IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

CHARLES TODD LEE et al.,

Plaintiffs,

v. CASE NO. 4:08cv26-RH/WCS

ELIZABETH DUDEK et al.,

Defendants.

_____/

ORDER DIRECTING THE ENTRY OF JUDGMENT FOR THE PLAINTIFF GRIFFIN, DISMISSING THE OTHER NAMED PLAINTIFFS' CLAIMS AS MOOT, AND DECERTIFYING THE CLASS

Seven named plaintiffs filed this case in 2008, asserting that the State of Florida was unnecessarily requiring Medicaid beneficiaries to enter or remain in nursing homes in order to receive care they could and should have received in the community. The plaintiffs asserted that this violated the Americans with Disabilities Act. Under *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), a state violates the ADA if it unnecessarily isolates disabled individuals in institutions as a condition of providing them public assistance. *See also*

Radaszewski ex rel. Radaszewski v. Maram, 383 F.3d 599 (7th Cir. 2004); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003).

I certified a class and entered a preliminary injunction in favor of one named plaintiff, Clayton Griffin. The Eleventh Circuit affirmed the preliminary injunction.

An unrelated legislative development—a virtually limitless appropriation for transitioning Medicaid beneficiaries from nursing homes into the community—led to substantial changes in the state's Medicaid program. At the parties' request, I stayed the litigation for a year, while the state implemented the changes and the plaintiffs evaluated their effect on the plaintiffs' claims. The plaintiffs were not satisfied, and the litigation resumed. Following a bench trial, I now make permanent the injunction in Mr. Griffin's favor, dismiss as moot the claims of the other named plaintiffs, and decertify the class, on the ground that it is no longer true—as it was when the class was certified—that the case meets the requirements of Federal Rule of Civil Procedure 23(b).

I

When they filed this lawsuit, the named plaintiffs all were Medicaid beneficiaries living in nursing homes who wished to move back into the community. They sued the Secretary of the Florida Agency for Health Care

Administration and the Secretary of the Florida Department of Elder Affairs, in their official capacities. AHCA is the agency that administers the Medicaid program in Florida. Elder Affairs has a role in implementing the program. The plaintiffs originally named the Governor as an additional defendant, but they filed an amended complaint dropping the claims against the Governor. For convenience, this order sometimes refers to AHCA, its Secretary, or both defendants together as "the state."

II

The Medicaid program is the nation's primary effort to provide medical care for patients of limited economic means. As the Eleventh Circuit has described the program,

> Medicaid is a cooperative venture of the state and federal governments. A state which chooses to participate in Medicaid submits a state plan for the funding of medical services for the needy which is approved by the federal government. The federal government then subsidizes a certain portion of the financial obligations which the state has agreed to bear. A state participating in Medicaid must comply with the applicable statute, Title XIX of the Social Security Act of 1965, as amended, 42 U.S.C. § 1396, *et seq.*, and the applicable regulations.

Harris v. James, 127 F.3d 993, 996 (11th Cir. 1997), quoting *Silver v. Baggiano*, 804 F.2d 1211, 1215 (11th Cir. 1986).

Each participating state may structure its own Medicaid program as it sees fit, but only within the parameters established by the applicable federal statutes and regulations. A state plan must make nursing-home placement available to a patient who qualifies medically. In Florida, a patient qualifies for a nursing home if the patient needs 24-hour "observation and care and the constant availability of medical and nursing treatment and care," but does not need to be in a higher-level facility such as a hospital. 59 Fla. Admin. Code 59G-4.180(3)(e). A patient who needs the level of care available in a nursing home may instead receive it in the community—and have the state pay for the needed services—only if the patient can safely live in the community and the state has received a federally-approved "waiver" allowing it to provide the care in the community instead of in a nursing home. A patient who qualifies for placement in a nursing home may choose to remain in the community, rather than entering a nursing home, but is limited to the services that have been approved under a waiver and the services generally available under the Medicaid program for a patient who does not qualify for nursing-home placement.

A waiver typically comes with conditions setting out the kind of patient who qualifies and capping the number of available slots. In addition, a waiver must be "cost neutral," at least in the aggregate. A waiver is cost neutral in the aggregate if

the cost that a state incurs to treat patients under the waiver, in the aggregate, does not exceed the cost the state would incur to treat the patients without the waiver.

