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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Sharon Newton-Nations, et al.,)	No. CV-03-02506-PHX-ROS
Plaintiffs,)	
vs.)	ORDER
Thomas J. Betlach, et al.,)	
Defendants.)	

Pending before the Court are Defendants’ Motions to Dismiss based on mootness. (Doc. 235 & 237). The Court has considered the parties’ arguments and has determined that oral argument would not assist in its decision. For the following reasons, Defendants’ motions to dismiss will be granted.

BACKGROUND

On October 1, 2003, the Arizona Health Care Cost Containment System (“AHCCCS”) published a final amended rule, A.A.C. Amended Rule R9-22-711(E) (“Rule R9”), that imposed increased copayments on certain Arizona residents who received medical services through AHCCCS. (Doc. 186 at 9). Rule R9 stated a medical “provider may deny a service if the member does not pay the required copayment.” (*Id.*). Rule R9 became effective October 1, 2003. (*Id.*). Shortly thereafter, Plaintiffs filed a complaint for injunctive and declaratory relief. Plaintiffs alleged the Director of AHCCCS (“Director”) and the Health and Human Services Secretary (“Secretary”) improperly authorized Arizona to implement the increased mandatory copayments. (Doc. 1, Compl.). Plaintiffs claimed the authorization

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1 of the increased copayments exceeded the Secretary's limited authority under 42 U.S.C.
2 § 1315—which allows for the implementation of “demonstration projects”—and, therefore, was
3 arbitrary and capricious (Compl. ¶¶ 116-19). Plaintiffs further alleged the Director's October
4 2003 written notice of the increased copayments violated the Due Process Clause of the
5 Fourteenth Amendment and was contrary to the Medicaid Act, 42 U.S.C. § 1396a(a)(3)
6 (Compl. ¶¶ 128-30).¹

7 In April 2004, the Court granted a preliminary injunction prohibiting implementation
8 of the increased copayments. Eventually, however, the Court granted summary judgment in
9 favor of the Director and Secretary on all issues. On appeal, the Ninth Circuit reversed. The
10 Ninth Circuit held the Secretary's decision approving the increased copayments did not
11 satisfy the requirements of 42 U.S.C. § 1315. In other words, the administrative record did
12 not “demonstrate that the Secretary made the requisite findings required” by existing law.
13 *Newton-Nations v. Betlach*, 660 F.3d 370, 381 (9th Cir. 2011). Therefore, the Ninth Circuit
14 initially remanded this claim “with directions to vacate the Secretary's decision and remand
15 [the issue] to the Secretary for further consideration.” *Id.* at 383. The court also remanded
16 Plaintiffs' claim regarding the adequacy of the notices sent in 2003, but observed this claim
17 was “likely moot” due to multiple notices sent after 2003. *Id.*

18 On October 27, 2011, the Ninth Circuit filed an order amending its remand order to
19 provide that “[u]pon remand, the district court may determine whether any or all of
20 Appellants' claims are moot and whether further action on the [Administrative Procedure
21 Act] claim by the district court or [the Secretary] is necessary.” (Doc. 227). The mandate
22 issued on October 27, 2011. (Doc. 227).

23 After remand, the Director and the Secretary filed motions to dismiss arguing the two
24 remaining claims are moot. According to the Secretary, the program that included the
25 increased copayments at issue in this lawsuit expired on October 21, 2011. (Doc. 237 at 2,
26

27 ¹ Plaintiffs had additional claims not relevant here.

1 Ex. 1, Wachino Decl. ¶ 6). On that date, Arizona received approval of a new program
2 effective October 22, 2011 with an expiration date of September 30, 2016. (*Id.* at ¶¶ 7-8).
3 The Secretary argues that while this new program includes imposition of similar copayments,
4 the Secretary's decision to approve the new copayments was based on a different
5 administrative record. (Doc. 237 at 2). Because of the new program, the Secretary contends
6 there is no decision of the Secretary to vacate and nothing to consider on remand regarding
7 the Secretary's approval of copayments under the prior program. The Director argues the
8 claim regarding written notices is moot as additional notices, fully compliant with due
9 process, were sent in 2010 and 2011.

