

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**(1) ESEC, LLC d/b/a ESEC Surgery
Center,**)

Plaintiff,)

v.)

**(1) ALEX AZAR, in his official
capacity as Secretary of Health and
Human Services,**)

Defendant.)

Case No. CIV-18-789-F

**VERIFIED COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF, AND
TEMPORARY RESTRAINING ORDER**

Plaintiff ESEC, LLC d/b/a ESEC Surgery Center (“ESEC”) files this Verified Complaint for Preliminary and Permanent Injunctive Relief, and Temporary Restraining Order against Defendant Alex Azar in his official capacity, alleging as follows:

INTRODUCTION

1. ESEC is an ambulatory surgery center (“ASC”) located in Oklahoma City, Oklahoma (the “Center”) that provides ambulatory surgical services to patients.

2. The Centers for Medicare and Medicaid Services (“CMS”) recently notified ESEC that its Medicare provider agreement will be involuntarily terminated due to ESEC being cited for two (2) deficiencies during an inspection survey.

3. As a result of the threatened termination of ESEC’s provider agreement, ESEC will stop receiving Medicare payments on August 18, 2018 and, as a result, will be unable to treat Medicare patients. In addition, Section 6501 of the Affordable Care Act requires States to terminate a provider’s Medicaid agreement if the provider’s

participation in Medicare is terminated. A majority of ESEC's revenue—over sixty percent—is derived from Medicare and Medicaid funding; thus, loss of Medicare and Medicaid funding will have devastating consequences for ESEC, its patients and its employees.

4. ESEC has filed this civil action for injunctive relief in which ESEC seeks an injunction preventing Defendant from terminating and/or stopping reimbursement payments pursuant to ESEC's provider agreement until ESEC has been afforded a hearing and adjudication of its claims as stated herein.

5. The injunction ESEC seeks is limited in scope and duration. ESEC does not ask this Court to adjudicate the validity of CMS's decision to terminate ESEC's provider agreement, although ESEC contends such decision is erroneous. Instead, through this action, ESEC asks this Court to preserve the status quo so that ESEC can have a meaningful opportunity to mount a defense through the administrative appeals process.

6. ESEC has addressed and is addressing the alleged problems that are cited as the basis for the proposed termination and is confident it will have both issues resolved to CMS's satisfaction before August 31, 2018, a mere two weeks from today. During this two week period, there is no threat to patient safety, as evidenced by the fact that the Center has operated for over thirteen years with these two issues present and has had no incidents involving either issue.

7. As a consequence of the two issues being resolved, the basis for CMS's termination will no longer exist.

8. This Court is the appropriate and only forum for ESEC to obtain the immediate relief it seeks. ESEC will administratively appeal and seek review of the Defendant's decision, but that review will not occur before ESEC's provider agreement is terminated. Moreover, CMS has refused to extend the termination date to allow resolution of the appeal.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action and the parties thereto pursuant to 42 U.S.C. § 405(g), 28 U.S.C. § 1331, and the Court's inherent equity powers and its power to preserve its own jurisdiction. ESEC is also entitled to judicial relief it seeks pursuant to the Administrative Procedure Act, 5 U.S.C. § 705, and the All Writs Act, 28 U.S.C. § 1651.

10. The administrative exhaustion requirements of 42 U.S.C. §§ 405(g)-(h) are waived in this situation because ESEC's claim for declaratory and injunctive relief is: (1) completely collateral to a substantive claim of entitlement; (2) colorable in its showing that denial of relief will cause irreparable harm; and (3) one whose resolution would not serve the purposes of exhaustion. *Mathews v. Eldridge*, 424 U.S. 319, 330-331 (1976); *see also Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 24 (2000) (“[A] court can deem [the procedural steps set forth in § 405(h) waived in certain circumstances ... even though the agency technically holds no ‘hearing’ on the claim.” (internal citations omitted)).

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (e), and the Administrative Procedure Act, 5 U.S.C. § 703.

PARTIES

12. Plaintiff ESEC is a licensed ASC located at 3705 NW 63rd St. in Oklahoma City, Oklahoma.

13. Defendant Alex Azar, ("Secretary Azar") is the Secretary of Health and Human Services, United States Department of Health and Human Services ("HHS"). Secretary Azar is the federal official responsible for administering the Medicare Act, 42 U.S.C. §§1395-1395iii, as well as overseeing federal responsibilities under the Medicaid Act, 42 U.S.C. §§ 1396-1396w. Although Secretary Azar has delegated many of those responsibilities to CMS, he retains statutory responsibility for the official actions complained of herein.

