

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

AMERICAN SOCIETY OF ANESTHESIOLOGISTS,
et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES, *et al.*,

Defendants.

No. 1:21-cv-06823

Honorable Marvin L. Aspen

JOINT STATUS REPORT

The parties respectfully submit this Joint Status Report in accordance with this Court’s Minute Order of July 13, 2022, ECF No. 24. In that Order, this Court continued the stay of proceedings in this action and directed the parties to submit a joint status report by September 6, 2022, to inform the Court of the status of this case. The parties respectfully ask this Court to continue the stay of proceedings in this action for an additional thirty days. The parties state as follows:

1. The Plaintiffs’ suit challenges portions of an interim final rule that implements aspects of the No Surprises Act. *See Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55,980 (Oct. 7, 2021).

2. On August 26, 2022, the Defendants published a final rule that finalizes certain provisions of the regulations under the No Surprises Act that are at issue in this litigation. *Requirements Related to Surprise Billing*, 87 Fed. Reg. 52,618 (Aug. 26, 2022). In particular, the rule finalizes portions of an HHS regulation under the Act that the Plaintiffs have challenged here, 45 C.F.R. § 149.510, as well as portions of the parallel provisions of the Treasury and Labor regulations.

3. Earlier this year, the U.S. District Court for the Eastern District of Texas issued a judgment that vacated portions of the same interim final rule that the Plaintiffs challenge in this Court. *Tex. Med. Ass’n v. U.S. Dep’t of Health and Human Servs.*, No. 6:21-CV-425-JDK, 2022 WL 542879, at

*15 (E.D. Tex. Feb. 23, 2022). The Defendants filed a notice of appeal to the Fifth Circuit, and that court granted their motion to hold the proceedings in that appeal in abeyance during the pendency of rulemaking proceedings. *Texas Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, No. 22-40264, 2022 WL 1632580 (5th Cir. May 3, 2022).

3. The Defendants previously filed an unopposed motion for a stay of proceedings in this action, ECF No. 19, which this Court granted in its Minute Order of March 8, 2022, ECF No. 20. In addition, the parties have filed two joint status reports in which the Defendants requested, without opposition from the Plaintiffs, that the Court continue the stay of proceedings. ECF No. 21, ECF No. 23. The Court granted these requests in its Minute Orders of May 3, 2022 and July 13, 2022. ECF No. 22, ECF No. 24. The Defendants explained in their motion and in the joint status report that, in light of the vacatur of the relevant portions of the interim final rule by another federal district court and the forthcoming issuance of a final rule, it would best serve the interests of efficiency and economy to stay briefing in this case during the Defendants' rulemaking proceedings.

4. The parties agree that a continuation of the stay of proceedings will afford the Plaintiffs the opportunity to consider how they wish to proceed after their review of the final rule.

5. This Court has the inherent power to grant this request to continue the stay of proceedings. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of cases on its docket with economy of time and effort for itself, for counsel and for litigants." *Texas Indep. Producers & Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 980 (7th Cir. 2005). In evaluating whether to grant a motion to stay, this Court considers "whether a stay will unduly prejudice or tactically disadvantage the non-moving party," "whether a stay will simplify the issues in question and streamline the trial," and "whether a stay will reduce the burden of litigation on the parties and on the court." *Lynn Scott, LLC v. Grubhub, Inc.*, No. 1:20 CV 06334, 2021 WL 1088304, at *2 (N.D. Ill. Mar. 22, 2021).

6. The parties contend that each of these considerations favors the continuation of the stay. First, given the order of vacatur of the challenged portions of the interim final rule that was issued by the Eastern District of Texas, the Plaintiffs would not be prejudiced or disadvantaged by a

stay of proceedings concerning the same rule that is addressed in that order. Second, the stay of proceedings will simplify the issues in question in this Administrative Procedure Act case by permitting the parties to focus on the matters that might remain in dispute between them, if any, with regard to the now-published final rule. Third, a stay would reduce the burden of litigation on the parties and on the Court by ensuring that litigation resources need not be expended on disputes over an interim final rule that has been vacated by another court and that has now been replaced by a new rulemaking. Ultimately, these factors weigh in favor of granting the request to continue the stay.

7. The parties respectfully request that the Court instruct them to submit an additional status report, within thirty (30) days, to inform the Court of any relevant developments during that period.

Accordingly, the parties respectfully request that the Court continue the stay of proceedings in this case for a period of thirty (30) days, and that it direct the parties to submit an additional status report at the conclusion of that period.

Dated: September 2, 2022

Respectfully submitted,

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