

**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 remaining defendants) have previously moved for partial 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/files/document/faqs-part-48.pdf>.

3. Federal Defendants report that on February 2, 2023, they published a notice of proposed rulemaking that would “amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health plans and non-grandfathered group or individual health insurance coverage to cover certain contraceptive services without cost sharing.” U.S. Dep’t of the Treasury, U.S. Dept’t of Labor, & U.S. Dep’t of Health & Human Servs., Coverage of Certain Preventive Services Under the Affordable Care Act, 88 Fed. Reg. 7,236 (Feb. 2, 2023), <https://www.federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>.

5. The comment period for the proposed rule closed on April 3, 2023. Federal Defendants received more than 44,000 comments on the proposed rule. The review and assessment of the comments is ongoing.

6. Regarding the timing of the release of the Final Rule, the Office of Management and Budget periodically issues a Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which reports on administrative agencies’ planned regulatory actions. The Unified Agenda represents Federal Defendants’ statement of their expectations regarding the timeline for rulemaking. The Fall 2023 Unified Agenda, which is the most recent Unified Agenda as of this filing, states that Federal Defendants expect to publish the Final Rule in August 2024. Executive Office of the President of the United States, Office of Information and Regulatory Affairs, Office of Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the Affordable Care Act, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU94>.

6. 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).

7. 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.

8. 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: February 12, 2024

Respectfully submitted,

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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 February 12, 2024.

/s/ Rebecca M. Kopplin
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Counsel for Federal Defendants