III

Clayton L. Griffin is the only one of the original seven named plaintiffs who still has a claim. In 2004, at the age of 51, Mr. Griffin suffered a stroke that left him paralyzed on the left side. He is confined to a wheelchair and needs assistance to get in and out of bed, to shower, to dress, and to use the bathroom.

When this lawsuit was filed, Mr. Griffin was living in a nursing home. The cost of the nursing home was covered by the state's Medicaid program. Mr. Griffin wished to live in the community rather than in a nursing home. In order to do that, Mr. Griffin needed four hours of personal-attendant care per day, isolated emergency personal-attendant care, and the same outside medical care that would be covered if Mr. Griffin remained in a nursing home. The state refused to provide these services.

On June 14, 2008, Mr. Griffin moved out of the nursing home and began living by himself in an apartment complex, despite the state's refusal to pay for the needed services. A certified nursing assistant went to his apartment for two hours in the morning and two hours in the evening to assist Mr. Griffin with activities of daily living. He had a visiting nurse and visiting physician who provided needed

medical care. Mr. Griffin spent time in his apartment but also went out into the community using public transportation. He had friends and relatives in the apartment complex. Mr. Griffin's quality of life—at least in his opinion—was substantially better than it had been in the nursing home.

Mr. Griffin's income was limited to $996 per month in social-security disability benefits. The cost of his certified nursing assistant was $52 per day. This was a small fraction—less than a third—of the cost of the nursing home, but still much more than Mr. Griffin could pay. He survived financially for a time after moving out because he received limited Medicare benefits and support from friends and family, but the Medicare benefits expired and his friends and family could not carry the expense. He moved for a preliminary injunction requiring the state to provide Medicaid coverage for the certified nursing assistant.

The state opposed the motion. On October 14, 2008, I entered a preliminary injunction requiring the state to provide the needed Medicaid benefits to Mr. Griffin in the community during the litigation. The state appealed. On August 10, 2010, the Eleventh Circuit issued its mandate affirming the preliminary injunction in a narrow opinion that expressly did *not* decide the merits. ECF No. 300. The Eleventh Circuit held only that issuing the preliminary injunction was not an abuse of discretion.

Mr. Griffin has continued to live successfully in the community. The state has continued to provide Medicaid benefits and now acknowledges that Mr. Griffin is entitled to the benefits. The state opposes a permanent injunction for Mr. Griffin only on the ground that it is unnecessary—that the state will continue to provide the benefits with or without an injunction.

IV

The situation is different for the six other named plaintiffs. One, Charles Todd Lee, wished to move back into the community when the lawsuit was filed but now prefers to stay in his nursing home. The reason for the change was that his daughter and grandchild—whom he wished to see more often—moved away. Another named plaintiff, John Boyd, successfully transitioned into the community while the lawsuit was pending but died before the trial. The other four named plaintiffs all died before moving back to the community.

V

In 2008, when the plaintiffs filed this lawsuit, Florida had more approved waivers than any other state. Even so, limits on the number of available slots and on the available funding led to waiting lists.

The state had an effective program to get patients into waivers before they entered long-term placements in nursing homes in the first place. But the state's

efforts to transition patients out of nursing homes, once they got there, by moving them into waivers at that point, were less effective. A substantial number of patients were in nursing homes, wished to return to the community, could have received services safely in the community at a lower cost than in nursing homes, but did not obtain state approval to transition to the community—sometimes because they did not even know that receiving the necessary services in the community was possible, and thus did not ask to do it. The patients remained in nursing homes.

VI

The plaintiffs moved to certify a class. On October 14, 2008, I granted the motion, certifying a class consisting of any Florida Medicaid-eligible adult who, at any time during the litigation, resided in a nursing home that received Medicaid funding, and who could and would have resided in the community with appropriate community-based services. I explained:

> Under Federal Rule of Civil Procedure 23(b)(2), a class action may be maintained if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole," so long the requirements of Rule 23(a) also are satisfied. *Here the Secretary has refused to act on grounds that apply generally to the class*. This is a classic Rule 23(b)(2) class action.

