

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SMART APPROACHES TO  
MARIJUANA, *et al.*,

*Plaintiffs,*

v.

ROBERT F. KENNEDY, JR., in his official  
capacity as Secretary of Health and  
Human Services, *et al.*,

*Defendants.*

Case No. 1:26-cv-01081

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING  
ORDER, PRELIMINARY INJUNCTION, AND STAY OF AGENCY ACTION  
PENDING JUDICIAL REVIEW**

Plaintiffs Smart Approaches to Marijuana, Inc. ("SAM"), *et al.* respectfully move this Court, on an emergency basis, for the following:

1. A temporary restraining order under Federal Rule of Civil Procedure 65(b);
2. A preliminary injunction under Federal Rule of Civil Procedure 65(a); and
3. A stay of the effective date of the Substance Access Beneficiary Engagement Incentive ("BEI") pending judicial review under 5 U.S.C. § 705.

Plaintiffs are likely to succeed on the merits. The BEI is a legislative rule that the Centers for Medicare & Medicaid Services ("CMS") created and adopted without notice in the Federal Register or opportunity for public comment, and contradicting CMS's own April 2025 final rule stating that "cannabis products" were not available to Medicare beneficiaries. This lack of proper procedure violated the Administrative Procedure Act ("APA"). Moreover, Plaintiffs will suffer irreparable harm absent emergency relief. The BEI takes effect April 1, 2026. Through it the CMS will treat America's seniors like lab

rats, sanctioning distribution of hemp-derived THC products to Medicare beneficiaries without any public input in its process or analysis of the serious safety risks to the elderly from these products. The balance of the equities and public interest strongly favor preserving the pre-BEI status quo while this Court evaluates whether CMS acted lawfully.

This motion is supported by the accompanying Memorandum of Points and Authorities, the declarations filed herewith, and the Complaint already filed in this action, with its attendant exhibit.

The BEI will go into effect on April 1, 2026. Due to the imminent nature of the injury Plaintiffs will suffer as detailed in the attached memorandum of points and authorities, and in its accompanying declarations, a temporary restraining order is warranted.

Date: March 30, 2026

Respectfully submitted,

/s/ Patrick Kenneally

Patrick Kenneally\*

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**Attorneys for Plaintiffs**

**CERTIFICATE OF COUNSEL PURSUANT TO LOCAL RULES 7(M) AND 65.1**

Pursuant to Local Civil Rules 7(m) and 65.1, undersigned counsel conferred with counsel for Defendants via email regarding this motion before filing on March 30, 2026 and provided them with draft copies of the complaint and its attendant exhibits, this motion, and its accompanying memorandum and declarations. Counsel for Defendants responded via email and indicated that Defendants oppose the motion.

*/s/ Patrick Kenneally* \_\_\_\_\_

Patrick Kenneally

**CERTIFICATE OF SERVICE**

I hereby certify that, on March 30, 2026, I electronically filed the foregoing Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and Stay of Agency Action Pending Judicial Review, an accompanying Memorandum of Points and Authorities with its attendant exhibits, a proposed order, and this Certificate of Service with the Clerk of Court for the United States District Court for the District of Columbia by using the CM/ECF system. In accordance with Fed. R. Civ. P. 4, I am causing to be served one true and correct copy of the filed documents via certified mail, along with a summons, on each of the following persons:

ROBERT F. KENNEDY, JR.  
in his official capacity as Secretary of Health  
and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

THE UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
200 Independence Avenue, S.W.  
Washington, DC 20201

MEHMET OZ, M.D.  
in his official capacity as Administrator of  
the Centers for Medicare & Medicaid  
Services  
7500 Security Boulevard  
Baltimore, MD 21244-1850

THE CENTERS FOR MEDICARE &  
MEDICAID SERVICES  
7500 Security Boulevard  
Baltimore, MD 21244-1850

JEANINE FERRIS PIRRO  
in her official capacity as U.S. Attorney for  
the District of Columbia  
601 D Street, N.W.  
Washington, DC 20579

PAMELA BONDI  
in her official capacity as Attorney General  
of the United States  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

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Patrick Kenneally

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**ORDER**

Upon consideration of Plaintiffs' Emergency Motion for Temporary Restraining Order, Preliminary Injunction, and Stay of Agency Action Pending Judicial Review Under 5 U.S.C. § 705, the accompanying Memorandum of Points and Authorities, the declarations and exhibits submitted in support thereof, and the entire record herein, and for good cause shown, it is hereby ORDERED that Defendants and their officers, agents, employees, and all persons acting in concert with them, are temporarily restrained and enjoined from implementing, applying, or enforcing the Substance Access Beneficiary Engagement Incentive, pending a hearing on Plaintiffs' motion.

It is further ORDERED that the effective date of the Substance Access Beneficiary Engagement Incentive is stayed pending conclusion of judicial review in this action, pursuant to 5 U.S.C. § 705.

It is further ORDERED that a hearing on Plaintiffs' motion for preliminary injunction is hereby set for \_\_\_\_\_, 2026 at \_\_\_\_\_, and that Defendants shall

show cause at or before the hearing why a preliminary injunction should not issue for the duration of this action.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2026.

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United States District Judge