

US Owes ACA Payments To Health Insurers, Fed. Circ. Rules

By **Adam Lidgett**

Law360 (August 14, 2020, 7:12 PM EDT) -- The federal government is on the hook for money damages to several insurers that said they were stiffed on Affordable Care Act cost-sharing reduction payments, the Federal Circuit said Friday in a pair of rulings.

A three-judge panel ruled that insurers Sanford Health Plan, Montana Health CO-OP, Community Health Choice Inc. and Maine Community Health Options were owed damages as a result of the Trump administration's decision to cut off cost-sharing reduction payments in 2017. Cost-sharing reduction payments were meant to help reduce copays and deductibles for low-income consumers on the ACA exchanges.

The appellate court said that a recent U.S. Supreme Court decision from April "makes clear that the cost-sharing-reduction reimbursement provision imposes an unambiguous obligation on the government to pay money and that" insurers may sue for damages. The panel said the insurers were due money for cost-sharing reductions that were not paid in 2017.

But in the case of Community Health and Maine Community only, the appellate court said those two companies can't get every penny they say they're owed. That's because Community Health and Maine Community were allowed to bump up premiums on certain middle-tier health plans to help mitigate the effects of cost-sharing reduction payments losses for 2018, the panel said, kicking the case back to see how much the insurers are entitled to.

"We conclude that additional premium tax credits were received by Community and Maine Community in 2018 as a direct consequence of their mitigation efforts following the government's nonpayment of 2018 cost-sharing reduction reimbursements, and the claims court was required to credit the government with such tax credit payments in determining damages," the appellate panel said.

Multiple courts have found that health insurers are owed millions of dollars in ACA cost-sharing reductions that President Donald Trump abruptly stopped paying in 2017.

The White House in October 2017 said that the U.S. Department of Health and Human Services, based on guidance from the U.S. Department of Justice, concluded that the cost-sharing reduction payments lack a valid appropriation. Under the ACA, insurers had to provide the reductions.

The appellate court's Friday ruling honed in on an April Supreme Court ruling that found the federal

government acted unlawfully when it reneged on a commitment to shield ACA insurers from heavy financial losses. Specifically, the justices reversed a Federal Circuit decision that left in place Congress' denial of \$12 billion in "risk corridor" funding, which the ACA dangled as an incentive for insurers during the law's first three years of operation.

The risk corridor program was funded partly with contributions from highly profitable ACA insurers, but there was still a \$12 billion shortfall.

"The health plans have provided cost-sharing reductions as required by law, and the court's decision makes clear that the government was required to provide CSR payments in accordance with the law," Stephen McBrady, an attorney for Montana Health CO-OP, Sanford and Maine Community Health, said in a statement to Law360 on Friday. "We look forward to continuing to pursue CSR amounts owed by statute."

Representatives for the government and counsel for Community Health Choice did not immediately respond to requests for comment on Friday.

Circuit Judges Timothy B. Dyk, William Curtis Bryson and Richard G. Taranto sat on the panel.

The government is represented in both cases by Alisa Beth Klein, Mark B. Stern and Ethan P. Davis of the U.S. Department of Justice.

Montana Health CO-OP, Sanford Health Plan and Maine Community Health Options are represented by Stephen McBrady, Daniel Wolff and Cliff Elgarten of Crowell & Moring LLP.

Community Health Choice Inc. is represented by William Lewis Roberts, Jonathan William Dettmann and Nicholas James Nelson of Faegre Drinker Biddle & Reath LLP.

The cases are Sanford Health Plan et al. v. U.S., case number 19-1290, and Community Health Choice Inc. et al. v. U.S., case number 19-1633, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Jeff Overley. Editing by Jack Karp.