I find that the requirements of Rule 23(a) also are satisfied. First, under Rule 23(a)(1), class treatment is appropriate only if "the class is so numerous that joinder of all members is impracticable." The record indicates that there are probably more than 8,500 Medicaid beneficiaries in nursing homes in Florida who would prefer to live in the community. If the plaintiffs prevail on the merits, it is likely that appropriate injunctive relief will extend to a significant portion, if not most, of these 8,500 individuals. The number of affected individuals is easily enough to make class treatment appropriate.

Under Rule 23(a)(2), class treatment is appropriate only if "there are questions of law or fact common to the class." There are common questions in the case at bar. *Common issues include, for example, the issues of what* Olmstead *requires, and whether providing assistance in the community rather than in nursing homes would require a fundamental alteration of the Florida Medicaid program*. There of course may be individual issues also, but Rule 23(a)(2) requires only that there be common issues, not that there be no individual issues. And while the common issues predominate in the case at bar, this is not essential; in a Rule 23(b)(2) class, unlike in a Rule 23(b)(3) class, there is no requirement that common issues predominate.

Under Rule 23(a)(3), class treatment is appropriate only if "the claims . . . of the representative parties are typical of the claims . . . of the class." Here the named plaintiffs are individuals who were confined in nursing homes when the lawsuit was filed but assert they could be treated as effectively and efficiently in the community. Each named plaintiff's precise medical circumstances are of course unique; no two individuals are ever medically identical in all respects. But *the claims of the named plaintiffs are very much typical of the claims of class members generally*.

Under Rule 23(a)(4), class treatment is appropriate only if "the representative parties will fairly and adequately protect the interests of the class." This standard is easily satisfied here. For all this record reflects, these named plaintiffs have every reason to represent the

> class zealously and are motivated to do so. They are represented by attorneys well able to carry the load.

Order Certifying Class, ECF No. 136, at 2-4 (emphasis added).

VII

The italicized portions of the class-certification order were true when the order was entered. No effective transition program was underway. Many patients were unnecessarily confined to nursing homes. Mr. Griffin was typical. The other named plaintiffs apparently were, too.

But the italicized portions of the order are no longer true.

In January 2009, the Florida Legislature enacted an appropriations-bill proviso that allowed the transfer of funds from the state's nursing-home appropriation to four waiver programs, so long as the funds were used for nursing-home transition. *See* Pls.' Ex. 73. The general nursing-home appropriation dwarfed the funds that were specifically designated for waivers, because Florida had a large population of Medicaid beneficiaries in nursing homes who could not or did not wish to transition to the community. The proviso's practical effect was to make unlimited funds available for transition.

The responsible state officials enthusiastically embraced the proviso and the resulting opportunity to transition patients out of nursing homes. *See*, *e.g.*, Tr. 1053, ECF No. 358 at 6 (Hajdukiewicz testimony). The state adopted a transition

plan in 2009 and another—marked "draft" because of the state's intent to continue to improve it—in 2010. The plans included extensive efforts to find patients in nursing homes who wished to return to the community, and to move them out. The goal was to return to the community 100% of the Medicaid nursing-home patients who wished to return. *Id*. at 1084, ECF No. 358 at 37. From the adoption of the proviso to the time of trial, the state successfully transitioned roughly 1,600 Medicaid patients back into the community.

The state would have done these things even without this lawsuit, but the lawsuit underscored the importance of the state's efforts. To its credit, the state did not slow the transition efforts in order to mask the weakness in its earlier performance—as defendants in lawsuits sometimes do.

The change is well illustrated by the state's treatment of Mr. Griffin. The state provided services in the community of the kind Mr. Griffin needed only under a waiver. When it refused to approve Mr. Griffin for services in the community, there were no available waiver slots, and the state had not determined that Mr. Griffin could safely transition to the community. The state did not agree then, and does not agree now, that *Olmstead* applied. The state noted that in *Olmstead*, the state's own treatment professionals had determined that the patients could be safely treated in the community; that was not so for Mr. Griffin. And the state has

consistently asserted that a state may and indeed must comply with the conditions applicable to a waiver, including the cap on the number of waiver participants. Thus, the state says, the ADA's general prohibition on discrimination against the disabled—and even the *Olmstead* principle barring a state from unnecessarily making services available only in an institution—do not trump the Medicaid Act's specific approval of waiver caps. The state says *Olmstead* is not inconsistent with its position, because in *Olmstead* the services could be provided without exceeding a waiver cap.

