

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

D & W HEALTH SERVICES, INC., d/b/a
THE OAKS OF MID CITY NURSING
& REHABILITATION CENTER,

CIVIL ACTION

VERSUS

NO. 10-319-JJB-SCR

KATHLEEN SEBELIUS, SECRETARY
OF THE UNITED STATES DEPARTMENT
OF HEALTH & HUMAN SERVICES, ET AL

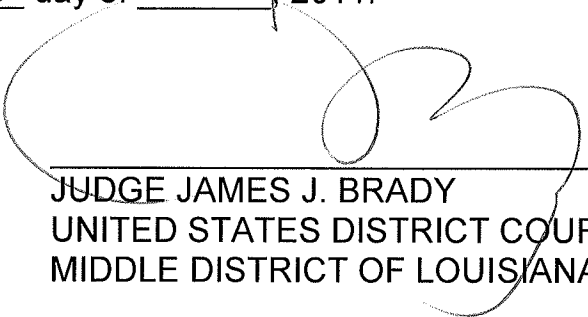
ORDER

HAVING CONSIDERED Defendants' Second Motion (doc. 129) to Dismiss for Failure to State a Claim;

IT IS HEREBY ORDERED that Defendants' motion (doc. 129) be DENIED. In its Ruling on Defendant's Appeal (doc. 114) of the Magistrate Judge's Decision, this Court determined that it was without jurisdiction to review the Secretary's decision to terminate Plaintiff's provider agreement and the constitutionality of the review process following the Secretary's decision. The Secretary also imposed civil monetary penalties and federal law provides that the Courts of Appeals have exclusive jurisdiction to review cases in which the Secretary does so. 42 U.S.C. § 1320a-7a(e). See, e.g., *Frounfelter v. Leavitt*, 563 F. Supp. 2d 1327, 1332-33 (M.D. Fla. 2008). This Court found that were it to retain jurisdiction over Plaintiff's non-civil monetary-penalty claims, it would run a serious risk of contradictorily ruling on the legality of the Secretary's decision and the process employed in reaching reach that decision. As such, the Court found

that it no longer has jurisdiction over Plaintiff's claims and Defendant's motion is therefore moot.

Signed in Baton Rouge, LA this 13th day of July, 2011.



JUDGE JAMES J. BRADY
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA