

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MAXWELL KADEL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:19CV272
	)	
DALE FOLWELL, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	

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**MEMORANDUM OPINION AND ORDER**

LORETTA C. BIGGS, District Judge.

On June 10, 2022, this Court issued its Memorandum Opinion and Order (“Order”) resolving various motions of the parties and permanently enjoining Defendants Folwell and Jones, in their official capacities, from enforcing the Plan’s exclusion and ordering the reinstatement of coverage for “medically necessary services of treatment for gender dysphoria.” (ECF No. 234 at 72–73; 261 at 72–73 (corrected version).) In that Order, the Court expressly reserved judgment on the parties’ cross motions for summary judgment related to Plaintiffs’ claims arising under the Affordable Care Act (“ACA”). (ECF No. 261 at 65.) The Court withheld judgment given the U.S. Department of Health and Human Services’ (“DHHS”) indication that it would revisit its interpretation of the term “health program or activity,” which under the 2020 Rule excluded entities “principally engaged in providing or administering . . . health insurance coverage.” (*Id.* at 64–65.)

On August 4, 2022, DHHS published a Notice of Proposed Rulemaking on this issue. Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47824 (proposed Aug. 4, 2022) (to be codified at 45 C.F.R. pt. 92). In light of the new rule, the Court finds that additional limited briefing on this issue could assist the Court in resolving the parties' cross motions.

For the reasons stated herein, the Court enters the following:

**ORDER**

**IT IS THEREFORE ORDERED** that each party may, but is not required to, provide additional limited briefing on their respective motion related to Plaintiffs' ACA claim in light of DHHS's recent rulemaking. Each party may file a supplemental brief within 14 days of the entry of this Order, which shall not exceed 3,125 words. Further, each party may file a response, if any, within 7 days of the filing of supplemental briefing, likewise, not to exceed 3,125 words.

This, the 24<sup>th</sup> day of October 2022.

/s/ Loretta C. Biggs  
United States District Judge