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MEMORANDUM

April 27, 2021

TO: Tribal Health Clients
FROM: Hobbs, Straus, Dean & Walker, LLP
RE: *Judge Issues Order Staying the Case in HHS Sunset Rule Litigation*

On Friday, April 23, the District Judge in *County of Santa Clara et al. v. HHS* issued an order staying the case through July 30, 2021. Case No. 5:21-cv-01655 (N.D. Cal. March 9, 2021). The temporary pause of the case was requested by the United States to provide the Department of Health and Human Services ("HHS") with additional time to assess the claims that have been raised against its final rule entitled, "Securing Updated and Necessary Statutory Evaluations Timely" (the "Sunset Rule" or "Rule"). As previously reported, the California Tribal Families Coalition and certain other plaintiffs are challenging the Rule—which would cause nearly all HHS regulations to expire beginning in 2026—as a violation of federal law and the HHS's tribal consultation obligations.¹

Critically, in its request for the stay of the case, the HHS states that it "currently anticipates issuing, in the coming months, a notice of proposed rulemaking repealing the SUNSET Rule." Repeal of the Rule would have major implications for the Indian health system as it would otherwise affect all of the governing regulations for the Indian Health Service, along with all of Title 21 (food and drugs), Title 42 (public health) and Title 45 (public welfare) of the Code of Federal Regulations. The statement marks a significant departure from the Department's position under the previous Administration, which strongly minimized the potential impacts of the Rule.

The stay of the case follows on HHS's decision to delay the effective date of the Rule by one year to March 22, 2022, to allow for internal and judicial review of the plaintiffs' claims, including specifically the Rule's expansive implications for Indian health.

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We are actively monitoring the HHS's actions in relation to this case and the Sunset Rule. If you have any questions or would like further information on this litigation or the underlying rule, please do not hesitate to contact Elliott Milhollin (emilhollin@hobbsstraus.com or 202-822-8282); Geoff Strommer (gstrommer@hobbsstraus.com or 503-242-1745); or Lisa Meissner (lmeissner@hobbsstraus.com or 202-822-8282).

¹ For a detailed discussion on the Sunset Rule and the key arguments being raised in the case, please see our Tribal Health Clients Memorandum of March 17, 2021 titled, "Lawsuit Challenging HHS Sunset Rule Filed in Northern California."