10 ANALYSIS

11 I. Standard For Mootness

12 A federal court's jurisdiction is limited to actual cases and controversies. U.S. Const.,
13 art. III, § 2. "To invoke the jurisdiction of a federal court, a litigant must have suffered, or
14 be threatened with, an actual injury traceable to the defendant and likely to be redressed by
15 a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). A
16 court may not take action on a case once it becomes moot. *Liner v. Jafco, Inc.*, 375 U.S. 301,
17 306 n.3 (1964); *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 715 (9th Cir. 2011)
18 (court lacks jurisdiction to hear claims if a case is moot). An action is moot where issues are
19 no longer live or the parties lack a legally cognizable interest in the outcome. *Murphy v.*
20 *Hunt*, 455 U.S. 478, 481 (1982). *See Am. Cargo Transp., Inc. v. United States*, 625 F.3d
21 1176, 1179 (9th Cir. 2010) (a case becomes moot when "there is no reasonable expectation
22 that the alleged violation will recur" and "interim relief or events have completely and
23 irrevocably eradicated the effects of the alleged violation"). A case is not moot if the court
24 can provide any effective relief, even if it is not the precise relief originally sought. *Siskiyou*
25 *Reg'l Educ. Project v. United States Forest Serv.*, 565 F.3d 545, 559 (9th Cir. 2009).

1 **II. Plaintiffs' APA Claim Is Moot**

2 The Court's consideration of the Secretary's decision to approve Rule R9 involved
3 review under the Administrative Procedure Act ("APA"). (Doc. 1, Compl. at 25-26; Doc.
4 186 at 2). The "predominant" rule regarding such review is that a court must "scrutiniz[e]
5 the administrative record at the time the agency made its decision." *Asarco, Inc. v. United*
6 *States Env'tl. Prot. Agency*, 616 F.2d 1153, 1159 (9th Cir. 1980). This is "because the focus
7 of judicial review is not on the wisdom of the agency's decision, but on whether the process
8 employed by the agency to reach its decision took into consideration all the relevant factors."
9 *Id.* See also *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985) (review
10 under the APA requires review of "the agency decision based on the record the agency
11 presents to the reviewing court").

12 In remanding the APA claim to this Court, the Ninth Circuit concluded the particular
13 administrative record offered by the Secretary in support of Rule R9 was insufficient; the
14 Ninth Circuit found the Secretary's decision arbitrary and capricious because that
15 administrative record did not demonstrate the Secretary had made the findings required by
16 42 U.S.C. § 1315 and *Beno v. Shalala*, 30 F.3d 1057 (9th Cir. 1994). *Newton-Nations*, 660
17 F.3d at 381. The copayments currently in effect are due to a *new* program based on a *new*
18 administrative record. Therefore, Plaintiffs' claim aimed at the now-superseded program is
19 moot. Plaintiffs offer no convincing argument the Court should engage in the empty
20 formalism of remanding to the Secretary for further proceedings on the prior program; doing
21 so would provide no redress for harm allegedly suffered under the prior program and would
22 have no impact on the program now in effect. Plaintiffs are free to challenge the new
23 program in a separate suit, but the APA claim in this lawsuit was aimed at the old program
24 and is moot.

25 **II. The Notices Claim Is Moot**

26 Plaintiffs' other claim was that the notices sent to beneficiaries by the Director in
27 October 2003 did not comply with due process. (Doc. 1, Compl. ¶¶ 54 & 128-30). Those
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1 notices were supplemented by notices in 2010 and 2011. Given the expiration of the prior
2 program, as well as the additional notices sent later, the claim in Plaintiffs' complaint
3 regarding the 2003 notices is moot.

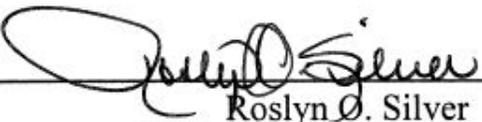
4 Accordingly,

5 **IT IS ORDERED** Defendants' Motions to Dismiss (Doc. 235 & 237) are
6 **GRANTED**. Plaintiffs' APA claim against Defendant Secretary based on violation of 42
7 U.S.C. § 1315 (First Claim) and Plaintiffs' claim against Defendant Director regarding the
8 2003 notices (Fourth Claim) are dismissed as moot.

9 **IT IS FURTHER ORDERED** Plaintiffs' Motion for Judicial Notice (Doc. 258) is
10 **DENIED AS MOOT**.

11 **IT IS FURTHER ORDERED** the Clerk shall close this case.

12 DATED this 16th day of April, 2012.

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16 Roslyn O. Silver
17 Chief United States District Judge
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