

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

CHINATOWN SERVICE CENTER., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:21-cv-00331-JEB
)	
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	
)	

JOINT MOTION TO STAY PROCEEDINGS

The parties, having conferred, hereby jointly request that the Court stay all proceedings in this matter until July 16, 2021, and suspend Defendants’ time to respond to the Complaint until further order of the Court. The parties propose that they file a joint status report on or before July 16, 2021, apprising the Court of the status of agency proceedings and submitting a proposal for further proceedings in this case. On February 5, 2021, Plaintiffs—Chinatown Service Center and Saint Barnaba Senior Services—filed this action seeking judicial review of a final rule that HHS promulgated in 2020. Complaint, ECF No. 1 (“*Compl.*”). The rule, entitled Nondiscrimination in Health and Health Education Programs or Activities, 85 Fed. Reg. 37,160 (June 19, 2020) (“2020 Rule”), implements Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116. In this case, Plaintiffs seek judicial review of aspects of the 2020 Rule’s modifications to Section 1557 regulations governing standards for covered entities to ensure meaningful access to their programs or activities for limited English proficient (“LEP”) persons, in particular the elimination of the prior rule’s notice and tagline requirements. *See generally* *Compl.* Defendants’ response to the Complaint is currently due June 1, 2021.

On May 10, 2021, HHS announced its determination that it anticipates initiating a section 1557 rulemaking proceeding, which may address many of the 2020 Rule's changes to Section 1557 regulations, such as the LEP-related modifications at issue in this case. HHS has announced that it anticipates issuing a Notice of Proposed Rulemaking as expeditiously as reasonably possible given its limited resources, but has not specified a date.

The parties state separately their reasons in support of this stay below:

Plaintiffs' Reasons in Support of a Limited Stay

Based on Defendants' representation that HHS's anticipated rulemaking proceeding may address the availability of notice and taglines information for limited English proficient (LEP) individuals raised in Plaintiffs' complaint, Plaintiffs are agreeable to a stay of proceedings in this case until July 16, 2021. That date coincides with the date for a status report set by the Court on May 17, 2021 in *Whitman Walker Clinic, Inc v. U.S. Dept. of Health and Human Services et al.*, No. 1:20-cv-01630-JEB (D.D.C. May 17, 2021), a case that includes a challenge to the same HHS rule at issue in Plaintiffs' complaint. Plaintiffs remain concerned about the ongoing harm to the health of LEP individuals created by the current HHS rules. While a preliminary injunction is in place addressing the Plaintiffs' sex discrimination claims in the *Whitman-Walker* litigation, the 2020 Rule's elimination of the notice and tagline requirements is in full effect. As noted in the joint status report in the *Whitman-Walker* case filed on May 14, 2021, the rulemaking proceeding Defendants plan to initiate is still of "an undetermined scope" and its release date is "yet-to-be-determined." Thus, as with the Plaintiffs submitting that report, Plaintiffs believe the Defendants' announced intentions "do[] not provide sufficient clarity as to whether or how it will ... ameliorate Plaintiffs' ongoing harms, as well as those to the public and public health." Plaintiffs, moreover, cannot agree with Defendants that an indefinite stay somehow gives Plaintiffs a "reasonable

opportunity" to file complaints with HHS's Office of Civil Rights that the unavailability of taglines or notices to LEP individuals violates the 2020 Rule being challenged by the complaint. Plaintiffs therefore are agreeable only to a limited duration stay to better understand and evaluate the effect of HHS's announced plans for a new rulemaking, and to conserve judicial resources.

Defendants' Reasons in Support of a Limited Stay

Defendants believe that a stay is justified in this case for two independent reasons that counsel for the parties discussed on May 19, 2021. First, the Biden administration's anticipated Section 1557 rulemaking proceeding may result in changes to Section 1557 rules that render it unnecessary for the Court to resolve the issues presented in this case. Second, a stay would provide Plaintiffs a reasonable opportunity to submit a complaint to HHS' Office for Civil Rights regarding the validity, under 45 C.F.R. § 92.101 as amended by the 2020 Rule and under other applicable law, of certain practices that Plaintiffs allege in their Complaint. *See, e.g.*, Compl. ¶¶ 71-72, 76, 80-83; *see also* 85 Fed. Reg. at 37,176 (explaining that the 2020 Rule "continues to require covered entities to provide taglines whenever such taglines are necessary to provide meaningful access by LEP individuals to a covered program or activity"). Consistent with its standard administrative protocols and with its commitment to ensuring the rights of LEP individuals, HHS would have the opportunity to consider investigating those practices Plaintiffs may identify as discriminatory.

