UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED HEALTHCARE SERVICES, INC., et al., Plaintiffs, v. HOSPITAL PHYSICIAN SERVICES SOUTHEAST, P.C., et al., Defendants.	CIVIL ACTION NO. 1:23-CV-05221-JPB

ORDER

This matter is before the Court on Hospital Physician Services Southeast, P.C., InPhyNet Primary Care Physicians Southeast, P.C. and Redmond Anesthesia & Pain Treatment, P.C.'s (collectively, "Defendants") Second Motion to Dismiss Amended Complaint for Lack of Subject Matter Jurisdiction [Doc. 59]. This Court finds as follows:

BACKGROUND

United[1] is the largest healthcare provider network in the United States. [Doc. 27, p. 1]. As the largest healthcare provider network, United administers

[1] "United" refers to the plaintiffs in this action: United Healthcare Services, Inc., UnitedHealthcare Insurance Company and UMR, Inc.

health care benefits for over 80 million people. Id. This means that United reviews claims for medical services provided to its members and pays reimbursements to the medical providers. Id.

United reimburses claims rendered by both "in-network" and "out-of-network" providers.[2] As to out-of-network providers, United asserts that it must reimburse those providers at rates set forth in the specific healthcare benefits plans (the "Plans"). Id. at 3. In many instances, the Plans allow United to negotiate agreed reimbursement amounts for services with out-of-network providers. Id. Barring such agreements, however, the Plans contain rates or methodologies for determining the reimbursement amount.[3] Id. United concedes that when reimbursement is determined by the rates or methodologies established by the Plans, the reimbursement amount is typically less than the provider's billed

[2] A contract between United and a provider is known as a network contract, and providers who enter those agreements are in-network providers. The parties to a network contract have agreed to specific reimbursement amounts for covered services. Conversely, out-of-network providers are those providers that do not have contracts with United for the reimbursement of expenses.

[3] For example, Plan B states that an out-of-network provider will be paid "based on the reasonable and customary rate and not the amount charged by the provider." [Doc. 27, p. 17].

charges. Id. Put simply, United does not reimburse the out-of-network provider at the full amount billed.

TeamHealth, which operates in forty-seven states, is the largest physician staffing, billing and collections company in the country. Id. at 2; [Doc. 29-1, p. 5]. Medical groups affiliated with TeamHealth have sued United in nine of the forty-seven states in which they operate.[4] [Doc. 29-1, p. 5]. In these cases, TeamHealth affiliates seek to recover their full-billed charges where United has calculated different and lower benefit amounts in accordance with the rates and methodologies stated in the Plans. [Doc. 27, p. 7].

Defendants, who are owned by TeamHealth, are healthcare staffing companies that operate out of Georgia hospitals. Id. at 2. Over the last five years, Defendants have provided medical services to patients whose benefits are administered by United. Id. Because Defendants do not have a contract with United, these medical services are considered out-of-network. Id. According to United, Defendants have consistently demanded reimbursement from United at 100% of their billed charges even though none of the Plans allow for reimbursement at that level. Id. at 25. Moreover, United contends that Defendants

[4] The nine states are New York, New Jersey, Pennsylvania, Florida, Texas, Oklahoma, Nevada, Arizona and Michigan.

consider these claims "disputed" and that they will remain disputed unless reimbursed at 100%. Id. at 26.

In this action, United seeks declaratory relief as to the required rate of reimbursement for patients who receive medical treatment from Defendants. Excluded from this dispute, however, are claims subject to the No Surprises Act ("NSA").[5] The NSA applies to two types of claims accruing after January 1, 2022: claims for emergency services and claims for services delivered by out-of-network providers at in-network hospitals or other facilities. Thus, the predominate claims at issue here are those for non-emergency services provided to patients at out-of-network hospitals after January 1, 2022, and all claims predating the NSA. As to these claims, United asserts that it faces the choice of: (1) complying with its obligations under the Employee Retirement Income Security Act of 1974 ("ERISA") to calculate benefits in accordance with the payment rates and methodologies in the Plans when reimbursing Defendants for out-of-network services; or (2) acquiescing to TeamHealth's contention that state law requires United to reimburse claims from Defendants at their full-billed charges. Id. at 7. Ultimately, United seeks a declaration that any claim that seeks reimbursement in

[5] The NSA contains dispute-resolution provisions.

excess of the amount determined in accordance with the rates and methodologies stated in the Plans are preempted by ERISA and the Supremacy Clause of the United States Constitution.

