

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, Secretary
of Health and Human Services, *et al.*,

Defendants.

No. 7:16-cv-00108

STATUS REPORT

Pursuant to this Court’s August 16, 2017 Order, ECF No. 108, Defendants hereby provide the following update on “rulemaking proceedings initiated with respect to the challenged Rule.” ECF No. 108. *See also* 45 C.F.R. § 92 (the “Rule”).¹ As previously described, Defendants are reevaluating the reasonableness, necessity, and efficacy of the Rule that is challenged in this case and, as part of that process, are assessing the issues identified by the Court in granting Plaintiffs a preliminary injunction.

As stated in Defendants’ last status report, the Department of Health and Human Services has submitted a draft of a proposed rule to the Office of Management and Budget (OMB) for inter-agency clearance as required under Executive Order 12,866. As reflected on the website of OMB’s Office of Information and Regulatory Affairs (OIRA), the proposed rule was submitted under this clearance process on April 13, 2018. *See* <https://www.reginfo.gov/public/do/eoDetails?rrid=127999> (last visited October 12, 2018). The

¹ Pursuant to Fed. R. Civ.P. 25(d), Alex M. Azar II is substituted as a defendant in his official capacity as Secretary of Health and Human Services.

text of the proposed rule will not be publicly available until after the E.O. 12,866 process is complete, at which time it will be published in the Federal Register. Defendants will provide the Court, and the Plaintiffs, with the text of the proposed rule as soon as it has been published in the Federal Register and is available to the public. Defendants anticipate that the proposed rule will, upon publication, provide for a public comment period. The time required to complete the notice-and-comment phase and to publish a final rule will depend, in part, on the scope of the public comments received concerning the proposed rule.

Defendants request an opportunity to continue reconsidering the Rule and do not request that the Court close this case. Defendants will continue to abide by this Court's preliminary injunction and will therefore not enforce the Rule's prohibition against discrimination on the basis of gender identity or termination of pregnancy. Defendants therefore request that the Court maintain the stay in this case.

DATED: October 15, 2018

JOSEPH H. HUNT
Assistant Attorney General
Civil Division

JENNIFER D. RICKETTS
Director, Federal Programs Branch

JOSHUA E. GARDNER
Assistant Director, Federal Programs Branch

/s/ Rhett P. Martin

Rhett P. Martin

ALEX HAAS

U.S. Department of Justice

Civil Division, Federal Programs Branch

1100 L Street NW

Washington, DC 20005

phone: (202) 305-7538

fax: (202) 616-8470

email: rhett.martin@usdoj.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2018, a copy of the foregoing Status Report was filed electronically via the Court's ECF System, which effects service upon counsel of record.

/s/ Rhett P. Martin _____
Rhett P. Martin