In Defendants' view, July 16, 2021, is an arbitrary end date for the stay in light of the reasons justifying one. Nevertheless, Defendants join Plaintiffs in moving this Court to stay all proceedings in this matter until July 16, 2021, as an interim measure subject to Defendants' ability to request a further stay at a future date tailored to the particular justifications for one that apply in this case, if necessary.

CONCLUSION

For the foregoing reasons, the Court should stay proceedings in this case until July 16, 2021, and suspend Defendants' time to respond to the Complaint until further order of the Court. The parties propose that they file a joint status report by no later than July 16, 2021, apprising the Court of the status of agency proceedings and submitting a proposal for further proceedings in this case.

Dated: May 26, 2021

Respectfully submitted,

JUSTICE IN AGING

DENNY CHAN*
(admitted in California only
Bar No. 290016)
dchan@justiceinaging.org
JUSTICE IN AGING
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
Phone: (213) 375-3559
Fax: (213) 550-0501

REGAN BAILEY
(D.C. Bar No. 465677)
rbailey@justiceinaging.org
CAROL WONG**
(D.C. Bar No. 1035086)
cwong@justiceinaging.org
JUSTICE IN AGING
1444 Eye Street NW Suite 1100
Washington, D.C. 20005
Phone: (202) 289-6976

ALICE BERS* (CT Bar No. 442203)
WEY-WEY KWOK* (NY Bar No. 4004974)
CENTER FOR MEDICARE ADVOCACY
P.O. Box 350
Willimantic, CT 06226
Phone: (860) 456-7790
Fax: (860) 456-2614
Email: abers@medicareadvocacy.org
wkwok@medicareadvocacy.org

STINSON LLP

By: /s/ HARVEY L. REITER
HARVEY L. REITER
(D.C. Bar No. 232942)
harvey.reiter@stinson.com
MICHAEL TUCCI
(SBN DC 430470)
michael.tucci@stinson.com
M. ROY GOLDBERG
(D.C. Bar No. 416953)
roy.goldberg@stinson.com
STINSON LLP
1775 Pennsylvania Avenue NW, Suite 800
Washington, DC 20006
(202) 785-9100

ANTHONY J. JARBOE*
(MO Bar No. 68746)
tony.jarboe@stinson.com
STINSON LLP
7700 Forsyth Blvd., Suite 1100
St. Louis, Missouri 63105
Phone: (314) 863-0800
Fax: (314) 863-9388

* Admitted *pro hac vice*.

** *Application for admission to U.S. District Court for the District of Columbia forthcoming.*

Attorneys for Plaintiffs

BRIAN M. BOYNTON
Acting Assistant Attorney General

MICHELLE R. BENNETT
Assistant Director, Federal Programs Branch

/s/ Liam C. Holland

LIAM C. HOLLAND
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530
Tel.: (202) 514-4964
Fax: (202) 616-8470
Email: Liam.C.Holland@usdoj.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
CHINATOWN SERVICE CENTER., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:21-cv-00331-JEB
)	
U.S. DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

[PROPOSED] ORDER GRANTING JOINT MOTION TO STAY PROCEEDINGS

The Court having considered the parties’ joint motion to stay proceedings in this matter until July 16, 2021, and good cause having been shown, it is hereby

ORDERED that the motion is GRANTED; and it is further

ORDERED that all proceedings in the above-captioned case are STAYED until July 16, 2021; and it is further

ORDERED that the Defendants’ time to answer or otherwise respond to the Complaint is SUSPENDED until further order of the Court; and it is further

ORDERED that the parties shall file a joint status report proposing a schedule for further proceedings on or before July 16, 2021.

Dated: _____

JUDGE JAMES E. BOASBERG
United States District Judge