

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

**Susan Neese, M.D., and James Hurly,
M.D.**, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human
Services; **United States of America**,

Defendants.

Case No. 2:21-cv-00163-Z

MOTION FOR ENTRY OF CLASS-CERTIFICATION ORDER

The Court's memorandum opinion and order of October 14, 2022 (ECF No. 65) granted the plaintiffs' motion for class certification. The plaintiffs respectfully ask the Court to enter a class-certification order that complies with the requirements of Rule 23.

The language of Rule 23(c)(1)(B) requires the Court to appoint class counsel in its certification order. *See* Fed. R. Civ. P. 23(c)(1)(B) ("An order that certifies a class action must define the class and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)."). The plaintiffs also respectfully ask the Court to include language that explicitly defines the certified class as well as the "class claims, issues, or defenses," as required by Rule 23(c)(1)(B), to avoid any possible collateral attack on the classwide judgment that will issue. *See, e.g., Lewis v. City of Chicago, Illinois*, 702 F.3d 958, 962 (7th Cir. 2012) (holding that class-certification orders must include all material required by Rule 23(c)(1)(B)).

We have attached a proposed order that includes the language that we believe should be included in the class-certification order under Rule 23(c)(1)(B). The plaintiffs respectfully ask the Court to issue an order that includes this or similar language. We have conferred with counsel for the defendants and they no position at this time but reserve the right to oppose.

Respectfully submitted.

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Dated: November 21, 2022

*Counsel for Plaintiffs and
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CERTIFICATE OF SERVICE

I certify that on November 21, 2022, I served this document through CM/ECF
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**[PROPOSED] ORDER GRANTING PLAINTIFFS’
MOTION FOR CLASS CERTIFICATION**

The plaintiffs’ motion for class certification is granted.

The Court certifies the following class under Rule 23(b)(2) of the federal rules of civil procedure:

All health-care providers subject to section 1557 of the Affordable Care Act.

Susan Neese and James Hurly are appointed class representatives. Jonathan F. Mitchell is appointed class counsel under FRCP 23(g). The class claims are:

1. Whether Secretary Becerra’s interpretation of section 1557 of the Affordable Care Act, which appears in his Notification of Interpretation and Enforcement of May 10, 2021, is inconsistent with the statutory definition of “sex” discrimination.
2. Whether the prohibition on “sex” discrimination in section 1557 of the Affordable Care Act encompasses only situations in which a provider would have acted differently toward an identically situated member of the opposite biological sex.

Dated: _____

MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE