

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

DEBORAH CARR, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, SECRETARY,
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Defendant.

Case No. 3:22-cv-00988 (MPS)

JOINT STATUS REPORT

Pursuant to the Court's September 29, 2023, minute order, the Parties hereby submit the following joint status report:

1. This case concerns a challenge to an Interim Final Rule ("IFR") interpreting Section 6008(b)(3) of the Families First Coronavirus Response Act ("FFCRA"). Under FFCRA § 6008(a), states could qualify for a 6.2 percentage point increase in the Federal Medical Assistance Percentage ("FMAP") during the "public health emergency" as long as they met certain conditions. As relevant here, section 6008(b)(3) provides that a state would not qualify for the enhanced federal reimbursements if "the State fails to provide that an individual who is enrolled for benefits under such plan (or waiver)" on or after March 18, 2020 "shall be treated as eligible for such benefits through the end of the month in which such emergency period ends unless the individual requests a voluntary termination of eligibility or the individual ceases to be a resident of the State." FFCRA § 6008(b)(3).

2. On November 6, 2020, the Centers for Medicaid & Medicare Services ("CMS") promulgated an IFR under which states were allowed or required to modify a Medicaid recipient's level of benefits, subject to certain limitations, and still qualify for the FMAP increase. *See* Additional

Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency, 85 FR 71142-01, 71162.

3. On August 3, 2022, Plaintiffs—three Medicaid beneficiaries—filed this suit, alleging that the IFR violated the Administrative Procedure Act (“APA”) and seeking a preliminary injunction and a temporary restraining order. ECF No. 1. On August 26, 2022, Plaintiffs filed an Amended Complaint that added two new Plaintiffs and a motion for class certification. ECF Nos. 43, 44.

4. On November 7, 2022, the Court granted in part Plaintiffs’ motion for a preliminary injunction, enjoining the application of the IFR to the five named Plaintiffs. ECF No. 77.

5. On December 29, 2022, Congress passed the Consolidated Appropriations Act, 2023, which amended the FFCRA so that the conditions set forth in Section 6008(b)(3) would end on March 31, 2023. Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Division FF, Title V, Subtitle D, § 5131, 136 Stat. 4459 (available at <https://www.congress.gov/bill/117th-congress/house-bill/2617/text>). On January 31, 2023, the Court granted in part Plaintiffs’ motion for class certification and entered a class-wide preliminary injunction that expired on March 31, 2023. ECF No. 100.

6. The Parties are currently engaging in negotiations to settle attorneys’ fees in this case, as part of an overall compromise that would lead to a voluntary dismissal of the action by Plaintiffs, subject to Court approval under Rule 23(e). Accordingly, the Parties respectfully request that the case remain open while these discussions remain ongoing. The parties propose filing another joint status report on or before Thursday, December 14, 2023, that will update the Court on the progress of these discussions, if the case has not been dismissed by that date.

Dated: October 13, 2023

Respectfully submitted,

/s/ Sheldon V. Toubman

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