

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 LA CLINICA DE LA RAZA, INC.,

No. C 10-4605 CW

5 Plaintiff,

6 v.

ORDER DENYING
MOTION FOR
INJUNCTION PENDING
APPEAL

7 CAL. DEP'T OF HEALTH CARE
8 SERVICES, et al.,

(Docket No. 94)

9 Defendants.
10 _____/

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12 On May 13, 2014, this Court entered an order granting in part
13 and denying in part Defendants' motion for summary judgment and
14 denying Plaintiff's cross-motion for summary judgment. Docket No.
15 78.¹ Plaintiff appealed to the Ninth Circuit Court of Appeals,
16 which appeal remains pending. Docket No. 90. On July 30, 2015,
17 Plaintiff filed a motion for an injunction pending appeal. Docket
18 No. 94. For the reasons explained below, the Court now denies
19 Plaintiff's motion.
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21 BACKGROUND

22 The following facts are taken from the Court's May 13, 2014
23 summary judgment order with minor modifications and additions.
24 Plaintiff is a nonprofit healthcare organization which provides

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26 ¹ The above-captioned case is related to three other cases.
27 The May 13, 2014 order resolved motions that were filed by several
28 additional parties not currently before the Court. This order
omits mention of the additional parties, except where relevant to
the current dispute, for clarity.

1 medical services to low-income communities in the San Francisco
2 bay area. Plaintiff receives funding from the United States and
3 the State of California (the Governments) under the Medicaid and
4 Medicare programs for operating as a "federally-qualified health
5 center" (FQHC). As a condition of this funding, Plaintiff is
6 required to report certain information about its operations and
7 finances to the Governments. This action arises out of a dispute
8 concerning the State's method of reimbursing Plaintiff for certain
9 services Plaintiff provides under the Medicare Part D program.
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11 Medicare is a federal health insurance program that provides
12 benefits to people with disabilities and people over age sixty-
13 five. See 42 U.S.C. §§ 1395 et seq. The Medicare Act is divided
14 into several parts, each of which deals with a different set of
15 benefits. Part D, which pertains to prescription drug benefits,
16 is the only part relevant here.
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18 In 2006, Congress passed legislation expanding Part D
19 coverage to individuals who qualify for benefits under both
20 Medicaid and Medicare, a group known as "dual-eligibles." This
21 legislation effectively shifted responsibility for paying dual-
22 eligibles' prescription drug costs from state Medicaid programs to
23 Medicare. See 42 U.S.C. § 1396u-5(d)(1). Because of this shift,
24 FQHCs in California must now seek reimbursement under Medicare
25 Part D, rather than Medi-Cal, for the prescription drug services
26 they provide to dual-eligibles. Previously, FQHCs were reimbursed
27 for these services in the same way that they were reimbursed for
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1 all other of the other services they provided to Medi-Cal
2 beneficiaries: that is, a combination of wraparound payments (the
3 name given to a system for estimating how much a FQHC is owed) and
4 reconciliation payments (the annual process under which a more
5 precise calculation of compensation is determined).

6 After the 2006 legislation, the California Department of
7 Health Care Services (DHCS) offered FQHCs two options for seeking
8 reimbursement for prescription drug services under Medicare Part
9 D. Under the first option (Option 1), the FQHC would adjust its
10 per-visit reimbursement rate by subtracting the costs of all
11 prescription drug services, for both dual-eligibles and other
12 Medi-Cal beneficiaries, and seek reimbursements directly from the
13 Department of Health and Human Services (HHS) for its services to
14 dual-eligibles; DHCS would then reimburse the FQHC at a separate
15 per-visit rate for the prescription drug services it provided to
16 non dual-eligibles. Under the second option (Option 2), the FQHC
17 would continue to receive reimbursements from DHCS at the same
18 per-visit reimbursement rate but, during the annual reconciliation
19 process, would pay back to DHCS any funding that the FQHC received
20 under Medicare Part D during that fiscal year for its prescription
21 drug services to dual-eligibles. Following the Part D expansion,
22 Plaintiff chose to proceed under Option 2.
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25 In June 2010, another FQHC, North East Medical Services
26 (NEMS), not a party to this action, filed a declaratory judgment
27 action against DHCS and its director challenging the agency's
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1 efforts to implement the Medicare Part D expansion in California.
2 Specifically, NEMS alleged that both reimbursement options offered
3 by DHCS violated federal law. Plaintiff, represented by the same
4 counsel as NEMS, filed this nearly identical action against DHCS
5 and its director in October 2010. The two cases were consolidated
6 in November 2010, with Judge Richard Seeborg presiding.

