Receipt number AUSFCC-7293440

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ALLIANT HEALTH PLANS, INC.

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 21-1769 C

COMPLAINT

Plaintiff Alliant Health Plans, Inc. ("Plaintiff" or "Alliant") brings this action against Defendant, the United States of America ("United States," or "Government"), and alleges the following:

INTRODUCTION

1. Alliant brings this action to recover amounts that the Government owes Alliant under the Government's mandatory cost-sharing reduction ("CSR") payment obligations established by Section 1402 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 and its implementing federal regulations.

2. In March 2010, the United States enacted The Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and The Health Care and Education Reconciliation Act, Pub. L. No. 111-152 (collectively, the "ACA").

3. The ACA requires individuals to purchase coverage if they are not otherwise insured, but also created a support system of federal subsidies to offset the costs of coverage. The ACA's individual mandate, coupled with the availability of federal subsidies, was designed to realize the ACA's twin goals of increasing both the availability and affordability of health

insurance coverage. Together, they dramatically increased the number of individuals – many previously uninsured – purchasing health insurance. To help serve the vastly expanded pool of individuals seeking coverage, the ACA also established health insurance exchanges – online marketplaces where individuals and small groups may purchase health insurance. Created by Title I, Subtitle D of the ACA, the health insurance exchanges are designed to bring together buyers and sellers of insurance, with the goal of increasing access to coverage offered in a competitive marketplace.

4. Health insurance issuers selling insurance on the exchanges are required to offer qualified health plans in the individual and small group markets. A qualified health plan ("QHP") is a health plan that meets certain criteria established by the Centers for Medicare & Medicaid Services ("CMS") in order to be sold to consumers through the exchanges.

5. The ACA classifies plans offered on the exchanges in one of four levels – silver, gold, platinum, and bronze – based on their cost-sharing requirements: the coinsurance, copayments, and deductibles a policyholder must pay out-of-pocket until satisfying a maximum in a benefit year[1] as established by regulation. 42 U.S.C. § 18022(d); 45 C.F.R. § 156.130.

6. A "silver" plan is a plan structured so that the insurer pays approximately 70% of the average enrollee's health care costs, leaving the enrollee responsible (before the application of the subsidy) for the other 30% through cost sharing. 42 U.S.C. § 18022(d). Under the ACA, an insurer must reduce cost sharing for eligible individuals enrolled in "silver" plans through an exchange. *Id.* § 18071(c)(2).

[1] A "benefit year" is "a calendar year for which a health plan provides coverage for health benefits." 45 C.F.R. § 155.20.

7. In a "gold" or "platinum" plan, the insurer bears a greater portion of health care costs, while under a "bronze" plan, the insurer is responsible for a lower portion of those costs. *Id.* An insurer that offers coverage on an exchange is required to offer at least one plan at both the "silver" and "gold" levels of coverage. *Id.* § 18021(a)(1)(C)(ii). The ACA does not require insurers to reduce cost sharing for individuals enrolled in "gold," "platinum," or "bronze" plans.

8. To realize the goal of making affordable health insurance available to low- and moderate-income Americans, the ACA, among other things, established an integrated program of subsidies to defray both the premium expenses and out-of-pocket costs of health insurance with two main components: premium tax credits and cost-sharing reductions.

9. First, Section 1401 of the ACA provides premium tax credits for qualified individuals with household incomes between 100% and 400% of the federal poverty level who purchase health insurance through the exchanges. 26 U.S.C. § 36B. Because these tax credits are refundable, they can subsidize insurance purchased by individuals who have no income tax liability. *See* Congressional Budget Office ("CBO"), *Refundable Tax Credits* at 1 (Jan. 2013), *available at* https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/43767_RefundableTaxCredits_2012_0_0.pdf. The vast majority of individuals who buy insurance on an exchange rely on advance payments of these premium tax credits. *See King v. Burwell*, 135 S. Ct. 2480, 2493 (2015).

