

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

STATE OF MISSISSIPPI, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., in his official  
capacity as Secretary of Health and Human  
Services, *et al.*,

Defendants.

Civil Action No. 1:22-cv-00113-HSO-RPM

**JOINT MOTION FOR STAY PENDING RULEMAKING**

The parties respectfully move for a stay of this proceeding pending the intended rulemaking of the Centers for Medicare & Medicaid Services (CMS) that would propose removing the challenged improvement activity. The parties propose to submit a joint status report by September 2, 2025, to update the Court on developments in that intended rulemaking process. The reasons for this motion are set forth further below.

1. Seven state Plaintiffs challenge a rule promulgated by CMS implementing part of the Merit-based Incentive Payment System (“MIPS”). Under MIPS, CMS adjusts payments for covered professional services under Medicare Part B based on CMS’s assessment of MIPS eligible clinicians’ performance on measures and activities specified by CMS under four performance categories, including the clinical practice improvement activities performance category. MIPS eligible clinicians, defined at 42 U.S.C. § 1395w-4(q)(1)(C) and 42 C.F.R. § 414.1305 as including physicians, physician assistants, nurse practitioners, and other suppliers of covered professional services, who participate in MIPS may select from a list of clinical practice improvement activities to earn credit for completion of the improvement activities performance category, which may

qualify the MIPS eligible clinician for a positive payment adjustment. The States challenge a rule establishing one of those voluntary activities, “Create and Implement an Anti-Racism Plan.” *See* Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes, 86 Fed. Reg. 64,996, 65,969 (Nov. 19, 2021), Administrative Record (AR) 0001, 0005.

2. Currently pending before this Court are the parties’ cross-motions for summary judgment. *See* Pls.’ Mot. for Summ. J, ECF No. 167; Defs.’ Cross-Mot. for Summ. J., ECF No. 169.

3. On May 6, 2025, CMS announced the suspension of eight MIPS improvement activities for the calendar year (CY) 2025 performance period, including the improvement activity at issue in this action. *See* Notice of Suspension of Improvement Activity, ECF No. 198. The announcement stated that CMS “intend[s] to propose removing these improvement activities in future rulemaking.” *Id.*

4. On May 8, 2025, this Court directed “the parties to confer regarding” the Notice of Suspension of Improvement Activity “and inform the Court on or before May 29, 2025, whether the pending motions” for summary judgment “and/or this entire civil action are rendered moot, or whether further action by the Court is necessary.” Text Only Order (May 8, 2025).

5. The parties have conferred and agree that, depending on the outcome of CMS’s intended rulemaking, this action may become moot. Moreover, because CMS announced the suspension of the challenged improvement activity, any prejudice to Plaintiffs pending the intended rulemaking process is mitigated.

6. Accordingly, to avoid the expenditure of judicial resources to resolve an action that may become moot, the parties respectfully request a stay of proceedings pending the intended rulemaking process.

7. To ensure the Court stays informed on the status of the intended rulemaking, the parties propose to submit a joint status report by September 2, 2025, to update the Court on further developments.

For these reasons, the parties respectfully ask the Court to stay proceedings pending further updates on the intended rulemaking. A proposed order is attached.

Dated: May 29, 2025

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**ORDER GRANTING JOINT MOTION FOR STAY PENDING RULEMAKING**

Upon consideration of the parties' joint motion for stay pending rulemaking, it is hereby:

**ORDERED** that the Motion is **GRANTED**. The parties shall submit a joint status report by no later than September 2, 2025, to update the Court on further developments.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Chief U.S. District Judge Halil S. Ozerden