

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

STATE OF TEXAS; TEXAS HEALTH AND §
HUMAN SERVICES COMMISSION, §

Plaintiffs, §

v. §

XAVIER BECERRA, in his official capacity as §
Secretary of the United States §
Department of Health and Human §
Services; UNITED STATES DEPARTMENT §
OF HEALTH AND HUMAN SERVICES; §
CHIQUITA BROOKS-LASURE, in her official §
capacity as Administrator of the Centers §
for Medicare & Medicaid Services; §
MEENA SESHAMANI, in her official §
capacity as Deputy Administrator and §
Director of Center for Medicare; DANIEL §
TSAI, in his official capacity as Deputy §
Administrator and Director of Medicaid §
and CHIP Services; THE CENTERS FOR §
MEDICARE & MEDICAID SERVICES; §
JOSEPH R. BIDEN, in his official capacity as §
President of the United States; UNITED §
STATES OF AMERICA; §

Defendants. §

Case No. 2:21-CV-00229-Z

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Plaintiffs the State of Texas and Texas Health and Human Services Commission move for a temporary restraining order and preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

As set forth more fully in the brief filed in support of this motion, injunctive relief is warranted because Texas is likely to prevail on its claims that the vaccine mandate adopted by the Centers for Medicare and Medicaid Services (“CMS”) is unlawful: CMS lacked statutory authority to adopt it, CMS failed to follow required procedures for adopting a rule, and CMS acted arbitrarily and capriciously when adopting the mandate. Moreover, the vaccine mandate will cause irreparable harm by interfering with the provision of healthcare services in Texas as healthcare providers, who are already short staffed, will be required to terminate additional workers who choose not to be vaccinated.

For the reasons discussed here and in Plaintiffs’ brief in support, the Court should grant Plaintiffs’ request for a temporary restraining order and preliminary injunction.

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CERTIFICATE OF CONFERENCE

I hereby certify that on November 16, 2021, counsel for Plaintiffs, Cynthia A. Morales, conferred with counsel for Defendants, Joel McElvain, regarding the substance of this motion. Defendants are opposed to the motion because they oppose the relief sought in Plaintiffs' motion.

/s/ Landon A. Wade _____

LANDON A. WADE

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 16, 2021. The foregoing document was also served electronically on counsel for Defendants on November 16, 2021, although counsel for Defendants has not agreed to accept electronic service. I further certify that a true and accurate copy of the foregoing document will be served by mail on the following recipients on November 17, 2021:

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Programs; Omnibus COVID-19 Health Care Staff Vaccination,” 86 Fed. Reg. 61,555, is unlawful. CMS lacked statutory authority to adopt it under 42 U.S.C. §§ 1302 and 1395hh or the other facility-specific regulations it cites. CMS failed to follow required procedures for adopting the mandate, including providing a notice-and-comment period, consulting with state agencies, and including a rural-impact analysis. *See* 5 U.S.C. 553(b)(B); 42 U.S.C. §§ 1302(b)(1), 1395hh(b)(2)(C), 1395z. And CMS acted arbitrarily and capriciously when adopting the mandate. *See* 5 U.S.C. § 706(2)(D).

Moreover, as the evidence submitted by Plaintiffs demonstrates, the vaccine mandate will cause irreparable harm by interfering with the provision of healthcare services in Texas as healthcare providers, who are already short staffed, will be required to terminate additional workers who choose not to be vaccinated. It will also harm Texas’s sovereign interests in enforcing its own laws that prohibit vaccine mandates.

It is therefore ORDERED that Plaintiffs’ Motion for Temporary Restraining Order is GRANTED. It is hereby ORDERED that:

1. Defendants and all their respective officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with them are hereby ENJOINED from enforcing and implementing the Interim Final Rule with Comment Period entitled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination,” 86 Fed. Reg. 61,555.
2. This temporary restraining order shall remain in effect until _____ unless it is extended for good cause pursuant to Federal Rule of Civil Procedure 65.
3. A preliminary injunction hearing is set for _____.

SO ORDERED

_____, 2021.

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE