

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CIVIL ACTION NO. 26CV038297-910

NORTH CAROLINA STATE
HEALTH PLAN FOR TEACHERS
AND STATE EMPLOYEES; THE
OFFICE OF THE NORTH
CAROLINA STATE TREASURER;
TREASURER BRADFORD B.
BRINER, in his official capacity as
the State Treasurer of North
Carolina,

Plaintiffs,

v.

ATRIUM HEALTH, INC.,

Defendant.

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

This case is fundamentally about whether state employees and their families will be able to keep their trusted health care providers during open enrollment for the 2027 State Employee Health Plan without being forced to pay exorbitant amounts in co-pays, deductibles, and co-insurance. The Plan, in its new design for 2027, is attempting to force Plan members to change health care providers so that it can arguably save money under contracts it has entered into with these providers. The Plan refused Atrium Health, Inc.'s ("Atrium") offer of discounted rates¹ and has instead entered contracts with alternative providers, which puts the Plan participants who are current Atrium patients in the middle by attempting to charge them higher costs.

Atrium, as it is contractually allowed to do in each of its contracts with the Plan and the third-party administrator for the Plan, has offered a way for patients to get out of the middle. Under Atrium's Affordability Protection Program, Plan members do not have to choose between leaving their trusted doctors or trying to pay health care costs they cannot afford. Atrium is choosing not to collect the exorbitant amounts in co-pays, deductibles, and co-insurance from patients that the Plan wants Atrium to charge in order to steer those patients away from Atrium. Instead, Atrium will voluntarily bear those costs for patients.

¹ Since July, Atrium has offered to match the Plan's Preferred tier pricing, which would give the Plan the savings it says it needs without requiring a single Plan member who receives care from Atrium to change physicians.

The Plan should not be able to contractually create its own claimed injury, reject a ready solution that would provide the savings it seeks, and then invoke that claimed injury as grounds for emergency equitable relief. But that is exactly what the Plan is attempting to do in this lawsuit. The Plan is asking this Court to do something unprecedented and extraordinary: use its equitable power to force patients to either pay higher prices for health care (i.e., exorbitant amounts in co-pays, deductibles, and co-insurance) or lose their trusted doctors. That is a choice patients should not have to make, and that the Court should not force them to make. For that reason, and for the reasons articulated below, the Court should deny plaintiffs' motion for a temporary restraining order.

* * *

The Plan and the North Carolina Treasurer will, in 2027, substantially disrupt the delivery of health care to the State's teachers, law-enforcement officers, administrators, and other valuable public servants. That disruption, plaintiffs say, is necessary to address the Plan's financial condition—a necessary step for the Plan to avoid again tapping its reserves or requesting appropriations from the North Carolina General Assembly. The Plan is attempting to solve its years-long financial problems by restricting state employees' health care choices through increased out-of-pocket costs. But the Plan's longstanding challenges do not establish an emergency caused by Atrium or justify immediate injunctive relief against a program that does not increase what the Plan pays. Instead, the Plan's strategy is to steer patients away from their existing doctors and medical specialists in favor of

the Plan's preferred providers by massively increasing the out-of-pocket costs those patients would pay to keep their care team. This strategy puts the Plan's own members in the middle, requiring them to pay more to continue receiving care from physicians who, in some cases, have cared for them for years, know their medical histories, have earned their trust, and are guiding them through serious and deeply personal health challenges.

The Plan's disruption to state employees is not necessary. It is driven by the Plan's exclusion of Atrium from the lowest-cost tier. As a result, Atrium decided to take steps to ensure that the choices of its Plan-member patients were not burdened by the Plan. Atrium currently offers generous access and affordability programs to all of its patients that ease cost-sharing demands. Many Plan members have income levels that qualify them for these programs. Atrium's Affordability Protection Program, launched in response to the Plan's exclusion of Atrium from preferred-provider status, is nothing more than another such program extended directly to those likely to need it.