REGULATORY BACKGROUND

I. Medicare and Medicaid Conditions of Participation

14. The Medicare program, established by Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395iii, is a federally-administered and funded program that provides payment for healthcare services to millions of aged or disabled individuals. 42 U.S.C. § 1395c.

15. The Medicaid program, established by Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w, is a joint federal-state program that provides medical assistance to low-income people who are aged, blind, disabled, pregnant, young children, or members of families with dependent children. 42 U.S.C. § 1396. The Medicaid program is jointly funded by the Federal Government and each participating State.

16. In order to receive payments under Medicare and/or Medicaid, an ASC like ESEC must be certified as meeting certain minimum requirements. A facility that is certified then enters into a provider agreement with the Federal Government and/or the State. This provider agreement allows the ASC to begin billing Medicare for services provided to Medicare beneficiaries.

II. Survey Procedures and Remedy Determinations

17. CMS conducts periodic on-site inspections of facilities to determine whether they meet federal requirements and thus are eligible to participate in the Medicare and Medicaid programs. These on-site inspections are commonly known as "surveys." If it is determined through surveys that a previously certified facility no longer meets participation requirements, various sanctions may be imposed.

18. Secretary Azar has delegated significant responsibilities under the Medicare and Medicaid Acts to CMS. CMS, in turn, contracts with state agencies to conduct surveys on CMS's behalf. 42 U.S.C. § 1395aa. The state agency then forwards its survey findings and recommendations to CMS. *Id.*; 42 C.F.R. § 488.12. CMS makes certification and remedy determinations for most facilities based upon the recommendations of state survey agencies. In Oklahoma, the state survey agency is the Oklahoma State Department of Health ("OSDH").

19. The Medicare Act sets forth specific requirements that ASCs must satisfy in order to participate in the Medicare programs. It also establishes procedures for CMS and/or state survey agencies to conduct surveys of facilities, and establish enforcement provisions for facilities not meeting the applicable requirements for participation.

20. Failure to adhere to the federal participation requirements results in "deficiencies." When a deficiency is cited by a survey team, the facility is informed of the deficiency via a written report, referred to as a "Statement of Deficiencies."

21. CMS has the authority to terminate a provider agreement if it determines that the ASC no longer meets the conditions for coverage as specified in 42 C.F.R. § 416.26, or is not in substantial compliance with the provisions of the provider agreement or relevant regulatory requirements. 42 C.F.R. § 416.35.

22. In nearly all cases, facilities are given a certain period of time in which to file a document known as a "Plan of Correction" that is designed to specifically address deficiencies cited in the Statement of Deficiencies. The survey agency evaluates the Plan of Correction and, if the plan is determined to likely result in the correction of a facility's deficiencies, the survey agency accepts the Plan of Correction.

23. When an agreement with an ASC is terminated by CMS, the ASC may not file another agreement to participate in the Medicare program unless CMS finds that the reason for the termination of the prior agreement is removed, and is assured that the reason for the termination will not recur. 42 C.F.R. § 416.35(e).

III. Medicare Administrative Appeal Process

24. Under federal law, if CMS determines that a facility is not in compliance with the relevant regulatory requirements or if a provider's agreement is terminated for that reason, the facility has the right to request that the determination be reviewed. 42 C.F.R. § 498.40 ("Any provider dissatisfied with an initial determination to terminate its provider agreement is entitled to hearing before an ALJ.").

25. A facility that is dissatisfied with the ALJ's ruling may appeal to the Appellate Division of the DAB and, ultimately, the Federal district court. 42 C.F.R. § 498.5(c).

26. While Congress has instructed CMS to hold expedited hearings on termination appeals, there is no process in place that guarantees an appellate decision prior to the termination of the provider agreement. Indeed, ESEC's provider agreements will be terminated before an appeal is heard.

27. ESEC intends to file a request for an expedited hearing before an ALJ, pursuant to 42 C.F.R. § 498.40.

28. Unfortunately, the termination of ESEC's provider agreement will occur before any hearing takes place on the merits of ESEC's appeal unless this Court grants ESEC the injunctive relief it seeks.

FACTUAL BACKGROUND

29. OSDH conducted an initial survey of ESEC on July 30, 2015 and noted two deficiencies: (1) the essential electrical system was not properly designed to separate the Life Safety branch and the Critical branch in two electrical panels ("Electrical Issue"); and (2) the placement of the two non-hooded counter-top sterilizers was inappropriate ("Sterilizer Placement Issue"). ESEC, by and through its counsel of record, worked with OSDH at that time to resolve the deficiencies.

30. In light of the fact that OSDH had approved the plans in 2005, inclusive of the two noted deficiencies, as well as the fact that the deficiencies posed no patient safety

concern, OSDH, by and through its General Counsel, approved a waiver of the two issues.

31. OSDH conducted a revisit on November 20, 2017, during which ESEC was cited for the same two deficiencies from 2015. Despite ESEC's explanation that OSDH had previously waived the two issues, ESEC received a Statement of Deficiencies on December 11, 2017 from OSDH identifying the Electrical Issue and Sterilizer Placement Issue, and recommending termination of ESEC's provider agreement, effective March 11, 2018.

32. Over the course of the two months that followed, ESEC was in constant communication with OSDH to develop an acceptable Plan of Correction ("POC"). Each of the POCs submitted by ESEC was rejected by OSDH.

33. On February 27, 2018, ESEC submitted a Request for Waiver to OSDH for the Electrical Issue (despite the fact that, as previously mentioned, OSDH approved the initial plans in 2005 and subsequently waived the deficiencies when they arose in 2015). This Request for Waiver was forwarded by OSDH to CMS.

34. On March 21, 2018, CMS denied ESEC's Request for Waiver; notably, however CMS addressed the incorrect issue, i.e., electrical switches. In rejecting the Request for Waiver, CMS did not address the Electrical Issue, i.e., the need to have the Life Safety branch and Critical branch in separate electrical panels.

35. Furthermore, the OSDH employee who sent the Request for Waiver on behalf of ESEC failed to request a waiver on the Sterilizer Placement Issue.

36. On July 5, 2018, at OSDH's recommendation, ESEC submitted a second Request for Waiver directly to CMS of both the Electrical Issue and the Sterilizer Placement Issue, but explained to OSDH at that time that ESEC would be willing to correct the deficiencies if the Request for Waiver was not approved.

37. On July 20, 2018, OSDH informed ESEC that CMS had rejected ESEC's July 5 Request for Waiver.

38. Conversely, on July 25, 2018, Mr. Dodge Guioa at OSDH informed ESEC that OSDH was incorrect in its July 20 statement and that CMS was still considering the July 5 Request for Waiver.

39. On August 3, 2018, CMS sent the Notice of Termination letter to ESEC, but made no mention of the July 5 Request for Waiver or the proposed plan to correct the two issues.

40. On August 6, 2018, ESEC received a letter from CMS rejecting the July 5 Request for Waiver, but again made no reference to ESEC's proposed plan to correct the two issues.

41. On August 13, 2018, Jennifer Mendola, counsel for CMS, agreed to request a stay of two weeks to correct the issues. However, on August 14, 2018, Ms. Mendola informed ESEC that CMS had declined to extend the termination date.

42. Ms. Mendola explained that the reason CMS declined to extend the termination date was that no Plan of Correction was presented; however, ESEC had explained in detail how the two issues would be completely corrected in two weeks.

IV. Impending Violations of ESEC's Rights

43. ESEC presented the plans for the Center to OSDH in 2004 and OSDH approved the plans. ESEC built and equipped the center exactly according to the approved plans. ESEC should be able to rely on OSDH's approval of the plans for the Center.

44. From 2005 to 2015, CMS, through its agent OSDH, periodically inspected the Center and never raised the two issues. Moreover, when it did finally raise the issues in 2015, it waived them. Again, ESEC should be able to rely on the waiver of the two issues by CMS's agent, OSDH.

45. For over thirteen years of full-time operation, there was never been an incident relating to the Electrical Issue or the Sterilizer Placement Issue.

46. ESEC presented in its July 5 Request for Waiver plans to correct these issues and CMS never considered those plans. ESEC has begun the process of fixing the two issues and will be finished on or before August 31, 2018.

47. ESEC is being unduly prejudiced by CMS's arbitrary and capricious refusal to extend the termination date by two weeks in order for ESEC to finish the fixes that are well underway.

48. Under the United States and Oklahoma Constitutions, ESEC has a fundamental right to pursue its regulatory appeals and remedies in connection with the termination of the provider agreement, and until such appeals are exhausted, CMS and the OSDH must not terminate its provider agreements. In terminating ESEC's provider agreements prior to the completion of the appeals process afforded to it by law, the

Defendants have deprived ESEC of its right to due process in connection with its provider agreements.