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8 In June 2011, Judge Seeborg dismissed Plaintiff's and NEMS's
9 claims. He found that, because they were seeking to recover Part
10 D funds that they had previously paid to DHCS under Option 2, they
11 were essentially asserting claims against the State for
12 retrospective monetary relief, which is precluded by the Eleventh
13 Amendment to the United States Constitution. Plaintiff and NEMS
14 appealed the order of dismissal in July 2011.

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16 In April 2013, the Ninth Circuit affirmed the order of
17 dismissal in part and reversed it in part. North East Med. Servs.
18 v. Cal. Dep't Health Care Servs., 712 F.3d 461, 470-71 (9th Cir.
19 2013) (NEMS). It held that the district court properly found that
20 the Eleventh Amendment barred Plaintiff and NEMS from pursuing
21 monetary relief but erred in dismissing the claims in their
22 entirety. It reasoned that some of the claims against the
23 director of DHCS could potentially be construed as injunctive
24 relief claims and "under Ex parte Young, the Eleventh Amendment
25 generally does not bar suits for prospective, non-monetary relief
26 against state officers." Id. at 466. The court highlighted two
27 claims, in particular, that might fall under the Ex Parte Young
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1 exception to the Eleventh Amendment. First, it found that one of
2 NEMS's claims could be construed as claim for prospective relief
3 insofar as NEMS was seeking to avoid future liability for its past
4 failures to comply with Option 2, such as when it refused to pay
5 DHCS the Medicare Part D money that it received in 2008. Id. at
6 470 ("While California has not demanded payment, it has maintained
7 that it is entitled to it. This leaves open the possibility that
8 California will prospectively apply Option 2 to NEMS for fiscal
9 year 2008 when California tries to extract payment from NEMS in
10 the future."). Second, the court found that one of Plaintiff's
11 claims might also be construed as a claim for prospective relief
12 insofar as it was seeking to avoid complying with its obligations
13 under Option 2 in the future.² Id. ("La Clinica continues to pay
14 Medicare Part D payments over to California under Option 2. As
15 such, it argues that it is entitled to declaratory and injunctive
16 relief barring any future attempt by California to collect La
17 Clinica's Part D payments."). Because the Ninth Circuit found
18 that both of these claims "arguably seek genuine prospective
19 relief," id. at 466, it remanded "to allow the district court to
20 assess Ex Parte Young's application to: (1) NEMS's claim to
21 injunctive relief for fiscal year 2008, and (2) Plaintiff's claims
22 arising from prospective application of Option 2." Id. at 471.

26 ² The Ninth Circuit did not find that NEMS's claims for declaratory
27 relief regarding DHCS's future enforcement of Option 1 contained a
28 prospective component. This is likely because "NEMS conceded in both
its briefing and at oral argument that it suffers no ongoing harm since
proceeding under Option 1." NEMS, 712 F.3d at 465.

1 Following remand, the cases were related to two other pending
2 cases and reassigned to this Court. Docket No. 28. Defendants,
3 along with the United States of America (as a defendant in the
4 related cases) filed a motion for summary judgment. Docket No.
5 50. Plaintiff and NEMS filed a cross-motion for summary judgment.
6 Docket No. 65.

7 In the portion of the order relevant here, the Court held
8 that Ex Parte Young did not apply to NEMS's claim because NEMS was
9 seeking retrospective monetary relief; that is, in the context of
10 Medicaid payments, NEMS was seeking reimbursement for services
11 already rendered. Accordingly, the Eleventh Amendment barred
12 NEMS's claims. The Court held that the Eleventh Amendment did not
13 bar Plaintiff's claim because Plaintiff was not seeking
14 compensation for services it had already rendered. However, the
15 Court determined that Plaintiff's claim was moot because Plaintiff
16 could still elect to proceed under Option 1. The Court also
17 rejected Plaintiff's and NEMS's argument that Option 2 violates
18 federal law for an additional and independently adequate reason:
19 that neither Plaintiff nor NEMS presented sufficient evidence to
20 support an inference that Option 2 violates federal law.
21 Plaintiff moved for leave to file a motion for reconsideration;
22 the Court denied the motion and entered judgment. Docket Nos. 85
23 and 89. Plaintiff then filed its notice of appeal to the Ninth
24 Circuit Court of Appeals.
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1 There appears to have been no subsequent relevant interaction
2 between the parties until May 15, 2015, when DHCS contacted
3 Plaintiff to request a reporting of Plaintiff's Part D revenues
4 for dual-eligible patients from fiscal year 2011. Docket No. 96-
5 2, Ex. A. Then, on June 23, 2015, DHCS sent a written notice that
6 it would begin the reconciliation process to determine whether
7 Plaintiff had been under- or overpaid for fiscal year 2011.
8 Plaintiff requested that DHCS delay the reconciliations because
9 the payments were the subject of litigation on appeal before the
10 Ninth Circuit, but DHCS indicated it would move forward with the
11 reconciliation process unless Plaintiff could provide an
12 injunctive order prohibiting DHCS from proceeding. On July 29,
13 2015, DHCS issued final settlements for the reconciliation
14 requests. The final settlements show that Plaintiff owes
15 \$100,111.00 for one clinic and \$28,374.00 for a second clinic; the
16 total amount due is thus \$128,485.00. Docket No. 96-2, Exs. B and
17 C. The following day, July 30, 2015, Plaintiff filed this motion
18 seeking an injunction against "all actions by [Defendants] with
19 respect to [Plaintiff's] pending reconciliation requests" until
20 resolution of its appeal. Docket No. 94.

