

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

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 January 31, 2022. Defendants report that, since the last joint status report, the United States Department of Health and Human Services (“HHS”) has submitted a draft of a proposed rule implementing Section 1557 of the Affordable Care Act to the Office of Management and Budget Office of Information and Regulatory Affairs (“OIRA”). OIRA received the draft proposed rule on March 22, 2022. The status of the proposed rule is available at the following website: <https://www.reginfo.gov/public/do/eoDetails?rrid=234566>. The parties provide separate statements below.

**Plaintiffs’ Statement**

Plaintiffs represent that they have no insight into Defendants’ internal process, including no information about the anticipated date of publication or the language of the proposed rule that has been submitted to OIRA.

Since this Court’s September 3, 2021 Order, ECF No. 077, the parties have provided the court with Joint Status Reports every other month, consistent with this Court’s order in *Chinatown*

*Service Center, et al. v. HHS, et. al.* requiring that Defendants provide an update on HHS's proposed rule at the end of every other month. *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). In the joint status reports previously filed in this matter, Defendants have represented that they anticipated issuing a Notice of Proposed Rulemaking "no later than April 2022." *See* ECF No. 079 at 1; ECF No. 081 at 1. In light of that previously anticipated target date, Plaintiffs request that Defendants be ordered to provide their next update on HHS's proposed rule on April 29, 2022.

Plaintiffs' request that Defendants be ordered to provide their next update on April 29, 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.* While Plaintiffs appreciate that HHS has made progress in sending a proposed rule to OIRA for review, Defendants have provided no update regarding the anticipated timing for issuing the Notice of Proposed Rulemaking or the substantive scope of the proposed rule under review. As such, Plaintiffs' 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).

**Defendants’ Statement**

Since this Court’s September 3, 2021 Order, ECF No. 077, the parties have provided the court with Joint Status Reports every other month. In each Joint Status Report, the parties have requested that Defendants be ordered to provide an update on the rulemaking at the end of every other month, consistent with this Court’s order in *Chinatown Service Center, et al. v. HHS, et. al.* 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). Plaintiffs’ request for even more frequent status reports is unwarranted. Given that Defendants have already submitted the proposed rule to OIRA and the status of OIRA review is available on the aforementioned website, if any change to reporting every other month were warranted, it would be to terminate the joint status report requirement and for Defendants to instead notify the Court within thirty days of the date that the proposed rule is published in the federal register. Nevertheless, Defendants do not object to updating the Court on the status of the rule at the end of every other month, with the next update due on May 31, 2022.

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Dated: March 31, 2022

Respectfully submitted,

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