The interplay between *Olmstead* and waiver caps presents a nice issue. But the issue no longer has any practical significance for nursing-home patients in Florida. For Mr. Griffin and, so far as shown by this record, every other class member, the state has adequate funding and an available slot in a waiver under which the state can provide all the needed services. The plaintiffs have identified not a single Medicaid beneficiary who is in a nursing home, wishes to be in the community, and could safely transition to the community even under the plaintiffs' own view of safety, but who, under the state's post-proviso position, would not be approved for transition.

It thus is no longer true that the state "*has refused to act on grounds that apply generally to the class*." Order Certifying Class, ECF No. 136, at 2 (emphasis

added). The state has not refused to act on any ground that applies generally to the class.

It is no longer true that "[*c*]*ommon issues include, for example, the issues of what* Olmstead *requires, and whether providing assistance in the community rather than in nursing homes would require a fundamental alteration of the Florida Medicaid program*." *Id*. at 3 (emphasis added). The state has explicitly abandoned any fundamental-alteration defense and has acknowledged that the issue is simply whether it has made mistakes, failing to transition nursing-home residents who could be served in the community. Tr. 1233-34, ECF No. 360 at 49-50. To be sure, the plaintiffs seek to raise other common issues, including whether the state must affirmatively seek out nursing-home residents to advise them of the option to return to the community. But this is again an issue that makes no real difference. The state has undertaken an aggressive effort to find nursing-home residents who wish to transition, and the plaintiffs have identified not a single resident who wishes to transition but the state failed to find.

Finally, it also is no longer true that "*the claims of the named plaintiffs are very much typical of the claims of class members generally*." Order Certifying Class, ECF No. 136 at 3 (emphasis added). Only one named plaintiff—Mr. Griffin—is at all typical of the class members. And to the extent he is typical, it

cuts as much against class certification as in favor. The state no longer opposes Mr. Griffin's ability to obtain benefits in the community. He is typical of other class members only in that for him, as for them, the availability of benefits in the community is only an individual question of what services are needed.

VIII

The state's change of position—its willingness and even eagerness to transition anyone who can appropriately transition—might well render the claims of class members moot under the voluntary-cessation doctrine. In arguing the contrary, the plaintiffs rely on cases involving private defendants. *See*, *e.g.*, *Friends of the Earth, Inc. v. LaidLaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (noting that a party who asserts mootness based on the voluntary cessation of challenged conduct has a "heavy burden" to show "that the challenged conduct cannot reasonably be expected to start up again"). The Eleventh Circuit has repeatedly said, though, that the burden is lighter when the defendant is a government entity. A government entity that has discontinued challenged conduct enjoys a rebuttable presumption that the conduct will not recur. *See*, *e.g.*, *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1351-52 (11th Cir. 2011) (collecting earlier cases).

The proviso will remain in effect only if reenacted each year. Predicting the Florida legislature's budget decisions is not an exact science. Nor have Florida officials uniformly supported the interests of Medicaid patients. But the responsible officials who testified in this case—especially Marcy Robin Hajdukiewicz and Elizabeth Yvonne Kidder—credibly set out their own dedication, and that of their employees, to transitioning nursing-home patients into the community. Transitioning patients reduces—it does not increase—the overall cost of the Medicaid program. There is no reason to anticipate a return to the approach that denied the named plaintiffs and class members the services they needed to live in the community.

In any event, under Federal Rule of Civil Procedure 23(c)(1)(C), "[a]n order that grants or denies class certification may be altered or amended before final judgment." When, as here, the conditions that made class-certification appropriate are no longer present, a court has discretion to decertify the class. I choose to do that here. The decertification makes it unnecessary to decide whether the class claims are indeed moot under the voluntary-cessation doctrine.

IX

In reaching this conclusion, I have not overlooked the flaws and weaknesses in the state's transition efforts, including those set out in this section of this order.

