

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH)	
CONNECTIONS,)	
)	
Plaintiff,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
<i>et al.</i> ,)	
)	
Defendants.)	

No. 1:18-cv-00773 SCY/KBM

**JOINT MOTION FOR REASSIGNMENT
OF THIS CASE TO THE HON. JAMES O. BROWNING**

RELIEF REQUESTED

Plaintiff New Mexico Health Connections (“NMHC”) and Defendants (“HHS”) hereby jointly move the Court to reassign this case to the Hon. James O. Browning. The parties respectfully submit that reassignment is appropriate to promote efficiency for the parties and the Court; as set forth more fully below, this action relates to the same federal program at issue in a matter currently pending before Judge Browning, involves the same parties, and raises many of the same legal issues as are presented in that case. Additionally, neither party consents to the disposition of this matter by a trial Magistrate Judge.¹

¹ NMHC has withdrawn the motions for consolidation under Fed. R. Civ. P. 42 in this case, ECF No. 11, and in the prior case discussed herein, *NMHC v. HHS I*, ECF No. 86. This motion for reassignment does not seek consolidation under Rule 42, and HHS does not consent to such relief.

BACKGROUND

This lawsuit concerns a rule promulgated by HHS pursuant to the risk adjustment program, a program established by section 1343 of the Patient Protection and Affordable Care Act, *see* 42 U.S.C. § 18063. This is the second lawsuit NMHC has filed against HHS in regard to the risk adjustment program. The first suit, filed on July 29, 2016, asserted Administrative Procedure Act (“APA”) claims regarding HHS rules establishing the methodology for the risk adjustment program for the 2014, 2015, 2016, 2017, and 2018 benefit years. *See* Compl., ECF No. 1, *New Mexico Health Connections v. U.S. Dep’t of Health & Human Services*, No. 1:16-cv-878 JB/JHR (D.N.M.) (“*NMHC v. HHS I*”). Upon consideration of the parties’ cross-motions for summary judgment in that case, the Court granted NMHC’s motion for summary judgment in part and partially vacated the 2014–2018 risk adjustment methodologies. *See* Mem. Op. & Order at 82–83, Feb. 28, 2018, ECF No. 55, *NMHC v. HHS I*. HHS subsequently filed a motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) and that motion remains pending before Judge Browning. *See* ECF No. 57, *NMHC v. HHS I*.

NMHC’s complaint in this case also concerns the risk adjustment program, asserting claims relating to HHS’s new rule adopting a methodology for the risk adjustment program for the 2017 benefit year (the “current 2017 rule”). *See* Compl., ECF No. 1 (citing 83 Fed. Reg. 36456 (July 30, 2018)). This rule was promulgated after the Court’s partial vacatur of the prior 2017 benefit year risk adjustment methodology in *NMHC v. HHS I*. Specifically, the current 2017 rule states that it was issued “to allow charges to be collected and payments to be made for the 2017 benefit year” after the Court had partially vacated the previous methodology pursuant to which those transfers would be made. *See* 83 Fed. Reg. at 36456. NMHC’s Complaint challenges the current 2017 rule both on the basis that it was not issued pursuant to notice and comment rulemaking

procedures and on the ground that it is substantively unlawful under the APA. *See* Compl. ¶¶ 192–208.

ARGUMENT

Although the cases are at different stages, NMHC’s complaint in this case raises many of the same legal issues presented by the first risk adjustment case pending before Judge Browning and substantial efficiencies for the parties and the Court could be gained by transferring this case to him. First, both cases concern the same Affordable Care Act program—risk adjustment—and both cases involve the same parties. Second, many of the legal issues presented will be similar: the current 2017 rule at issue in this litigation “adopts the risk adjustment methodology previously established for the 2017 benefit year,” 83 Fed. Reg. at 36456, a methodology that was also challenged in the first case. Judge Browning is already substantially familiar with this complex methodology by virtue of his consideration of the parties’ extensive summary judgment and Rule 59(e) briefing in the prior case. Finally, the third count of NMHC’s Complaint challenges the current 2017 rule as arbitrary and capricious and contrary to law under the APA, just as the prior suit challenged the prior 2017 rule on the same grounds. Thus, the same or similar legal arguments as were made before Judge Browning in the first case may be advanced here as well.

Moreover, to the extent it bears on the Court’s consideration of this Motion, neither party consents to proceed before a trial Magistrate Judge.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court reassign this case to the Hon. James O. Browning.

Dated: August 29, 2018

Respectfully submitted,

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/s/ James Powers
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2018, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

/s/ James Powers

James R. Powers