49. Further, the structure and timing of the termination and appeals process precludes ESEC from obtaining any effective relief. The United States Supreme Court has held that exhaustion of administrative remedies may be waived if its rigid application “would not simply channel review through the agency, but would mean no review at all.” *Shalala v. Ill. Council on Long Term Care, Inc.*, 429 U.S. 1 (2000). Indeed, by the time CMS hears the appeal, ESEC will be shut down, having the practical effect of no review at all. *See Frontier Health, Inc. v. Shalala*, 113 F. Supp. 2d 1192 (E.D. Tenn. 2000) (finding that a preliminary injunction was appropriate because, “if the hospital were forced to close before administrative remedies had been exhausted, it would not be in a position to seek judicial review at the close of the administrative process.”).

V. Threat of Imminent Irreparable Harm to ESEC, its Patients and its Employees.

50. Under the circumstances, ESEC’s administrative appeal rights do not afford an adequate remedy because the prescribed process cannot provide any meaningful relief in this instance. An expedited ALJ hearing will be requested in this matter as soon as possible, but any decision on the merits by the ALJ or the DAB’s Appellate Division will necessarily come after ESEC’s provider agreement has been terminated, after ESEC’s Medicare payments have stopped, and after ESEC’s doors have been closed. Therefore, any such administrative decision will do nothing to redress the irreparable harm suffered by ESEC and its patients.

51. Furthermore, the termination of Medicare and Medicaid payments scheduled to take place on August 18, 2018, without a meaningful opportunity to challenge the merits of CMS's erroneous findings and unlawful termination order, will financially destroy ESEC. The majority of ESEC's patients rely exclusively on Medicare reimbursement for the services they receive at ESEC. If ESEC's Medicare payments are ceased, ESEC will lose the majority of its revenue, forcing it to close and discharge its twenty-five (25) employees.

52. The damage to ESEC's patients will be worse. Indeed, there are thirty-five (35) patients scheduled for surgery next week and twenty (20) the following week that will have to reschedule their surgeries and delay the care they need to receive if ESEC's provider agreement is terminated.

53. The threat of irreparable harm to ESEC, its patients and employees far outweighs any harm that might be suffered if injunctive relief is granted. In fact, federal and state officials will not be harmed in any way by maintaining the status quo until after ESEC has had an opportunity to challenge CMS's findings at the administrative appeals level. If the decision of the ALJ and/or the Appellate Division of the DAB favors ESEC, as ESEC expects, the threatened termination and financial collapse will be properly averted. But even if the appeals process favors federal and state authorities, then no harm will result to federal and state authorities by the delay.

54. The injunctive relief requested by ESEC will not adversely affect the public interest. The public interest is in no way served by an unwarranted shutdown of a facility that provides care to numerous low-income, disadvantaged and disabled patients. In

short, the public interest cannot be served by shutting down an ASC with alleged deficiencies that have never posed any harm to patients. This lack of harm or threat of harm to patients is clearly evidenced by two facts. First, for over thirteen years there have been zero incidents involving the Electrical Issue or the Sterilizer Placement Issue. Second, OSDH waited over two years after initially identifying the alleged deficiencies before it conducted a revisit survey.

55. This Court is the only forum for ESEC to obtain the relief it seeks. ESEC has appealed CMS's decision to terminate ESEC's provider agreements, but that review will not occur before the cessation of all Medicare payments. In short, for ESEC to obtain any meaningful review of these issues, CMS must be prevented from terminating the provide agreement until ESEC has had an opportunity to exhaust its administrative remedies.

56. Based upon the irreparable harm demonstrated above, pursuant to Fed. R. Civ. P. 65, a temporary restraining order, preliminary injunction, and permanent injunction should be issued enjoining Defendant from terminating ESEC's provider agreement prior to a final decision on the merits resulting from the administrative appeal proceedings.

COUNT ONE
PROCEDURAL DUE PROCESS

57. The allegations contained in paragraphs 1 through 56 above are incorporated by reference as if fully set forth herein.

58. The procedure used by CMS to terminate ESEC's provider agreement was constitutionally inadequate because it failed to allow any type of hearing before termination, without justifying such action by any allegation of ongoing harm to the Medicare program.

59. To satisfy the requirements of procedural due process in these circumstances, the Secretary must provide ESEC with an administrative hearing *before* terminating its provider agreement, especially where, as here, there is no indication of threat to patient safety.

