

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF)
PENNSYLVANIA,)
v. Plaintiff,) Civil Action No. 2:17-cv-04540 (WB)
JOSEPH R. BIDEN, in his official)
capacity as President of the United States,)
et al.,)
Defendants.)

STATUS REPORT

On August 2, 2021, the Court entered an order staying this case and instructing Federal Defendants to file a status report on or before October 29, 2021 and every 90 days thereafter. ECF No. 281. Federal Defendants report the following:

1. This case involves a challenge to final rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,536 (Nov. 15, 2018); *Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA*, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).
3. The Court has before it fully briefed dispositive motions. *See, e.g.*, ECF Nos. 252, 254, 255.
4. On July 30, 2021, Federal Defendants filed a motion asking the Court to stay the case to permit them to evaluate the issues presented by this litigation, as well as their

regulatory and policy options. ECF No. 279. The Court had previously granted two other similar motions made by Federal Defendants. *See* ECF Nos. 271, 275.

5. On August 2, 2021, the Court granted Federal Defendants' motion and entered an order staying the case. ECF No. 281. In that order, the Court also instructed Federal Defendants to file a "status report on or before October 29, 2021, and every 90 days thereafter." *Id.*
6. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act) (attached as Exh. 1).
7. The Departments continue to work toward rulemaking as described in the August 16, 2021 guidance.

DATED: October 29, 2021

Respectfully submitted,

BRIAN NETTER
Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Justin M. Sandberg
JUSTIN M. SANDBERG (Il. Bar No. 6278377)
Senior Trial Counsel
MICHAEL GERARDI
CHRISTOPHER R. HEALY
REBECCA M. KOPPLIN
DANIEL RIESS
Trial Attorneys
U.S. Dep't of Justice, Civil Div., Federal Programs Branch
1100 L Street, NW
Washington, D.C. 20001
(202) 514-5838
Justin.Sandberg@usdoj.gov

Attorneys for Federal Defendant

CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2021 a copy of the forgoing document was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 29th day of October, 2021.

s/ Justin M. Sandberg
JUSTIN M. SANDBERG
Senior Trial Counsel
United States Department of Justice

EXHIBIT 1

FAQS ABOUT AFFORDABLE CARE ACT IMPLEMENTATION PART 48

August 16, 2021

Set out below is an additional Frequently Asked Question (FAQ) regarding implementation of the Affordable Care Act. This FAQ has been prepared jointly by the U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments). Like previously issued FAQs (available at <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs> and <http://www.cms.gov/cciio/resources/fact-sheets-and-faqs/index.html>), this FAQ is intended to help stakeholders stay informed about the law.

Coverage of Preventive Services

Section 2713 of the Public Health Service Act (PHS Act), as added by the Affordable Care Act and incorporated into the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code), requires that non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage provide coverage of certain specified preventive services without cost sharing. These preventive services include, with respect to women, preventive care and screenings as provided for in comprehensive guidelines supported by the Health Resources and Services Administration (HRSA), including contraceptive services.

On November 15, 2018, the Departments published final regulations concerning religious and moral exemptions and accommodations regarding coverage of certain preventive services (2018 final regulations).¹ The 2018 final regulations expand exemptions for entities with religious or moral objections to the contraceptive coverage requirement to which their health plans would otherwise be subject.

Q1. Are the Departments considering changes to the 2018 final regulations?

Yes. The Departments are considering how best to address these provisions in light of recent litigation. The Departments intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process.

¹ 83 FR 57536, 83 FR 57592 (Nov. 15, 2018).