

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

Monte A. Rose, Jr., et al.,)	
Plaintiffs,)	
v.)	No. 1:19-cv-02848-JEB
)	
Alex M. Azar, et al.,)	
Defendants.)	
)	

NOTICE OF INTENT TO FILE BRIEF

Pursuant to this Court’s order of November 21, 2019, Intervenor Defendant Indiana Family and Social Services Administration (FSSA) hereby notifies the Court that it believes the approval of the Healthy Indiana Plan (HIP) Section 1115 Medicaid Demonstration Project is materially different from Kentucky’s and Arkansas’s, and that it intends to file a brief explaining the differences and why the challenged components of HIP should not be struck down even if the D.C. Circuit were to affirm this Court’s rulings invalidating the Kentucky and Arkansas Section 1115 approvals.

As will be further explained in Indiana’s briefing, the HIP demonstration project—which dates back to 2008 and covers approximately 400,000 of Indiana’s 1.4 million Medicaid beneficiaries—is distinct from the rest of Indiana’s Medicaid program. From its inception, HIP has been a consumer-directed health care program that has included a series of features designed to promote personal wellness and responsibility. Most significantly, HIP pairs a high-deductible consumer-driven health plan with an account similar to a health savings account—called the Personal Wellness and Responsibility (POWER) account—that is primarily funded by the State, with contributions required of some HIP members.

When the Affordable Care Act provided States with the ability to expand Medicaid to adults with incomes up to 133% of the federal poverty level, the Indiana legislature authorized the expansion population to receive coverage through the HIP program. Ind. Code § 12-15-44.5-3. Notably, compared with other portions of Indiana’s Medicaid program, HIP is governed by separate statutes and separate provisions of the Indiana Administrative Code. *See* Ind. Code § 12-15-44.5-1 *et seq.*; 405 Ind. Admin. Code 10-1-1 *et seq.* And HIP uses different funding sources, different provider networks, different reimbursement rates, and different capitation rates—which are separately calculated based on the unique characteristics of the HIP beneficiary population and HIP’s distinct delivery system. Evaluations of HIP have also shown that the incentives and requirements associated with the HIP program positively influence member behavior and improve health outcomes, and that the overwhelming majority of participants are satisfied with the program.

Because HIP operates as a distinct program from the rest of Indiana’s Medicaid program, and because its distinct features require federal demonstration approval, entirely vacating the most recent HIP approval would leave the State without a service delivery system in place to provide benefits to nearly one-third of its Medicaid population, and would raise substantial questions under state law as to funding and authority to cover the expansion population through an alternative program. Unlike Kentucky and Arkansas, there is no status quo ante to return to for the Indiana Medicaid expansion population, as they have always been covered (without challenge) under HIP.

As the State will further explain in its brief, Indiana believes this history and structure makes the most recent Section 1115 approval of HIP—including the approval of new community-engagement requirements—materially different from the Kentucky and Arkansas Section 1115 approvals this Court has previously invalidated. Moreover, if this Court were to conclude that invalidation of HIP’s community-engagement requirements is necessary, these factors—as well as

the State's unilateral decision not to enforce the community engagement-requirements while this litigation is pending—counsel in favor of a different approach regarding the proper remedy than this Court adopted in the Kentucky and Arkansas cases.

Respectfully submitted,

CURTIS T. HILL, JR.
Indiana Attorney General

By: /s/Thomas M. Fisher
Thomas M. Fisher
Solicitor General

Kian J. Hudson
Deputy Solicitor General

Office of the Indiana Attorney General
302 W. Washington St.
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Phone: (317) 232-6255
Fax: (317) 232-7979
Email: Tom.Fisher@atg.in.gov
Kian.Hudson@atg.in.gov

Caroline M. Brown
Philip J. Peisch
Brown & Peisch PLLC
1233 20th St. NW, Suite 505
Washington, D.C. 20036
Phone: (202) 499-4258
Email: cbrown@brownandpeisch.com
ppeisch@brownandpeisch.com

*Counsel for Indiana Family and Social Services
Administration*

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which shall send notification of such filing to any CM/ECF participants.

/s/Thomas M. Fisher

Thomas M. Fisher
Solicitor General

Office of the Attorney General
302 W. Washington St.
Indiana Government Center South, 5th Floor
Indianapolis, IN 46204-2770
Phone: (317) 232-6255
Fax: (317) 232-7979
Email: Tom.Fisher@atg.in.gov