10. Second, and most pertinent here, Section 1402 of the ACA requires insurers to provide "cost-sharing" reductions to individuals who are enrolled on a silver plan on the exchanges and whose household income is below 250% of the federal poverty level. 42 U.S.C. § 18071(c)(2), (f)(2). As noted above, "cost-sharing" refers to out-of-pocket payments to health care providers in the form of copayments, coinsurance, and deductibles that individuals are typically required to pay

under their insurance plan. *See* CBO, *Key Issues in Analyzing Major Health Insurance Proposals* at 15-17 (Dec. 2008), *available at* www.cbo.gov/publication/41746.

11. Insurers, in turn, are guaranteed by the ACA to be reimbursed by the Government for the cost-sharing reductions they provide to their insureds. Specifically, the ACA requires that the Secretaries of Health and Human Services ("HHS") and the Treasury "***shall make*** periodic and timely payments to the [QHP] issuer equal to the value of the reductions." 42 U.S.C. § 18071 (emphasis added). These advance payments are made directly to health insurance issuers. *Id.* § 18082(a)(3).

12. Alliant insures individuals and groups within Georgia under the bronze, silver, gold, and platinum plans.

13. Federal and state regulations do not permit health plans, such as Alliant, to raise premiums mid-benefit year (as opposed to prospectively) to cover the cost of providing the cost-sharing reductions.

14. In an October 12, 2017 memorandum, HHS Acting Secretary Eric Hargan informed CMS that "CSR payments to issuers must stop, effective immediately."[2] According to the memorandum, this instruction was premised upon a legal opinion of the U.S. Attorney General concluding that the CSR program lacked a valid appropriation.

15. The Government's failure to pay CSR reimbursements deprives QHP issuers, including Alliant, of money to which they are entitled by statute on account of their performance in the exchanges for benefit year 2017. CBO estimated CSR payments of approximately $7 billion

[2] Oct. 12, 2017 Mem. from E. Hargan to S. Verma re Payments to Issuers for Cost-Sharing Reductions (CSRs), *available at* https://www.hhs.gov/sites/default/files/csr-payment-memo.pdf.

for fiscal year 2017.[3] Regardless of whether Congress appropriated sufficient funds to HHS to make the CSR payments, the Government's statutory obligation to make such payments, and Alliant's right to those payments, remains.

16. This identical issue has been litigated successfully by other QHP issuers. Those issuers sued the Government alleging that they were entitled to damages because the Government had failed to reimburse them for cost-sharing reductions they made in the final months of 2017. Their lawsuits made their way to the United States Court of Appeals for the Federal Circuit, where the Federal Circuit sided with the QHP issuers, holding that "the cost-sharing-reduction reimbursement program 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[.]" *Sanford Health Plan v. United States*, 969 F.3d 1370, 1372-73 (Fed. Cir. 2020); *Cmty. Health Choice, Inc. v. United States*, 970 F.3d 1364, 1367 (Fed. Cir. 2020) ("In these cases, following our decision in *Sanford*, we affirm the Claims Court's decisions as to liability. As in *Sanford*, we conclude that the government is not entitled to a reduction in damages with respect to cost-sharing reductions not paid in 2017.").

17. The Government petitioned the U.S. Supreme Court for a writ of certiorari, which the Court denied on June 21, 2021. *See ME Com. Health Options v. United States*, No. 20-1162, 2021 WL 2519118 (U.S. June 21, 2021), and *United States v. ME Com. Health Options*, No. 20-1432, 2021 WL 2519119 (U.S. June 21, 2021).

[3] *See* CBO, Federal Subsidies Under the Affordable Care Act for Health Insurance Coverage Related to the Expansion of Medicaid and Nongroup Health Insurance: Tables from CBO's January 2017 Baseline at 4, *available at* https://www.cbo.gov/sites/default/files/recurringdata/51298-2017-01-healthinsurance.pdf.

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