

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60460-CIV-ZLOCH

A.R. by and through her next  
friend, Susan Root, et al.,

Plaintiffs,

vs.

**O R D E R**

ELIZABETH DUDEK, in her  
official capacity as Secretary  
of the Agency for Health Care  
Administration, et al.,

Defendants.

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF FLORIDA,

Defendant.

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THIS MATTER is before the Court upon Plaintiffs' Renewed Motion For Class Certification (DE 220). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

Plaintiffs T.H., L.J., A.G., A.C., A.R., C.V., M.D., C.M., and B.M.<sup>1</sup> initiated the above-styled cause on March 13, 2012, against Defendants Elizabeth Dudek, in her official capacity as Secretary

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<sup>1</sup> Plaintiffs T.F., L.J., and A.C. have passed away since the commencement of the above-styled cause. See DE Nos. 147, 245 & 260.

of the Agency for Health Care Administration, John Armstrong, M.D., in his official capacity as State Surgeon General and Secretary of the Florida Department of Health, and Dennis Cookro, M.D., in his official capacity as Deputy Secretary of the Florida Department of Health and Director of Children's Medical Services (hereinafter "the State Defendants"), as well as eQHealth Solutions, Inc. (hereinafter "Defendant eQHealth"), a non-profit corporation with whom the State of Florida has contracted to provide prior authorization of home health services. Plaintiffs are children with complex medical needs who have been diagnosed as "medically fragile"<sup>2</sup> and qualify for health care services through Florida's Medicaid program. In their Second Amended Complaint (DE 62), filed August 23, 2012, Plaintiffs allege, essentially, that Defendants have failed to provide medically necessary services in both home and community settings, as opposed to institutionalized settings, and are denying Medicaid services to Plaintiffs.

By prior Order (DE 203), United States District Judge Robin Rosenbaum denied without prejudice Plaintiffs' Motion For Class Certification (DE 95) and with leave to refile.<sup>3</sup> Said Order

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<sup>2</sup> A "medically fragile" child is one who is "medically complex and whose medical condition is of such a nature that he is technologically dependent, requiring medical apparatus or procedures to sustain life, e.g., requires total parenteral nutrition (TPN), is ventilator dependant, or is dependent on a heightened level of medical supervision to sustain life, and without such services is likely to expire without warning." Fla. Admin. Code Rule 59G-1.010(165).

<sup>3</sup> On December 6, 2013, Judge Rosenbaum consolidated Plaintiffs' action with the related case filed by the United States of America against the State of Florida, Case No. 13-61576-CIV. See DE 215. The

directed Plaintiffs to conduct discovery bearing on the class-certification issue, specifically, whether the potential class is affected by systemic practices or by isolated errors in the application of the challenged policies. By the instant Motion (DE 220), Plaintiffs inform the Court that Plaintiffs have conducted discovery and argue that class certification remains appropriate, based on alleged evidence of Defendants' systemic practices.

In their Response In Opposition To Plaintiffs' Renewed Motion For Class Certification (DE 237), the State Defendants included a Renewed Motion To Dismiss. In said Motion (DE 237), the State Defendants assert, first, that Plaintiffs' claims are now moot because, due to the changes in the State's administrative rules, the challenged policies and practices are no longer in force. Second, they maintain that Plaintiffs lack standing because no Plaintiff is institutionalized or at imminent risk of institutionalization. DE 237.

Because Defendants' Renewed Motion To Dismiss (DE 237) challenges this Court's subject matter jurisdiction, the Court will resolve the potentially dispositive Motion prior to taking up Plaintiffs' Renewed Motion For Class Certification (DE 220). See Webster v. Royal Caribbean Cruises, Ltd., 124 F. Supp. 2d 1317, 1321 (S.D. Fla. 2000) ("[T]he Court notes that the motion to

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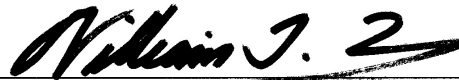
consolidated action was then reassigned to this Court on May 30, 2014, pursuant to Administrative Order 2014-48. DE 251.

dismiss may be dispositive, thereby rendering the motion for class certification moot."); Tapken v. Brown, 1992 WL 178984 at \*12 (S.D. Fla. Mar. 13, 1992) (citing Wright v. Shock, 742 F.2d 541, 543-45 (9th Cir. 1984) (relying on cases from the Second, Third, Fifth, Eighth, and Tenth Circuits in affirming district court's decision to rule on summary judgment motion before the motion for class certification)). Therefore, Plaintiffs' Renewed Motion For Class Certification (DE 220) will be denied without prejudice with leave to refile, pending the Court's ruling on the State Defendants' Renewed Motion To Dismiss (DE 237).

Accordingly, after due consideration, it is

**ORDERED AND ADJUDGED** that Plaintiffs' Renewed Motion For Class Certification (DE 220) be and the same is hereby **DENIED** without prejudice with leave to refile following the Court's ruling on the pending the State Defendants' Renewed Motion To Dismiss (DE 237).

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 9th day of September, 2014.



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WILLIAM J. ZLOCH  
United States District Judge

Copies furnished:

All Counsel of Record