60. CMS threatens to deprive ESEC of its property and liberty interests in or associated with its Medicare provider agreement and business goodwill without due process of law in violation of the Fifth Amendment of the United States Constitution and other applicable law. Such action threatens to cause irreparable harm to ESEC and the patients it serves. The issuance of injunctive relief prohibiting such termination until such due process has been provided will not harm CMS and is in the public interest.

COUNT TWO
SUBSTANTIVE DUE PROCESS

61. The allegations contained in paragraphs 1 through 56 above are incorporated by reference as if fully set forth herein.

62. CMS's arbitrary and capricious termination of the Medicare provider agreement deprives ESEC of its property and liberty interests, in violation of due process under the Fifth and Fourteenth Amendments to the United States Constitution and other applicable laws. Such action threatens to cause irreparable harm to ESEC and the

patients it serves. The issuance of injunctive relief prohibiting such termination will not harm CMS and is in the public interest.

COUNT THREE
PRESERVATION OF RIGHTS UNDER SECTION 705 OF THE APA

63. The allegations contained in paragraphs 1 through 56 above are incorporated by reference as if fully set forth herein.

64. In relevant part, the Administrative Procedures Act provides that “[o]n such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, *including the court to which a case may be taken on appeal . . .*, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705 (emphasis added).

INJUNCTIVE RELIEF

65. ESEC’s closure will not only cause it severe and irreparable harm, but would also harm the many employees of ESEC who would lose their jobs.

66. The irreparable harm to ESEC and its patients far outweighs the harm CMS might suffer if injunctive relief is granted. In fact, Defendant cannot show that it will be harmed in any way by maintaining the status quo.

67. There is a substantial likelihood that ESEC will prevail on the merits in contesting the termination of its Medicare provider agreement.

68. The injunctive relief requested by ESEC will not adversely affect the public interest. The public interest is in no way served by an unwarranted shut down of an ASC.

69. Based upon the irreparable harm demonstrated above, pursuant to Fed. R. Civ. P. 65, a temporary restraining order should be issued enjoining Defendant from terminating ESEC's Medicare provider agreement until such time as further hearing can be held on ESEC's request for preliminary injunction, pursuant to Fed. R. Civ. P. 65.

70. Based upon the irreparable harm demonstrated above, a preliminary and permanent injunction should be issued enjoining Defendant from terminating ESEC's provider agreement prior to exhaustion of all administrative remedies.

WHEREFORE, ESEC prays that the Court (1) immediately issue a temporary restraining order prohibiting Defendant from terminating ESEC's provider agreement until such time that a hearing can be held on ESEC's request for a preliminary injunction; (2) expeditiously schedule a hearing and grant to ESEC a preliminary and/or permanent injunction prohibiting Defendant from terminating ESEC's provider agreements prior to a final decision from the Secretary following the administrative proceedings on the merits of such termination; and (3) award it reasonable attorney's fees and costs; and (4) all other just and proper relief to which it may be entitled.

Respectfully submitted,

s/Kevin D. Gordon

Kevin D. Gordon, OBA #10826
Sanford C. Coats, OBA #18268

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ATTORNEYS FOR PLAINTIFF, ESEC,
LLC d/b/a ESEC SURGERY CENTER

VERIFICATION

I, Elisse Seals, Regional Vice President of Operations, of ESEC, LLC d/b/a ESEC Surgery Center, have reviewed the factual allegations of this Complaint and verify that the statements contained therein are true and correct to the best of my knowledge and belief.



Name: Elisse Seals
Title: Regional Vice President of Operations

Subscribed and sworn to before me this 16th day of August, 2018.


Notary Public

My Commission Expires:

02/06/2019
[SEAL]



JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

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| <p>I. (a) PLAINTIFFS ESEC, LLC d/b/a ESEC Surgery Center</p> <p>(b) County of Residence of First Listed Plaintiff <u>Oklahoma</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Kevin D. Gordon, Sanford C. Coats, Crowe & Dunlevy, 324 N. Robinson Ave. Suite 100, Oklahoma City, OK 73102, 235-7700</p> | <p>DEFENDANTS Alex Azar, in his official capacity as Secretary of Health and Human Services</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p> |
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| <p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p> | <p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
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| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | | |
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| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes | |
| <p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | <p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark | <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
42 U.S.C. sections 1395cc(a), 1396a(a)(27)

Brief description of cause:
Injunctive relief seeking to enjoin termination of plaintiff's medicare provider agreement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ injunctive relief
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE 08/16/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Kevin D. Gordon

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____