

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

Council for Medicare Choice, *et al.*,

Plaintiffs,

v.

United States Department of Health and Human Services, *et al.*,

Defendants.

Case No. 4:24-cv-446-O

**Relief Requested by July 10, 2024**

**Hearing Requested**

**Plaintiffs' Opposed Motion For Preliminary Injunction  
And A Stay Of Effective Date**

Plaintiffs move for a preliminary injunction under Federal Rule of Civil Procedure 65 and for a stay of effective date under 5 U.S.C. § 705 of certain portions of the “Compensation Rule.” *Medicare Program; Changes for Contract Year 2025*, 89 Fed. Reg. 30,448 (Apr. 23, 2024). In particular, Plaintiffs move this Court to preliminarily enjoin Defendants from enforcing and to stay the effective date of 42 C.F.R. §§ 422.2274(a), (c), (d), (e), 423.2274(a), (c), (d), (e).

As explained in the attached brief in support of this motion, the Court should grant the motion because Plaintiffs are likely to succeed on the merits of their claims, have demonstrated irreparable harm, have shown that the equities are in their favor, and have shown that granting the requested injunction is in the public interest.

Dated: May 21, 2024

Respectfully submitted,

/s/ Allyson N. Ho

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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1(b), I hereby certify that Matthew S. Rozen, counsel for Plaintiffs, and Brian Stoltz, counsel for Defendants, conferred in a good-faith attempt to resolve Plaintiffs' motion on May 20, 2024. The parties were unable to reach agreement, and Defendants intend to oppose Plaintiffs' motion for a preliminary injunction and a stay.

Dated: May 21, 2024

Respectfully submitted,

/s/ Matthew S. Rozen

Matthew S. Rozen

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 21, 2024, I caused the foregoing motion to be filed with the Clerk for the U.S. District Court for the Northern District of Texas through the ECF system. Participants in the case who are registered ECF users will be served through the ECF system, as identified by the Notice of Electronic Filing.

Dated: May 21, 2024

Respectfully submitted,

/s/ Allyson N. Ho

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**[Proposed] Order  
Granting Plaintiffs' Motion For Preliminary Injunction And Stay Of Effective Date**

Before the Court is Plaintiffs' Motion for Preliminary Injunction and Stay of Effective Date. Plaintiffs seek an order preliminarily enjoining Defendants from enforcing, and staying the effective date of, certain provisions of a final rule promulgated and implemented by Defendants. *Medicare Program; Changes for Contract Year 2025*, 89 Fed. Reg. 30,448 (Apr. 23, 2024) (the “Compensation Rule”); *see* Fed. R. Civ. P. 65; 5 U.S.C. § 705. After due consideration of the briefing, arguments, evidence presented, pleadings, documents filed with the Court, and applicable law, the Court **GRANTS** Plaintiffs’ motion.

The Court therefore **ORDERS** that Defendants, their respective officers, agents, servants, employees, attorneys, and other persons in active concert or participation with them: (1) are preliminarily enjoined from enforcing the challenged provisions of the Rule—specifically, those amending 42 C.F.R. §§ 422.2274(a), (c), (d), (e) and 423.2274(a), (c), (d), (e); and (2) shall not apply those provisions to prohibit the performance of, or any payment made pursuant to, any contract or agreement entered into, renewed, or retained in reliance on this Order. The Court **FURTHER ORDERS** that the effective date of the challenged provisions of the Rule is postponed

pending further judicial review, unless and until the Court orders otherwise.

The Court finds that Plaintiffs are likely to prevail on the merits of their claims. The Rule likely violates the Administrative Procedure Act because it exceeds Defendants' statutory authority under 42 U.S.C. § 1395w-21(j)(2)(D), violates notice-and-comment requirements, is arbitrary and capricious, and is otherwise contrary to law. *See* 5 U.S.C. § 706(2)(A)-(D). In addition, the Rule will cause irreparable injury to Plaintiffs or their members. If it takes effect, Plaintiffs or their members will lose unrecoverable revenue, suffer substantial financial harm, rearrange their business operations, and incur compliance costs. Finally, the public interest and the balance of equities favor granting relief. The Rule's injuries to Plaintiffs, their members, other firms, agents and brokers, and Medicare Advantage and Medicare Part D beneficiaries outweigh any government interest in implementing a Rule that is likely unlawful.

The Court further finds that Defendants will suffer no financial loss from this preliminary injunction and thus **ORDERS** that no security bond shall be required under Federal Rule of Civil Procedure 65(c). *See Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 303 (5th Cir. 1978) ("The amount of security required is a matter for the discretion of the trial court; it may elect to require no security at all.").

**SO ORDERED.**

\_\_\_\_\_, 2024.

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UNITED STATES DISTRICT JUDGE