A

First, AHCA enlisted other agencies in the process. One was the Florida Department of Children and Families. DCF was responsible for assessing candidates for a waiver that targeted patients with traumatic brain injuries or spinal cord injuries. This was the primary waiver used for transitioning nursing-home residents under age 60. Inexplicably, DCF screened out any patient who needed 24-hour care, was not cognitively intact, or had no friend or family member who could provide housing or support.

The state admitted at trial that DCF's approach was simply wrong. The state vowed to correct the errors. A reasonable inference is that it now has done so.

B

Second, among the tools that the state used to find transition candidates was a poster intended for display in nursing homes. It was a commendable effort, intended to increase the awareness of nursing-home residents and to encourage any resident who wished to transition to come forward. Thus, for example, the poster started with an excellent heading in large, bold lettering: "Would You Like To Move Back Into Your Home or Community?" Pl. Ex. 353. The poster continued with another excellent statement: "Nursing Home Transition may allow you to live

somewhere other than a nursing home." But the poster continued with two sentences that, at least standing alone, might have been misleading:

> You could move in with a family member or friend. You could also choose to move to an Adult Family Care Home or Assisted-Living Facility.

Id. Though literally true, these sentences failed to advise a nursing-home resident that another option was to live alone in the community.

Further, the poster said: "The services provided by community service agencies are not meant to provide 24 hour-a-day care." *Id*. This might have been misleading, because the state, if not "community service agencies," *does* provide 24-hour services to a Medicaid beneficiary who needs them, including, most commonly, 24-hour emergency-call assistance. It is undisputed that the state's waiver programs can provide up to 24 hours of care from professionals or attendants of various kinds.

The state admitted at trial that the poster—and a brochure with similar language—should have been written better. The state vowed to promptly correct the errors. A reasonable inference is that it now has done so.

In addition, the poster and brochure may not have been distributed as widely as the state intended. The state had no authority to require the nursing homes—which are private—to display a poster or distribute a brochure. Even so, the poster

and brochure were part of a broader effort to find residents who wished to transition, and there is no evidence that the state did not try to circulate the poster and brochure as broadly as possible.

C

The plaintiffs also complain that the state has not always given prompt and sufficient notice to a patient whose application for a waiver was denied. A patient has a right to an administrative hearing on such a denial. But the state has sometimes been slow to give notice of that right, and its description of the reason for a denial has sometimes been vague, if not misleading.

Still, the assertion has little to do with the claims in this lawsuit. The first amended complaint does not assert a due process claim. To the contrary, the named plaintiffs have consistently asserted that they had a right to bypass any administrative remedy and proceed directly in this court. A person who knows about an administrative remedy but chooses to forego it is hardly typical of a class member who does not know about the administrative remedy.

And more importantly, there is no evidence that any patient who wished to pursue the administrative remedy failed to do so, for lack of prompt and sufficient notice or otherwise.

D

The plaintiffs note that the unavailability of housing is sometimes a barrier to transition. The plaintiffs say the waiver programs come up short by failing to provide housing assistance, including rent subsidies or financial assistance with things like security deposits. But the state has applied for authority to provide some of the things the plaintiffs focus on.

More importantly, with one possible exception, this record includes no evidence that any named plaintiff or class member was ever denied transition—or chose not to pursue transition—because of the unavailability of housing assistance. Housing assistance is available, after all, from a variety of public and private entities, separate and apart from the Medicaid program.

The one possible exception is Christopher Clabeaux. He is a 21-year-old Medicaid patient with quadriplegia. He is in a nursing home but wishes to live with his family or a friend in the community. Tr. 142, ECF No. 354 at 142. His application for a waiver apparently was approved. *Id.* at 143. But his mother declined his request to live with her. Mr. Clabeaux's father agreed to take him only if the father's house was remodeled—a whole new section added—at a cost of $80,000. The record does not establish that the changes were in fact needed. Nor does the record indicate whether Mr. Clabeaux would choose to live alone if

offered the opportunity, or whether other public or private entities—unrelated to the Medicaid program—would provide suitable, affordable housing for Mr. Clabeaux to live alone, if he wished to do that.

Mr. Clabeaux's attempt to transition thus raises individual issues that provide no basis for continuing this case as a class action. Even if class relief were granted precisely as the plaintiffs have requested, it would benefit Mr. Clabeaux not at all, unless further proceedings were conducted to determine whether *individual* relief should be granted addressing his unique circumstances.

E

Finally, the state apparently has made errors, even after enactment of the proviso and the adoption of the aggressive transition effort, in failing to transition a small number of nursing-home residents. Those who qualify for transition to the community apparently include Marguerite Pace, Ruth Fiedler, David Larsen, Gary Martin, Michele McCreary, and these individuals identified only by initials: DM, MG, and CH. Those who qualify for transition to assisted-living facilities apparently include TS, MT, EC, and BS.

The state approved Ms. Fiedler and apparently approved Ms. Pace shortly after the trial. The state may have approved others. Indeed, it is unclear whether, at this point, the state has failed to approve any of these. But if the state has still

failed to approve any of these, the reason is one of two things: a circumstance not shown by this record—the state chose not to join issue on the specific circumstances of each person identified by the plaintiffs—or an isolated error.

The victim of an isolated ADA error can properly pursue either a state administrative remedy or a federal claim. *See Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982) (holding that a § 1983 plaintiff need not exhaust administrative remedies); *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1226-27 (11th Cir. 2006) (same). But an isolated error affecting a patient who is a class member is a poor reason to go forward with a class action. Instead, a patient who has fallen victim to an isolated error can best pursue the patient's own remedy, protecting the patient's own rights. *See*, *e.g.*, *Moore ex rel. Moore v. Reese*, 637 F.3d 1220 (11th Cir. 2011) (addressing a Medicaid beneficiary's individual claim for services the state denied). If there is any such patient, the decertification of the class will not render the patient's claim untimely, even if, as seems unlikely, the otherwise-applicable deadline passed during the pendency of this action. *See Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1380-82 (11th Cir. 1998). In any event, in light of the state's dedication to transitioning 100% of the Medicaid patients who wish to move into the community, it seems unlikely that pursuit of an individual remedy will be necessary.

F

In sum, the state's transition efforts have not been perfect. But the plaintiffs have identified no continuing flaw or reason to believe that the state is now violating, or if not enjoined will continue to violate, the rights of class members as a group. Any ongoing violation is the result of an oversight or isolated error or, at least to the extent shown by this record, has made and is continuing to make no practical difference. The class should be decertified.

X

This leaves for consideration the question whether Mr. Griffin's preliminary injunction should be made permanent—as he contends—or his claim should be dismissed as moot based on the voluntary-cessation doctrine—as the state contends. It is a close question.

On balance, I conclude that the injunction should be made permanent. Mr. Griffin obtained the Medicaid benefits to which he was entitled only by filing this action and obtaining a preliminary injunction over the state's determined opposition. Indeed, the state pursued an appeal through the issuance of a mandate. This does not preclude application of the voluntary-cessation doctrine, but it is a factor in the analysis.

The state has changed its course and has acknowledged Mr. Griffin's entitlement to benefits. If it now terminated his benefits, he would be entitled to an administrative hearing, and could file a new lawsuit. But uncertainty and delay can themselves take a toll. He is in a waiver that is still administered partly by DCF, the agency that adopted erroneous screening standards that were corrected only when AHCA learned of the errors at the trial. Under all the circumstances, Mr. Griffin has overcome the presumption that the state's conduct will not recur. *See*, *e.g.*, *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1351-52 (11th Cir. 2011).

XI

For these reasons,

IT IS ORDERED:

1. It is declared that the plaintiff Clayton Griffin is entitled to the Medicaid services that are available under a waiver and necessary to allow him to live safely in the community, including at least (a) four hours of personal-attendant care per day, (b) isolated emergency personal-attendant care, and (c) the same outside medical care that would be covered if Mr. Griffin remained in a nursing home. The defendant Elizabeth Dudek, in her official capacity as Secretary of the

Florida Agency for Health Care Administration, must provide these services. Any other claim of Mr. Griffin is dismissed.

2. The claims of the other named plaintiffs are dismissed as moot.

3. The class is decertified.

4. The clerk must enter judgment in accordance with paragraphs 1 and 2.

5. The court reserves jurisdiction to award costs and attorney's fees on a timely application in accordance with Local Rules 54.1 and 54.2.

SO ORDERED on January 3, 2012.

s/Robert L. Hinkle
United States District Judge