IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, on behalf of itself and all others similarly situated, vs. THE UNITED STATES OF AMERICA, Defendant.	No. 1:17-cv-00877-KCD (Judge Davis)

JOINT MOTION TO DIVIDE SELECTHEALTH IDAHO FROM THE CSR DISPUTE SUBCLASS AND TO RENAME THE NOT-PURSUING-CLAIMS-BEYOND 2017 SUBCLASS

Pursuant to RCFC 23(c)(5), Plaintiff Common Ground Healthcare Cooperative ("CGHC" or "Plaintiff") and the United States jointly move the Court to divide from the CSR Dispute Subclass class member SelectHealth Idaho (HIOS ID 26002)[1] into a separate subclass (the "SelectHealth Idaho CSR Subclass"); appoint Quinn Emanuel Urquhart & Sullivan, LLP counsel for the subclass; and rename the Not-Pursing-Claims-Beyond-2017 Subclass to the "Aspirus CSR Subclass". The purpose of this request is to enable SelectHealth Idaho and Aspirus Health Plan, Inc. to move forward with a proposed settlement with the United States.

STATUTORY BACKGROUND

In Section 1402 of the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148 (2010), 124 Stat. 119, Congress created the cost-sharing reduction (CSR) program to lower the expenses associated with health insurance coverage offered for eligible customers. 42 U.S.C. § 18071. Under the CSR program, insurers must provide reductions to their eligible customers' cost-sharing expenses, such as reductions in co-payments and deductibles, and the Secretaries of Health and Human Services (HHS) and the Treasury (collectively, the government) must reimburse insurers for those reductions. Section 1412 of the ACA (42 U.S.C. § 18082) authorizes advance payment of premium tax credits ("APTCs") to insurers. In addition, as one of three interrelated risk-mitigation programs, Congress created the risk corridors program in section 1342 of the ACA (42 U.S.C. § 18062). The plaintiffs' respective claims arise under these provisions.

THE PLAINTIFFS' CLAIMS AND THE CERTIFIED CLASSES

The government stopped making CSR reimbursement payments to issuers in October 2017, after the Attorney General of the United States concluded that such payments were not within any

[1] For clarity, this request concerns only SelectHealth Idaho (HIOS ID 26002) and not SelectHealth Utah (HIOS ID 68781). SelectHealth Utah (HIOS No. 68781) was a member of the 2017 CSR Subclass (as defined below).

congressional appropriation. On June 27, 2017, Plaintiff filed a Class Action Complaint on behalf of itself and others similarly situated, seeking risk-corridors damages under section 1342 of the ACA for benefit year 2016. ECF No. 1. On November 22, 2017, Plaintiff filed a First Amended Class Action Complaint which added a claim under section 1402 for unpaid cost-sharing reduction payments for the 2017 and 2018 benefit years. ECF No. 10.

On April 17, 2018, the Court certified the following class (the "2017-2018 CSR Class"):

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2017 or 2018 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds.

ECF No. 30 at 17. Excluded from the 2017-2018 CSR Class are the Defendant and its members, agencies, divisions, departments, and employees. *Id.* In the same order, the Court appointed Plaintiff as the class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP lead counsel for the Class. *Id.*

On March 22, 2019, Plaintiff filed a Second Amended Class Action Complaint adding a claim under section 1402 for unpaid cost-sharing reduction payments for the 2019 benefit year. ECF No. 59. On May 29, 2020, the Court certified the following class (the "2019 CSR Class"):

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds.

ECF No. 90 at 2. Excluded from the 2019 CSR Class are the Defendant and its members, agencies, divisions, departments, and employees. *Id.* In the same order, the Court appointed Plaintiff as the

class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP lead counsel for the Class. *Id.* at 3.

On August 14, 2020, the United States Court of Appeals for the Federal Circuit held 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, 28 U.S.C. § 1491(a)(1)." *Sanford Health Plan v. United States*, 969 F.3d 1370, 1372-73 (Fed. Cir. 2020). The United States Court of Appeals for the Federal Circuit held in *Community Health Choice, Inc. v. United States*, 970 F.3d 1364, 1367 (Fed. Cir. 2020), that the government was obligated to pay the plaintiff insurers the full CSR amounts owed each year under the statute, reduced 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." The Federal Circuit also noted that, upon remand, the plaintiff insurers may prove that "other factors, such as market forces or increased medical costs" may have caused some of the silver-level premium increases and if so, "the government's liability is not reduced by the tax credits attributable to these other factors." *Id*. at 1380.

