

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

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BRYLEE MCCUTCHEN, <i>et al.</i> ,		)	
		)	
		)	
	Plaintiffs,	)	
		)	
v.		)	No. 1:21-cv-01112-TSC
		)	
XAVIER BECERRA, Secretary		)	
of Health and Human Services, <i>et al.</i> ,		)	
		)	
	Defendants.	)	
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**JOINT STATUS REPORT AND MOTION TO LIFT STAY**

In accordance with the Court’s September 7, 2023 order, Plaintiffs Brylee McCutchen et al., Federal Defendants Xavier Becerra et al., and Intervenor-Defendant State of Tennessee (collectively, the “parties”) respectfully submit the following joint status report advising the Court on how they wish to proceed in this matter.

1. Plaintiffs filed their Complaint on April 23, 2021 (ECF No. 4) and, as amended on May 24, 2021 (ECF No. 23), challenged a January 8, 2021 decision by the Federal Defendants to approve “TennCare III” as a Medicaid demonstration project under Section 1115 of the Social Security Act, 42 U.S.C. § 1315.
2. The State of Tennessee moved to intervene as a Defendant on May 20, 2021 (ECF No. 19). The Court granted the unopposed motion on August 4, 2021. Minute Order, entered Aug. 5, 2021.

3. On August 11, 2021, with the Plaintiffs' agreement, the Federal Defendants filed an unopposed motion to hold the case in abeyance while they reopened the federal comment period on the approval challenged in the lawsuit and reconsidered the challenged decision (ECF No. 29). The motion noted that the approval of TennCare III would remain in effect during the abeyance. *See id.* ¶ 3.
4. The Court granted the motion that day: "This action is hereby STAYED pending the outcome of the new comment period pertaining to the challenged agency decision of January 8, 2021. The parties shall file a Joint Status Report and propose order within 30 days of whatever decision is issued following the new comment period." Minute Order, entered Aug. 11, 2021.
5. On August 10, 2021, CMS opened a new 30-day federal comment period to receive input from the public on the approved TennCare III project.
6. On June 30, 2022, the Federal Defendants wrote to Tennessee proposing changes to the approved project, including its aggregate financing cap and sharing savings structure and authorization to use a closed drug formulary. Both of these provisions of the TennCare III waiver were subject matter of the Amended Complaint, *see* ECF No. 23, ¶¶ 4, 6, 126-141.
7. On August 30, 2022, the State of Tennessee submitted an amendment to TennCare III, known as "Amendment 4."
8. On September 6, 2022, Federal Defendants opened a new 30-day federal comment period to receive input from the public on the State's proposed Amendment 4.
9. On August 4, 2023, the Federal Defendants approved Amendment 4, which approved Tennessee's requests to make certain modifications to the project approved on January 8, 2021. The January 8, 2021 TennCare III approval otherwise remains in effect.

10. Plaintiffs submit that the Federal Defendants' approval does not address all of the issues raised in the Amended Complaint, notably the 10-year time span for the approval (through Dec. 31, 2030) and the waiver of three-months' retroactive coverage, *see, e.g.*, ECF No. 23, ¶¶ 3,7.
11. On September 5, 2023, the parties submitted a Joint Status Report and Motion for Extension of Stay (ECF 32) indicating that they would like the opportunity to determine whether they can agree on a proposal to the Court for further proceedings in this case. The parties asked the Court to continue the stay until November 3, 2023, by which date they would file another Joint Status Report.
12. The Court granted the motion, ordering the parties to file a Joint Status Report by November 3, 2023 "advising the court on how they wish to proceed in this matter and include a proposed order." Minute Order, entered Sept. 7, 2023. Pursuant to that Order, the parties inform the Court as follows:
13. Plaintiffs intend to file a Supplemental Complaint in this case. Under Fed. R. Civ. P. 15, they will need the Court's leave. Plaintiffs will share a draft of the Supplemental Complaint with Defendants by December 8, 2023. Defendants will notify Plaintiffs of their position with respect to the proposed complaint by December 18, 2023. Plaintiffs will file a motion for leave to file the Supplemental Complaint by December 22, 2023.
14. Within two weeks of any court order granting Plaintiffs' motion for leave to file, the parties will submit a proposed schedule to govern further proceedings in the case.

Therefore, the parties respectfully move the court for an order: 1) lifting the stay in this case; 2) directing Plaintiffs to move for leave to file the Supplemental Complaint by December 22,

2023; and 3) directing the parties to submit a proposed schedule for further proceedings within two weeks of any court order granting Plaintiffs' motion for leave to file the Supplemental Complaint.

Dated: November 3, 2023

Respectfully submitted,

/s/ Jane Perkins

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