IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

NEW MEXICO HEALTH CONNECTIONS, Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	)	No. 1:18-cv-00773 JB/KBM

JOINT MOTION TO STAY PROCEEDINGS

Plaintiff New Mexico Health Connections ("NMHC") and Defendants (collectively "HHS"), by and through their undersigned counsel, respectfully move the Court to stay this case pending the Court's resolution of Defendants' Rule 59(e) motion in *New Mexico Health Connections v. U.S. Dep't of Health & Human Services*, No. 1:16-cv-878 JB/JHR (D.N.M.) ("*NMHC v. HHS I*" or "the previous litigation"). *See* ECF No. 57, *NMHC v. HHS I*. In support of the motion, the parties state as follows:

1. *NMHC v. HHS I* asserted Administrative Procedure Act ("APA") claims regarding HHS rules establishing the methodology for the risk adjustment program for the 2014–2018 benefit years. *See* Am. Compl., ECF No. 21, *NMHC v. HHS I*. Upon consideration of the parties' cross-motions for summary judgment in that case, this Court granted NMHC's motion for summary judgment in part and partially vacated the 2014–2018 risk adjustment methodologies. *See* Mem. Op. & Order at 82–83, Feb. 28, 2018, ECF No. 55, *NMHC v. HHS I*. HHS subsequently filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) and that motion remains pending before this Court. *See* ECF No. 57, *NMHC v. HHS I*.

2. NMHC filed its Complaint in this case on August 13, 2018, asserting claims relating to HHS's new rule adopting a methodology for the risk adjustment program for the 2017 benefit year (the "current 2017 rule"). *See* Compl., ECF No. 1 (citing 83 Fed. Reg. 36,456 (July 30, 2018)). The current 2017 rule was promulgated after the Court's partial vacatur of the prior 2017 benefit year risk adjustment methodology in *NMHC v. HHS I*. Specifically, the current 2017 rule states that it was issued "to allow charges to be collected and payments to be made for the 2017 benefit year" after the Court had partially vacated the previous methodology pursuant to which those transfers would be made. *See* 83 Fed. Reg. at 36,456. NMHC's Complaint challenges the current 2017 rule both on the basis that it was not issued pursuant to notice and comment rulemaking procedures and on the ground that it is substantively unlawful under the APA. *See* Compl. ¶¶ 192–208.

3. The current 2017 rule at issue in this litigation "adopts the risk adjustment methodology previously established for the 2017 benefit year," 83 Fed. Reg. at 36,456, a methodology that was also challenged in the first case. And the third count of NMHC's Complaint challenges the current 2017 rule as arbitrary and capricious and contrary to law under the APA, just as the previous litigation challenged the prior 2017 rule on the same grounds. Thus, similar legal issues may be raised in this litigation as in the previous litigation.

4. Defendants' deadline to respond to the Complaint is October 15, 2018.

5. Because the underlying legal issues in *NMHC v. HHS I* are similar to the issues in this case, their final disposition could have a bearing on the resolution of this case. Accordingly, the parties agree that a stay of this litigation would be appropriate until the Court decides Defendants' Rule 59(e) motion in *NMHC v. HHS I*.

6. The parties also stipulate that they intend to meet and confer further on the timing for filing of an administrative record in this case, which the parties intend to do notwithstanding the existence of any stay of proceedings in this case.

7. Accordingly, the parties respectfully request an order providing that:

a. This case is stayed;

b. The deadline for Defendants to respond to the Complaint is vacated pending further proceedings in *NMHC v. HHS I*; and

c. The parties shall file a joint status report within 14 days of the Court's ruling on Defendants' Rule 59(e) motion in *NMHC v. HHS I*, ECF No. 57, to propose a schedule for further proceedings in this case.

Dated: October 5, 2018

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director

/s/ James Powers
JAMES R. POWERS (TX Bar No. 24092989)
Trial Attorney
U.S. Department of Justice,
Civil Division, Federal Programs Branch
1100 L Street, N.W., Room 11218
Washington, D.C. 20005
Telephone: (202) 353-0543
james.r.powers@usdoj.gov

Counsel for Defendants

/s/ *Nancy R. Long*
Nancy R. Long
LONG, KOMER & ASSOCIATES, PA
2200 Brothers Road/PO Box 5098
Santa Fe, NM 87502
(505) 982-8405
nancy@longkomer.com
email@longkomer.com
vmarco@longkomer.com

Barak A. Bassman
Sara B. Richman
Leah Greenberg Katz
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215-981-4000
bassmanb@pepperlaw.com
richmans@pepperlaw.com
katzl@pepperlaw.com

Marc D. Machlin
PEPPER HAMILTON LLP
Hamilton Square
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
202-220-1200
machlinm@pepperlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

/s/ James Powers
James R. Powers