On February 8, 2024, Defendants filed their First Motion to Dismiss arguing that the Court lacked subject matter jurisdiction. [Doc. 29]. Defendants asserted that no controversy existed between the parties because Kent Bristow—TeamHealth's Senior Vice President for Revenue Management—represented in a declaration (hereinafter, "First Declaration") that "[p]resently, [Defendants] have no intent to take legal action against United" regarding the claims at issue in this case. [Doc. 23-1, p. 4]. On August 16, 2024, the Court denied Defendants' motion because Bristow's First Declaration merely suspended the threat of suit and did not negate the possibility of an action in the future regarding the claims. [Doc. 43].

The parties completed discovery on March 31, 2025, and discovery revealed only twenty-one disputed claims from January 2022 to the present. Significantly, the most recent date of service for these twenty-one claims was February 27, 2024—more than one year ago. [Doc. 72-2]. In light of the evidence produced during discovery, on April 18, 2025, Bristow executed another declaration (hereinafter, "Second Declaration") hoping to resolve the controversy between the parties. The Second Declaration provides that it is a "covenant not to sue on the at-

issue Litigation Medical Claims." [Doc. 59-4, p. 4]. The Second Declaration also affirms that:

> [T]he Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates will not bring claims against United or any of its subsidiaries and affiliates for payments of the Litigation Medical Claims at issue in *United Healthcare Services, Inc., et al. v. Hospital Physician Services Southeast, P.C., et al.* under state common law theories and state statutory claims (save and except for breach of contract theories).
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> [F]or clarity and the avoidance of any doubt, by this Declaration, the Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates fully and finally extinguish any and all claims seeking increased payment on the Litigation Medical Claims, and any other claim for non-emergent services provided at out-of-network hospitals with a date of service on or before the date of this Declaration.

Id. at 4–5.

Defendants filed the instant Second Motion to Dismiss Amended Complaint on April 18, 2025. [Doc. 59]. The motion is now ripe for review.

LEGAL STANDARD

Challenges to subject matter jurisdiction, which are brought pursuant to Federal Rule of Civil Procedure 12(b)(1), take two forms—facial attacks and factual attacks. A facial attack questions subject matter jurisdiction based on the allegations in the complaint alone. Morrison v. Amway Corp., 323 F.3d 920, 924

n.5 (11th Cir. 2003). "On a facial attack, a plaintiff is afforded safeguards similar to those provided in opposing a Rule 12(b)(6) motion—the court must consider the allegations of the complaint to be true." Lawrence v. Dunbar, 919 F.2d 1525, 1529 (11th Cir. 1990). This is not the case for a factual attack, which contests jurisdiction "in fact, irrespective of the pleadings. In resolving a factual attack, the district court may consider extrinsic evidence such as testimony and affidavits." Morrison, 323 F.3d at 924 n.5 (citation omitted). Because extrinsic evidence may be considered, "[a] district court evaluating a factual attack on subject matter jurisdiction . . . 'is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.'" Kennedy v. Floridian Hotel, Inc., 998 F.3d 1221, 1230 (11th Cir. 2001). Defendants' attack in this case is factual.

ANALYSIS

Defendants contend that this matter must be dismissed because the Second Declaration moots any controversy between the parties. Under Article III of the Constitution, courts have the authority to adjudicate "Cases" and "Controversies." The Supreme Court of the United States has "repeatedly held that an actual controversy must exist not only at the time the complaint is filed, but through all

stages of the litigation." Already, LLC v. Nike, Inc., 568 U.S. 85, 90–91 (2013) (citation modified).

A covenant not to sue can moot a controversy and deprive a court of jurisdiction. Importantly, a defendant claiming that a covenant not to sue moots a case "bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." Id. at 91. In other words, the defendant "must demonstrate that the covenant not to sue is of sufficient breadth and force that [the plaintiff] can have no reasonable anticipation of a future" lawsuit. Id. at 102 (Kennedy, J., concurring). "In assessing whether a particular covenant not to sue renders the declaratory judgment action moot," courts should look "to the claims and relief sought in the complaint as compared to the scope of the covenant not to sue." Synopsys, Inc. v. Risk Based Sec., Inc., 70 F.4th 759, 765 (4th Cir. 2023). Importantly, "[c]ourts should proceed with caution before ruling that [a covenant not to sue] can be used to terminate litigation." Already, LLC, 568 U.S. at 104 (Kennedy, J., concurring).

