UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

Case No. 05-23037-CIV-JORDAN/O'SULLIVAN

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 ON DEFENDANTS' SUGGESTION OF MOOTNESS

Following oral argument on the defendants' suggestion of mootness [D.E. 1250, 1267], and for the reasons set forth at the conclusion of this week's hearing, I conclude that at this time no aspect of this case is moot.

"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.'" *Already, LLC v. Nike, Inc.*, 133 S. Ct. 721, 726 (2013) (citation omitted). "[A] defendant claiming that its voluntary compliance moots a case, [however,] bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* at 727. As part of the mootness analysis, and as applicable here, a court may take into account the defendants' "failure to acknowledge wrongdoing[,] [which] suggests . . . that a live dispute between the parties

remains[,]" as the defendants could presumably resume their alleged wrongdoing because the legality of the practice has not been determined. *See Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1187 (11th Cir. 2007). *See also United States v. W. T. Grant Co.*, 345 U.S. 629, 632 (1953) (noting that the "public interest in having the legality of the practices settled[ ] militates against a mootness conclusion"); *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 43 (1944) (a live controversy remains where the defendant "has consistently urged the validity of the [practice] and would presumably be free to resume [it] were not some effective restraint made").

I again reject the defendants' contention that the two-year increase of certain Medicaid reimbursement rates to Medicare levels renders this case moot. This temporary rate increase, paid for by federal dollars, ends on December 31, 2014, and as of today nobody knows whether the Florida Legislature will continue to fund the reimbursement rate increases in whole or in part past that date. *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 (11th Cir. 2010).

Similarly, Florida's decision to have 98% to 99% of Medicaid-eligible children placed in managed care does not, at this time, render this case moot. The defendants acknowledge that 1% to 2% of Medicaid-eligible children will still remain in a fee-for-service environment, and at least as to those children and their doctors, the reimbursement rate claims, among others, remain very much alive. Just as importantly, Florida's shift into a managed care system will not be complete until August 1, 2014—assuming that the system is implemented in a timely basis—and even then there will be an additional 60-day transition period to follow. That means that Florida's managed care system will not be in full swing until approximately October 1, 2014. At this time nobody knows whether or not the new managed care system will alleviate or solve the

issues that the plaintiffs have been complaining about for years. Without a developed factual record on how the managed care system is working (or not working), it is impossible to declare any part of this case moot. And it is worth noting that "[c]hanges made by defendants after a suit is filed do not remove the necessity for injunctive relief, for practices may be reinstated as swiftly as they were suspended." *Jones v. Diamond*, 636 F.2d 1364, 1375 (5th Cir. 1981), *overruled on other grounds by Int'l Woodworkers of Am., AFL-CIO & its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 1174 (5th Cir. 1986).

I recognize that the viability of relief should be considered in analyzing mootness, but "[a] case becomes moot only when it is *impossible* for a court to grant any effectual relief whatever to the prevailing party." *Knox v. Serv. Employees Int'l Union, Local 1000*, 132 S. Ct. 2277, 2287 (2012) (emphasis added). The defendants argue that this case is moot because the new managed care system will affect the ability of the plaintiffs to obtain the relief sought, but this argument—which goes to the legal availability of a certain kind of relief—conflates mootness issues and merits issues. *See Chafin v. Chafin*, 133 S. Ct. 1017, 1024 (2013) (explaining that the argument that a court lacks the authority to order a certain type of relief "confuses mootness with the merits"). At this point in time, given all the uncertainty over the temporary two-year increase for certain reimbursement rates and the efficacy (or lack thereof) of the new managed care system, I cannot say that it will be impossible to grant the plaintiffs effective relief.

DONE and ORDERED in chambers in Miami, Florida, this 10th day of July 2014.

Adalberto Jordan
United States District Judge

Copy to: All counsel of record