

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

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| DIALYSIS PATIENT CITIZENS, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 4:17-cv-00016-ALM |
| |) | |
| THOMAS E. PRICE, M.D., |) | |
| Secretary, United States Department of |) | |
| Health and Human Services, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

DEFENDANTS’ CONSENT MOTION TO STAY PROCEEDINGS

Defendants respectfully move the Court to stay further proceedings in this action while Defendants conduct further rulemaking proceedings concerning the Interim Final Rule challenged by Plaintiffs. Plaintiffs consent to this motion. In support of their motion, Defendants state as follows:

1. On January 6, 2017, Plaintiffs filed a Complaint [ECF No. 1] alleging that Defendants had violated the Administrative Procedure Act in issuing an Interim Final Rule, *Interim Final Rule with Comment Period, Medicare Program; Conditions for Coverage for End-Stage Renal Disease Facilities—Third-Party Payment*, 81 Fed. Reg. 90211 (Dec. 14, 2016).
2. Also on January 6, 2017, Plaintiffs filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction [ECF No. 3]. This Court entered a temporary restraining order on January 12, 2017 [ECF No. 33], and a preliminary injunction on January 25, 2017 [ECF No. 36].

3. Defendants are currently preparing a Notice of Proposed Rulemaking in which Defendants anticipate that they will propose to issue a new final rule that would, when finalized, replace the Interim Final Rule.

4. Defendants' rulemaking efforts are underway, and Defendants expect that they will publish a Notice of Proposed Rulemaking in the Federal Register this fall.

5. Counsel for Defendants have conferred with counsel for Plaintiffs about these developments, and the parties agree that it would be appropriate if proceedings in this case were to be stayed during the pendency of Defendants' rulemaking proceedings, with the preliminary injunction previously entered by the Court to remain in force during this stay.

WHEREFORE, Defendants respectfully request that the Court stay proceedings in this action during the pendency of Defendants' rulemaking proceedings concerning the Interim Final Rule.

DATED: June 22, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

BRIT FEATHERSTON
Acting United States Attorney

JOEL McELVAIN (D.C. Bar No. 448441)
Assistant Branch Director

/s/ Matthew J. Berns
MATTHEW J. BERNS (D.C. Bar No. 998094)
Federal Programs Branch
U.S. Department of Justice, Civil Division
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel: (202) 616-8016/Fax: (202) 616-8470
Email: Matthew.J.Berns@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2017, I filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record who are deemed to have consented to electronic service.

/s/ Matthew J. Berns
Matthew J. Berns

CERTIFICATE OF CONFERENCE

I hereby certify that Defendants have complied with the meet and confer requirement in Local Rule CV-7(h). Plaintiffs' counsel stated via e-mail on June 22, 2017, that Plaintiffs consent to the relief requested herein.

/s/ Matthew J. Berns
Matthew J. Berns

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| |) | |
| Defendants. |) | |
| _____ |) | |

[PROPOSED] ORDER

This matter having come before the Court on defendants’ unopposed motion to stay proceedings, and the Court being fully advised in the premises and concluding that the motion should be granted, IT IS HEREBY ORDERED that:

1. Proceedings in this action are stayed until further Order of the Court, with the preliminary injunction previously entered by the Court to remain in force during this stay; and
2. Within 30 days after the publication by Defendants of a final rule that replaces the Interim Final Rule that Plaintiffs have challenged in this action, the parties shall file a joint status report that states the parties’ positions as to whether further proceedings in this case are needed and a proposed schedule for any such proceedings.

DATE:

Hon. Amos L. Mazzant, III
UNITED STATES DISTRICT JUDGE