As stated previously, the covenant not to sue in this case provides, in relevant part, that:

> [T]he Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates will not bring claims against United or any of its subsidiaries and affiliates for payments of the Litigation Medical Claims at issue in *United Healthcare*

> *Services, Inc., et al. v. Hospital Physician Services Southeast, P.C., et al.* under state common law theories and state statutory claims (save and except for breach of contract theories).
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> [F]or clarity and the avoidance of any doubt, by this Declaration, the Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates fully and finally extinguish any and all claims seeking increased payment on the Litigation Medical Claims, and any other claim for non-emergent services provided at out-of-network hospitals with a date of service on or before the date of this Declaration.

[Doc. 59-4, pp. 4–5]. In short, the covenant protects United from an action based on any claim existing before April 18, 2025. The covenant is silent, however, as to claims arising after April 18, 2025.

Defendants contend that Bristow's Second Declaration is broad enough to moot the controversy between the parties. United asserts, on the other hand, that it "does not moot the controversy because [Bristow] fails to withdraw the threat of future litigation in connection" with any ongoing claims. [Doc. 66, p. 7]. United defines the ongoing claims as "non-emergency services" delivered "at out-of-network hospitals" after April 18, 2025. Id. at 8–9. According to United, "the fact remains that TeamHealth can initiate suit against United at any time on these [o]ngoing [c]laims" and that each time Defendants provide a medical service outside the scope of the NSA, "United continues to face an impossible choice

between adhering to its duties under ERISA and courting litigation from Defendants, or acceding to Defendants' demands and risking exposure to its customers." Id. at 9.

Both parties in this case make compelling arguments as to their relative positions. Indeed, the Court understands that at the present time, the risk of ongoing claims—claims accruing after April 18, 2025—is minimal for at least two reasons. First, the evidence produced in discovery shows that since January 1, 2022, just twenty-one claims have been made that fall outside the scope of the NSA. Notably, only one claim was made in 2024, and no claims have been made since that time. This historical data suggests that future claims are unlikely. Second, the evidence shows that Defendants currently do not staff any out-of-network facilities. This is significant because ongoing claims will only materialize if Defendants provide non-emergency services at these facilities.[6]

Even though ongoing claims seem unlikely at this time, Defendants fail to affirmatively disclaim that they will never demand full payment or bring suit on a

[6] United presented evidence that "hospitals and other facilities in Georgia occasionally terminate their participating provider agreements for various reasons, thus leaving United's network of providers. Sometimes, United is able to quickly come to terms with the departing hospital or facility on a mutually acceptable participating provider agreement, such that the loss of the provider from the network is temporary. At other times, the loss of the provider from the network is extended." [Doc. 54-44, p. 2]. Thus, although Defendants do not currently provide services at an out-of-network hospital or

claim accruing after April 18, 2025, should current circumstances change. Critically, Defendants admit that ongoing claims could be possible if a facility staffed by Defendants goes out-of-network. [Doc. 74, p. 4]. Yet, Defendants refuse to covenant not to sue on these claims. In the Court's view, if future claims were as impossible as Defendants suggest, Bristow's Second Declaration would have explicitly excluded these claims. See [Doc. 66, p. 29] ("Defendants' insistence that there is no possibility of litigation over ongoing non-emergency claims at out-of-network facilities makes their refusal to covenant with respect to such claims inexplicable—and belies any suggestion that a lawsuit on these claims is improbable."). Ultimately, the covenant plainly does not insulate United from an action on any claim that may accrue after April 18, 2025. The Court thus finds that Defendants fail to meet the "formidable burden" to make it "absolutely clear" that the unlawful conduct (here, demanding payment or threatening suit on insurance claims that are not paid at 100% of the billed charges) will not recur. See Hitachi Koki Co. v. Techtronic Indus. Co., No. 1:09-cv-3308, 2013 WL 10110347, at *4 (N.D. Ga. Feb. 6, 2013) (determining that a covenant not to sue failed to moot a controversy where it left open the possibility to sue in the future);

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facility, it could happen at any time. Defendants could also choose to expand their network and start operating in new facilities.

see also Synopsys, Inc., 70 F.4th at 768 (holding that where "a defendant retains the authority and capacity to repeat an alleged harm, a plaintiff's claims should not be dismissed as moot"). Therefore, the controversy in this case is not moot.

CONCLUSION

For the foregoing reasons, Defendants' Second Motion to Dismiss Amended Complaint for Lack of Subject Matter Jurisdiction [Doc. 59] is **DENIED**. Within fourteen days, the parties shall meet and confer and submit to the Court a proposed briefing schedule for dispositive motions.

SO ORDERED this 12th day of January, 2026.

J. P. BOULEE
United States District Judge