On April 4, 2025, the Parties jointly moved to divide the 2017-2018 and 2019 CSR Subclasses into four subclasses. ECF No. 256 at 4-5. On April 7, 2025, the Court granted the motion and approved the following four subclasses as defined as follows.

1. The 2017 CSR Subclass

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2017 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds, and who, as of February 18, 2025, have confirmed their intention to participate in the settlement for 2017 benefit year.

2. The 2018 CSR Subclass

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2018 benefit year, and who made cost–sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds, and who have submitted attestations to the class counsel by March 7.

3. The 2019 CSR Subclass

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2019 benefit year, and who made cost–sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds, and who have submitted attestations to the class counsel by March 7.

4. The Not-Pursing-Claims-Beyond-2017 Subclass

> All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2017 benefit year, and who made cost-sharing reductions for eligible insureds pursuant to Section 1402 of the Patient Protection and Affordable Care Act, but did not receive a "timely and periodic" payment from the Government of an amount "equal to the value of the reductions" provided to its insureds, and who have not informed Class Counsel or the government by March 7 whether they are pursuing claims for any benefit years beyond the 2017 benefit year.

ECF No. 258 at 2. The Not-Pursuing-Claims-Beyond-2017 Subclass consisted of the following eight issuers: Premier Health Plan, Inc.; Prominence Healthfirst of Texas, Inc.; Community Health Plan of Washington; New Mexico Health Connections; Prominence Healthfirst; Medica Insurance Company; Group Health Cooperative of South Central Wisconsin; and Aspirus Health Plan, Inc. ECF No. 256 at 5 & Exh. D.

On June 11, 2025, the Parties jointly moved to divide a "CSR Dispute Subclass" from the certified 2017 CSR Subclass, 2018 CSR Subclass, and 2019 CSR Subclass. ECF No. 268 at 1. The proposed CSR Dispute Subclass contained five total members: Independence Blue Cross (HIOS ID 31609); Keystone Health Plan East, Inc. (HIOS ID 33871); AmeriHealth HMO, Inc. (HIOS ID

77606); AmeriHealth Insurance Co. of New Jersey (HIOS ID 91762); and SelectHealth Idaho (HIOS ID 26002). *Id.* at 2. The purpose of the division was to give those class members an opportunity to resolve certain remaining disputes with the Government without delaying the CSR Subclasses' ability to settle their claims. *Id.* The Court granted the Parties' motion on June 13, 2025. ECF No. 269.

On February 9, 2026, the Court dismissed the claims of all the Not-Pursing-Claims-Beyond-2017 Subclass members except Aspirus Health Plan, Inc. ECF No. 302.

SELECTHEALTH IDAHO SHOULD BE DIVIDED FROM THE SUBCLASSES

SelectHealth has agreed with the United States to resolve SelectHealth's claims, as well as the defenses and counterclaims of the United States. Accordingly, the Parties request that the CSR Dispute Subclass "be divided into subclasses that are each treated as a class under" RCFC 23(c)(5). Specifically, the Parties request to move SelectHealth into a newly created "SelectHealth Idaho CSR Subclass" defined as "SelectHealth Idaho, HIOS 26002" and appoint Quinn Emanuel Urquhart & Sullivan, LLP counsel for the subclass.

This Court has previously divided subclasses in the interest of not delaying relief to the remainder of the class members. *See*, *e.g.*, ECF No. 258 (dividing subclasses because "Considerations of judicial economy support this finding because it allows the CSR Subclass Members who provided the attestations necessary for the agreed-upon settlement procedure 'to finally dispose of and settle their respective claims'") (citing ECF No. 256 at 5); *see also* ECF No. 269. Common Ground and the government jointly submit that such subdivision is warranted again here.

THE NOT-PURSING-CLAIMS-BEYOND-2017 SUBCLASS SHOULD BE RENAMED THE ASPIRUS CSR SUBCLASS

Aspirus Health Plan, Inc., the only remaining member of the Not-Pursing-Claims-Beyond-2017 Subclass, has also agreed with the United States to resolve its claims. To avoid confusion, the parties ask the Court to rename this subclass the "Aspirus CSR Subclass".

Dated: April 10, 2026

Respectfully submitted,

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