

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASSOCIATION OF AIR MEDICAL SERVICES,

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

Civ. No. 1:21-cv-3031 (RJL)

Consolidated with
No. 1:21-cv-3231 (RJL)

PLAINTIFF’S NOTICE OF FILING

Plaintiff Association of Air Medical Services (AAMS) respectfully submits this Notice to inform the Court of the Departments’ filing of “Defendants-Appellants’ Unopposed Motion to Hold Case in Abeyance” in *Texas Medical Association v. U.S. Department of Health and Human Services*, No. 22-40264 (5th Cir.) (*TMA*) (Doc. No. 00516301384). AAMS has attached a copy of the Motion to this Notice as Exhibit A.

In the Motion, the Departments ask the U.S. Court of Appeals for the Fifth Circuit to hold the Departments’ appeal of *TMA* in abeyance indefinitely, with status reports due at 60-day intervals, because “the Departments expect to issue a final rule early this summer that will supersede the portions of the interim final rule that Plaintiffs challenged.” Ex. A at 2. The Departments further state in the Motion that they “are in the process of preparing a final rule that will address the substantive issues that were the subject of the district court’s decision” in *TMA*. *Id.*

The Departments’ Motion reinforces why AAMS needs relief as soon as possible. The Departments originally expected to publish a final rule in May. Now they expect to do so in early summer. They have no binding deadline and have not agreed to publish a final rule by a date

certain. Nor have they suggested that the final rule will repeal the regulatory guidance that arbitrarily singles out air ambulance providers and treats them differently from all other providers under Interim Final Rule (IFR) Part II. To the contrary, the Departments state in their Motion that the final rule will address “the substantive issues *that were the subject of the district court’s decision*,” as opposed to AAMS’s separate and distinct challenges to IFR Parts I and II.

IFR Parts I and II are harming AAMS members. The harm will continue unless the Court grants relief. AAMS renews its request that the Court remedy this inequity by vacating the offending provisions of IFR Parts I and II.

Dated: May 2, 2022

Respectfully submitted,

/s/ Brian Stimson

Brian R. Stimson (D.C. Bar No. 1657563)

Sarah P. Hogarth (D.C. Bar. No. 1033884)

MCDERMOTT WILL & EMERY LLP

500 North Capitol Street NW

Washington, DC 20001

(202) 756-8000

bstimson@mwe.com

shogarth@mwe.com

Attorneys for Plaintiff

Association of Air Medical Services

Exhibit A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TEXAS MEDICAL ASSOCIATION, *et al.*,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES, *et al.*

Defendants-Appellants.

No. 22-40264

**DEFENDANTS-APPELLANTS' UNOPPOSED MOTION
TO HOLD CASE IN ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully requests that this Court hold its appeal in this case in abeyance in light of ongoing rulemaking proceedings, with status reports due at 60-day intervals. This motion is unopposed.

1. Plaintiffs challenged an interim final rule that implemented provisions of the No Surprises Act, which addressed surprise medical billing. The Act created an arbitration procedure to resolve disputes between insurers and providers, and directed the Departments of Health and Human Services, Labor, and the Treasury (“the Departments”) to issue regulations implementing this arbitration process. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. BB, tit. I, 134

Stat. 1182, 2757-2890 (2020). The Departments determined that there was good cause to make those regulations effective on October 7, 2021, with a 60-day comment period to follow. *See Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55,980 (Oct. 7, 2021).

2. On Plaintiffs' motion for summary judgment, the district court vacated the challenged portions of the interim final rule. The court ruled that the interim final rule conflicted with substantive provisions of the No Surprises Act and also ruled that there was not good cause to make the interim final rule effective without advance notice and comment. *See Texas Med. Ass'n v. U.S. Dep't of Health and Human Servs.*, No. 6:21-cv-425, 2022 WL 542879 (E.D. Tex. Feb. 23, 2022), Dkt. No. 113.

3. The government filed this appeal on April 22, 2022. However, the Departments expect to issue a final rule early this summer that will supersede the portions of the interim final rule that Plaintiffs challenged. The comment period on the interim final rule has closed, and the Departments are in the process of preparing a final rule that will address the substantive issues that were the subject of the district court's decision. Accordingly, to avoid an unnecessary expenditure of resources by the parties and the Court, the government moves to have this appeal held in abeyance, with status reports due at 60-day intervals.

4. Counsel for Plaintiffs have informed us that Plaintiffs do not oppose this motion.

Respectfully submitted,

ALISA B. KLEIN

/s/ Kevin B. Soter

KEVIN B. SOTER

(202) 514-3602

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave. NW

Room 7222

Washington, D.C. 20530

APRIL 2022

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 361 words, according to the count of Microsoft Word.

/s/ Kevin B. Soter

KEVIN B. SOTER