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23 LEGAL STANDARD

24 The Court may employ either of two different frameworks to
25 determine whether to grant an injunction pending appeal.

26 Southeast Alaska Conservation Counsel v. U.S. Army Corps of
27 Engineers, 472 F.3d 1097, 1100 (9th Cir. 2006). Under the
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1 "traditional test" the moving party must show "(1) a strong
2 likelihood of success on the merits, (2) the possibility of
3 irreparable injury to the plaintiff if preliminary relief is not
4 granted, (3) a balance of hardships favoring the plaintiff, and
5 (4) advancement of the public interest (in certain cases)." Id.
6 (internal quotations omitted). Under the "alternative test" the
7 moving party must show "either a combination of probable success
8 on the merits and the possibility of irreparable injury or that
9 serious questions are raised and the balance of hardships tips
10 sharply in his favor." Id. (internal quotations omitted). "These
11 two formulations represent two points on a sliding scale in which
12 the required degree of irreparable harm increases as the
13 probability of success decreases. They are not separate tests but
14 rather outer reaches of a single continuum." Id. (internal
15 quotations omitted, capitalization modified).
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18 ANALYSIS

19 A. Plaintiff's Waiver of Relief

20 In its opposition, Defendants first argue that there is no
21 basis for granting a stay because Plaintiff waived any claim to
22 relief involving the services included in the pending
23 reconciliation requests when it did not appeal this Court's
24 conclusion that relief sought for services provided in the past
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1 are retroactive claims barred by the Eleventh Amendment.³
2 Defendants argue that, because Plaintiff did not appeal on this
3 ground, the Ninth Circuit's eventual ruling cannot possibly undo
4 this Court's holding that claims for past services are barred, and
5 accordingly granting a stay is inappropriate. In reply, Plaintiff
6 argues that its case has often been commingled with facts and
7 arguments presented by NEMS; thus, according to Plaintiff, it does
8 not matter that Plaintiff did not raise the question on appeal
9 because, presumably, NEMS did.⁴
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11 While the Court agrees that it appears that the Ninth
12 Circuit's decision could not result in Plaintiff being able to
13 keep the money due, as explained below, the Court concludes that
14 analysis under the two established tests for preliminary
15 injunctions clearly results in denial of Plaintiff's motion. The
16 Court, accordingly, proceeds to the analysis under the established
17 framework.
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21 ³ Plaintiff's opening brief articulates two issues presented
22 for review: (1) whether this Court erred in denying its claim for
23 prospective injunctive relief as moot and (2) whether this Court
24 erred in finding that Plaintiff did not present sufficient
evidence that Option 2 violates federal law. Docket No. 96-1.

25 ⁴ Plaintiff provides no proof that NEMS is actually pursuing
26 this claim on appeal. Instead, Plaintiff implies that NEMS has
27 appealed on this ground, arguing that Defendants' argument creates
28 "artificial distinctions between NEMS and [Plaintiff]" and alleges
"that an argument raised by NEMS cannot also be raised by
[Plaintiff]." Reply Brief (Docket No. 97) at 3.

1 B. The Traditional Test

2 The first showing Plaintiff must make under the "traditional
3 test" is that it is likely to succeed on the merits of its claim.
4 Southeast Alaska Conservation Counsel, 472 F.3d at 1100.

