UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No. 05-23037-CIV-JORDAN/BANDSTRA

FLORIDA PEDIATRIC SOCIETY/THE FLORIDA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS et al.

Plaintiffs

vs.

SECRETARY OF THE FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION et al.

Defendants
_____/

ORDER DENYING MOTION TO DISMISS

The defendants' motion for dismissal on mootness grounds of certain claims in this case [D.E. 1230 at 1-18] is denied. As discussed at last week's hearing, CMS has not approved Florida's state plan amendment (which, by the way, points out that rate increases are temporary through December 31, 2014). Without this approval, qualified and eligible medical providers in Florida have not been paid, and will not be paid, the higher Medicare reimbursement rates. These providers, therefore, are still being paid the rates that the plaintiffs are challenging in this case, and everything remains the same as it was at trial. As a result, as of today, nothing in this case—not the merits of the claims nor the injunctive relief requested—has been rendered moot by § 1202 of the Health Care and Education Reconciliation Act of 2010, Pub. L.No. 111-152, § 1202, 124 Stat. 1029, 1052-53 (2010) (codified in relevant part at 42 U.S.C. § 1369(a)(13)(c)). *See*

Already, LLC v. Nike, Inc., 133 S.Ct. 721, 726 (2013) ("A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.'")

If and when CMS approves Florida's state plan amendment, the defendants can file a notice of that approval and ask that their motion to dismiss be considered anew. But the defendants will have a difficult burden to overcome. If, as everyone agrees, there is speculation about what Florida will do with respect to Medicaid rates on or after January 1, 2015, and what CMS will do with respect to Florida's decision, it would appear that the defendants will have a hard time showing that their eventual payment of Medicare rates to certain providers—because of a federal mandate which lasts for only two years—moots any part of this case. *See, e.g., City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982); *Harrell v. The Florida Bar*, 608 F.3d 1241, 1266-67 (11th Cir. 2010). Unlike the situation in *Green v. Mansour*, 474 U.S. 64, 65 (1985)—where the new federal law was indefinite in duration—§ 1202 has a two-year sunset, and this case has taken seven years to litigate. *Cf. Tallahassee Mem'l Reg'l Med. Ctr. v. Bowen*, 815 F.2d 1435, 1451 (11th Cir. 1987).

DONE and ORDERED in chambers in Miami, Florida, this 18th day of March 2013.

Adalberto Jordan
United States District Judge

Copy to: All counsel of record