

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MONTE A. ROSE, JR., et al.,	)	
	)	
Plaintiffs,	)	
	)	No. 1:19-cv-02848-JEB
v.	)	
	)	
XAVIER BECERRA, et al.,	)	
	)	
Defendants.	)	

**JOINT STATUS REPORT**

In accordance with the Court’s November 15, 2023 order, Plaintiffs Monte A. Rose, Jr., et al.; Federal Defendants Xavier Becerra, et al.; and Intervenor-Defendant the Indiana Family and Social Services Administration (collectively, the “parties”) respectfully submit the following joint status report.

1. On September 23, 2019, the Plaintiffs filed a complaint challenging the Federal Defendants’ approval of the Healthy Indiana Plan (HIP) under Section 1115 of the Social Security Act.
2. The Plaintiffs moved to set an expedited briefing schedule, and the Federal Defendants and the Intervenor-Defendant jointly cross-moved for a stay pending the issuance of the mandates in *Stewart v. Azar* and *Gresham v. Azar*. ECF Nos. 16, 18. The Court granted each motion in part and denied each motion in part, but did not stay the case. Min. Order (Nov. 21, 2019).
3. Plaintiffs filed an Amended Complaint on January 27, 2020. ECF No. 32.
4. On April 3, 2020, the parties filed a joint status report, in which Indiana requested, without opposition, that the Court stay proceedings during the pendency of the COVID-19 public health emergency. ECF No. 36. The Court granted the stay and directed the parties to submit

a joint status report within two weeks of the COVID-19 public health emergency being declared over. Min. Order (April 6, 2020).

5. On October 26, 2020, CMS renewed the HIP Demonstration Program for the period from January 1, 2021 through December 31, 2030. *See* Letter from Anne Marie Castello, Acting Deputy Adm'r and Dir., CMS, to Allison Taylor, Medicaid Dir., Ind. Fam. & Soc. Servs. Admin. 2 (Oct. 26, 2020), <https://www.medicaid.gov/sites/default/files/2020-10/in-healthy-indiana-plan-support-20-ca-01012021.pdf>. That approval letter only conditionally approved work requirements, the lockout penalty for failure to pay premiums, and the redetermination lockout penalty, contingent on the Supreme Court's issuance of a decision in *Azar v. Gresham* "that legally authorizes these elements." *See id.* at 1-3. The Supreme Court did not issue such a decision. *See Becerra v. Gresham*, 142 S. Ct. 1665 (2022) (vacating the D.C. Circuit opinion and remanding to that court with instructions to direct the district court to vacate its judgment and dismiss the case as moot under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950)).
6. On June 24, 2021, CMS notified Indiana that it was withdrawing its conditional approval of the work requirements, based on its determination that they are not likely to promote the objectives of the Medicaid program. *See* Letter from Chiquita Brooks-LaSure, Adm'r, CMS, to Allison Taylor, Medicaid Dir., Ind. Fam. & Soc. Servs. Admin. 3, 22 (June 24, 2021), <https://www.medicaid.gov/sites/default/files/2023-12/in-healthy-indiana-plan-cms-withdr-commu-engmnt.pdf>.
7. CMS simultaneously notified Indiana that it was reviewing the other authorities that it had previously approved in HIP and that the "review remains ongoing." *See id.* at 23.

