

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

MONTE A ROSE, JR., *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, *et al.*,

Defendants.

Civil Action No. 1:19-cv-2848 (JEB)

NOTICE BY FEDERAL DEFENDANTS

The Federal Defendants file this notice in response to this Court's order instructing the parties to indicate whether they believe that "the approval of Indiana's work requirements is materially different from that of Kentucky's or Arkansas's" or whether "a D.C. Circuit merits affirmance in the Kentucky and Arkansas cases would also bar the work requirements here." Minute Order (November 21, 2019). The Court further instructed that (1) the Defendants shall file any brief by January 6, 2020, explaining why "the approval of Indiana's work requirements is materially different" and/or why even if it is not different, "other challenged components of HIP should not be struck down in the event the D.C. Circuit affirms this Court's rulings on the Kentucky and Arkansas approvals;" (2) Plaintiffs shall file any response by January 27, 2020; and (3) Defendants shall file any reply by February 10, 2020. *Id.* The Court also noted that Defendants "reserve the right to take different positions in the event the D.C. Circuit decision is not a straight affirmance on the grounds set forth by this Court." *Id.*

The Federal Defendants respectfully submit that, under the reasoning of this Court's decisions in *Stewart v. Azar*, 366 F. Supp. 3d 125 (D.D.C. 2019), and *Gresham v. Azar*, 363 F. Supp. 3d 165 (D.D.C. 2019), the Secretary's approval of the work and community engagement component of the Healthy Indiana Plan ("HIP") is not materially different from the approval of the Kentucky and Arkansas work and community engagement components in *Stewart* and *Gresham*. Accordingly, if the D.C. Circuit were to issue a straight merits affirmance in *Stewart v. Azar*, No. 19-5096 (D.C. Cir.), and *Gresham v. Azar*, No. 19-5094 (D.C. Cir.), on the same grounds set forth by this Court, and did not include additional or different reasoning, the Secretary's approval of HIP's work and community engagement requirement would be unlawful under circuit precedent, absent further judicial review. However, the Federal Defendants further submit that the other components of HIP, such as the waiver of retroactive eligibility and monthly premium requirement, should not be vacated in light of

HIP's distinct procedural history. Thus, in accord with the Court's order, the Federal Defendants intend to file a brief by January 6, 2020, addressing this issue.

Dated: December 9, 2019

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