

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

IRISH 4 REPRODUCTIVE HEALTH
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES
et al.,

Defendants.

Case No. 3:18-cv-0491-PPS-JEM

STATUS REPORT

On August 25, 2021, the Court granted the parties' joint motion to stay the proceedings in this case and ordered Federal Defendants to submit a status report on or before November 17, 2021, and every 90 days thereafter. ECF No. 139. Federal Defendants accordingly submit the following:

1. On August 12, the Court dismissed a number of the claims at issue in this case, leaving pending only Plaintiffs' arbitrary and capricious challenge to the Final Rules. Op. and Order, ECF No. 137. Federal Defendants (now the only defendants remaining in the case) have previously filed a partial motion for summary judgment on the arbitrary and capricious claim. ECF No. 114.

2. On August 16, 2021, Federal Defendants announced that “[t]he Departments [of Health and Human Services, the 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), https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act.

3. Federal Defendants have now determined that they will be unable to meet their anticipated target to issue a notice of proposed rulemaking by mid-February 2022. This is so for two reasons. First, the agencies have limited resources and face many competing and extraordinary demands on those resources, particularly in light of the ongoing pandemic and public health emergency. For example, the agencies must meet the need for frequent updates to guidance setting forth requirements for group health plans and health insurance issuers to cover items and services relating to COVID-19 as the items and services available evolve. Also, the agencies are working under statutory deadlines to take the actions necessary to implement the important patient protections enacted in the No Surprises Act. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758-2890 (2020). Second, the agencies continue to evaluate the issues presented by this litigation, as well as their regulatory and policy options. Of course, the agencies recognize the importance of finality, and they will continue to work toward initiating the rulemaking as quickly as is possible consistent with resource limitations and prudent decision making.

4. Similar pending cases in California and Pennsylvania remain stayed. *See California v. HHS*, No. 4:17-cv-5783 (N.D. Cal.) (motions held in abeyance Mar. 2, 2021, ECF No. 454); *Pennsylvania v. Biden*, No. 2:17-cv-4540 (E.D. Pa.) (stayed Mar. 8, 2021, ECF No. 271).

5. Federal Defendants propose that this case remain stayed and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.

6. Undersigned counsel has conferred with counsel for Plaintiffs, and Plaintiffs have advised that they do not oppose keeping the litigation in its current posture at this time.

Dated: February 15, 2022

Respectfully submitted,

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/s/ Rebecca M. Kopplin
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Counsel for Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Status Report was served on counsel for all parties using the Court's CM/ECF system on February 15, 2022.

/s/ Rebecca M. Kopplin
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Counsel for Federal Defendants