

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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WHITMAN-WALKER)	
CLINIC, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:20-cv-01630-JEB
)	
U.S. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

JOINT STATUS REPORT

The parties, by and through undersigned counsel, respectfully submit this Joint Status Report pursuant to the Court’s Order dated November 3, 2021. Defendants report that, since the last joint status report, the United States Department of Health and Human Services (“HHS”) has issued a proposed rule that would amend several provisions challenged by Plaintiffs in this case. If finalized, the proposed rule would revert several regulatory provisions addressing nondiscrimination back to the regulatory language in place before 2020. Specifically, HHS is proposing changes to 45 C.F.R. §§ 147.104(e), 155.120(c), 155.220(j), 156.125(b), 156.200(e), and 156.1230(b). Public comments on these proposed revisions were due January 27, 2022. HHS is in the process of considering all comments it received during the comment period. Plaintiffs challenge the 2020 modifications to these provisions in this case. Compl. ¶¶ 154-58. A copy of the proposed rule and its preamble, as published in the federal register on January 5, 2022, are attached.

In addition to this proposed rule, HHS continues to anticipate issuing a proposed rule no later than April 2022 implementing Section 1557 of the Affordable Care Act. Plaintiffs represent

that they have no insight into Defendants' internal process beyond Defendants' representation that they anticipate issuing a proposed rule no later than April 2022.

Consistent with this Court's order in *Chinatown Service Center, et al. v. HHS, et al.*, the parties request that Defendants be ordered to provide an update on HHS's proposed rule at the end of every other month, with the next update due on March 31, 2022. *See* Memorandum Opinion and Order, *Chinatown Service Center, et al. v. HHS*, No. 21-CV-331-JEB, ECF No. 23 at 4 (D.D.C. Oct. 13, 2021). Defendants do not join Plaintiffs in their argument below.

Plaintiffs' Statement

The parties' request that Defendants be ordered to provide updates at the end of every other month, with the next update due on March 31, 2022, should not be construed as an agreement by Plaintiffs to an indefinite stay past April 2022. As HHS acknowledges, "[w]ithout protection from discrimination, individuals may continue to face barriers to accessing medically necessary health care." Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 Fed. Reg. 584, 597 (Jan. 5, 2022). Indeed, "the removal of such protections in the 2020 section 1557 final rule frustrated ... the broader aim of improving health equity." *Id.* As such, the agreed-upon request is made without prejudice to Plaintiffs' ability to reopen proceedings if the rulemaking pertaining to Section 1557 of the Affordable Care Act or related rulemakings fail to address every aspect of the 2020 Revised Rule that Plaintiffs have challenged in the instant case, Defendants fail to meet the above timeline, or changed circumstances warrant it. *See* Mem. & Order on Mot. to Remand, *Bos. All. of Gay, Lesbian, Bisexual & Transgender Youth v. United States Dep't of Health & Hum. Servs.*, No. CV 20-11297-PBS (D. Mass. Oct. 29, 2021) (ECF No. 83), at 2-3 (noting that Defendants "cannot guarantee anything other than that the new final rule 'may resolve or moot some or all of the claims that

remain subject to review in this litigation” and granting stay “until the end of April 2022”) (emphasis in original).

Dated: January 31, 2022

Respectfully submitted,

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