

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PHARMACEUTICAL CARE
MANAGEMENT ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

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) Civil Action No. 21-cv-00095-JDB
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**STIPULATED REQUEST FOR AN ORDER TO POSTPONE
RULE'S EFFECTIVE DATE AND HOLD THE CASE IN ABEYANCE**

Subject to the Court's approval and pursuant to Local Civil Rules 7 and 16.6, the parties through their undersigned counsel STIPULATE as follows:

1. Plaintiffs in this action challenge a final rule promulgated by the U.S. Department of Health and Human Services (HHS) on November 20, 2020, and published at 85 Fed. Reg. 76,666; at the time of publication, provisions of that rule were set to take effect on January 29, 2021, and January 1, 2022. 85 Fed. Reg. at 76,731.
2. In a notice currently on display and scheduled for publication in the Federal Register on February 2, 2021, HHS announced that it is undertaking a review of the rule, and delayed the effective date of certain provisions from January 29, 2021, until March 22, 2021. *See* Notice, ECF No. 16.
3. HHS stipulates that it will postpone the effective date of the rule's remaining provisions, *i.e.* the changes to the regulatory discount safe harbor, which are otherwise currently

scheduled to take effect on January 1, 2022, by one year—until January 1, 2023. HHS stipulates to this delay because it is the most efficient way to adjudicate this action while affording HHS an adequate opportunity to conduct a review of the entire November 20, 2020, rule. HHS does not concede that Plaintiff is likely to succeed on the merits of its current challenge.

4. Plaintiff maintains that—for the reasons expressed in its motion for partial summary judgment and motion for expedited decision—it would need prompt resolution of at least some of its claims were the final rule’s January 1, 2022, effective date not postponed.
5. Accordingly, to accommodate the parties’ competing interests, the parties request that the Court issue an order, pursuant to 5 U.S.C. § 705, postponing until January 1, 2023, the effective date of those provisions of the November 20, 2020, rule that are otherwise scheduled to take effect on January 1, 2022.
6. The parties further request that the Court hold this case in abeyance until the completion of the review that HHS is currently undertaking, subject to the continued consent of the parties. Because the timing and outcome of that review is currently unknown, the parties propose filing a joint status report within 60 days to inform the Court about their views on the status of this case and any appropriate next steps.
7. Should the Court grant the postponement and hold the case in abeyance, Plaintiff intends to withdraw its currently-pending motions for partial summary judgment and expedited consideration without prejudice.

Dated: January 29, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2021, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV