

United States Court of Appeals For the First Circuit

No. 17-1731

HEALTHPROMED FOUNDATION, INC., f/k/a Dr. Jose S. Belaval, Inc.;
CORP. DE SERVICIOS INTEGRALES DE SALUD INTEGRAL EN LA MONTAÑA,
INC.; MIGRANT HEALTH CENTER, INC.; NEOMED CENTER, INC., f/k/a
Gurabo Community Health Center, Inc.; MOROVIS COMMUNITY HEALTH
CENTER, INC.; CONCILIO DE SALUD INTEGRAL DE LOIZA, INC. (CSILO);
CORPORACION DE SERVICIOS DE SALUD Y MEDICINA AVANZADA, INC.,
(COSSMA),

Plaintiffs, Appellants,

and

CAMUY HEALTH SERVICES, INC.; ATLANTIC MEDICAL CENTER, INC.;
CENTRO DE SALUD FAMILIAR DR. JULIO PALMIERI FERRI, INC.;
CORPORACION DE SERV. MÉDICOS PRIMARIOS Y PREVENCIÓN DE HATILLO,
INC.; COSTA SALUD, INC., f/k/a Rincón Health Center, Inc.; EL
CENTRO DE SALUD DE LARES, INC.; HOSPITAL GENERAL CASTAÑAR, INC.;
RIO GRANDE COMMUNITY HEALTH CENTER, INC.; TOA ALTA COMPREHENSIVE
URBAN/RURAL ADVANCED HEALTH SERVICES, INC.,

Plaintiffs,

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES; DEPARTMENT OF HEALTH
FOR THE COMMONWEALTH OF PUERTO RICO; LORENZO GONZÁLEZ-FELICIANO,
Secretary, Department of Health for the Commonwealth of Puerto
Rico,

Defendants, Appellees,

and

COMMONWEALTH OF PUERTO RICO; ALEX MICHAEL AZAR, II, as Secretary
of United States Department of Health and Human Services,

Defendants.

No. 17-1812

ATLANTIC MEDICAL CENTER, INC.; CAMUY HEALTH SERVICES, INC.;
CENTRO DE SALUD FAMILIAR DR. JULIO PALMIERI FERRI, INC.; CIALES
PRIMARY HEALTH CARE SERVICES, INC.; CORPORACION DE SERV. MÉDICOS
PRIMARIOS Y PREVENCIÓN DE HATILLO, INC.; COSTA SALUD, INC.,
f/k/a Rincón Health Center, Inc.; EL CENTRO DE SERVICIOS
PRIMARIOS DE SALUD DE PATILLAS, INC.; HOSPITAL GENERAL CASTAÑAR,
INC.; EL CENTRO DE SALUD DE LARES, INC.,

Plaintiffs, Appellants,

and

RIO GRANDE COMMUNITY HEALTH CENTER, INC.; TOA ALTA COMPREHENSIVE
URBAN/RURAL ADVANCED HEALTH SERVICES, INC.; CONCILIO DE SALUD
INTEGRAL DE LOIZA, INC. (CSILO); CORP. DE SERVICIOS INTEGRALES
DE SALUD INTEGRAL EN LA MONTAÑA, INC.; CORPORACION DE SERVICIOS
DE SALUD Y MEDICINA AVANZADA, INC., (COSSMA); HEALTHPROMED
FOUNDATION, INC., f/k/a Dr. Jose S. Belaval, Inc.; MIGRANT
HEALTH CENTER, INC.; MOROVIS COMMUNITY HEALTH CENTER, INC.;
NEOMED CENTER, INC., f/k/a Gurabo Community Health Center, Inc.;
MUNICIPALITY OF SAN JUAN,

Plaintiffs,

v.

LORENZO GONZÁLEZ-FELICIANO, as Secretary of Department of Health
for Puerto Rico; ALEX MICHAEL AZAR, II, as Secretary of United
States Department of Health and Human Services,

Defendants, Appellees,

and

JOHNNY RULLAN; COMMONWEALTH OF PUERTO RICO

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Gustavo A. Gelpí, Jr., U.S. District Judge]

Before

Lynch, Lipez, and Barron,
Circuit Judges.

Nicole M. Bacon, with whom James L. Feldesman, Khatereh S. Ghiladi, and Feldesman Tucker Liefer Fidell LLP were on brief, for appellants Atlantic Medical Center, Inc., Camuy Health Services, Inc., Centro de Salud Familiar Dr. Julio Palmieri Ferri, Inc., Ciales Primary Health Care Services, Inc., Corporacion de Serv. Médicos Primarios y Prevención de Hatillo, Inc., Costa Salud, Inc., El Centro de Salud de Lares, Inc., El Centro de Servicios Primarios de Salud de Patillas, Inc., and Hospital General Castañar, Inc.

Robert A. Graham, with whom Iyen A. Acosta and Reno & Cavanaugh, PLLC were on brief, for appellants HealthproMed, Salud Integral en la Montaña, Migrant Health Center, COSSMA, Morovis Community Health Center, NeoMed Center, and Concilio de Salud Integral de Loiza.

Carlos Lugo-Fiol, with whom Solicitor General of Puerto Rico Isaías Sánchez-Báez was on brief, for appellees Commonwealth of Puerto Rico and Lorenzo González-Feliciano, in his official capacity as Secretary of the Department of Health for Puerto Rico.

December 4, 2020

LYNCH, Circuit Judge. These consolidated appeals, and the companion appeal No. 19-1336, arise out of the long-running litigation between Puerto Rico and several Federally Qualified Health Centers (FQHCs) over the Commonwealth's failure to make payments to the FQHCs. The FQHCs assert new claims that the Commonwealth has again failed to pay in full the statutorily required reimbursement amounts for the services they provide to poor patients under the Medicaid Act. We dismiss these appeals without reaching the merits, because we conclude that the orders appealed from are void -- having been issued in violation of the stay entered by the Title III court.

I. Background

The Medicaid Act requires FQHCs to provide care to underserved populations. States must reimburse the FQHCs for the full cost of these services through a Prospective Payment System (PPS). 42 U.S.C. § 1396a(bb)(1)-(3). Puerto Rico has contracted with Managed Care Organizations (MCOs) to run its Medicaid program. The MCOs in turn contract with FQHCs to deliver services as required. When the MCOs pay less than the PPS rate, Puerto Rico¹ must make up the difference through quarterly supplemental "wraparound" payments. Id. § 1396a(bb)(5).

¹ Puerto Rico is a state for purposes of the Medicaid statute. 42 U.S.C. § 1301(a)(1).

This litigation has been ongoing since 2003, when the FQHCs first sued the Commonwealth for failure to make the required wraparound payments. The factual and procedural history behind these appeals is described in our eight prior opinions in this matter, including most recently in Municipality of San Juan v. Puerto Rico, 919 F.3d 565 (1st Cir. 2019).²

In 2009, the district court appointed a Special Master to oversee the Medicaid payment calculations. In 2010, at the recommendation of the Special Master, the district court entered a preliminary injunction³ requiring the Commonwealth to make interim payments calculated by the Special Master, and directing the parties to calculate the actual PPS rates and then reconcile the interim payments with the amount actually due under the appropriate PPS formula.⁴

² These are: Rio Grande Community Health Center, Inc. v. Rullan, 397 F.3d 56 (1st Cir. 2005); Dr. Jose S. Belaval, Inc. v. Pérez-Perdomo, 465 F.3d 33 (1st Cir. 2006); Dr. Jose S. Belaval, Inc. v. Pérez-Perdomo, 488 F.3d 11 (1st Cir. 2007); Concilio de Salud Integral de Loiza, Inc. v. Pérez-Perdomo, 551 F.3d 10 (1st Cir. 2008); Concilio de Salud Integral de Loiza, Inc. v. Pérez-Perdomo, 625 F.3d 15 (1st Cir. 2010); Consejo de Salud de la Comunidad de la Playa de Ponce, Inc. v. González-Feliciano, 695 F.3d 83 (1st Cir. 2012); Rio Grande Community Health Center, Inc. v. Armendáriz, 792 F.3d 229 (1st Cir. 2015); and Municipality of San Juan v. Puerto Rico, 919 F.3d 565 (1st Cir. 2019).

³ The district court previously entered a preliminary injunction in 2004, but vacated it after Puerto Rico created a PPS office. We reversed that decision in Concilio de Salud Integral de Loiza, Inc., 551 F.3d at 19.

⁴ The FQHCs represent that during the period of 2010-2014, "[t]he bulk of the efforts of both the parties and the

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