Another new, charitable program designed to make health care affordable is hardly cause for alarm, let alone a basis to claim some sort of irreparable harm. As applied to Plan members, the program confirms and clarifies assistance to those who largely qualified for and needed it, particularly in light of the burdens the Plan's tier program sought to create. Although Atrium's Affordability Protection Program may not have been anticipated by the Plan, it certainly does not impose irreparable harm. Plaintiffs have offered no evidence to the contrary.

* * *

Importantly, Atrium did not implement its Affordability Protection Program before pursuing status as a preferred provider. The Plan, however, excluded Atrium from consideration in the first place. The Plan was not transparent and did not use a competitive bidding process. When Atrium learned through media reports that it had been placed in non-preferred status, it made multiple attempts to be included, but the Plan refused Atrium's offers, despite stating publicly that Atrium was "no more expensive than other leading health systems in North Carolina." It is further important to emphasize that the new costs the Plan has tried to impose are not modest. They are punitive and are deliberately designed to sever patients' relationships with their doctors. For instance, inpatient hospital visit co-pays at Atrium would be twice those for Preferred providers. Annual deductibles would be three to four times higher than those for Preferred providers and would range from 60% to more than 200% higher than the in-network levels in 2026.

Although repeatedly rebuffed in its attempt to become a preferred provider, Atrium won modest concessions in a Letter of Agreement with the Plan. In that agreement, the Plan regrettably continued to insist that most of Atrium's providers and facilities be assigned to the highest cost-share Non-Preferred tier. Although Atrium was willing to agree to the Letter of Agreement, it *did not* promise to compel Plan members to pay the higher out-of-pocket costs that the Plan seeks. By declining to do so, Atrium left open the possibility that it could implement the

burden-easing program it has implemented here and allow Plan members to continue to access Atrium's high-quality health care services and facilities.

On the same day Atrium announced its Affordability Protection Program, the Plan wrote Atrium, objecting to the program and claiming that it was a breach of the Letter of Agreement. Atrium pointed out that the agreement did not bar the program. Even so, Atrium offered to continue to discuss the issue consistent with the requirements of the agreement to negotiate disputes in good faith during a sixty-day cure period. Nevertheless, a mere two days later, plaintiffs filed this case and moved for a temporary restraining order.

* * *

As further detailed below, plaintiffs' request for a restraining order is misplaced. At bottom, the motion asks this Court to use its equitable powers to give the Plan what it failed to secure at the bargaining table: a commitment by Atrium to impose financial burdens on state employees and their families in derogation of patient choice. Put another way, plaintiffs desire an injunction to force Plan members to pay higher health care costs or lose their trusted doctors and providers. Invoking this Court's equitable powers, however, requires plaintiffs to meet a high burden—one they have come nowhere close to meeting here.

First, plaintiffs have not shown, based on the record before the Court, that they are likely to succeed on the merits of any of their claims. Atrium has not changed the Plan's benefits or payment obligations; it has simply chosen to collect

less from its own patients. Plaintiffs have pointed to no statute, rule, or contractual provision between the parties that requires otherwise.

Second, plaintiffs have not shown, based on record evidence, that Atrium's Affordability Protection Program will cause them any harm, let alone the type of immediate and irreparable harm needed to support a temporary restraining order. Atrium's program does not change what the Plan pays. Plaintiffs have not alleged with specificity or quantified any loss, and the Plan's own pre-suit letter alleging breach of contract noted a sixty-day cure period provided for in the parties' contract.

Third, any hypothetical harm to plaintiffs from Atrium's program is substantially outweighed by the harm that a restraining order would inflict on Atrium, thousands of state employees, and those employees' families by forcing them to pay more to keep the physicians and care teams they trust. Thus, the balance of the harms defeats plaintiffs' motion.

In sum, plaintiffs have not presented any basis for relief. As the Plan indicated only three days before filing this action, to the extent the parties need to address issues concerning the Letter of Agreement, they are capable of doing so through good-faith discussions and collaboration. On this record, the Court should deny plaintiffs' request for a restraining order. If plaintiffs later renew their request for interim injunctive relief, they should do so on a full record, with reasonable notice and an opportunity for interested parties to present evidence and comprehensive legal arguments.