5 Plaintiff has not made a strong showing in this regard. In the
6 order on the motions for summary judgment, the Court found that
7 Plaintiff's claim was moot because Plaintiff could still elect to
8 proceed under Option 1. Plaintiff first argues that it is likely
9 to succeed on its appeal because Option 1 is not lawful.

10 Plaintiff asserts that it is unlawful because the only way that
11 Option 1 can be lawful is if Plaintiff agrees to accept Option 1
12 and it has not done so. But the Court did not deny Plaintiff's
13 claims on the basis that Plaintiff had accepted Option 1; the
14 Court denied Plaintiff's claims because Plaintiff did not present
15 any evidence to suggest that it could not proceed under Option 1.
16 Plaintiff's argument that the only threat to Option 1's legality
17 is that Plaintiff has chosen not to elect it only underscores the
18 viability of Option 1. Plaintiff next argues that the Court
19 misunderstood its claim regarding Option 2. This is the exact
20 argument Plaintiff made, and the Court rejected, in its motion for
21 leave to file a motion for reconsideration. Accordingly, as
22 explained above and in the order denying Plaintiff's motion for
23 leave to file a motion for reconsideration, the Court concludes
24 that Plaintiff has not shown that it is likely to succeed on the
25 merits of its claim.
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1 The second prong of the traditional test requires Plaintiff
2 to show that it will suffer irreparable harm absent an injunction.
3 Plaintiff has not made such a showing. Plaintiff argues that if
4 it is required to pay the settlement amount for the reconciliation
5 request, it will have no adequate legal remedy in federal court
6 because its claims would then be characterized as seeking
7 retrospective monetary damages and would be, therefore, barred by
8 the Eleventh Amendment. However, as Defendants show, if Plaintiff
9 is required to pay the settlement amount, it will merely lose the
10 federal forum for that claim, but it will still have the option to
11 file an administrative appeal and to seek a writ of administrative
12 mandate in state court if it loses its administrative appeal.
13 Plaintiff does not dispute the adequacy or availability of a state
14 forum for relief in its reply brief. Accordingly, the Court
15 concludes that Plaintiff has not shown that it will be irreparably
16 harmed absent an injunction.
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19 The third prong requires a showing that the balance of harms
20 weighs in favor of granting the injunction. Plaintiff argues that
21 issuing the stay will preserve the status quo and permit Plaintiff
22 to use the income to "further the objectives of its Section 330
23 grant, including serving additional patients and providing
24 additional services to the residents of its service area." Motion
25 Brief (Docket No. 94) at 10. That Plaintiff could effect greater
26 community service with the funds at issue is not relevant to the
27 inquiry. The Court has determined that Plaintiff's arguments
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1 regarding Option 2 do not warrant relief, and the result of the
2 reconciliation process is that Plaintiff was overpaid and must now
3 pay Defendants the amount of that overpayment. While Plaintiff
4 must relinquish its overpayments, this does not constitute harm in
5 a legal sense because it was not entitled to the funds in the
6 first place. On the other hand, Defendants are harmed if they are
7 delayed in recouping the funds to which they are entitled. The
8 harm in denying Defendants the funds these funds may be modest,
9 but it outweighs any harm Plaintiff claims. Thus, the balance of
10 harms tips in Defendants' favor.

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12 The final prong of the traditional test requires Plaintiff to
13 show that the public interest is served by granting the
14 injunction. Plaintiff again argues that the funds would allow it
15 to serve the community; that argument is no more persuasive under
16 this prong than it was on prong three of the test. And finally
17 Plaintiff argues that the public interest is served by granting
18 the stay so that the federal court retains jurisdiction. The
19 Court is not persuaded, considering the above-discussed
20 availability of an alternative forum for Plaintiff's claims.

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22 In sum, Plaintiff has not shown entitlement to a preliminary
23 injunction pending appeal under the traditional test.

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25 C. The Alternative Test

26 Under the "alternative test" the moving party must show
27 "either a combination of probable success on the merits and the
28 possibility of irreparable injury or that serious questions are

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raised and the balance of hardships tips sharply in his favor." Southeast Alaska Conservation Counsel, 472 F.3d at 1100 (internal quotations omitted). For the reasons articulated under the traditional test, Plaintiff has shown neither a probability of success on the merits nor irreparable injury. Further, Plaintiff has not shown that any serious questions are raised and, as discussed above, the balance of hardships does not weigh in favor of granting a stay. Accordingly, Plaintiff is not entitled to an injunction under the alternative test.

For the reasons stated above, Plaintiff's motion for an injunction pending appeal is denied.

IT IS SO ORDERED.

Dated: September 11, 2015



CLAUDIA WILKEN
United States District Judge