8. On June 28, 2021, the Court ordered the parties to file a joint status report. Min. Order (Jun. 28, 2021). In response to that report, ECF No. 40, the Court ordered the parties to “file a further joint status report within two weeks of the COVID-19 public-health emergency being declared over or CMS completing its review of the current Healthy Indiana Plan approval, whichever occurs first.” Min. Order (July 8, 2021).
9. On May 11, 2023, the COVID-19 public health emergency ended. *See* Letter to U.S. Governors from HHS Secretary Xavier Becerra on Renewing COVID-19 Public Health Emergency (PHE) (Feb. 9, 2023), <https://www.hhs.gov/about/news/2023/02/09/letter-us-governors-hhs-secretary-xavier-becerra-renewing-covid-19-public-health-emergency.html>. Since the end of the COVID-19 public health emergency, the parties have filed several joint status reports in which CMS advised that its review of HIP was ongoing. ECF 43, 45, 47. In the last joint status report, filed on November 14, 2023, CMS advised that it intended to issue a final decision explaining the outcome of its review no later than December 22, 2023, after which it intended to confer with Indiana and Plaintiffs about next steps. ECF 47.
10. On December 22, 2023, CMS advised Indiana by letter that it had “concluded the review,” deciding against “taking any action now on the premium authority, or any other authority, in the approved HIP demonstration.” Letter from Daniel Tsai, Deputy Adm’r and Dir., CMS, to Cora Steinmetz, Medicaid Dir., Ind. Fam. & Soc. Servs. Admin. 1 (Dec. 22, 2023), [https://www.medicaid.gov/sites/default/files/2023-12/in-cms-ltr-to-the-state-12222023\\_1.pdf](https://www.medicaid.gov/sites/default/files/2023-12/in-cms-ltr-to-the-state-12222023_1.pdf). Indiana has not been implementing premium requirements since March 2020 due to the public health emergency. The State is planning to reinstate premium requirements in July 2024.

11. Accordingly, of the HIP features challenged in Plaintiffs' Amended Complaint, the authority to impose community engagement requirements has been withdrawn, and Indiana no longer has approval to impose a "lockout" for failure to pay a premium or complete the redetermination process. The authority to impose a premium, and the waivers of non-emergency transportation and retroactive eligibility—all of which have been part of the HIP program since 2008 and were renewed as part of a HIP extension approved on October 26, 2020—remain in place and, pursuant to Section 1115, are subject to evaluation and monitoring by the State and by CMS.
12. Intervenor-Defendant Indiana FSSA has informed the other parties that named Plaintiffs Rhonda Cree and Elizabeth Wepler are no longer enrolled in HIP, and that named Plaintiffs Monte Rose and Erin Nicole Tomlinson (whose eligibility has not been reviewed since the beginning of the COVID-19 PHE in March 2020) are scheduled to have their eligibility redetermined by March 31, 2024.
13. Plaintiffs plan to file a Motion for Leave to File a Supplemental Complaint pursuant to Federal Rule of Civil Procedure 15(d). Plaintiffs will file the Motion by January 31, 2024.
14. The Federal Defendants and Intervenor-Defendant do not object to Plaintiffs filing a supplemental complaint by January 31, 2024, but preserve all potential defenses to the supplemented complaint.
15. The parties propose filing a proposed briefing schedule for the case by February 9, 2024.

Dated: January 12, 2024

Respectfully submitted,

BRIAN M. BOYNTON  
Acting Assistant Attorney General

MICHELLE BENNETT  
Assistant Branch Director

/s/

JACOB S. SILER  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs  
Branch  
1100 L Street, NW  
Washington, D.C. 20005  
(202) 353-4556  
jacob.s.siler@usdoj.gov

*Counsel for Federal Defendants*

/s/

Jane Perkins  
Catherine McKee  
National Health Law Program  
1512 E. Franklin Street, Suite 110  
Chapel Hill, NC 27514  
(919) 968-6308  
[perkins@healthlaw.org](mailto:perkins@healthlaw.org)

*Counsel for Plaintiffs*

THEODORE E. ROKITA  
Indiana Attorney General

By: /s/

James A. Barta  
Solicitor General  
Office of the Indiana Attorney  
General  
IGC-South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204-2770  
Telephone: (317) 232-0709  
Fax: (317) 232-7979  
Email: [James.Barta@atg.in.gov](mailto:James.Barta@atg.in.gov)

Caroline M. Brown  
Philip J. Peisch  
Brown & Peisch PLLC  
1233 20th St. NW, Suite 505  
Washington, D.C. 20036  
Phone: (202) 499-4258  
cbrown@brownandpeisch.com  
ppeisch@brownandpeisch.com

*Counsel for Intervenor-Defendant  
Indiana Family and Social Services  
Administration*