

**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, 2021, 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. Since Federal Defendants filed their last status report in May 2022, the Agencies have made meaningful progress toward publishing a Notice of Proposed Rulemaking to amend the 2018 final regulations. Specifically, on July 8, 2022, Federal Defendants submitted a draft proposed rule to the Office of Management and Budget for review by its Office of Information and Regulatory Affairs (OIRA) pursuant to Executive Order 12866. *See Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9903)*, <https://www.reginfo.gov/public/do/eoDetails?rrid=254114>. Federal Defendants intend to publish the new Notice of Proposed Rulemaking in the Federal Register upon completion of that review.

4. Federal Defendants cannot control the timing of OIRA's review, but they recognize the importance of moving the proposed rule forward and will continue to work toward publishing the new Notice of Proposed Rulemaking as quickly as is possible consistent with ongoing resource limitations and prudent decisionmaking.

5. 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; stayed Aug. 17, 2021); *Pennsylvania v. Biden*, No. 2:17-cv-4540 (E.D. Pa.) (stayed Mar. 8, 2021, ECF No. 271).

6. 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.

7. 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: August 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 August 15, 2022.

/s/ Rebecca M. Kopplin
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Counsel for Federal Defendants