.Kerr@usdoj.gov

*Of Counsel:*

Thomas D. Cunningham  
SIDLEY AUSTIN LLP  
One South Dearborn Street  
Chicago, IL 60603  
tcunningham@sidley.com

OF COUNSEL:

ALBERT S. IAROSSO  
Trial Attorney  
Civil Division  
U.S. Department of Justice

William A. Sarraille  
Tobias S. Loss-Eaton  
SIDLEY AUSTIN LLP  
1501 K Street NW  
Washington, DC 20005  
(202) 736-8000  
tlosseaton@sidley.com

*Attorneys for Defendant*

*Attorneys for Plaintiffs*